LUND UNIVERSITY

Researching Security: Collaboration Obstacles and Success in Described and Observed Experiences of Police and Border Guards' in the Baltic Sea Area

Basic, Goran; Yakhlef, Sophia

Published in:
Researching Security: Approaches, Concepts and Policies

2015

Document Version:
Publisher's PDF, also known as Version of record

Link to publication

Citation for published version (APA):
Basic, G., & Yakhlef, S. (2015). Researching Security: Collaboration Obstacles and Success in Described and Observed Experiences of Police and Border Guards' in the Baltic Sea Area. In *Researching Security: Approaches, Concepts and Policies* (pp. 24-41). University St. Kliment Ohridski, Faculty of Security, Skopje, Macedonia.

Total number of authors:
2

General rights
Unless other specific re-use rights are stated the following general rights apply:
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.
• Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
• You may not further distribute the material or use it for any profit-making activity or commercial gain
• You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: https://creativecommons.org/licenses/

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

University “St. Kliment Ohridski”-Bitola
Faculty of Security-Skopje

INTERNATIONAL SCIENTIFIC CONFERENCE

RESEARCHING SECURITY: APPROACHES, CONCEPTS AND POLICIES

Volume I

RESEARCHING SECURITY: APPROACHES, CONCEPTS AND POLICIES

www.fb.uklo.edu.mk

ISBN 978-608-4532-71-2

Skopje

МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

БЕЗБЕДНОСТА КАКО ПРЕДМЕТ НА ИСТРАЖУВАЊЕ - ПРИСТАПИ, КОНЦЕПТИ И ПОЛИТИКИ

INTERNATIONAL SCIENTIFIC CONFERENCE

RESEARCHING SECURITY: APPROACHES, CONCEPTS AND POLICIES

МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

БЕЗБЕДНОСТА КАКО ПРЕДМЕТ НА ИСТРАЖУВАЊЕ - ПРИСТАПИ, КОНЦЕПТИ И ПОЛИТИКИ

2-3 Јуни 2015, Охрид

Том I

СКОПЈЕ, 2015

INTERNATIONAL SCIENTIFIC CONFERENCE

RESEARCHING SECURITY: APPROACHES, CONCEPTS AND POLICIES

2 - 3 June 2015
Ohrid, Republic of Macedonia

Volume I

SKOPJE, 2015

Издавачи:
Универзитет „Св. Климент Охридски“ Битола
Факултет за безбедност – Скопје

За издавачите:

проф. д-р Сашо Коруновски, ректор на Универзитетот „Св. Климент Охридски“ – Скопје
проф. д-р Оливер Бачановиќ, декан на Факултетот за безбедност – Скопје

Уредник на изданието:
Проф. д-р Цане Т.Мојаноски

Преведувачи:
Анче Белада
м-р Даниела Јосифова
Марија Рашковска
Марија Вучкова

Компјутерска обработка:
Проф. д-р Цане Т. Мојаноски
Кемал Рушид

Печати:
АД „Ван Гог“ - Скопје

Адреса на издавачите:
Факултет за безбедност
1000 Скопје
П. Фах 103
тел: 022546211

Универзитет „Св. Климент Охридски“
1ви Мај б.б.
7000 Битола,
тел: 047223788

Publishers:
University “St. Kliment Ohridski”- Bitola
Faculty of Security- Skopje

For the Publishers:

Sašo Korunovski, PhD Rector of the University “St. Kliment Ohridski”- Bitola
Oliver Bačanović, PhD Dean of the Faculty of Security- Skopje

Editor in Chief:
Cane T.Mojanoski, PhD

Proofreading:
Anče Belada
Daniela Josifova, MA
Marija Raškovska
Marija Vučkova

Computer Processing::
Cane T.Mojanoski, PhD
Kemal Rushid

Print:
“Van Gog” - LTD Skopje

Address of the Publishers:
Faculty of Security
1000 Skopje
P.O. Box 103
tel: ++389(0)22546211

University “St. Kliment Ohridski”
1 Maj b.b.
7000 Bitola
tel: +++389(0) 47223788

ПРОГРАМСКИ ОДБОР

д-р Оливер Бачановиќ, декан, Факултет за безбедност –Скопје, Република Македонија
д-р Младен Бајагиќ, декан, Криминалистичко-полициска академија, (КПА), Србија
Хелен Мартини, претседател на Асоцијацијата на европските полициски колеџи
д-р Горазд Мешко, декан на Факултетот за криминална правдаи безбедност, Словенија
д-р Неделчо Лазаров Стојчев, Ректор на Академијата при Министерството за внатрешни работи, Софија
д-р Радомир Милашиновиќ, Декан на Факултетот за безбедност, Универзитет во Белград, Србија
д-р Ремзи Финдикли, Директор на турската национална Полициска академија, Турција
д-р Миле Шикман, началник, Директорат за полициска едукација, МВР, Република Српска, Босна и Херцеговина
д-р Иван Тош, Универзитет на применет науки, Хрватска
Рајко Пековиќ, Полициска академија, Црна Гора
д-р Трое Даниел Костел, ректор на Полициска академија Alexandru Ioan Cuza", Романија
д-р Нецад Корајлиќ, декан, Факултет за криминалистика, криминологија и безбедносни студии, Босна и Херцеговина
д-р Ференц Банфи, Директор во ЦЕПОЛ (Европски полициски колеџи)
д-р Аљоша Канџиќ,Институт за корпоративнни студии ИЦС, Љубљана, Словенија

СЕКРЕТАР

д-р **Весна Трајковска**,
Секретар на Програмскиот одбор

PROGRAMME COMMITTEE

Oliver Bačanović, PhD., Dean of the Faculty of Security
Mladen Bajagć, PhD , Dean of the Academy of Criminalistics and Police Studies, Serbia
Helene Martini, President of the Association of European Police Colleges
Gorazd Meško, PhD , Dean of the Faculty of Criminal Justice and Security, Slovenia
Nedelčo Lazarov Stojčev, PhD , Rector of the Academy of the Ministry of Interior, Bulgaria
Radomir Milašinović, PhD, Dean of the Faculty of Security Studies, University of Belgrade, Serbia
Remzi Findikli, PhD, Director of the Turkish National Police Academy, Turkey
Mile Šikman, PhD, Head of the Administration for Police Education of Republika Srpska, Bosnia and Herzegovina
Ivan Toth, PhD, University of Applied Sciences - VVG, Croatia
Rajko Pekovic, Police Academy, Montenegro
Troje Daniel Kostel, PhD, Rector of the Police Academy "Alexandru Ioan Cuza", Romania
Nedžad Korajlić, PhD, Dean of the Faculty of Criminalistics, Criminology and Security Studies, University of Sarajevo, Bosnia and Herzegovina
Ferenc Banfi, PhD, Director of CEPOL (European Police College)
AljošaKandzic, PhD, President of the Council, Institute for Corporate Security Studies ICS Ljubljana, Slovenia

SECRETARY

Vesna Trajkovska, PhD
Secretary of the International Programme Committee

ОРГАНИЗАЦИОНЕН ОДБОР

проф. д-р Цане Т. Мојаноски, претседател
вон. проф. д-р Марјан Николовски
вон.проф.д-р Светлана Николовска
доц. д-р Снежана Мојсоска
доц. д-р Никола Дујовски
доц. д-р Љупчо Тодоровски
доц. д-р Раде Рајковчевски
доц. д-р Весна Стефановска

СЕКРЕТАР
доц. д-р Марјан Ѓуровски

ORGANIZING COMMITTEE

Cane Mojanoski, PhD, Chairman

Marjan Nikolovski, PhD
Snežana Mojsoska, Dr. Sc
Nikola Dujovski, PhD
Ljupčo Todorovski, PhD.
Rade Rajkovčevski, PhD
Marjan Gjurovski, PhD
Vesna Stefanovska, PhD

SECRETARY
Marjan Gjurovski, PhD

CONTENTS

President Republic of Macedonia IX

SALUTATION OF THE DEAN OF THE FACULTY OF SECURITY - SKOPJE

Oliver Bachanovic, PhD XI

SECURITY AS A RESEARCH SUBJECT

Cane T. Mojanoski, PhD 1

THE PRINCIPLE OF NON-INTERFERENCE IN THE DOMESTIC AFFAIRS AS A PARAMETER AND "MEASURE" OF SECURITY

Augusto Sinagra 13

RESEARCHING SECURITY: COLLABORATION OBSTACLES AND SUCCESS IN DESCRIBED AND OBSERVED EXPERIENCES OF POLICE AND BORDER GUARDS' IN THE BALTIC SEA AREA

Authors: Goran Basic, Sophia Yakhlef 24

CONCEPTS OF HUMAN SECURITY AND SAFETY AND THEIR IMPLICATIONS

HUMAN SECURITY AND HUMANITARIAN IMPACT OF NUCLEAR WEAPONS: THE CASE OF IRAN'S DISARMAMENT

Valentina Ranaldi, PhD 45

VIOLENCE AGAINST WOMEN, ARMED CONFLICTS, GENDER AND HUMAN SECURITY

Mitko Korovchevski PhD, Blagica Kotovchevska MA 58

SECURITY IN THE 21ST CENTURY: IN SEARCH OF NEW RESEARCH PARADIGMS AND APPROACHES

Astrid Orovcanec, MA, Dimitar Mircev, PhD 68

THE EU STRATEGY FOR DEMOCRACY IN LIBYA AND UKRAINE: LEGALIZING HUMAN SECURITY OR, RATHER, PROMOTING THE "EUROPEAN WAY OF LIFE" IN THE WIDER WORLD?

Paolo Bargiacchi 85

DOES THE EU SUFFER FROM A DEMOCRATIC DEFICIT?

Fabiola Deliaj, MA 100

EUROPEAN UNION STRATEGY FOR THE DANUBE REGION (2011-2020) AND THE NATIONAL SECURITY OF THE REPUBLIC OF BULGARIA

Tihomir Lichev, Katia Licheva, Ivanka Borisova 109

HUMAN SECURITY CONCEPT – A CONTROVERSIAL ATTEMPT TO REDIFINE AND BROADEN THE SECRUTY CONCEPT

Blagica Kotovchevska, MA 118

SEMANTIC ANALYSIS OF SELECTED CRIMINAL LAW TERMINOLOGY IN ENGLISH AND FRENCH AND THEIR TRANSLATIONAL EQUIVALENTS IN MACEDONIAN

Vesna Trajkovska, PhD, Aneta Gjurovska, MA..... 129

INTERNATIONAL POLICY AND INTERNATIONAL HUMAN RIGHTS

DEMOCRACY AND HUMAN RIGHTS IN THE INTERNAL SECURITY POLICIES OF EU – AN IMPERATIVE TO THE SECURITY OF THE REGION

Zorica Saltirovska PhD 141

PROTECTION OF THE RIGHT TO LIFE AND THE USE OF FORCE IN COUNTERTERRORIST OPERATIONS THROUGH THE PRISM OF THE EUROPEAN CONVENTION FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Aleksandar Doncev, PhD, Vesna Poposka, LL.M..... 153

THE LEGAL FRAMEWORK OF THE RIGHT TO ASYLUM IN THE EUROPEAN UNION AND THE REPUBLIC OF MACEDONIA..... 163

Mirjana Ristovska MA, Natasa Pelivanova PhD..... 163

LEGALITY OF AMNESTY UNDER INTERNATIONAL HUMAN RIGHTS LAW

Marija Milenkovska, PhD..... 178

TITLE: DEMOCRACY, LEGAL STATE, HUMAN RIGHTS: THE "ARMED HUMANITARIAN INTERVENTION AS TRIUMPH OF THE HUMAN RIGHTS OVER THE SOVEREIGNTY 194

Jana Ilieva, LLD., Blagoj Conev, ... 194

THE CONCEPT OF GROUP-DEFINED RIGHTS IN MULTIETHNIC MULTICULTURAL AND POLYETHNIC MULTICULTURAL STATES

Nikola Ambarkov, MA 206

IMPLEMENTATION OF THE RIGHTS OF THE CITIZENS TO PUBLIC ASSEMBLY

Mirela Jokić, PhD 224

POLICE AND INTERNATIONAL POLICE-COOPERATION ON THE BALKAN

ETHICAL EDUCATION OF POLICE OFFICERS IN THE FUNCTION OF THE POLICE SERVICE ROLE IN A DEMOCRATIC SOCIETY

Temelko Risteski, PhD, Tanja Popova, MA., Emrah Mihtaroski,MA., ... 241

ON SOME ETHICAL ISSUES IN POLICING RESEARCH

Stojanka Mirceva, PhD, ... 254

MANAGEMENT IN POLICE WITH A SPECIAL REVIEW ON MANAGEMENT IN COMLEX SECURITY SITUATIONS

Nikola Dujovski, PhD, Snezana Mojsoska, PhD 265

ON GENERAL POLICE ANTI DRUG ACTION: INVENTORY AND UNIFICATION OF POLICE ACTIONS AS A WAY TO GENERAL ANTI DRUG PREPAREDNESS

Pavle Hadzic, PhD, Vojkan M. Zoric 280

THE PLACE AND ROLE OF POLICE IN THE MODERN CRIMINAL PROCEEDINGS

Boban Simić, LLD, Željko Nikač, PhD, Nikola Aritonović..... 288

POLICE REFORMS - EXPERIENCES, ANALYSIS AND BEST PRACTICES: EFFECT OF THE ORGANIZATION OF THE POLICE

OF REPUBLIC OF SRPSKA, APPLICATION OF THE CONCEPT OF COMMUNITY POLICING

Borislav Đukić, PhD, Gojko Šetka, MA..... 301

LOBBYING ACTIVITY INSTITUTE AND THE POSSIBILITY OF CORRUPTIVE ACTIVITY

Aleksandar Čudan, PhD, Dr Gyöngyi Major, PhD..... 313

Dear,

With the scientific contribution, the Ohrid 2015 conference answer the questions that are of interest to the scientific and social public. One of those questions addresses the issue of defining security science as a concept, which is related to the concept of security. For this concept different language systems use different terms. Also, one of the principal problems is the naming of the science which deals with researching security. Namely, security is a phenomenon which is the subject of research of philosophy and science, but it is also the subject of interest of other forms of knowledge as well, such as religious, common-sense and artistic ones. But it also denotes a state, activity and certain social creations which, one way or the other, fill human life or are in the function of meeting human needs. It deals with searching for the answer related to the nature of the destructions, the risks and prerequisites for setting up the conditions and the environment for the creation and improvement of human life, and also with the values: a) whether these values are threatened, to what extent, what from and why; b) how to improve and promote the values and eliminate their threat, who from, with what measures and against whom?

Topics

Approaches and methods in researching security
Contemporary security – problem of the state or the society
Security as a public good and its transformation in the spirit of the new generation of security risks and threats
Classification of security – types of security
The concept of security system reform
Security neutrality versus European and Atlantic integration
The concept of securitization
Place and role of intelligence and counterintelligence services
Expanded approach to security
Parliamentary control over the security system
Security law
Corporate security – new type of dealing with risks
The "public's right to know" and the security system
Prevention of violence at sports events
Energetic security in Southeast Europe
Comparative experiences and latest mechanisms for preventing corruption
Types of corruption in the security system and the judiciary
Participation of citizens in the fight against corruption
Practical policies for police reforms
Police integrity yesterday, today and tomorrow

Forms of cooperation between police forces and police organizations

Structure of international police cooperation

Contents of international police cooperation

Forms of ad hoc institutionalization of international police cooperation

Educational systems and profile of police profession in the Balkan states

Forms of bilateral and multilateral cooperation in the area of dealing with crime, trafficking in humans, narcotics and psychotropic substances

Institutionalization of regional cooperation in dealing with crises and other security problems

Is the formation of joint Balkan police forces?

Is the formation of Balkan network of criminologists as well as networks of individuals coming from particular specialties possible?

Approaches in cases of domestic violence

Contemporary forms of trade, legal regulations and relations between states

Cooperation of economic subjects between legal security and security threats and risks

Regional cooperation and regional economic policies

Democracy, legal state, human rights, their enhancement and forms of protection

International standards for the protection of freedoms and rights of persons and citizens and the policies of the Balkan states

Forms of protection of freedoms and rights – experiences and perspective

Strengthening the rule of law and the responsibility of the institutions

The role of international organizations in the promotion and implementation of international norms for the protection of human rights in the Balkans

Democracy, stabilization, integration

Inter-state and inter-institutional cooperation in the protection of human freedoms and rights

Contemporary forms of crime and ways for their suppression

Contemporary forms of cyber crime (electronic: frauds, misleadings, threats, id thefts and other forms of electronic frauds and crimes)

Forms of crime related to the Internet and cyber services and manners for their detection

Criminalistic experiences, achievements, methods, means and manners for the suppression of contemporary forms of criminality

Gender perspectives in security

Relationship between criminological and victimological sciences and security as a science – independence, complementarity, distinctiveness, delimitation, subject of study and research methods.

Relationship between criminal law science and security as a science – independence, complementarity, distinctiveness, delimitation, subject of study and research methods.

Relationship between criminalistics and security as ascience - independence, complementarity, distinctiveness, delimitation, subject of study and research methods

Classical (conventional) criminality – (un)justly neglected topic

Homicides and other crimes against the person – a worrying upward trend

Capital punishment – pros and cons (reasons for reconsideration)

Frauds – unjustly neglected criminality (phenomenology, etiology, prevention, penal policy)

Victimization of vulnerable groups (women, children, older persons, persons with disabilities etc.) and their protection

Reform of the criminal material and process law

Contemporary risk management methods in socio-pathological phenomena

Modernization of criminal justice

Contemporary challenges to criminology

Prevention of juvenile delinquency

Contemporary responses to criminality suppression

Sexual abuse of children

Assistance and support to crime victims

Problems relating to the statistical recording of criminality

Gender perspective of criminality

Women and criminality

Stress and victimization in penal institutions

The paradigms and the institutional models of security have a historical continuity. They have been changing. Security is inseparably related to the state and its organization, organs and function. Contemporary debates on security are expanded to the social and political sphere. Although the very mentioning of the concept of security, is, above all, associated with internal peace and peaceful life of the citizens, i.e. as freedom from threats, it also denotes a state of defence from an external enemy and encroachment of sovereignty. Therefore, the central interest of the concept of security is the state, which can be jeopardized by internal turmoil, economic and social disturbances, particularly in communities lacking the feeling of endangerment of identity and social cohesion. Hence, it can be concluded that "freedom means nothing without security" and that "the test of the freedom is the security of the minorities".

Taking into consideration the fact that the Faculty of Security functions within the system of higher education institutions of the University "St. Kliment Ohridski", as well as its tasks of continuous organized efforts for

theoretical conceptualization and reevaluation of security practice, the organization of the Conference is a serious challenge for contemporary science, whose task is to open dilemmas and debates about security, risk and crisis management, regional cooperation and their importance in the system of science. In this aspect, it is of great significance to evaluate the constitution and the development of security sciences,as organized and systematized knowledge of the security as a phenomenon, its organization and relations, as well as its activities, which impose the need for critical revalorization of scientific and research efforts.

Country	Original scientific paper	Review-scientific paper	Professional paper	Negative reviews	Total work papers
Italy		4			4
Hungary			1		1
Russian Federation			1		1
Ukraine		1			1
Sweden		1			1
Portugal	1				1
Serbia		12	13	2	27
Czech			1		1
Albania		2			2
Croatia		1			1
Bulgaria	1	2			3
Montenegro			1		1
Bosnia and Herzegovina			6	2	8
Macedonia		40	28	5	73
Total work papers	2	63	51	9	125

Organization committee of the
International Scientific Conference
Cane T. Mojanoski, PhD, president

Republic of Macedonia
President

To:
Faculty of Security – Skopje
University of "St. Kliment Ohridski" – Bitola

At the very beginning, allow me to greet you and wish you efficacious work of the International Scientific Conference on the subject: Macedonia and the Balkans, a hundred years after the First World War – Security and Euro-Atlantic Integrations".

Undoubtedly, this conference will considerably contribute to the affirmation of the Macedonian scientific thought and in addition to this, to promotion of the Republic of Macedonia as a host country of this event, and further as a country which is actively engaged in the field of security and regional collaboration.

I am convinced that about the hundred of participants who are to present their works will also have the opportunity for productive discussion, collaboration and encouragement of future activities. I would like to take this opportunity and compliment on the achievements of the Faculty of Security – Skopje and the St. Kliment Ohridski University – Bitola, as promoters of this significant international event. Further, I express my desire that the Faculty will continue to develop its academic work as a part of significant international activities.

Affirming my support, once again I wish to you a productive conference.

With respect,

Gjorge Ivanov, PhD
President of the Republic of Macedonia

Oliver Bachanovic, PhD

Dean of the Faculty of Security

SALUTATION OF THE DEAN OF THE FACULTY OF SECURITY - SKOPJE

Dear Rector,
Dear colleagues,
Ladies and Gentlemen,
Dear representatives of the Media,

On my behalf and on behalf of the Faculty of Security – Skopje I am honored to welcome you on the sixth International scientific conference with the title "SECURITY AS A SUBJECT OF RESEARCH – APPROACH, CONCEPTS, AND POLICIES" which is to be held in Ohrid, the Republic of Macedonia, in the following two days.

In the duration of the two-day conference most of the 127 participating papers will be presented, of which: 2 authentic scientific papers, 64 review scientific papers, and 52 expert papers. During the reviewing procedure 9 of the papers handed over received a negative review.

We can emphasize that this year the crown of the conference are the papers of professors and scientists from 15 countries, including Italy, the Russian Federation, Hungary, Portugal, the Czech Republic, Ukraine, Sweden, Bulgaria, Slovenia, Croatia, Serbia, Albania, Montenegro, the Republic of Srpska, Bosnia and Herzegovina, and the Republic of Macedonia.

The scientific conference in Ohrid 2015 through debates shall give answers to the questions which provoke interest in the scientific and general public. One of these questions is the defining of the concept of security science. This is related to the concept of security. For this term, in the different language systems different terms are used. One of the basic problems is naming the science whose subject of research is security. Namely, security is a phenomenon studied by philosophy and science, but it is also a subject of interest of other forms of knowledge, such as religious, reasonable, and artistic. It is also a state, an activity, and certain social creations which accomplish human life in one way or another or function in direction of fulfilling human needs. It deals with searching for an answer about the nature of destructions, about the risks and conditions for creating

an ambience in which human life will be created and promoted, but also with the values:

a) whether, to which extent, from what and why they are threatened;

b) how to reduce or eliminate the threats, and by whom, what measures and against whom these measures should be overtaken?

Dear friends,

At the conference, through an open and well-argued debate we expect to actualize the discussion about the difference between the activity of security and the science which deals with security, i.e. scientific consideration and discovering the scientific laws and legitimacy in the social field of security.

When we talk about security on a national or global plan, it should be known that security got its contemporary concept and its basic contours after the fall of the Berlin wall, i.e. after the Cold War. The terrorist attacks of September 11th 2001 marked a new era in the studying and the practice of security. Globalization and the processes which led to a change in the structure of the world power conditioned that the phenomena which threaten security should be viewed as challenges, risks, and threats. The ranking of these terms and phenomena depends on the degree of their influence on the threats of security, and hence they are latent, potential, or factors of direct threats.

In the scientific and expert debate there are polemics on security and the security science. Thus, instead of science we talk about a state (integral security), about an area (security sector) or a certain system. It is indisputable that security is all this together. It is a significant human activity which implies numerous processes, subjects, and relations. This sphere is characterized by specific events and phenomena which are a challenge for many individuals, organs, and organizations, and above all for the country. Security is a complex phenomenon which has often been unilaterally and narrowly defined throughout history.

Distinguished colleagues,

As a political conception, security is obviously a precondition for existence of life – individual and societal, and it refers to absence of threats and protection from them. The understanding of security as an indigenous interest of every individual and the broader human collectivities – the family, society, nation, country, international system, etc. points out to the need of broadening the concept of security towards such approaches. Hence, in the theory, the concepts such as national or international security are shaped, and

in recent times – human, individual, societal and global security, which indicates a significant spreading into new dimensions of security. The paradigms and the institutional models of security have historical continuity. They have changed. Security is inseparably connected to the state and its organization, organs, and function.

The contemporary debates of security are spread on the social and political sphere. When we mention the term of security, above all we imply internal peace and peaceful life of the citizens, i.e. absence of threats, but it also refers to the state of defense from an external enemy and threats on the sovereignty. This means that the central interest of the term of security is the state, which can be threatened by internal factors, economic and social disorders, especially in communities which lack the awareness of threats on the identity and social cohesion. Hence we can state that "freedom is nothing if there is no security" and that a "test for freedom is the security of the minorities".

Distinguished professors,

Dear guests,

Since the time of independence the Republic of Macedonia has been developing a multiplied system of national security which through the form of the four pillars clearly defines the determination for personal, collective, and regional security and defense, as well as the support towards the international operations. In the framework of these determinations, at the present moment there is not a dominant position of any of the security sectors. The security analysis of the sectors facilitates the development of new standings and processes for further development and research of the field of security, penetrating deeper towards the referent security subjects as bearers and executors of the national security which are essential in the implementation of the Euro-Atlantic vision for creating a modern, contemporary, and safe country.

The Macedonian model of national security is defined as "an inter-dependent set of measures and activities, plans and programmes carried out by the relevant institutions in the Republic of Macedonia with the aim of protection, maintenance and promotion of the national security. Taking into consideration that it comes to a multidisciplinary security system, we can confirm the standing that the Republic of Macedonia makes firm steps on its way to the Euro-integration processes by which it follows the efforts of the international community for maintenance of peace and security at a local, regional and global level.

Dear Ladies and Gentlemen,

Dear colleagues,

The Faculty of Security in Skopje continues its orientation in organizing international conferences in the area of security; thus, it contributes to development of the scientific thought and helps the decision-makers at regional, national, and local level, with the help of cognizance and research results to overcome the practical problems which they face in a quick, simple and timely manner.

I believe that in the following two days good and fruitful debate will be developed. Such debate will bring to new concepts, approaches and policies in the security and its researches.

I wish productive work to all participants.

Thank you.

UDK:355.45:001.87

SECURITY AS A RESEARCH SUBJECT

Cane T. Mojanoski, PhD

Faculty of Security Skopje

As in any other science, the possibility for scientific research of the security phenomena is primarily conditioned by the features of the subject, the theoretical fund (especially by its known scope) and the language of the security sciences. In the essence, the possibility of research is conditioned by a thorough methodology of the security sciences, the cadres, the general attitude towards researching, the research means, etc. Yet, research, and especially methods primarily depend on the other constituents of the security sciences. The methodologic theory insists on the unity of the subject and the method of research. The epistemological characteristics of the subject define the method (Mojanoski, 2010, p. 15). This implies that the method of asfaliology (*asfalia - security; logia - science, i.e. security science*) is specific in relation to the method of the other sciences as the security phenomena are specific as a subject of research in relation to the scope of reality which is researched by the other sciences. It is indisputable that the features of the security phenomena have the same implications of the method, and hence of the possibility of scientific research in asfaliology (security sciences) (Mojanoski, 2010, p. 12).

The analysis of the bases of the research of security starts from the standing that the **ontological assumptions** lead to **epistemological assumptions** which on their part, refer to methodologic analyses which evoke questions such as: whether and to which extent the applied instruments and methods of research provide for gathering information and on these grounds objective and true conclusions can be drawn. Individuals have always strived to come to the truth, and the means they used can be classified in three broad categories which are based on experience, reasoning, and research. Of course that they should not be observed as independent one from the other mutually excluding each other, but as complementary and mutually supplementing.

Experience is knowledge derived from the everyday life of people; it is based on authority and it is reasonable.

Reasoning is deductive, inductive, and deductive-inductive.

Research is a "systematic, controlled, empirical, and critical review of the hypothetical standings about the supposed relationship among the phenomena".

Research, unlike the other two types in the studying of the reality and discovering the truth, has several important features:

1. **Research implies a controlled and systematic way in the process of discovering the truth and is based on the inductive-deductive method;**
2. **Research is empirical or, as Kerlinger says: "subjective belief… has to be ascertained in relation to the objective reality. Scientists have to base their notions on the judgement of the empirical research and assessment".**
3. **And, in the end, research corrects itself; i.e. the incorrect results are discovered and corrected.**

In the research of the security reality two conceptions are recognized.

First, **conceptions which derive from the ontological nature** and they refer to the essence of the security phenomena which are researched. Here comes the question of whether the security reality is outside the individual? Is this reality something that comes from the cognizance? Is it a result of the individual cognizance? And even simpler: is the reality objective or, by its nature, it is a product of the individual cognizance?

The actions of people (employees of the security organs) in their relationship to other people are not, and cannot be strictly programmed; they are dependent on the person, emotions, capability, knowledge and the values (Spaseski, 2005, p. 33). The actions are defined by the legal regulations of security. They are based on the qualitative values of the people. What is emphasised here are the principles: activity, incentive, humanity, consistency, etc. which are not always in accordance with the technical systems. But, security structures, not only because of the character of the work and the specifics of this activity, are closed structures. They are vailed in an aureole of secrecy. This position provides an assumption that the subjective weaknesses and ignorance are covered by the principle of secrecy. For this reason, and especially from the aspect of satisfying the principle of verification and availability of data, the possibility for studying and researching of the activities of the security organs is disrupted (Milosevic and Milivojevic, 2001, p. 34). This is why we cannot expect exact results from the researches. Yet, the subjective nature of the activity of the organs of security determines that for such (inexact, probable) research results - a complex methodological framework should be used as well as methods by which we will indirectly recognize the processes and the content of the work (Spaseski, 2010, p. 3 - 4).

The second group of **conceptions is related to the epistemological nature of cognizance** of the security phenomena and refers to the nature of knowledge. (1) Namely, is it possible to define and transmit the nature of knowledge in its objectivity, as raw and real? (2) Is knowledge soft,

subjective, spiritual, or we can even say that it is of a transcendental nature based on experience and insight which are in a unity, and basically it is of individual nature (Burrell & Morgan, 1979). The standing according to which knowledge is raw and substantial on the part of the observer will require overtaking a role of a researcher who observes by the example of the natural sciences.

The third group of conceptions refers to the nature of human knowledge related to human reacting to the surrounding. Here, two images about the individual derive: a) an image which sees the individual as a being that reacts mechanically to the surrounding, and b) an image which observes the individual as bearer of his or her actions. "In these two extremes of the relation between the individual and his or her surrounding is recognised the big philosophical discussion between the representatives of determinism on one part, and the volunteerism on the other part" (Burrell & Morgan, 1979 in: Cohen, L., Manion, L., Morison, K., 2007).

These three approaches in the understanding of reality directly influence on the methodological position of the researchers, because the different ontological and epistemological aspects suggest different models of research. The researchers, who have adopted the positivistic aspect similar as in the example of approaching the studying of the world of the nature, consider that thus should be approached the world of the society. Undoubtedly, from the big arsenal of methods, they will choose the methods which are distinctive for them, such as: experimenting, raw methods, statistical or quantitative methods which strive to accurately measure the phenomena.

Security phenomena have an interdisciplinary subject of research because they are complex, dynamic, and hierarchized and contain factors studied by different sciences. Thus, since they cannot be deduced to an elementary phenomenon, security phenomena are a subject of numerous scientific disciplines (Spaseski, 2010, p. 23). Researches in the security phenomena are interdisciplinary because they have to lean on the cognizance of these scientific disciplines and use the methods used by these scientific disciplines (Remenski – Tashevska, 2007, p. 19). Of course, these researches are complex and durable, and the results depend on the level of the theory and the method of the numerous scientific disciplines (Bakreski, 2007, p. 11).

Others are more favourable towards subjectivist methods, which observe the world in the sense of individuality, more humanely, non-determining, and in this spirit, methods which are related to descriptions, observing of the individuals, the individual cases and the forming of constructs.

In the first example we are talking about **quantitative researches** where the attention is directed towards defining of the elements and discovering the ways in which these elements are related. This aspect strives towards **discovering of universal laws** which explain and change reality. This standing is called **nomothetic,** unlike the **ideographic,** where it is the contrary: the meaning of the subjective experience of the person is emphasised in the creation of the social world, and here the world is approached in a different way in its studying. The external reality is not interesting for studying; for the researcher, in essence it does not even exist.

In the social sciences, and thus also in asfaliology (the science of security), mainly, two different traditions in relation to the use of the method are recognized: a) **followers of the qualitative methods in the sense of objective, statistical methods**, and b) **followers for application of humanistic and qualitative researches, and with it, of such methods.**

In a big number of the researches the two methods are applied simultaneously, and in this case we are talking about mixed methodology. The margins between these two approaches are not very strict and there is an interweaving and moving from one to another method. For example, the post-modernistic methodology does not start from the conviction that researchers can discover the truth in the society, and that there is only one truth.

Security reality is a subject of research from the aspect of the standing of the security actors in the role of active participants in the research process. For example, in the feministic methodology the division to quantitative and qualitative methods is not very significant. Here, we start from other assumptions which mainly criticize the methods of research which they consider against the interests of women and they suggest new epistemological guidelines in the researching.

The post-modernistic destruction on the plan of theory, epistemology, and methodology clearly indicates that the time of the big theories is over long ago. According to Mouzelis, the theory "should not strive towards a type of a monolithic paradigmatic simplicity, but towards strengthening of a theoretic pluralism, removing the obstacles for open communication among the different sub disciplines or paradigms" (Mouzelis, N., 2000:32, according to Aceski, 2103).

With the appearance of the **social constructivism** in which different approaches in the studying of the security reality are included, a "multitude of different worlds" have started to be recognised. This is problematized by the classical understanding of the objectivity. This suggests efforts to avoid the importing of subjective elements in the researching, i.e. to make clear distinction between the objective and the subjective. It is insisted on avoiding of one positivistic, Dirkem's approach, in which security phenomena are

observed as facts, i.e. Weber, who influenced by historicism, puts the emphasis on the understanding of the human activity and individual behaviour.

In the researching of the security phenomena several researching traditions have been identified from which we can see how the concepts will be used, which hypotheses will be used, and what the role of the theory and the models is. In this context, according to Blaikie, **four traditions** represent the way in which the concepts in the security researches have been used:

- **ontological tradition – the concepts identify the main features and the relations in some security phenomenon;**
- **operational tradition – the concepts are transformed in variables which can be measured in a different way;**
- **sensitizing tradition – the concepts give initial ideas for what is chosen and these ideas are recognized during the researching process;**
- **hermeneutic tradition – the concepts used by the researcher to describe or understand the specificity of the security phenomenon, i.e. the questions deriving from the everyday concepts and meanings.**

The ontological assumptions are always implicit and include:

- **the basic components of the social life, including individuals, social processes and the social structures;**
- **the way of relatedness of the components;**
- **the features of the human nature, i.e. whether human behaviour is determined, or human beings are relatively autonomous and they create their own social and security life;**
- **motivation in the behaviour from interests or values.**

Operational tradition is concerned with transformation of the concepts into variables with the help of identification of the key concepts and their defining and measuring. The language of conceptualisation is used for identification of the key concepts and for perception of the relations among these concepts for identifying the research hypotheses and questions. This language is understood by some as a "theory".

In fact, according to Turner, theories are built on concepts, and concepts are constituted of definitions. The researcher is required exact terms and by the help of these terms he or she defines the concepts in order to use them in the research project. The aim is to maintain consistent theoretical language, which is difficult to achieve, but it is not necessary.

Namely, the **main question is how the theoretical concept can be transformed into empirical concepts?** This is achieved by specifying the

conducts by which the "theoretical" concepts, by stating what will be considered as an example or what has to be changed in order to obtain different values about the theoretical concept, i.e. the indicators which will be used for operationalisation of the concept in the function of coming to the needed information. This, according to Blaikie, is a way of coming to an operational definition.

One of the main difficulties which the researchers face in the defining and operationalisation of the concepts is the degree of abstractness. Some concepts refer to concrete phenomena for a concrete place and time, and other concepts refer to phenomena which are very general. The theoretical researches, according to Blaikie, **are essential for identification of the most useful concepts** and finding of their true formal meaning, whereas research refers to selection of the best methods for operationalisation of the concepts in order to continue gathering of appropriate information and their analysis.

Sensitive concepts deal with the question of how the things should be researched. The task of the research is to re-structuralise the concept in order to identify the nature and the mutual aspects and variety of the other features. Unless this is achieved, concepts about the phenomenon cannot be imposed. The researcher sets one or several general and at the beginning insufficiently clear concepts which he or she needs in order to direct the research project. At the beginning, their significance will be ascertained rather by explanations than by exact definitions. Yet, as research develops, **the meaning** of the concept will be redefined to make it precise for the purpose for which it is set, considers Blaikie. On the other side, Glaser, B. G., Strauss, A. L. point out to the **meaning of data** about the sensitivity and the continuous development of theory. Their theory combines "concepts and hypotheses which derive from several existing data which are useful. The potential theoretical sensitivity is lost when the researcher relates in advance exceptionally to only one theory (Glaser, B. G., Strauss 1967:48). The sensitivity here refers to the **openness** of the researcher towards different ideas and continues towards theoretical perceptions and data" (According to Aceski, 2013).

The basic feature of this tradition is that the researcher primarily gives (preliminary) **ad hoc** concepts and then, during the research, he redefines their meaning. Even though the researcher can obtain some help from the people involved in the research, yet the concept is left to the researcher. Even when it has been replaced by another concept, the concept and its useful meaning is based on the decision of the researcher.

According to the **ontological assumptions** of the research in relation to the answer to the question about the objectivity of reality, researchers polarise in two streams: **nominalists,** for whom reality is a product of our mind and the subjects are existent in our subjective consciousness, and

realists, who consider that reality is outside of us, regardless of our senses and our mind. About the qualitative researches the nominalist approach has a crucial role in the approach towards the research.

In the **ethnographic terrain researches** several types of validity of the research have been registered, and those are: trust and authenticity of the data, credibility and trustworthiness as well as a possibility that they become confirmed in a different way, for example, by a re-researching.

Some researchers deal in details with the **degree of value** and the **certainty** of the research, where mainly attention is directed, above all, towards impartiality, which implies existence of a thorough and balanced representation of the variety of reality in the research and the quality of construction of the situation.

Authenticity which derives from the ontological grounds of the research refers to the understanding of the situation to transform the unfamiliar into familiar. In the sphere of authenticity, as an important component of the **validity** of a research are also put the educative, catalytic, and tactical authenticity. For example, **tactical authenticity** refers to the benefits from the research for all participants in the research.

The essence of the conflict between the two paradigms, on one part: positivism, the logical positivism and the post-positivism, and on the other: constructivism, the interpretational approach, phenomenology or naturalism in their ontological or epistemological assumptions are all consisted in the **incompatibility** of the approaches, strategy of research, rhetoric and the methods. It is considered that these principles are related to different **paradigms,** so using of combined methods, especially in the realisation of a research project, is considered impossible.

One of the questions which evoke interest in the scientific and the general public is the defining of the term of **security science.** This is related to the term security. For this term, in the different lingual systems different terms are used[*]. One of the basic problems is also the naming of the science which deals with studying of security. Namely, *security is a phenomenon* which is studied by the philosophy and the science, but it is also a subject of interest of the other forms of knowledge such as the religious, reasonable, and the artistic. But it is also a state, activity and certain social creations which in some way fulfil human life or are in function of satisfying human needs. It deals with searching for the answer about the nature of the destructions, about the risks and conditions for creating an ambience in which human life will be created and developed. It also deals with *the*

[*] English - security, Slovenian - varnost, French - sécurité, German – sicherheit, Spanish – seguridad, Russian – безопасность, Turkish – güvenlik, Ukrainian – безpека, Swedish – säkerhet, Bulgarian – сигурност, Albanian – siguri, sigurim, Greek - asfalia (η ασφαληζ), Serbian – безбедност, Croatian – sigurnost,

values: a) whether, to which extent, from what and why they are threatened; b) how to reduce or eliminate the threats, from whom, by which measures, and towards whom these measures should be overtaken?

Security derives from the needs of the individual. It is an interest to preserve personal and collective goods, but also to warn on the possible disruptions of the adopted social values. According to the contemporary understandings, security can be individual, national, or global, economic, or ecological. In the academic circles there is a disagreement in the legitimising of the science of security. While some experts consider that it is a completely independent discipline with a defined subject, aims and methods of studying, others classify it in the marginal areas of the different social sciences, because according to its requirements, it represents a "sea without a shore". Thus, we can read that the political sciences, law, sociology, criminology and the military skilfulness are based on security, and derive from it. When we talk about security on a national or a global plan, we should bear in mind that security gained its contemporary concept and its basic contours after the fall of the Berlin wall, i.e. after the Cold War. The terroristic attacks from 11 September 2001 marked a new era in the studies and the practice of security. Globalisation and the processes which led to change in the structure of the world power evoked phenomena which threaten security to be observed as challenges, risks, and threats. The ranking of these concepts and phenomena depends on the degree of their influence over the threatening of security, and thus they represent latent, potential, or factors of direct threatening.

Because of the fact that some security phenomena are occasional, researches lose their stable (permanent) empirical base (Remenski – Tashevska, 2008, p. 373). Instead of real phenomena (for example civil unrests, terroristic plots, criminal acts, and similar), imitation and the models become an empirical field (Spaseski, 2008, p. 363). This is why some researches in the security sciences are modal. This has significant implications on the possibility of cognizance. Namely, **models cannot be identical**, and not even similar to the originals. Even though they may be similar according to space, time, physical forces and activities, they cannot be similar according to the qualitative values of people, nor according to the results (for example the losses); these values cannot be valuably modelled, nor even researched. Hence, results can be only conditionally certain (Milosevic and Milivojevic, 2001, p. 34).

Because security phenomena are occasional and because they appear in concrete forms and contents, **researches are difficult to verify.** If the factual standings of the security sciences are derived inductively from the previous experience (as a criterion of verification) they can be true and operational as much as that experience; by experience they become old, lose the power of the facts and become hypothetical standings. This means that

they must be reassessed so that in reality they can act as facts (Milosevic and Milivojevic, 2001, p. 34). Here we should always bear in mind that the standings about the **numerous qualitative factors** – the people, employees in the organs of security can hardly be empirically assessed and measured out of the real activity of the system of security. If the standings are verified theoretically, by approving of the accordance with the most general standings of the security sciences or even with the normative standings (deductively), there is a danger of positivism and vulgarisation, because all standings which are verified have to be in accordance with the standings of the theories by which they are verified. In this type of verification it is often that the theory confirms the accurateness of the standing which is contrary to this theory. The theory is most often accepted in a positivistic manner, as a priori true (Milosevic and Milivojevic, 2001, p. 34 - 35).

It is obvious that the **inductive** and **deductive** ways of verification separately are not sufficient, nor they are certain about the researching of the security phenomena. Each one has certain advantages but also disadvantages, and this is why it is considered that verification can be correct only if it was derived by the dialectical inductive-deductive method. This means that only by mutual empirical and theoretical verification it is possible to come to factual standings about the security sciences (Milosevic and Milivojevic, 2001, p. 35).

The possibility of scientific research of the security phenomena is conditioned by the theoretic fund and the language of the security sciences. Here we should emphasise that the new scientific cognizance about the security phenomena is quite dependant on the quantity and the quality of the continuous theoretic fund of the security sciences. It is a fact that, security sciences do not have even one theory built; it is a sum of the often distanced theories about the narrower parts of the subject of the security sciences. Some are primarily theoretical, and others are applied. Each one of them has a character of a doctrine and / or a legal regulation; they are comprised of a sequence of attitudes, instructions and principles. There is not a sufficient number of correct definitions and scientific laws which have a capital role in the researching of the security phenomena. For this reason researches are especially complex and uncertain, and the results are conditional and hypothetical (Milosevic and Milivojevic, 2001, p. 35).

Security is a phenomenon which is studied by philosophy and science, but it is also a subject of interest of the other forms of knowledge such as the religious, reasonable, and the artistic. But it is also a state, activity and certain social creations which in some way fulfil human life or are in function of satisfying human needs.

The philosophy of the security develops as part of the general philosophy and in basics it poses the questions related to humans and their

existence, it poses numerous questions and seeks for answers which are either in the content of the phenomenon of security, or are in a direct relation to the security. It concerns with searching for the answer about the nature of destructions, about the risks and the conditions for creating an ambience in which human life will be created and developed (Pavlović, 2013, p. 57 - 60). It also deals with the values: a) whether, to which extent, from what and why they are threatened; b) how to reduce or eliminate the threats, from whom, by which measures, and towards whom these measures should be overtaken?

The philosophy of the security tries to discover the ontological and the gnoseological problems of security, to define the principles of the notion of security and to offer bases and methods for constituting of the truth about security. According to this, security is not a science which by its own methods and actions can answer the questions about the state with the values. This is achieved by the help of other sciences which separately study the values or the phenomena which define their position from the aspect of whether they are threatened or not, and how to overcome those threats (Spaseski, 2005, p. 38).

Security is a subject of science. There are numerous sciences and scientific disciplines which deal with different approaches in the studying of security, and they are related to: a) values; b) threats on the values; c) the methods and means by which the threats of the values are discovered; d) measures, methods, and means which are to be used for prevention and combating threats; e) the right to security; f) the security policy; g) the person – delinquent; h) the security organisations and institutions; i) security relations. But, there is also a science which is generally concerned with security known as a general science of security or asfaliology.

Security is also a subject of interest of the religious interpretations and knowledges. Through its guidelines and their implementation, religion proclaims relations among people weaved with requirements of peace and welfare on the Earth and among people. Through the principle of *belief* religion strives to create a positive spirit among people or to calm down the unrestful spirit among people. Such is the example with the Ten Commandments. They are in function of the security of the believers, as well as in function of the security of humans as individuals (Spaseski, 2005, p. 38).

And, at the end, a word on the Conference. For already six years, the theme of security varies. Nine volumes of papers have been published. The fund of authors' contributions has excessed 600. I hope that these Ohrid meetings will actualise a part of the open dilemma – is there a science of security? If there is, then why the institutions where it is studied are called "security studies?" Why the institutions which study the political science are

called “political sciences” etc. I hope and expect that the search for the answer to these questions will continue in the future.

Referents

Blakie, Norman. *Designing Social Research.* Cambrige: Cambrige Univeristy press, 2000.

Cohen, L., и L. Manion. *Research Methods in Education.* London and New York: Routledge, 1994.

Cohen, Louis, Lawrence Manionand, и Keith Morrison. *ResearchMethodsinEducation.* London: Routledge, 2007.

Pavlović, Gojko . “Razvoj ideje bezbednosti.” *Sociološki diskurs* 5, бр. 3 (2013): 51 – 66.

Pavlović, Vukašin. *Teorijski identitet političke sociologije.* Godišnjak Fakultata političkih nauka. Beograd: Fakulet političkih nauka Univerzitata u Beogradu, 2010.

Ацески, Илија. *Дизајнирање на социјалните истражувања (теорија, методи, собирање и обработка на податоци).* Скопје: Филозофски факултет, 2012.

—. *Социологија.* 3. Скопје: Филозофски факултет, 2002.

Бакрески, Оливер. “Нови предизвици за безбедноста.” *Полициска академија Скопје*, 2007: 11-19.

Милошевиќ, Новак, и Саша Миливојевиќ. *Основи методологије безбедносних наука.* Београд: Полицијска академија, 2001.

Милошевиќ, Новак, и Саша Милојевиќ. *Основи методологије безбедносних наука.* Београд: Полицијска академија, 2001.

Мојаноски, Цане Т. “За поимот наука за безбедноста (асфалиалогија).” *Годишник на Факултетот за безбедост*, 2010: 12-23.

Мојаноски, Цане Т. “Дилеми во дефинирањето на методологијата на асфалиалогијата.” Во *Безбедноста, еколошката безбедност и предизвиците на Република Македонија; Факултет за безбедност*, уредил Цане Т. Мојаноски. Скопје: Факултет за безбедност, 2010.

—. *Методологија на безбедносните науки - истражувачка постапка.* Том Книга II. II том. Скопје: Факултет за безбедност, 2012.

—. *Методологија на безбедносните науки - Основи.* Том Книга I. I том. Скопје: Факултет за безбедност, 2012.

Ременски - Ташевска, Фросина. “За некои општествено-политички аспекти на исламскиот радикализам и регионалната и глобалната

безбедност.” *Годишник на Полициската академија Скопје*, 2007: 19-32.

Ременски Ташевска, Фросина. “НАТО моделот за управување со кризи.” *Годишник на Полициската академија Скопје*, 2008: 373-388.

Спасеки, Јордан. “За потребата од современо вреднување на безбедносните превентивни мерки при градењето на безбедносната архитектура на Европската унија.” Во *Безбедноста, еколошката безбедност и предизвиците на Република Македонија*, уредил Цане Т. Мојаноски, 1-13. Скопје: Факултет за безбедност, 2010.

Спасески, Јордан. “Безбедносната политика во услови на светски процес на глобализација.” *Годишник на Факултетот за безбедност*, 2008: 365-373.

—. *Македонија- столб на безбедноста и мирот на Балканот.* Скопје - Кочани: Обнова, 2005.

Спасески, Јордан. “Човекот и безбедноста.” Уредил Цане Т. Мојаноски. *Годишник на Факултетот за безбедност - Скопје* (Факултет за безбедност Скопје), 1 2010: 23-33.

UDK: 323:355.45

THE PRINCIPLE OF NON-INTERFERENCE IN THE DOMESTIC AFFAIRS AS A PARAMETER AND "MEASURE" OF SECURITY

Augusto Sinagra, PhD
Full Professor of European Union Law at "Sapienza" University, Rome

Content: 1. *Preliminary considerations* – 2. *The evolution of the international relations, the globalization, the new exigencies and the contents of security* – 3. *International and domestic order* – 4. *The principle of non-interference in the domestic affairs of the State* – 5. *Prohibition of interference in internal affairs of the State, right to intervene and international security* – 6. *The parameter of compatibility between the prohibition of interference in internal affairs of the State and right to intervene. The responsibility to protect* – 7. *The political aspects and the mystification: the consequences on the international and internal security* – 8. *The role and the action of the European Union* – 9. *Conclusions*.

1. Object of this important Conference – *Researching Security: Approaches, Concepts and Policies* – is very well expressed in its presentation and, among several aspects, contents, exigencies and instruments for the protection of security (or, at least, for guaranteeing a higher grade of security), it is generally underlined that security is a complex phenomenon and a controversial notion not well defined over the years; in the same way has been correctly pointed out that any research in the field of security is necessarily connected to the different circumstances and categories as, for example, the physical security which guaranties the survival, the absence of a structural violence, the peace and stability.

Specifically, within the international relations, security is identified in several ways and frequently in the literature concerning international relations at different levels, as the one concerning international law, the notion of security is pointed out in different ways, as mentioned, without a shared definition of any unitary notion.

On political grounds in general the notion of security is clearly and prejudicially a necessary condition for the existence of the individual

and the social groups, and is clearly identified in the absence of threats and in the protection from the threats.

Therefore, as clearly evident, the implication of security reflexes the primordial interest of every individual and social entity as specifically, for what concerns in this paper, the Nation and the State with respect to which is directly implicated the analysis of the international system even and mostly in its normative expressions in order to measure the existing level of security in the relations between States, being this the specific point of view and the object of the present paper.

It is about a specific and well identified way of addressing the notion of security in the mentioned contexts, as the international one, beside the other different contexts with respect to which is rightly posed the problem or the exigency of guaranteeing a minimum standard of security.

2. We could not avoid to agree on the fact that in recent times the evolution of the international relations, the economic interests, the even religious disputes, the new and rapid communication an moving means, in a larger context of *globalization,* have determined not only new exigencies of security but a different content of security notion itself. Just to recall, at this purpose, the non-conventional armed conflicts (so-called "asymmetric") as well as the broadening phenomenon of national and international terrorism.

This evolution has subsequently determined the necessity to reconsider the concept of security within national limits but even and mostly within international ones.

If it is true that modalities and forms of security at international level underline their substantial continuity in the historical retrospective and perspective, it is about to evaluate if these forms and modalities of the international security system have been changed and in what way these changes are nowadays represented; keeping always in mind, however, that the international security is necessarily related to the State and its way of being.

Thus, the consequence deriving from the fact according to which, in presence of the above mentioned *global* changes, a credible standard of international security wouldn't prescind from a situation of internal peace within the State which means an orderly and pacific life of inter-individual relationship, but means also and mostly a condition of freedom from any kind of threat and a condition of innate exigency of defense from external threats which may threaten

the sovereignty of the State in terms of political independence as well as in terms of territorial integrity.
This aspect comes to evidence as a central element of the notion of security only if we observe how always most frequently the sovereignty of the State, in the indicated terms, is threatened or compromised through the external organization of seditious or subversive phenomena and even through the instrument of terrorism. This happens, mostly, in those state realities characterized of weaker national identity and social cohesion which can be easily jeopardized from internal seditions provoked by outside aiming the achievement of socio-economic contrasts.
The recent case of Ukraine where from outside was promoted and organized a real *coup d'état* demonstrates what above sustained.
This also with regard to the minorities existing within the State, as well as with regard to ethic realities whose enormous dimensions does not permit to talk in the real sense of "minority" with respect to which the necessary standard of security moves from well different starting-points and should be achieved by the mean of particular measures which are surely not those traditional guaranties the conventional or general international law grants in favor of minorities traditionally intended.
An aspect conveniently highlighted with regard to the object of the present Conference, is that without an adequate standard of security there is no room for effective freedom. Therefore, there is a strict relation between the notion of security and the minimal exigencies of individual and collective freedom.
In the level of international relations (more exactly, in the level of the inter-state relations), in conformity of general and conventional international law, the idea of the necessarily collective freedom, intended as a freedom of the people (of the Nation, in terms politically correct), should not avoid to signify specifically that political independence and territorial integrity that can only be guaranteed by through political and legal instruments apt to assure the appropriate protection.
According to the prospective and considerations herein followed, the ample phenomena of emigration-immigration almost uncontrolled, as often happens to the European Union member States, comes certainly into appearance as a potential element of threat with regard to the way of being of the State even in terms of proper effective capacity to regulate the phenomenon and self-determinate in independent way.
The way of being of a State moves from a specific identity that is manifested in terms of common history, shared values, internal

political organization as well as in terms of culture and political planning finally intended with specific attention to the regulation of the individual relations and among the different social entities living in the State and belonging to the State. As well as, lastly, even in religious terms as important composing parts of the cultural and historical model.

3. The Great Mustafà KEMAL ATATÜRK used to sustain: "Peace at Home, Peace in the World". On this reflection of the founder of the modern Turkey becomes necessary any consideration in order to underline how the peace internally intended should necessarily mean an orderly and equal regulation of the social relations and a correct balance point between political and civil rights and liberties and fundamental rights of the person of an economic and social nature as well as a balance point between rights and duties of the individual and rights and duties of the State as such.

To be mentioned that what above addressed concerns the complex problem of the recognition and the protection of the human rights and liberties as a minimal requirement of internal security of the State and security intended within inter-state relations.

With regard to the first aspect of the argument should be added that would be mystifying guaranteeing only, and only formally, civil and political rights without guaranteeing in real and concrete way social and economic rights (that is the right to life and to a dignified life which has its essential premise the right to access to a paid labor activity which only could guarantee freedom and dignity to the person) which constitute elementary premise for the use of effective civil and political rights and liberties. Again the President Mustafà KEMAL ATATÜRK used to add: "we need only one thing: to work".

As could be even less consistent recognizing individual rights of freedom if the State wouldn't have been effectively *free*, if it wouldn't have been respectively free from external conditioning the general collectivity living within the State, *which is* the State, and is organized in the forms and modalities of the State itself, as freely decided. In other terms, and in last analyze, would seem to be misleading talking about individual liberties if the membership social community.

4. It seems the international legal scholars, for several reasons, do not show interest about the principle of non-intervention in the domestic affairs of the State.

Among these reasons, probably is the one according to which the attention of the international legal scholars is almost exclusively concentrated to the questions concerning the fundamental human

rights and liberties of the individual. As to say that international law has only this interest in the sense to discipline, among all the fields of inter-state relations, only this sector. Probably it is an effect or an unconditioned reflection of the "globalization" with respect to which the question of the international protection of fundamental human rights and liberties, which itself prescind and transcends the national borders of the State, appears specifically coherent.

The other reason, certainly unrelated to any problem connected to the way of being of the international legal order and its systematic correlation, is represented by the objective fact of the predominant and decisive role played in the present historical moment of the international relations by the so-called *occidental representative democracies* of traditional liberal inspiration which, as seen and happening in many cases (Iraq, Serbia, Afghanistan, Libya, Egypt and, recently, Ukraine and Syria, without mentioning other cases belonging to state entities concerning western hemisphere and African continent), as a consequence of their expansive foreign policies, pervading and aggressive, leaded by the United States, actuated to achieve strategic and economic goals that nothing have to do with the international protection of fundamental rights and freedoms, by assuming the latter as an excuse and justification for proper aggression towards the domestic order, towards the political independence and the territorial sovereignty of the States object of even armed attacks, modestly called "humanitarian intervention" or actions of "international police".

Even this happens on the grounds of a self-justification in the name of an already allegedly irrevocable and unavoidable "globalization", which is intended to be extended even in the field of domestic jurisdiction, which is the internal political organization of any State. With any consequence, as it seems to be evident, involving the internal security of the State as well as the international security which finds its main fundament in a correct application of inter-state relations in full conformity with the norms and general principles – normative and structural – of the general international law.

5. The pretended predominance of the mentioned humanitarian exigencies and the necessity of the even "preventive" wars aiming the "exportation of democracy", as announced by US President Bush (although justifiable for the inadequacy of his covered function), has brought to forget that the international political legal order is grounded in a primordial way on the balance meeting-point between the principle that prohibits any interference in the domestic affairs of every State and the

principle that permits or rather imposes, but however always legitimates, an – even armed – intervention towards any State if the latter is considered responsible for a serious and continuous prejudice for the fundamental interest and *values* that in a certain historical moment are considered worthy of absolute protection by the international Community of the States, which in these *values* and interests recognizes, though in its historical relativism, its reason of being and its essential finality (addressed to the preservation of the international public order as historically intended in a certain moment). And even this is an unavoidable element for pursuing the goal of the internal security of any State and the international security in the inter-state relations.

As mentioned above, nobody talks anymore about the principle that prohibits the interference in the domestic affairs of the State and what assumes more importance is the exclusive and uncritical protection of fundamental human rights and freedoms which, beyond the fact that, as seen, are assumed as a justifying pretext for proper aggression against the internal order, the political independence and territorial integrity of the States, are represented nowadays not as an expression of any legal norm or principle accepted by the generality of the States, but rather as a reflection of an ideology or even, as often happens, of contingent policies aiming, from outside, the legitimating of internal revolutions within the States or, repeating again, proper and explicit armed aggressions against these States.

Preliminarily, should be remembered that even for the international law the internal way of being of the State does not matter but the element of interest is represented on the manner the State acts in the field of inter-state relations and if, in other words, acts in compliance or not with the customary and conventional norms or with the general principles of the proper legal order of the international Community.

It does not pertain to the international law and even less to any State, though economically or military powerful, to evaluate the *democracy* level of other States grounding, in this way, the assumption – which is an illicit pretention – on the fact that the internal political organization of the State should be democratic. Thus, ignoring the fact that it does not exist a unique form of democratic organization of any collectivity represented in the State, and with this underlining again that the pretension of the above mentioned *occidental democracies* consists in legitimization of only internal political organization of the State in conformity with the methods and contents of the representative democracy of the old liberal State which – to be said – does not represent any more the effective popular will.

6. The problem of the individuation of any political and legal measure of compatibility between the principle of non interference in the domestic affairs of the State and the principle of humanitarian intervention for the protection of rights considered superior, as the protection of the fundamental human rights and freedoms and the democracy, was preannounced by the then UN Secretary General Kofì ANNAN.

Replying to the solicitation of the UN Secretary General (and only few States followed this example) the Government of Canada established a special *Commission on Intervention and State Sovereignty*. The assigned task was, therefore, to evaluate contents, premises and limits of military intervention in relation with the protection of the State sovereignty, and thus on the base of what premises and according to what criteria and time the intervention against the domestic affairs of the State was legitimate, to the detriment of the equal political and legal range principle of non interference in the domestic affairs of the same State, as well as of the equality of the member subjects of the international Community.

The result of the work of the mentioned *Commission* did not bring to the adequate clarification of the premises and the limits of the even armed intervention, failing thus, in the exigency to determinate the balance point between the opposite principles, that is when humanitarian exigencies should or would have prevailed over the respect of the exclusive competence of the State on the issues of domestic jurisdiction.

To this purpose, more concrete results by the substantial and systematic point of view were achieved by the Organization for Security and Cooperation in Europe (OSCE) which, by the mean of a special *Resolution* clarified that an action of intervention used to find legitimacy on the grounds of international law and even with regard to the UN Charter (with specific concern to art. 51), only if the State object of intervention had been practicing (and continued to do so) a *policy* of massive, grave and systematic violations against fundamental human rights and freedoms.

To be added that, in effect, the work done by the Canadian *Commission* provoked the result to misbalance even more the relations between prohibition of interference in the domestic affairs of the State and right to humanitarian intervention, establishing as a duty of the State a new and singular "responsibility to protect" (R2P).

In other terms, if any State, because of its internal political weakness or even for other *external* reasons, would not be able to guarantee and protect proper citizens and residents of its territory, the circumstance

could justify the legitimacy of any action of collective or individual intervention even through the use of military force.
The assertion, in itself maybe even sharable, has become, in fact, pretension of real interventions or acts of aggression against the political independence and territorial integrity of some States (aggression, therefore, to the sovereignty of the State which is itself a general principle of structure and organization of the international Community), if only we take under exam the aberrant applications in the practice.
The emblematic case regards Libya where the legitimate government (and, again, *legitimate* should not necessarily signify *democratic* according to the meanings and the concepts in use in the occidental liberal-democracies) of Colonel Muammar KHADAFY was found responsible for not protecting the Libyan tumultuous gangs that, armed and sustained from France and England, and then by the whole offensive system of the NATO, used to fight in order to depose the legitimate government.
Similar situation was verified in Ukraine (but here we are in presence of simple and vulgar mystification) where the President YANUKOVYCH, democratically elected, was accused for not protecting the population demonstrating in Kiev, in Maidan Square, and which were shot by instigators belonging to the same demonstrators.

7. It is difficult, very difficult, any legal analyze of the relation between two main structural principles of the international Community of the States herein considered, if the facts, the happenings, the events are not evaluated for how they effectively were verified, beyond any mystification or propaganda, even throughout television or newspapers, to the benefit of economic or geo-strategic interests of the so-called occidental liberal-democracies that still today continue to persist in traditional actions of foreign policy of subjugation and disintegration of the territorial and political sovereignty of the States.

How much this compromises not only the internal security but even and especially the international security is shown emblematically in the cases of Ukraine and Syria.
It is about situations not resolved yet, in the first case, because of the secession of the Autonomous Republic of Crimea and of the resistance of the Eastern regions of the Country which still contrast the effects of the vulgar *coup d'état* perpetrated in Kiev by the occidental democracies; and, in the second case, because of the ongoing resistance of the President BASHAR AL ASSAD who still

effectively contrasts the insurgents, 85% of which are not Syrian but come from other Arab Countries, as Qatar, Jordan, Saudi Arabia or Libya, for competition exigencies internal to the *Arab Nation*, or armed or trained from non-Arab Countries, headed obviously by the United States: to a certain extent it seems that the situation within the Arab Nation is still the one the Colonel Lawrence of Arabia knew; but the most important is that about the effective situations and events happening in these Countries nothing is documented by the means of information, exclusively dedicated to mystifying and propaganda operations – except particular cases as *Frankfurter Allgemeine Zeitung* – to the benefit of the economic and geo-strategic interests of those States which intentionally caused these situations.

The situation summarily highlighted shows how the falsified and intentionally predestined use of the instrument of *humanitarian* intervention (that unavoidably brings situation of real war which continues to be falsely qualified, for its pretended legitimacy, as *humanitarian*), instead of guaranteeing the security of the individuals, of the populations or parts of it, compromises it irremediably with additional and unavoidable consequences of reaction phenomena increasingly vast and bloody of terroristic nature whose responsibility is attributable firstly to the foreign policy actions of the occidental liberal-democracies, which nowadays constitute the most relevant and diffused cause generating individual and collective insecurity in the Southern region, as well as in the so-called *occidental* States and the African Continent.

8. It should also be underlined that, in order to maintain a minimum standard of collective and/or individual security, the action of the foreign policy of the European Union as such, is substantially inexistent for the simple reason that in the facts, in reality, it does not exist any European Union foreign policy. Even from this point of view has been rightly observed that the European Union is a *political dwarf*: now, given the substantial economic situation of *stagnation* of the EU in its entirety, we can easily sustain that it is also an *economic dwarf*.

The irrelevance of the EU in the field of the foreign policy, unable to conduct an effective common foreign policy and unable to establish a proper common military instrument, depends on several reasons and among these mainly the fact that almost all the member States of the EU are also NATO members (organization that nowadays, in terms of aggressiveness, is considered as a more relevant and dangerous entity) to which the States of the EU are conditioned in their actions due to the dispositions provided for in the Lisbon Treaty of 2009; and

it is known that the operative decisions within the NATO are taken from the US government and its President.
The other reason, not less relevant, is that some member States of the European Union, and among these the Great Britain, France and the same Germany, pursue individual economic and geo-strategic interests at international scale and conduct absolutely different actions of foreign policy and even in contrast with those of other member States of the EU because, exactly, of different economic and geo-strategic interests.

9. Guaranteeing or, better, recovering a more reliable standard of internal and international security of States , without furthermore reducing the level of protection of fundamental human rights and freedoms which only within the State and by the mean of its action could be effectively recognized and protected (not certainly at international level), as also is implicitly is derivable from the finalities (though not sincere) of the individual or collective armed interventions aiming the alteration of the internal way of being of States in conformity with the necessity of protection of fundamental human rights and liberties, implicates a, not only theoretical but even practical, reaffirmation, in the context of the inter-state relation life, of the principle of non interference in the domestic affairs of the State, of every State, in the context of the general international Community of the States.

Paradoxically this principle was better guaranteed during the period of the *cold war* but later, ceased the so-called contrast between "blocks" due to the ideological, economic and political decline of the Union of the Socialist Soviet Republics (USSR) and of the Central-Eastern Europe States ruled by similar regimes, with the consequence of the prevalence of the liberal-democratic States of the Occident headed by the USA, the principle of non interference in the domestic affairs of the State has been almost abandoned or however omitted for the reason above mentioned.
Nowadays, with the emerging of the relevant function and role of the Russian Federation in the international politics even within the UN, certainly non negligible for its economic and military potential, seems that, as facts demonstrate, with regard, for example to Ukraine and Syria, new balances are being established that objectively in the practice facilitate an operative recovery (therefore, not merely announced) of the principle of non interference in the domestic affairs of the State, unless its containment is legitimately justified from superior necessities and interests of the international Community of the States as such.

And with this recovering, as sustained, a higher and effective standard of internal and international security. Actually, to this concern, to be observed that, according to an opposite apparently consequentiality, the international security fosters undoubtedly a higher level of internal security for what regards fundamental human rights and freedoms since it favors a more incisive and inclusive dialogue between governments and relative populations within proper territories.

The international Community of States, in the field of armed interventions and "humanitarian wars" which have provoked disastrous effects in terms of security, could and should facilitate this dialogue short of any external interference and in respect of the sovereignty of every State in its significance of political independence and territorial integrity.

The international Community of States, as such, should operate by guaranteeing every State (in its expressions of government and population) the right to decide freely the relative choices concerning the proper future and the proper internal dimension even in terms of human security**.**

UDK: 355.45:351.746.1(474.2/5)

RESEARCHING SECURITY: COLLABORATION OBSTACLES AND SUCCESS IN DESCRIBED AND OBSERVED EXPERIENCES OF POLICE AND BORDER GUARDS' IN THE BALTIC SEA AREA

Goran Basic, PhD

Lund University, Sweden

Sophia Yakhlef

Abstract

This study analyses the cooperation between police and border guard authorities in the Baltic Sea area and primarily one collaborative project initiated by the Stockholm border police (co-funded by the EU). The purpose of the project is to decrease trans-boundary criminality and improve day-to-day cooperation between police and border officers in the Baltic Sea region. The participants are police and border authorities in Estonia, Finland, Latvia, Lithuania, and Sweden. Earlier research on collaboration shows that cooperation comprises problems and conflicts. The purpose of this study is to map and analyze how the staff of the different organizations experience, understand, and define obstacles of cooperation as well as successful cooperation, and which interactive and discursive patterns are involved in the construction of this phenomenon. The empirical basis for this study are qualitative interviews and field observations of organized intelligence and operational meetings and informal meetings before and after the organized meetings conducted during visits to different organization. This study suggests that the border officers and police re-negotiate spatial and cultural identities to make cooperation possible. Close cooperation and performing mundane work practices together entail an emerging idea of a shared EU border police "culture". The notion of common northern European identity is described as an important feature for successful cooperation, but at the same time, conflicting views of regional and historical differences between the countries involved are expressed. Despite the alleged cultural differences and similarities, the border officers claim that cooperation between the countries is vital in order to protect EU territory and Schengen space from external

threats and criminal activity. When some border officers create a distance from criminals and other professional partners, conflicts can be erased so as to generate new conditions for cooperation. Construction and reconstruction of collaboration obstacles and success is an ongoing, interactive process. Presentation of the proper interaction moral is created and re-created during interactions and appears in the myriad everyday interactions.

Key words: police, border guards, intelligence meeting, operational meeting, cooperation, collaboration, moral, collaboration identity, field notes, field work, qualitative interviews

Introduction

This sociological report is a contribution to the European collaborative Project Turnstone, partly funded by the European Commission. Project Turnstone is a northern European project working against trans-boundary criminality and is an initiative of the Stockholm Police, Sweden. The aim of the project is to increase close cooperation in the Baltic Sea area with purpose of decreasing cross border crime[1]. The background of the project is the EU and Schengen agreement implying greater need for international police and border guard cooperation. It is argued that the abolition of borders serve as a possible security risk and the absence of borders makes it more challenging to detect and stop criminals at border controls (Faure Atger, 2008, p. 7). Borders that were before governed and monitored by passport controls must now rely on the cooperation between the border officers that need to adapt to new methods of working. Within the framework of their national legislations, the border officers often rely on neighbouring countries to perform their job duties and fight trans-boundary criminality. This entails the emergence of new police, coast, and border guard networks beyond the national police stations. Project Turnstone is an initiative responding to these needs. Although cooperation between border authorities in the EU and the Schengen area is not a new occurrence, the goal of the project is to increase cooperation on a new level. That is, cooperation guided by official agreements and legislations, but increased by a closer relationship between individual organizations and border, police and coast guard officers.

The participating nations and organizations in Project Turnstone are as follows: (1) Sweden (the Stockholm County Police, Border Police Division; the Swedish Coast Guard, Region Northeast), (2) Finland (the Helsinki Police; the Gulf of Finland Coast Guard District), (3) Estonia (the

[1] https://polisen.se/PageFiles/487243/Information.pdf

Police and Border Guard Board), (4) Latvia (the State Border Guard of the Republic of Latvia) and (5) Lithuania (the State Border Guard Service at the Ministry of Interior of the Republic of Lithuania). In addition to these organizations, a research group from the department of Sociology at Lund University, Sweden, also participates in the project with the purpose of writing the present study[1]. Additionally, the researchers will produce a report focusing on ferry and airport passengers' perspective of safety and border crossing (Yakhlef & Basic 2015). The aim of the present study is to define and analyse cooperation practices amongst police and border agencies in the northern part of the Baltic Sea region. Based on empirically gathered material, the purpose of the present study is to map and analyse how the staff of the different organizations experience, understand, and define successful cooperation and collaboration obstacles encountered during cooperation with neighbouring organizations. Additionally, we analyse the discursive and interactive patterns that are part of the construction of such phenomena. The research questions are: (1) How do members of the staff describe successful cooperation between the actors involved in the Project Turnstone? (2) How do the members describe collaboration obstacles regarding cooperation with the participating police and border organizations?

The analytical results of this study are presented in two chapters: (1) Successful Collaboration in intelligence and operative work and (2) Collaboration Obstacles in intelligence and operative work.

Successful Collaboration in Intelligence and Operative Work

The task of ethnographers and social researchers is not to explain how social reality is, but how it occurs (Gubrium & Holstein, 1997). Therefore, descriptions, opinions, and conversations with informants are crucial for social research (Garfinkel, 1967/1984). The informant's descriptions are his or her own interpretation of occurring events, and must

[1] When Project Turnstone was implemented the department of Sociology at Lund University was asked to collaborate and conduct sociological research alongside operative actions and other collaboration activities. Designing a research project implies discussing the appropriate methodology for the research purpose as well as ethical consideration. The authors of the present text have based this qualitative study on empirically gathered material such as interviews, fieldwork observations and documents (Silverman 1993, 2006; Gubrium & Holstein 1997; Atkinson & Coffey 1997/2004; Emmison 1997/2004; Heath 1997/2004). The aim is that a combination of the different methodologies will complement each other and provide a variety of data that will answer the proposed research questions. Additionally, the information gathered will also be used for the purpose of a PHD dissertation written by one of the researchers (Sophia Yakhlef). For this study, the same confidentiality agreements, ethical considerations, and anonymity assurances are applied. The research questions for this study will be related to the topics highlighted.

be analysed by the researcher so that different analytical dimensions can be brought to light. The comprehension of social reality is constructed and reconstructed in relationships between actors. This chapter will discuss and critically analyse interviews, conversations, and opinions of the informants as well as ethnographic observations made by the researchers during fieldwork in connection to Project Turnstone. The focus of this chapter is on how the participating members describe and analyse successful cooperation and how the individuals interviewed regard cooperation between participating organizations. In order to answer these questions, we analyse the data gathered looking for similarities or contradictions in the informants' descriptions. The concepts of successful cooperation versus unsuccessful cooperation, trust and mutual interests are especially relevant components in the specific descriptions of operative work cooperation that we have analysed.

Personal Contacts, Joint actions, and Collocation

Hornby & Atkins (2000/1993) agree that personal relationships are an important contributing issue for successful collaboration. This claim is supported by a majority of the people interviewed in connection to Project Turnstone. Official agreements are necessary for cooperation to be initiated, but the time aspect of processing intelligence information demand personal contacts as well. Personal contacts are created through social meetings and working with colleagues from other countries or organizations. Meeting partners face to face and establishing a personal working relationship entail mutual trust and increased knowledge in the working methods and procedures of collaborating partners. Such knowledge is important to avoid misunderstandings and confusion of how certain legal procedures are handled. In personal meetings partners create work and friendship relationships, but also establish work identities suitable to that situation.

According to Blumer (1969/1986: 10, 101-116) identity is socially constructed and is a changing, dynamic field rather than a static condition. Individuals can use multiple identities at the same time, for instance their ethnic identity, gender identity or work identity. Identities can be negotiated and have meanings for the construction of the organizational identity. Organization identity can be defined as a way that individuals in a group define their organizations and themselves (Basic 2015; Salzer, 1994, p. 21) or as a re-negotiated set of meanings about who we are as an organization (Whetten & Godfrey, 1998, p. 37). Some of the organizations participating in Project Turnstone have a long history of cooperation because of geographical or social proximity, and have already created an understanding of each other's organizational identities. However, organizational identity appears

through interpersonal interaction (Basic 2015; Sevón, 1996, p.53) and it is therefore necessary to continue social interaction between collaborating partners.

Some organizations partaking in the project have less history of joint operative cooperation and have greater need for social interaction to negotiate organizational identities. Organizations do not exist independent of its members who construct the organization through their speech, writing, and action (Basic 2015; Czarniawska, 1997). The researchers were told by several interviewees that the one of the most beneficial aspects of Project Turnstone is that it facilitates interaction and joint operative actions for the border, police, and coast guard officers. Getting to know the people you work with in real life facilitate the day-to-day connection considerably and enable successful cooperation. Such opinions may not seem surprising, but how do the participants define successful cooperation? During the joint operative action weeks selected members from the participating organization have gathered at the different organizations and worked together for a couple of days up to a week at a time. Those weeks have made it possible for officers to sit in the same room and work side by side with colleagues they usually cooperate with via phone, email, or official channels such as the SIENA information system. These weeks are important, according to the officers, to increase social relationships and thereby make collaboration stronger. In conversations with interviewees it was clear that the category successful cooperation is discussed in connection to collaborating with your partners in order to get operative results. The paramount aim of Project Turnstone is to fight cross border crime in the Baltic Sea area. This is only done if the involved police and border organizations cooperate, according to interviewed members. As one border guard describes it: "When personal networks are created, people are willing to send information that is useful for law enforcement".

Working together is not the only important element in creating social organizational bonds. After work socializing such as eating dinner together during these events also have strong impact on the participants work relationships. Doing actives together that everyone can perform (such as sharing meals, joking together, and socialize in a relaxed setting) can decrease boundaries between participating professions (Basic 2015; Hjortsjö, 2006, pp. 189-196). Inter-organizational identities are reconstructed and constructed in practices such as joint efforts, conflict, and everyday routines. Researchers have noted the experience of a clearer professional identity by professionals after cooperating with people of neighbouring profession (Hjortsjö, 2006). Most interviewees saw official meetings as less beneficial for establishing strong, social collaborative bonds even though most agree

that it is valuable to establish your official collaboration details on an organizational level. Talking, socializing, and working with colleagues from other organization aid the creation of a shared collaborative identity. Officers have described network building as a process involving several steps; First, official agreements regarding cooperation between the organizations must be made. Secondly, the officers must meet and get to know one another, learn about the other's possibilities and limitations and ascertain ways of communication. This process allows officers to establish mutual understandings of how the job should be done and if they can trust their collaborating partners. It is difficult just to start cooperation without this network building process without interpersonal relationships being established. The goal of this process is that collaborating partners should refer to themselves as a collective, rather than as separate entities representing their individual organizations, thus a the design of inter-organizational collaborative identities appears to be the basis for a successful collaboration (Basic 2015; Hardy, Lawrence, & Grant, 2005; Lotia & Hardy 2008, p. 379).

Sharing a Common Vision and Motivation

In order to create a shared collaborative identity participants must meet and share conversations to construct and reconstruct the social phenomenon of collaboration. Sharing conversations entails speaking the same language (literally and figuratively) as well as understand each other's working methods, aims, goals, and motivation. As mentioned earlier, cooperation between participating actors seems to be facilitated if there is a personal relationship between the involved actors. Although official agreements are necessary and there are proper channels to send and receive information intelligence based operative work is best conducted between people who have a work relationship, who know one another and have knowledge of each other's organization. One informant states that the participating members "speak the same language", even though they come from different countries. The officer experienced that the project participants endeavoured for the same goals and understood the work practices of operative work. This, according to several officers, is necessary if cooperation should run smoothly. Lotia and Hardy (2008, pp 366-389) similarly suggest that a common vision is important for producing and reproducing joint collaborative identities.

Regarding the question of how successful cooperation is created interviewees listed that there should be official agreements as well as mutual interest and motivation from the organizations involved to generate a successful cooperation. Officers ascertain that cross border criminality is not a Lithuanian problem, or a Swedish problem but a *European* problem, and

this is the approach necessary to achieve successful bilateral cooperate. During the Operative actions weeks implemented by Project Turnstone a few officers have expressed a stronger motivation for performing their job duties. Working together with other officers and seeing successful results being achieved increased their sense of purpose and the importance of the job. Several participating intelligence officers and criminal analysts have expressed a wish to continue working side-by-side with colleagues from other organizations in the future. A core issue of management is how to motivate employees to perform as efficiently as possible. Motivation can emerge through self-control or being imposed (McGregor, 1960/2006). According to McGregor (1960/2006, p. 55) the solution is to set organizational goals, to set individual goals, and to discuss and evaluate feedback. Drawing up a plan and setting short-term goals for managers and workers turn the superior role of the manager into a teaching role instead. During the joint operative actions weeks there has been an emphasis to work and talk on equal terms. The participants interviewed are aware of the purpose of the weeks and have expressed motivation to participate. All members involved are eager to perform well and strive after common goals: to find and apprehend targets and establish new contacts to improve their contact networks. However, building networks entails that there is a fair amount of trust among the participants.

Trusting Your Partners

Trust should be seen as a basic collaboration mechanism in everyday social life (Bachmann & Zaheer, 2008) and especially in the creation of organization networks and identity formation (Reinhard & Zaheer 2008). The creation of an organizational identity is a constantly ongoing process by its members (Czarniawska, 1997) and in the formation of organizational identity the morality of the participants is also produced and reproduced (Basic 2015, 2012). This occurs when partners moralize about other people and about each other (Lotia & Hardy, 2008, pp. 366-389). Such moralizing descriptions can consist of dichotomous terms (such as passive/active or friends/enemies). The participating border officers interviewed for the present study often used terms such as friends, neighbours, colleagues, brother and sisters to describe their collaborating partners. Such descriptions imply that the officers have positive associations to their partners and regard the cooperation as fruitful. Trust is highlighted as vital in most cooperation situations by the officers, and close networks of exchange cannot be established without trust. Although some interviewees did not have close personal contacts in all participating organizations, the joint operative activities served as means to create these contacts. Several participants saw

the operative actions weeks as opportunities to meet colleagues and establish trust with people they had never before shared a personal cooperation with.

Previous experience of joint collaboration, behaviour, and competence shape the participants view of collaborating partners. However, individual's motivation and interest in cooperation, as noted earlier, is crucial when creating a trust-based relationship. A vast majority of interviewed officers see trust as an important element for cooperating between organizations. The importance of trust is acknowledged and widely talked about in organization studies, but researcher are vague concerning what trust actually means in an organizational context (Porter, Lawler, & Hackman, 1975, p. 497; McAllister, 1995). Interviewed police and border officers associate trustworthy colleagues with transparency and honesty. Officers also mentioned competence and responsibility as central which researchers Barber (1983) and Shapiro (1990) also highlight. Doing your best within your limitations and showing motivation to do it well is the best way of being seen as a trustworthy colleague. We can thus list a few assumptions of how trust improves cooperation practices in the participating border organizations. Firstly, trust relationships developed in collaborations are important for sustaining individual and organizational effectiveness (Shapiro, 1987, 1990; Zucker,1986; McAllister 1995). Secondly, mutual confidence or trust influences control at institutional and personal levels of organizations, and enable sustained effective action in times of uncertainty or organizational change requiring mutual adjustments (Shapiro, 1987, 1990; Zucker,1986; Granovetter, 1985; Pennings & Woiceshyn, 1987; McAllister 1995; Thompson 1967). Thirdly, partners experiencing mutual trust are more willing to take risks since there is a belief that others will not take advantage of you. You therefore create an expectation that you will find what is expected rather than what is feared (Deutsch, 1973).

In Brewer (1979) and Turner's (1987) opinion similarities between individuals, such as ethnic background, age, gender, and social status can influence trust development in groups. In the present study most participants express feelings of similar cultural, historical and ethnic background belonging to the Baltic sea area, the European union, and the Schengen enlargement. Although differences in terms of organization structures and cultural backgrounds are mentioned these do not negative impact cooperation practices, according to interviewees.

This chapter has discusses positive aspects of collaboration as expressed by participating police, border, and coast guard officers. According to them, Project Turnstone has facilitated a number of important aspect for cooperation to be successful and for the development of a shared collaborative identify should emerge between participating individuals. The issues discussed are the importance for social interaction (collocation)

between officers and joint actions to facilitate that shared motivation, common goals, and trust among the officers emerge. The next chapter discusses aspects of project that can be improved and collaboration obstacles identified during the implementation of the Project Turnstone from the perspective of interviewed officers

Collaboration Obstacles in Intelligence and Operative Work

Creating inter-organisational collaboration identities is a dynamic process and it is not rare that conflicts or problems emerge (Basic 2012; Simmel, 1908/1955). The pursuit of collaboration and changes within organizations can cause conflicts about professional matters, but also about private concerns not associated with the organization per se (Kolb & Putnam 1992, pp. 16-17). Collaboration and conflict go hand in hand and it is not uncommon that struggles arise in intermediate organisational relationships where actors want to control or resist the activities of others (Basic 2012; Huxham & Beech 2008, pp. 555-579, Schruijer, 2008, p. 432). The source of disagreements is often a conflict regarding organisational goals, interests, and identities (Schruijer, 2008). This chapter focuses on how the participating officers describe collaboration difficulties and what obstacles they have encountered during the operative action weeks arranged by Project Turnstone, as well as during day-to-day cooperation between the border organizations. We adopt a similar approach as in the previous cheaper analysing opinions and statements from interviewees and observations made during field trips and go-alongs. Officers generally list few serious obstacles affecting their work practice, but have still encountered difficulties regarding language barriers, differences in legislation, as well as regarding rare opportunities for collocation.

Language Difficulties

In the previous chapter we focused on the importance of participating members to meet and share conversations, experiences, and a mutual interest to facilitate successful cooperation. Although a majority of officers interviewed experience a joint "understanding" of each other's goals, working methods, and operative aims language barriers between the officers is still a vital issue. The common language spoken during the Operative Action Weeks (and during other joint activities regarding Project Turnstone) is English, but officers often fall into the pattern of speaking more with people with whom they share their native language. This is not surprising considering Turner (1987) and Brewer's (1979) claim that groups of individuals with similar fundamental characteristics (such as ethnic background or a common language) have an advantage in creating trusting working relationship. Interviewed officers saw language barriers as

occasional obstacles as it might take longer to reach a colleague that you can communicate with. We were told that officers often encountered language difficulties in their day-to-day work when they needed to contact partners in other countries in Europe in general if officers have limited knowledge of English (or cannot understand each other's first languages). Some officers state that even between people who do speak the same language misunderstandings can occur since specific expressions used in daily work can differ in the different organizations. Otherwise, interviewees highlight that officers doing the same work tasks can easily understand each other and each other's work practices. This is mainly due to shared organisational goals and visions, as was discussed in the previous chapter.

Language difficulties can obstruct daily contact and be an obstacles for officers who want to keep in contact with collaborating partners. Keeping communication channels up do date is a full time occupation well worth the effort, according to interview officers. However, if such efforts should be useful there must be an interests from all collaborating partners to participate. The operative action weeks when the officers have been able to work side by side have, however, have simplified communication since officers know who to contact and who they can talk to in case they are in need of quick information. It is vital for intelligence officers to meet personally and share knowledge of known criminal networks and the modus operandi of suspected criminals.

Different Organizations, Different Legislations

Hjortsjö (2006, pp. 189-196) states that the borders between the involved categories must be erased in order to achieve a successful cooperation. External borders between the countries involved in Project Turnstone are already "erased" regarding the Schengen implementation and the EU enlargement. The organizations involved share the common goal of fighting criminal activity in the Baltic Sea area. However, considering the different organizational backgrounds and legislations of the seven police, coast guard, and border organizations involved the issue of common interest and mutual goals is not clear-cut. Important questions concerning confidentiality, differences in legal legalisations, and restrictions regarding providing other organizations with information have been raised during the implementation of the project.

Officers interviewed expressed the importance of being "as flexible as the criminals" operating in the Baltic Sea Area, meaning that international organised crime groups are not restricted by national borders. Therefore, law enforcement agencies must do the same and cooperate despite of organizational backgrounds or initial organizational focus. Each of the joint operative action weeks during 2014 were given a specific focus area such as

the smuggling of stolen goods, smuggling of human beings, and the smuggling of cigarettes. Nevertheless, officers focused on the themes presented during the joint activities, and were not restricted to focus only on these specific areas. This approach was continued for the duration of the following operative action weeks during 2014 and 2015.

An issue mentioned during several interviews is the importance of feedback. Lack of feedback regarding information sent or cases worked on is a source of frustration for collaborating partners. Feedback can also be an important source of information regarding successful or less successful of working methods and procedures; feedback can thus help officers improve their work skills and increase a sense of cooperation between the parties involved. As the proceeding of Project Turnstone, it has been highlighted that feedback, or the lack therefore can depend on national legislations and confidentiality rules. This is a further example that knowledge regarding collaborating partners and their working methods is vital for successful communication regarding cooperation.

Although belonging to the EU and Schengen participating organizations follow different national legislations, national laws, and work practices. In certain cases, physical, juridical, and bureaucratic distance between collaborating partners make collaboration difficult. Police, border, and coast guard officers are well connected through information exchange networks, but standardised rules and regulations occasionally make the process of information exchange slow. For example, the involved countries have different laws regarding the time limit and procedures for keeping suspects in custody and handling of evidence. Another example is the issue of providing information: some organizations have firmer regulations when it comes to sending or share information. This process, which can be slow and rigid is cause to frustration and missed opportunities to arrest suspects and solve crimes. The intelligence officers and participating members of staff with current or previous experience of cross border cooperation have sufficient knowledge of the cooperating partners to cooperate on a daily basis. However, interviews show that members of staff working with border guarding still have limited knowledge of other partner's work practices. Although this may not directly have a negative impact on their work efforts, serval interviewees claimed that knowledge of the working methods of other organizations' would be an advantage. Even officers with years of experience of cross border cooperation expressed confusion regarding some juridical work practices or surveillance restrictions of cooperating partners, stating that knowledge diminishes frustration.

Collocation and Future Cooperation

The advantage of the operative action weeks and joint activities implemented during Project Turnstone are that participating members have been able to meet in person and share knowledge about their working methods with each other. Although complete coherence regarding methods and regulation cannot be obtained between the collaborating partners in the Baltic Sea area regular joint activities, work actions, and education is beneficial for increasing successful cooperation. Officers have mentioned that the Schengen agreement demands that border organizations adapt to working as closely with international partners as they have been used to national partners. Organisation scholars (Emery & Trist, 1965, p. 7) have acknowledged the complex environmental changes facing modern organisation during the 20th and 21th century. Organizations meet a greater competition and a growing diversity of organizational environments (Dessler 1980, pp. 52-53, 43). Emery and Trist (1965, pp. 8, 18) developed a process perspective on the relationship between organizational and environmental change. In their view, the main challenge of organizational studies is that environmental contexts of the organizations are complex and in constant change, especially due to the impact of technological change. Similarly, the border officers and organizations participating in the Project Turnstone must cooperate and adapt to belonging to the Schengen implementation.

Hatch (1997, pp. 84-93) provides three different definitions of modern organizational environments; 1) inter-organizational networks (referring to partners, cooperation with other organizations, and clients), 2) the general environment (the cultural and technological aspect of the organization), and 3) the international or global environment (for instance, organizations operating on a global scale). Interviewed officers are well aware for the need to adapt to new methods of working and emphasize the need for close bilateral cooperation. Officers express concern that joint activities such as the operative action weeks will cease to exist after the termination of Project Turnstone. The contacts, mutual trust, and understanding that have been established will continue, according to the officers as long as the same people involved continue to cooperate. However, to be able to keep these contacts continued personal contact is necessary. There has also been suggestions that teams should be able to cooperate in joint activities virtually, since physical colocation will not always be possible.

Continued cooperation demand the same level of commitment as have been shown during the joint operative action weeks. As organization researcher (Basic 2012; Hibbert, Huxham, & Smith Ring, 2008, pp. 400-402; Lindberg 2009, pp. 55-59, 64) have acknowledged, clear organizational goals and clear roles facilitates cooperation clarifies main organizational

objectives. For future cooperation, clarifying responsibilities among participants may improve the networking process among organization members. Although one objective of the project has been to avoid unnecessary bureaucracy and meetings, adding structure to work tasks, responsibilities, and clearer roles for the participant can aid clarifying working methods and the purpose of the cooperation actives. The social implication of after work activities as ways of establish personal working relationships trust should also not be left ignored. Dacin, Reid, and Ring Smith (2008) suggest that it is important for collaborating organizations to communicate about organisational roles, responsibilities, and authority to avoid confusion. Facilitating dinners and joint activities when hosts and visiting officers can meet should not be regarded as less beneficial for establishing strong cooperation networks than work hours. It is after all according to the officers, one of the best ways of getting to know your partner, establish trust and a cooperation relationships.

Conclusion

Ethnography is nothing until inscribed as text (Fine, 1993, p. 288) and the chore of the researcher is to turn ethnographic field notes and observations into writings that speak to a wider audience (Emerson, Fretz, & Shaw, 2011, p. 172). The purpose of this report is not provide clear cut guidelines for successful cooperation. Instead, our focus is describing how participating police, border, and coast guard officers contributing to the Project Turnstone analyse examples of successful cooperation and the collaboration difficulties they have identified. The present report aims at providing a sociological perspective regarding the collaboration activities implemented by Project Turnstone. Based on empirically gathered material, such as field observations, go-alongs, interviews, and document analysis we have described how the participating police, border, and coast guard officers understand successful cooperation and what collaboration difficulties that they have identified.

Inter-organizational identities are reconstructed and constructed in practices such as joint efforts, conflict, and everyday routines. Previous research on cooperation asserts that social interaction create a greater sense of trust and motivation, and consequently organisation efficiency. Trust among collaborating partners increases the participants risk taking since they know what to expect from their partners and how cooperating organizations work (Deutsch, 1973). A majority of interviewed officers see Project Turnstone as a beneficial tool for reaching such aims. Most participants also saw the operative actions weeks as opportunities to meet colleagues and establish trust with people they had never before shared a personal cooperation with. Although not officially speaking the same national

language, officers experienced as common sense of purpose, objective, and aim which they expressed as "speaking the same langue". That cross border criminality is regarded as a European problem is important for producing and reproducing joint collaborative identities.

According to interviewees, a shared collaborative identity can only be achieved if partners meet, share conversations, conduct joint efforts, and work side by side with hands-on work tasks. Although official meetings and organisational agreements of cooperation are vital for a cooperation to be initiated, such practices are do not create a shared, collaborative identity.

If close interpersonal cooperation should be possible partners need to understand each other (literally and figuratively) as well as understanding each other's working methods, aims, goals, and motivations. Officers working with exchanging intelligence information express that they have enough knowledge about close cooperation partners. However, several members of staff in the different organizations feel that they have limited knowledge about the work practices of collaborating police, border and coast guard organisation. Such knowledge is important to avoid misunderstandings and confusion of how certain legal procedures are handled.

Cultural history and ethnic identity was not seen as a great obstacle for cross border cooperation in the Baltic Sea area. Because of their shared motivation and similar goals many officers highlighted few obstacles that directly affect collaboration. However, many have still encountered difficulties regarding language barriers, differences in legislation, as well as regarding rare opportunities for collocation. Language difficulties can obstruct daily information exchange, be an obstacles for officers who want to keep in contact with collaborating partners or delaying vital intelligence information. Considering the different organizational backgrounds and legislations of the seven police, coast guard, and border organizations involved questions concerning confidentiality, differences in legal legalisations, and restrictions regarding providing other organizations with information are raised as minor obstacles by officers. Organizations need to adapt to environmental changes (Emery & Trist, 1965), and Project Turnstone can be regarded as response to the need for closer cooperation for police, border, and coast guard officers in the EU and Schengen area. The main challenges that the police, border, and coast guard officers identify can, according to them, be eased and overcome through closer day to day work, education, and interpersonal exchange

References

Atkinson, P. & Coffey, A. (1997/2004) Analysing documentary realities. *Qualitative Research. Theory, Method and Practice*, s. 56-75. In Silverman, David (red). London: Thousand Oaks, New Delhi: Sage.

Barber, B. (1983) *The logic and limits of trust.* New Brunswick, NJ: Rutgers University Press.

Basic, G. (2015) *Successful collaboration. Described and Observed Experiences of Youth Care.* Malmö: Bokbox förlag.

Basic, G. (2012) *When collaboration becomes a struggle. A sociological analysis of a project in the Swedish juvenile care*. Lund: Lund University, Dissertation in sociology.

Blumer, H. (1969/1986) *Symbolic Interactionism. Perspective and Method*. Berkeley, Los Angeles, London: University of California Press.

Brewer, M. B. (1979) In-group bias in the minimal intergroup situation: A cognitive-motivational analysis. *Psychological Bulletin.* 86: 307-324.

Czarniawska, B. (1997) *Narrating the Organization: Dramas of Institutional Identity*. The University of Chicago Press.

Dacin, T., Reid, D & Ring Smith, P (2008) Alliances and Joint Ventures. The Role of Partner Selection from an Embeddedness Perspective. In Cropper, S., Ebers, M., Huxham, C & Smith Ring, P. (eds.). *The Oxford Handbook of Inter-organizational Relations*. New York: Oxford University Press Inc.

Dessler, G. (1980) *Organization Theory: Integrating Structure and Behavior*. Englewood Cliffs, N.J: Prentice-Hall.

Deutsch, M. (1973) *The resolution of conflict: constructive and destructive processes.* New Haven: Yale University Press.

Emerson, R. M., Fretz, R. I. & Shaw, L. L. (2011) *Writing Ethnographic Field Notes.* Second Edition. Chicago: The University of Chicago Press.

Emery, F. E. & E. Trist. (1965) The Causal Texture of Organizational Environments. *Human Relations.* 18, 21-32.

Emmison, M. (1997/2004) The conceptualization and analysis of visual data. In Silverman, D. (ed.) *Qualitative Research: Theory, Method and Practice*. London: Thousand Oaks, New Delhi: Sage.

Faure Atger, A. (2008) *The abolition of internal border checks in an enlarged Schengen area [electronic resource]: Freedom of Movement or a Scattered Web of Security Checks?*. Brussels: Centre for European Policy Studies. Available from: http://www.ceps.eu/book/abolition-internal-border-checks-enlarged-schengen-area-freedom-movement-or-scattered-web-secur [Accessed: 29th September 2014].

Fine, G. A. (1993) Ten Lies of Ethnography. Moral Dilemmas of Field Research. *Journal of Contemporary Ethnography*. 22 (3).

Garfinkel, H. (1967/1984) *Studies in Ethnomethodology*. New York: Prentice Hall.

Granovetter, M. S. (1985) Economic action and social structure: The problem of embeddedness. *American Journal of Sociology*. 91: 481-510.

Gubrium, J. F. & Holstein, J. A. (1997) *The New Language of Qualitative Method*. New York: Oxford University Press.

Hardy, C., Lawrence, T. B. & Grant, D. (2005) Discourse and Collaboration: The Role of Conversations and Collective Identity. *The Academy of Management Review*. 30(1).

Hatch, M. J. (1997) *Organisationsteori: Moderna, symboliska och postmoderna perspektiv*. Studentlitteratur, Lund.

Heath, C. (1997/2004) Analysing face-to-face interaction: video, the visual and material. In In Silverman, D. (ed.) *Qualitative Research: Theory, Method and Practice*. London: Thousand Oaks, New Delhi: Sage.

Hibbert, P., Huxham, C. & Smith Ring, P. (2008) Managing Collaborative Interorganizational Relations. In Cropper, S., Ebers, M., Huxham, C. & Smith Ring, P. (eds.). *The Oxford Handbook of Inter-organizational Relations*. New York: Oxford University Press.

Hjortsjö, M. (2006) *With cooperation in sight. Concerted efforts and co-located family centers.* Lund: Lund University.

Hornby, S. & Atkins, J. (2000/1993) *Collaborative care: interprofessional, interagency and interpersonal*. Oxford: Blackwell Scientific.

Huxham, C. & Beech, N. (2008) Inter-organizational Power. In Cropper, S., Ebers, M., Huxham, C & Smith Ring, P (eds.). *The Oxford Handbook of Inter-organizational Relations*. New York: Oxford University Press.

Kolb, D. M. & Putnam, L. L. (1992) Introduction: The Dialectics of Disputing. In Kolb, D. M. & Bartunek, J. M. (eds.). *Hidden Conflict in Organizations. Uncovering Behind – the – Scenes Disputer*. Newbury Park, London, New Delhi: SAGE Publications.

Lindberg, K. (2009) *Collaboration*. Malmö: Liber.

Lotia, N. & Hardy, C. (2008) Critical Perspectives on Collaboration. In Cropper, S., Ebers, M., Huxham, C. & Smith Ring, P. (eds.). *The Oxford Handbook of Interorganizational Relations*. New York: Oxford University Press Inc.

McAllister, D. J. (1995) Affect- and cognition-based trust as foundations for interpersonal cooperation in organizations. *Academy of Management Journal*. 38:1.

McGregor, D. 1960/2006. *The Human Side of Enterprise*. McGraw-Hill, New York.

Pennings, J. M. & Woiceshyn, J. (1987) A typology of organizational control and its metaphors. In S. B. Bacharach & S. M. Mitchell (Eds.). *Research in the Sociology of Organizations*. 5.

Porter, L. W., Lawler. E. E. & Hackman. J. R. (1975) *Behavior in organizations.* New York: McGraw-Hill.

Reinhard, B. and Zaheer, A. (2008) Trust in Inter-organizational Relations. In Cropper, S., Ebers, M., Huxham, C & Smith Ring, P (eds.). *The Oxford Handbook of Inter-organizational Relations*. New York: Oxford University Press.

Salzer, M. (1994) *Identity Across Borders: A Study in the "IKEA-World"*. Linkoping: Linkoping University.

Schruijer, S. G. L. (2008) The Social Psychology of Inter-organizational Relations. In Cropper, S., Ebers, M., Huxham, C & Smith Ring, P (eds.). *The Oxford Handbook of Inter-organizational Relations*. New York: Oxford University Press.

Sevón, G. (1996) Organizational Imitation in Identity Transformation. In Czarniawska, B. & Sevón, G. (eds.) *Translating Organizational Change*. Berlin: de Gruyter.

Shapiro, S. P. (1987) The social control of impersonal trust. *American Journal of Sociology,* 93.

Shapiro, S. P. (1990) Collaring the crime, not the criminal: Reconsidering the concept of white-collar crime. *American Sociological Review,* 55.

Silverman, D. (1993/2006) *Interpreting Qualitative Data. Methods for Analyzing Talk, Text and Interaction*. London: Thousand Oaks, New Delhi: Sage.

Simmel, G. (1908/1955) *Conflict and The Web Of Group-Affiliations*. The free Press.

Thompson, J. D. (1967) *Organizations in action.* New York: McGraw-Hill.

Turner, J. C. (1987) *Rediscovering the social group: A self-categorization theory.* Oxford:

Blackwell.

Whetten, D. A. & Godfrey, P. C. (1998) *Identity in Organizations: Building Theory Through Conversations*. SAGE, Thousand Oaks, Calif.

Yakhlef, S. & Basic, G. (2015) *Border Crossings, Safety, and the Freedom of Movement: Passengers' Perspective.*

Zucker, L, G. (1986) The production of trust: Institutional sources of economic structure, 1840-1920. In B. M. Staw & L. L. Cummings (Eds.], *Research in organizational behavior,* vol 8: 55-111. Greenwich, CT: JAI Press.

Internet Sources

https://polisen.se/PageFiles/487243/Information.pdf. [Accessed: 11th June 2015].

https://polisen.se/Stockholms_lan/Aktuellt/Nyheter/Stockholm/NY---april-juni/Fyra-arresterade-for-forsok-till-grov-stold-i-Norge/ [Accessed: 11th June 2015].

http://norrteljetidning.se/nyheter/nyheter/1.2844091-organiserade-ligor-pa-ostersjobatarna. [Accessed: 11th June 2015].

http://www.svd.se/grovt-kriminella-pa-ostersjofarjor. [Accessed: 11th June 2015].

http://www.atl.nu/entreprenad/resultatet-av-polissamarbete-ver-gr-nserna. [Accessed: 11th June 2015].

http://www.sydsvenskan.se/sverige/svensk-polis-skuggade-juveltjuvar/. [Accessed: 11th June 2015].

https://eng.si.se/police-co-operate-across-borders-against-international-crime/. [Accessed: 11th June 2015].

CONCEPTS OF HUMAN SECURITY AND SAFETY AND THEIR IMPLICATIONS

UDK: **355.019.2:623.454.8 (55**

HUMAN SECURITY AND HUMANITARIAN IMPACT OF NUCLEAR WEAPONS: THE CASE OF IRAN'S DISARMAMENT

Valentina Ranaldi, PhD

in INTERNATIONAL LEGAL ORDER AND HUMAN RIGHTS
UNIVERSITY OF ROME «La Sapienza»

INTRODUCTION

Seventy years after the devastating U.S. atomic bombings of Hiroshima and Nagasaki, the nuclear disarmament is currently the subject of a series of incentives at the international level. The warmest front of the present discussion on arms control, pursuing to reduce the threat of nuclear weapons use, is, certainly, the Iranian one. On 31 March 2015 the key parameters of a *Joint Comprehensive Plan of Action* regarding the Islamic Republic of Iran's nuclear program were decided in Lausanne, at the end of the heated discussions between Iran, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), and the European Union. Negotiations on the Iran's nuclear disarmament should come to a conclusion on 1 July 2015, deadline fixed by the Parties for the drafting of the final text. From November 2013, when an *interim* agreement was signed in Geneva, negotiations have been underway between Iran and the P5+1, seeking for a mutually-agreed, long-term and comprehensive solution that would ensure the Iran's exclusively peaceful nuclear program.

The recent case of economic sanctions against Iran charged with performing uranium enrichment in secret has brought back to the international attention the problem of the humanitarian consequences of nuclear weapons. With this respect, further international incentives are currently dealing with the nuclear issue. From 8 to 9 December 2014 a *Conference on the Humanitarian Consequences of Nuclear Weapons* took place in Vienna. The *Conference* may be considered as the expression of a new, significant current in the nuclear policy debate, addressing the problem of the humanitarian impact of any use of nuclear weapons, including effects on human health, environment, agriculture and food security, migration, and economy, as well as the problem of the international response capabilities and the applicable normative framework.

Furthermore, a *Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, which* entered into force in 1970 (and will be discussed *infra),* will be held in 2015 in New York, to review the implementation of the *Treaty*. In order to value the effective entity of the present evolution, several aspects should be considered, given the complexity of the international legal framework on the subject. Indeed, not only some international rules aimed at preventing the spread of nuclear weapons (such as rules concerning disarmament and nuclear non-proliferation) are applicable to the matter, but also the rules, both customary and conventional, concerning the legality of nuclear weapons and the regulation of their use in armed conflicts. The complex interplay of different and mutually interacting legal systems, such as the traditional humanitarian law (*Geneva law*), the law of war (*Hague law*) and the collective security system under the UN Charter, has also been the subject of attention from various international jurisdictions, including the International Court of Justice in its 1996 Advisory Opinion[1]. Actually, the issue of disarmament and non-proliferation of weapons of mass destruction is closely related to the prohibition, set by the rules of the international humanitarian law, of the use of certain types of weapons. In this regard, it should be preliminarily noted that, while the rules of the international humanitarian law should regulate the use of certain weapons once the conflict has already broken out, the rules concerning disarmament and non-proliferation is intended to operate before a conflict arises and precisely in order to reduce the chances that it will arise. This paper, however, will not examine the regulation of nuclear weapons in armed conflicts, as the Iranian nuclear issue falls in the aspect of prevention and disarmament. The problems so far mentioned are, clearly, relevant for the security of the States, and regulated by the classical mechanisms of the international law. However, for the transnational dimensions that the use of atomic weapons could have, and the humanitarian consequences that such a use could cause, «nuclear weapons remain the gravest and most immediate threat to human civilization»[2]. In this sense, some aspects related to the concept of human security are relevant, as it will be specified below.

[1] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, General (July 8, 1996), in *ICJ Reports*, 1996, p. 226

[2] Union of Concerned Scientists, *Nuclear Weapons & Global Security: Nuclear Weapons Overview*, 2009, www.ucsusa.org.

HUMAN SECURITY, STATE SECURITY AND NUCLEAR WEAPONS

A new understanding of the concept of security emerged for the first time officially with the *Human Development Report* (HDR) of 1994[3]. The concept of "human security" is, for some commentators, on its way to changing the practice and institutions of global governance. In this perspective human security, as a value-based and people-centered approach to security, should contribute to normative changes in the international legal order. The underlying issues of human security - a focus on the individual, the waning of State sovereignty and the rise of new actors, the adequate reaction to new threats - constitutes a challenge to the international law[4]. Still it is difficult to guarantee the internal human security of the individuals (in terms of economic welfare, development, health, living conditions, cultural and social rights, environmental protection), without any external security, granted mostly by the States in the context of international relations. A valid purpose when focusing on human security is, however, to ensure adequate attention to the real causes of insecurity for so many people all over the world. Of which weapons of mass destruction – such as nuclear, chemical, and biological weapons - are, undoubtedly, to be mentioned.[5]

It should be noted that, even if there were many threats with nuclear weapons after World War II, there was not practical use. By the dictatorship governments and within the civil wars, chemical and biological weapons were used most frequently because they are more efficient regarding the capability for covering the traces and evidences of their use. This is mostly addressed to biological weapons, due to the reason that they can contaminate the food and water and their reaction is delayed. Nevertheless, nuclear weapons and their technology remain more popular regarding their impact,

---

[3] United Nations Development Program (UNDP), *Human Development Report 1994*, New York - Oxford, 1994. For some introductory considerations over the concept of «human security», see Erjon Hitaj, "The pre-emptive use of force as a counterproductive measure to achieve human security", *KorEuropa*, No.5 (2014), http://www.unikore.it/index.php/numero-5/Hitaj#.VPH7Co5-SCl.

[4] On the subject of human security and nuclear weapons, see Ved P. Nanda, "Nuclear Weapons, Human Security, and International Law," *Denv. J. Int'l L. & Pol'y* 37, No. 3 (2009): p. 331 - 350

[5] In 2004, the Secretary General's High-level Panel which was established to examine new global security threats enumerated six clusters as threats to international security, which include weapons of mass destruction. The other five clusters listed in the report are: economic and social threats, interstate conflict, internal conflict, terrorism, and transnational organized crime. Secretary General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 23, U.N. Doc, A/59/565/2004 (2004)

especially if they are used as a threat between States. With this function of deterrence they have been historically employed, particularly during the cold war. The real problem regarding nuclear weapons seems to be the threat of their use and, consequently, the regulation of their possession. In this perspective the current Iranian nuclear issue is particularly relevant, mainly for its aspect of prevention and disarmament.

Because the regulation of the threat and the use of nuclear weapons are a matter of absolute importance to guarantee world order and international security, this survey examines the latest international developments, placing them in the mentioned international legal framework, which we are going to examine below in its essential characteristics.

INTERNATIONAL LEGAL FRAMEWORK TO PREVENT THE SPREAD OF NUCLEAR WEAPONS: *THE* TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS AND ITS REVIEW CONFERENCES

As it was mentioned above, international sources on disarmament and non-proliferation of weapons of mass destruction are meant to protect global security by prohibition of the existence or, at least, the spread of weapons particularly dangerous for the international system as a whole. With regard to nuclear weapons, the main conventional source is constituted by the *Treaty on the Non-Proliferation of Nuclear Weapons (NPT).* Opened for signature in 1968, the Treaty entered into force *on 5 March 1970. In 1995, Member States have decided, by consensus, to extend the Treaty for an indefinite period of time and without conditions*[6]. A total of 190 parties have joined the Treaty, including the five «Nuclear-Weapon States».

In this respect, it must be recalled that the Treaty identifies two classes of States: Nuclear-Weapon States (NWS) and Non-Nuclear Weapon States (NNWS), defining a nuclear-weapon State as «one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967»[7]. The *Treaty* provides a delicate balance between three sets of commitments: non acquisition of nuclear weapons by *Non-Nuclear Weapon States; the right of the latter to develop or acquire peaceful nuclear technology under certain conditions; nuclear disarmament*

[6] T*hus overcoming the 25-year term initially established by Article X, par. 2, of the NPT*

[7] *Treaty on the Non-Proliferation of Nuclear Weapons, Article IX, par. 3, these States are: China, France, the Soviet Union (today Russian Federation), the UK and the US.*

by Nuclear-Weapon States[8]. In this perspective, the *Treaty* states that each Nuclear-Weapon State, Party to the Treaty, undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices[9]. In turn, each non-nuclear-weapon State, Party to the Treaty, undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices[10].

Another obligation under the Treaty, for non-nuclear-weapon State is to accept safeguards, as set forth in an agreement negotiated and concluded with the International Atomic Energy Agency (IAEA), for the purpose of verification of the fulfillment of its obligations assumed under the Treaty, with a view to prevent diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices[11]. To further the goal of non-proliferation and as a confidence-building measure between States Parties, therefore, the *Treaty* establishes a safeguards system under the responsibility of the IAEA. Safeguards are used to verify compliance with the *Treaty* through inspections conducted by the Agency. The following article IV of the Treaty which has been used by Iran to justify the legitimacy of its nuclear policy is particularly important for the subject of this survey, as we will see below. **Article IV states that n**othing in the Treaty shall be interpreted as affecting «the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty»[12]. The Treaty, indeed, promotes cooperation in the field of peaceful nuclear technology and equal access to this technology for all State

[8] Yael Ronen, *The Iran nuclear issue* (Oxford: Hart Publishing, 2010)

[9] *Treaty on the Non-Proliferation of Nuclear Weapons, Article I*

[10] *Treaty on the Non-Proliferation of Nuclear Weapons, Article II*

[11] *Treaty on the Non-Proliferation of Nuclear Weapons, Article III,* Par. 3 of the same article states that the safeguards required by it shall be implemented to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use, or production of nuclear material for peaceful purposes.

[12] *Treaty on the Non-Proliferation of Nuclear Weapons, Article IV, par.1*

Parties, while safeguards prevent the diversion of fissile material for weapons use. In particular, the same article IV affirms the right, for all States Parties, to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty shall also co-operate in contributing, alone or together with other States or international organizations, to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world[13].

As it was mentioned above, the provisions of the *Treaty*, particularly article VIII, paragraph 3, envisage a review of the operation of the *Treaty* every five years, a provision which was reaffirmed by the States parties at the 1995 NPT Review and Extension Conference. On the occasion of the 2010 *Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, States Parties agreed to a final document which included a review of the operation of the *Treaty*, reflecting the views of the President of the Conference, as well as agreed conclusions and recommendations for further actions. The action plan contains measures to advance nuclear disarmament, nuclear non-proliferation, the peaceful uses of nuclear energy and regional issues, including the implementation of the 1995 Resolution on the Middle East[14].

The next Review Conference will be held from 27 April to 22 May 2015 at the UN Headquarters in New York. The 2015 Review Conference is expected to consider a number of key issues, including: universality of the Treaty; nuclear disarmament, including specific practical measures; nuclear non-proliferation, including the promoting and strengthening of safeguards; measures to advance the peaceful use of nuclear energy, safety, and security; regional disarmament and non-proliferation; implementation of the 1995 resolution on the Middle East; measures to address withdrawal from the Treaty; measures to further strengthen the review process; and ways to promote engagement with civil society in strengthening NPT norms and in promoting disarmament education.

[13] *Treaty on the Non-Proliferation of Nuclear Weapons, Article IV, par. 2*

[14] The *Review Conference* met at United Nations Headquarters in New York from 3 to 28 May 2010. A total of 172 States parties to the Treaty participated in the Conference. For the Conclusions of the Conference see *Final documents* NPT/CONF.2010/50 (Vol. I); (Vol. II); (Vol. III)

THE IRAN NUCLEAR ISSUE AND THE PRESENT INTERNATIONAL INCENTIVES

Since the exposure of its illicit nuclear program in 2002, the Islamic Republic of Iran has been the center of the international attention for the issue *de qua*. Retracing briefly, from a legal standpoint, the key stages that led Iran in the international spotlight, it should be remembered that, in August 2002, an Iranian opposition group revealed in Washington the existence of two undisclosed nuclear facilities under construction in Iran.[15] Few months later the United States published satellite pictures of the facilities, showing them as evidences of its suspicions that Iran was pursuing weapons of mass destruction. Iran, for its part, claimed in different occasions, to respect international obligations and the prevailing legal regimes on weapons of mass destruction, including the *Treaty on the Non-Proliferation of Nuclear Weapons* [16]. Furthermore, the purpose of its program was exclusively to support the civilian nuclear energy program, and it had operated in secret because of the American obstruction to its activities[17]. Iranian nuclear facilities became the subject of IAEA inquiry, which revealed that Iran had conducted relevant nuclear experiments, carried out development activities related to the treatment, storage and disposal of radioactive waste[18]. Consequently, Iran had failed to comply with its obligation under the *NPT Safeguard Agreement*[19].

Subsequently, after a series of unheard requests by the IAEA to suspend its activities associated with uranium enrichment, the Security Council of the United Nations adopted a Resolution in which, acting under article 40 of the Charter, required that «Iran shall without further delay suspend […] all enrichment-related and reprocessing activities»[20]. However, Iran has not backed off from its activities in developing uranium enrichment,

---

[15] There were a fuel enrichment plant in Natanz and a heavy water reactor in Arak. For a Chronology of the events see Yael Ronen, *the Iran nuclear issue* (Oxford: Hart Publishing, 2010), p. 43 - 80

[16] Security Council Debate on Resolution 1696 (2006), S/PV.5500, 31 July 2006. In this regard it should be remembered that Iran joined the *Treaty on the Non-Proliferation of Nuclear Weapons* in 1970 and concluded its safeguards agreement with the IAEA in 1974. It has signed the *Additional Protocol* to this safeguards agreement but it has not ratified it.

[17] Statement by Iran, IAEA, 46th General Conference, 16 September 2002

[18] *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report by the IAEA Director General, GOV/2003/40, 6 June 2003

[19] *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report by the IAEA Director General, GOV/2003/75, 10 November 200.

[20] Security Council Resolution 1696 (2006), 31 July 2006

and this led the Security Council to adopt, in December 2006, another Resolution (this time under article 41 of the Charter), which imposed enforcement measures on Iran, including a trade embargo on technologies which could contribute to activities which Iran was ordered to suspend, a prohibition to finance such activities, and asset freeze for designated individuals involved[21]. These sanctions were sharpened in 2007[22].

The IAEA, reporting that Iran had ceased providing information required under the Additional Protocol, stated clearly in November 2007 that the material that Iran had previously not declared, but owned since 2003, had not been diverted from peaceful to non-peaceful purposes[23]. Instead, Iran's recurring argument is that its nuclear program is entirely peaceful. Consequently, it is legitimate under the article IV of the *Treaty on the Non-Proliferation of Nuclear Weapons*, which recognizes an inalienable right of the States to develop nuclear technologies for peaceful purposes. This right emanates, according to the Iranian point of view, «from the universally accepted proposition that scientific and technological achievements are the common heritage of mankind»[24].

Since then, different Resolutions of the Security Council come in succession, and expanded the scope of the enforcement measures further[25]. In February 2010 when the government ordered the Atomic Energy Organization of Iran (AEOI, which is the main official body responsible for implementing regulations and operating nuclear energy installations in Iran) to commence enriching Iranian uranium to 19.75% for the Teheran Research Reactor (TRR), thereby significantly closing the gap between its normal low-enriched material and weapons-grade uranium. Furthermore, since early 2012 Iran has continued to deny the IAEA's requests for access to the alleged high explosive testing site related to nuclear armament experiments at Parchin. The extensive activities that Iran has undertaken there have seriously undermined the Agency's ability to conduct effective verification.

An important breakthrough was, however, accomplished with the *Geneva interim Agreement* signed on 24 November 2013, between Iran and the Foreign Ministers of China, France, Germany, Russia, UK, and USA

[21] Security Council Resolution 1737 (2006), 23 December 2006

[22] Security Council Resolution 1747 (2007), 24 March 2007

[23] *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolution 1737 (2006)* and *1747 (2007) in the Islamic Republic of Iran*, Report by the IAEA Director General, GOV/2007/58, 15 November 2007

[24] Statement by Iran, UN General Assembly, Report of the International Atomic Energy Agency, A/58/PV.53, 3 November 2003; Statement by Iran's Minister of Foreign Affairs to the Seventh NPT Review Conference, New York, 3 May 2005.

[25] Security Council Resolution 1803 (2008), 3 March 2008; Security Council Resolution 1835 (2008), 27 September 2008.

(P5+1– the five permanent members of the UN Security Council plus Germany). This agreement enhances monitoring activities, which would include wider access for IAEA inspectors and provision of information to the IAEA. In return, the other Parties accept to lift various US and EU sanctions on sectors including petrochemical exports, gold and precious metals and promised that no new nuclear-related sanctions would be imposed by either the UN Security Council or the EU over the six-month period covered by the first step, which commenced on 20 January 2014.

Furthermore, according to the action plan decided with the *Geneva interim Agreement*, the Parties aim to conclude negotiations concerning a long-term «comprehensive solution» within a year of the adoption of the *Geneva Agreement*[26]. The ultimate objective is the lifting of all nuclear-related sanctions against Iran, and the State's nuclear program being treated «in the same manner as that of any non-nuclear weapon state party to the NPT»[27]. The following IAEA reports show that Iran had not enriched any uranium above the established percentages of 5%; it had not installed any further centrifuges and provided access to several locations to which it had previously denied access[28]. Since no agreement was reached on November 24, 2014 (deadline earlier fixed by the Parties), negotiations on the Iran's nuclear disarmament should come to conclusion on 1 July 2015, as mentioned above. In the meantime, a political agreement was reached in Lausanne, Switzerland, on 31 March 2015, when the key parameters of a *Joint Comprehensive Plan of Action* (JCPOA) regarding the nuclear program of the Islamic Republic of Iran were decided. These parameters form the foundation upon which the final JCPOA text will be written by June 30, 2015.[29]

---

[26] As the *Geneva Agreement* states, «The final step of a comprehensive solution […] would: involve a mutually defined enrichment program with mutually agreed parameters consistent with practical needs, with agreed limits on the scope and level of enrichment activities, capacity, where it is carried out, and stocks of enriched uranium, for a period to be agreed upon; […] fully implement the agreed transparency measures and enhanced monitoring. Ratify and implement the Additional Protocol, consistent with the respective roles of the President and the Iranian parliament; include international civil nuclear cooperation including among others on acquiring modern light water power and research reactors and associated equipment, and the supply of modern nuclear fuel as well as agreed R&D practices».

[27] *Geneva Agreement*, 24 November 2013

[28] See the IAEA report on 20 March 2014 and 23 May 2014

[29] The text of the *Parameters for a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran's Nuclear Program*, April 2, 2015, can be read in the

With regard to the enrichment, Iran has agreed to reduce by approximately two thirds its installed centrifuges[30]. All excess centrifuges and enrichment infrastructure will be placed in IAEA monitored storage and will be used only as replacements for operating centrifuges and equipment. Iran has also agreed to not build any new facilities for the purpose of enriching uranium for fifteen years. Furthermore, in Lausanne the conversion of Iranian facility at Fordow was decided, so that it will be no longer used to enrich uranium but only for peaceful purposes. In that facility, Iran will not conduct research and development associated with uranium enrichment for fifteen years, nor will have any fissile material[31]. Iran will only enrich uranium at the Natanz facility, with only 5,060 IR-1 first generation centrifuges for ten years, removing its more advanced centrifuges[32].

About the inspections and transparency, the IAEA will have regular access to all of Iran's nuclear facilities including the above-mentioned Iranian enrichment facilities at Natanz and Fordow, and including the use of the most up-to-date, modern monitoring technologies. It will also be granted the access to enrichment facility, conversion facility, centrifuge production facility, or yellowcake production facility anywhere in the country. Other parameters decided in Lausanne concern the Iranian reactors and reprocessing. Iran will redesign and rebuild a heavy water research reactor in Arak, based on a design upon which the P5+1 had reached an agreement. The Arak reactor will not produce weapons grade plutonium, and will not accumulate heavy water in excess of the needs of the modified reactor. Any remaining heavy water is meant to be sold on the international market in a period up to fifteen years[33].

In exchange for these engagements, negotiations led to the decision in the sense of reducing the nuclear-related sanctions that oppress Iranian

---

US Department of State website (http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm).

[30] Iran will go from having about 19,000 installed today to 6,104 installed under the deal, with only 5,060 of these enriching uranium for 10 years. All 6,104 centrifuges will be IR-1s, Iran's first-generation centrifuge. Iran has agreed to not enrich uranium over 3.67 percent for at least 15 years and to reduce its current stockpile of about 10,000 kg of low-enriched uranium (**LEU**) to 300 kg of 3.67 percent **LEU** for 15 years.

[31] Moreover, all Fordow's centrifuges and related infrastructure will be placed under **IAEA** monitoring.

[32] Iran will remove the 1,000 IR-2M centrifuges currently installed at Natanz and place them in **IAEA** monitored storage for ten years.

[33] The original core of the reactor, which would have enabled the production of significant quantities of weapons-grade plutonium, will be destroyed or removed from the country.

economy. Indeed, the sanctions of America and the European Union will be suspended after the IAEA has verified that Iran has taken all of its key nuclear-related steps[34]. The final JCPOA text will also specify a dispute resolution process, which will enables JCPOA participant to seek to resolve disagreements about the performance of JCPOA commitments. However, it is planed that, if an issue of significant non-performance cannot be resolved through that process, then all previous UN sanctions could be re-imposed.

In the end, an agreement has been reached on the phases of the implementation of the disarmament program of Iran. In particular, Iran will limit domestic enrichment capacity, and research and development for ten years. For fifteen years, Iran will limit the additional elements of its program (such as the building of new enrichment facilities or heavy water reactors); it will limit its stockpile of enriched uranium and accept new and enhanced transparency procedures. Inspections and transparency measures will continue beyond these fifteen years, while the inspections of Iran's uranium supply chain will last for twenty-five years. Anyway, the Lausanne key parameters reiterate that Iran, even after the period of the most stringent limitations, will remain a party to the *Nuclear Non-Proliferation Treaty* which prohibits its development or acquisition of nuclear weapons and requires IAEA safeguards on its nuclear program.

CONCLUDING REMARKS

Waiting to see what results will be achieved in the two locations of multilateral negotiations currently open (the one on the Iranian nuclear issue, and the one on the revision of the *Treaty on the Non-Proliferation of Nuclear Weapons*), it should be noted that the current international developments move in the direction of a renewed attention to the problems of nuclear disarmament and non-proliferation.

Over the years, the UN Security Council has repeatedly counted nuclear proliferation among the major threats to peace and international security, to the extent that a State proceeds (or there is a high risk that it proceeds) to diverge from nuclear energy peaceful use to illegal programs of production of nuclear weapons or other explosive devices. However, the problem appears, today, even more significant. According to UN information, nuclear technology is accessible only for States, but there are cases when transnational terrorist groups announced that they have scientists

[34] Even the United Nations Security Council resolutions on the Iran nuclear issue will be lifted simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns. On the contrary, US sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under the deal.

and access to the nuclear technology. If their threats are true, the dangers of access to nuclear weapons and related materials by non-State actors, particularly terrorist groups, the results are particularly serious. This situation poses serious difficulties in making those mechanisms operative, designed for State actors, guaranteed by the *Treaty on the Non-Proliferation of Nuclear Weapons* and its *Additional Protocol*. The checks carried out by the IAEA, which have also ensured, as seen, some important results with regard to the Iran's nuclear issue, are not in any way applicable to the current situations of groups moving throughout fluid boundaries of States in disintegration.

It is, therefore, necessary to pay even more attention to the control of weapons of mass destruction, including nuclear ones, in areas at a higher risk such as, currently, the Middle East and North Africa. As a conclusion to the analysis carried out so far, it seems necessary to underline that world order and human security cannot be ensured if not in a context of State security in-house.

BIBLIOGRAHY:

Boisson de Chazournes, Laurence, and Philippe Sands., *International law, the International court of justice and nuclear weapons*, Cambridge: Cambridge university press, 1999

Conference proceedings, *Nuclear arms control, non proliferation and disarmament in the post-cold war security environment*. Cleveland, Ohio: Case Western Reserve University School of Law, 1999

Garrity, Patrick J., and Steven A. Maaranen., *Nuclear weapons in the changing world: perspectives from Europe, Asia, and North America*. New York, etc.: Plenum press, 1992

Garvey, Jack I. "A new architecture for non-proliferation of nuclear weapons", *Journal of conflict and security law* 12, No. 3 (2007): p. 339 - 357

Hirose Kawaguchi, Kazuko. "Regulation of the use of nuclear weapons: the complexity of the contemporary international law as seen through discourse analysis from the 1963 atomic bomb decision through the 1996 ICJ advisory opinion," *The Indian journal of international law* 47, No. 1 (2007): p. 57 - 88

Hitaj, Erjon. "The pre-emptive use of force as a counterproductive measure to achieve human security", *KorEuropa*, No. 5 (2014) http://www.unikore.it/index.php/numero-5/Hitaj#.VPH7Co5-SCl

Nanda, Ved P. "Nuclear Weapons, Human Security, and International Law," *Denv J. Int'l L. & Pol'y* 37, No. 3 (2009): p. 331 - 350

Ronen, Yael. *The Iran nuclear issue*, Oxford: Hart Publishing, 2010

Singh, Nagendra., *Nuclear weapons and international law*, London: Stevens & Sons, 1959

Singh, Nagendra and Edward McWhinney., *Nuclear weapons and contemporary international law*, Dordrecht, etc.: M. Nijhoff, 1989

Tabassi, Lisa. "The nuclear test ban: Lex lata or de lege ferenda?" *Journal of conflict and security law* 14, No. 2 (2009): p. 309 - 352

Vatanparast, Roxana. "International law versus the preemptive use of force: racing to confront the specter of a nuclear Iran", *Hastings international and comparative law review* 31, No. 2 (2008): p. 783 - 806

UDK: 355.012-058.65-055.2

VIOLENCE AGAINST WOMEN, ARMED CONFLICTS, GENDER AND HUMAN SECURITY

Mitko Korovchevski, PhD

"Ss. Cyril and Methodius" University in Skopje,
Faculty of Philosophy – Skopje, Republic of Macedonia
kotovcevski@gmail.com

Blagica Kotovchevska, MA

MIT University – Skopje, Republic of Macedonia
blagica.kotovcevska@gmail.com

Abstract: Central research frame of this serious global, social, and security phenomenon is the analysis of the relationship between genders (gender equality, especially the aspect of women and girls) in correlation with gender and human security. In recent decades, primarily in internal armed conflicts, women were victims of mass liquidations, mass rape, torture and sexual slavery. Also, in areas affected by bloody civil conflicts (even in the post-conflict period) women often faced increased and intensified domestic violence, as victims of the increased women trafficking and the rise of the modern slavery in which women pay the highest tax. All these important aspects of conflicts concerning gender dimension of human security are expanded with the role of the woman as a participant in the fights in internal armed conflicts. Additionally, women have another important function in their active participation in the implementation of other necessary functions such as logistics, intelligence etc. What is characteristic for women in modern internal conflicts is that they become targets for mass rape and other forms of sexual violence because they are considered important social and cultural symbols. Violence against women in these conflicts is a deliberated strategy of the opponent in order to undermine the social structure of the other opponent. Rape of women as a systemic military strategy poses a serious threat to global security and it is usually associated with the policy of ethnic cleansing and change of the ethnic structure in the conflict areas. In the paper we will analyze the correlation between the internal armed conflicts, as well as the new non-military threats against woman (double marginalization of woman's security issues, gendercide and

gender imbalance), and their impact on gender and human security. The indirect and direct effects of these conflicts (poverty, epidemics, destruction of the environment, weakening and disintegration of states) have a significant impact on the security in general and especially on human security. These "contemporary" threats become instruments of armed conflict, and the human and gender security of women are considered as a crime against humanity and a serious challenge to the security on individual and global level.

Key words: violence against women, armed conflicts, human security, gender security

1. INTRODUCTION

Considering the fact that the security of a country can be in "conflict"– tight and confronted relations with the security of the individual, feminists are trying to define security more extensively–within wider frames. According to their determinations, security in a wider context implies reduction of all forms of violence, including physical, economic and ecological. They believe that security should be considered from the bottom upwards instead of vice versa, meaning that what is supposed to be in the base and in the focus is the security of individuals (the human) and the community, instead of the country and the international system.

Human security, and in this context, gender equality, refer to all serious threats to the rights, security and lives of people, regardless of their gender, race, religion etc. In its essence and sense of existence is the preservation and protection of the life and dignity of individuals – protection of the vital core of all human lives in manners that increase the freedoms, the human rights and the fulfillment of people.

2. EXPANSION OF THE SECURITY AND HUMAN SECURITY CONCEPTS

"The deepened" approach to the studies of security, that is, the relevance of the term security as a wider and deeper concept, gets important specific weight in the "real" political matters.

The need of expansion of the relevance of security in global politics was recognized by the famous world statesmen during the seventies of the last century.

The essence of the expansion of the security concept arose from the fact according to which the threats to the security of the countries should represent a priority for governments. However, threats to human lives should be increasingly accepted as important or more important that the other "traditional" priorities of the country.

The need of expansion of the concept, that is, the relevance of the term security in global politics, was well recognized in global politics long before its complete modeling was achieved after the termination of the Cold War.

Even in the distant seventies of the past century, the Independent Commission on International Development Issues (ICIDI), headed by the former chancellor of Western Germany, Willy Brant, together with the former prime ministers of Great Britain and Sweden – Hill and Olof Palme, in their influential report concluded that:

"The important task of the constructive international policy should consist of provisioning of new, comprehensive understanding of "security" which will be less limited for the clear military aspects...

Our survival does not depend only on the military business, but also on the global cooperation to create a sustainable biological environment based on differently distributed resources ".[1]

In the era of the Cold War, until the end of the eighties, persisted the attitude and the fear that the military threat is the biggest threat for the security of the countries. With the end of the Cold War, these ideas and strives continued to exist and to find fertile soil in the field of security and international politics. This conclusion only confirms the post-cold war reality according to which the creation and the direction of the international security politics, both for the military, as well as for the nonmilitary aspects and issues, will generate the peace benefits of the nineties.

We can follow the expansion of the security concept quite illustratively also through the UN idea, represented for the first time on the international scene, an idea that in its vision went further than the previously promoted attitudes of the League of Nations. World War II announced the disintegration of the League of Nations, and to a great extent contributed for UN to apply the military access to security, increasingly following the realistic logics. Their "new" idea was directed towards preservation of peace both for the **individuals**, as well as for the countries, through the preservation and the guarantee of human rights, thereby tracing the road to more comprehensive and deeper understanding of security.

In the 1990s, UN got a new opportunity and capacities to revive, and even more, to develop this "more extensive" and modern way of thinking in accordance with, and in function of the human security concept.

"The security concept must be changed – from exclusive emphasis on national security to a much greater emphasis on security of people, from

[1] (ICIDI, 1980:124)

security through weapons towards security through human development from territory to food, employment and social security".[2]

Two years before the "official promotion" of the UN, that is, at the Pan-African Conference, cosponsored by the UN and the Organization of African Unity, the human security concept and idea were promoted.

"The security concept goes far beyond military thinking. It has to be understood in terms of security of the individual persons to live in peace with access to basic products for life and full participation in the work of its society freely and to enjoy all basic human rights".[3]

In this regard, it is inevitable to elaborate the attitudes indicated in the network of human security (promoted at the Conference in Lisen in 1998), according to which:

"Human security became a new measure of global security, as well as a new agenda on global action. Security is a characteristic of the freedom from fear, while the wellbeing is the goal of the freedom from need. Human security and human development are the two sides of the same coin, mutually strengthening themselves and leading towards an appropriate environment for themselves."[4]

At the end of the twentieth century, the anarchy was an international state system and the dangers from the other countries were greater than ever. In this regard, the access of the realists towards international relations was a return to the opinion that the country is of key importance in the provisioning of lives of its citizens, only under another mask.

The extensive interpretation of security obtained many critics among the realists who persistently strived to maintain the narrow focus, that is, the previous essence of the security concept. Their conceptual approach differed from the "new" concept established after the termination of the Cold War. The theoretician Walt strongly advocated a view according to which "the study of security may be defined as a study of threats, use and control of **the military force**".[5]

Many realists during a specific period feared that the military threats will be more probable and possible in the period after the Cold War regardless of the traditional guarantee of the security of the country and the military balance of power.

The supporters of the wider concept of security still believed that military threats are not the only threats that the countries, the people and the world as a whole will face.

---

[2] (UNDP, 1993: 2)

[3] (Africa Leadership Forum 1991)

[4] (Human Security Network, 1999)

[5] Walt, S. (1991) "The renaissance of Security Studies" International Studies Quarterly 35 (2): p. 212.

According to Ullman, "security implication in the countries with demographic pressures and exhausted resources should be considered same as the military threats from other countries."[6]

This "security logic" continued to deepen and develop and it started to focus on the other potential threats to the security of people and countries. Mathews, at the end of the Cold War, quite logically and justifiably expanded the existing spectrum of threats with "the newly created threats from the problems with the environment, as well as the reduction of the ozone layer and global warming".[7]

It is also typical to emphasize the viewpoint of Ayoob who considered that "internal, rather than external threats are the main threat for security in most of the less developed countries".[8]

Other authors (Peterson and Sebenius) emphasized in their studies that the crises in education and the increased number of the economic "subclasses" should be considered a security threat.

Lyn Jones and Miller included the dangerous nationalism and the social strike from migration in the spectrum of security threats. [9]

Despite the multitude of different attitudes and launched theories in this field, the expansion of the security concept did not refute the logic of realists regarding the conventional security studies. In the new global setting, the "expansion" of the concept implies only expansion of the scope and the spectrum of relevant factors that refer primarily to state power, beyond the field of military and economic matters.

However, "the deepened access" to the security studies, favorite among the pluralists and the social constructivists in international relations, increased the focus on the disciple and the security of people instead of the country. It is essentially the new concept of the controversial human security.

3. ARMED CONFLICTS, VIOLENCE ON WOMEN AND GENDER SECURITY

Instead of an introduction to the explication of the mutual dependence and relatedness of armed conflicts and violence against women and their impact on gender security, we will present a statement from the

[6] Ullman, R. (1983) " Redefining Security", International Security 8 (1), p.123

[7] For more details, see: Mathews, J. (1997) "Power Shift", Foreign Affairs 76 (1) : 50 -66.

[8] For more details, see: Ayoob, M (1977) "Defining Security : A Subaltern RN Realist Perspective", in K. Krause and M. Williams, Critical Security Studies, Minneapolis: University of Minnesota Press: 121-146.

[9] Lynn – Jones, S. and Miller, S. (1995) Global dangers: Changing Dimensions of International Security. Cambridge, MA, and London: MIT Press.

White Book of the British Government dedicated to the international development.

"Violent clashes cause negative rates of economic growth and lead to hunger, they destroy roads, schools and clinic and make people escape across the border… Particularly vulnerable are girls and women, due to sexual violence and abuse. Violent clashes and insecurity can also overflow in the neighboring countries and provide protection to terrorist or organized criminal groups".[10]

The death tolls in war or in some other major conflict below the level of a war, are not the most appropriate indicator of the threats on human security. Armed clashes essentially have many direct consequences on human life, wellbeing and on the overall development. The harmful consequences for the environment, the economic disturbances, the diseases, the poverty levels and other dangers represent only a part of the wide spectrum of consequences from military and violent clashes. On the other hand, they contribute for the occurrence of new clashes, factors that are necessary in the research of human security.

"A study showed that a country with a GDP of 250 American dollars per capita is facing 15% risk to start a civil war in the following five years, while the risk of war is less than 5% in a country where the GDP per capital is 5000 American dollars."[11]

The relation between gender and security is deeply correlated and it is essentially multidimensional. "The International Committee on Women's Rights and Gender Equality of the United Nations indicated five aspects: (1) violence against women and girls; (2) gender inequality in the control of resources; (3) gender equality in power and decision making; (4) human rights of women; (5) women (and men) as factors, and not victims".[12]

Sexual abuse of women during military conflicts may not represent some phenomenon, however in the past decades it became drastically increased and it acquired fearful dimensions. For a long time throughout history, raping was practiced by the occupant forces aiming to symbolize their power and subjugation of the occupied people, however the number of attacks in the last internal conflicts, especially in the ethnical and religious conflicts leads to systematic and very organized performance and well thought-out strategy.

In the recent, and even more, in the latest conflicts, women were victims of mass rapes, torture and sexual slavery. For example, "during the genocide in Ruanda in 1994, approximately 250,000 to 500,000 women were

[10] (Department for International Development 2006: 45)

[11] Humphreys, M.m., and Varshvey, A. (2004), Violent Conflict and the Millennium Development Goals: Diagnosis and Recommendation, CGSD Warkine Paper No, 19. p. 9.

[12] (United Nations Inter – Agency Committee on Women end Gender Equality. 1999: 1)

raped. Such bestiality against women is considered crime against humanity today."[13]

The estimations are also that approximately 20,000 to 35,000 women were raped during the war in Bosnia and Herzegovina. Raping women in modern internal conflicts is not only a misfortune of the war, but rather it also represents systematic military strategy that is raised to the level of new jeopardizing of the national global security. During the Bosnian conflict, raping was related to the ruthless policy and strategy of ethnic cleansing and genocide. The new strategy of raping "included forced pregnancy to make Bosnia a Serbian country by conception of Bosnian Muslim women with Serbian babies".[14]

Both conflicts represent classical – striking example of conflicts in the field of "social security", that is, a condition in which the countries were completely devastated and degraded by internal national conflicts.

"The demonization and the desire to humiliate "the other", promoted by nationalists, directly or indirectly legitimized the sexual ravage above all norms in the military conflict. During the riots of the civil wars in Siera Leone, Congo and Angola in the 1990s, the threat to women expressed in a form of mass raping became even stronger due to the ability to transfer HIV through the attacks. There cannot be more complete illustration of how women security is increased with the perceptions of national insecurity."[15]

With the use of the gender prism, we can analyze the effects of war on women, but also parallel understanding of unequal gender relations. At the same time, these analyses to a great extent help in clarification of the country and the international security.

In this regard, it is necessary to emphasize prostitution during military conflicts – military prostitution that is raised to the level of serious security issue. Katerina Moon quite illustratively and fully elaborates this old-new security, but also sociological, political, social and health phenomenon.

"Around many military bases, women were kidnapped and sold for prostitution. Katerina Moon wrote an entire perspective on military prostitution around the American military bases in South Korea in the seventies of the last century. As part of the attempt to provide a more hospitable environment for the American troops, the government of South Korea adopted a policy of issuance of work permits and sexual health of prostitutes. Moon's viewpoint shows us how military prostitution mutually

[13] Rehn, E., and Sirleaf, E. J (2002), Women, War, Peace: The independent Experts Assessment of the impact of Armed Conflict and Women's Role in Peace – Building, p . 9 .
[14] Pettman, J.J. (1996), Worlding Women: A Feminist International Politics (St. Leonards: Allend Q Unwih), p.101.
[15] Hugh, P. (2009), Notion of Global Security: (Skopje: Tabernakul), pages 134 - 135

acted with the American-Korean policy at highest level. On behalf of state security, Korea promoted policies that used the lives of these women. Stories such as Moon's story redirected the attention towards the lives of women in fields that were normally considered relevant to global politics."

By connecting their experiences in wider processes, they show how national security can be transferred into the personal insecurity of specific individuals.[16]

Most civil victims in modern wars and great military conflicts under the level of war (about 90%) unequivocally speak that women and children are the least protected, that is, the most threatened category. The largest percentage of civil victims, but also the largest percentage of forced migration in refugee camps belongs to women and children. This further increases their threat also in the post-conflict period.

4. CONCLUSION

Violence and the more extensive discrimination based on genders further remains endemic in most of the world and a lot is left to be done to appropriately protect women in times of peace, with a particular emphasis during military conflicts.

The threats to the security, particularly the human and gender security the focus of which is women as the most threatened category, tend to be ultimately marginalized due to the inability "to be heard" among the "advocates of security" in the society. Security and emancipation (especially gender emancipation) are two sides of the same coin.

Only emancipation, in theory and in practice leads to stable security with realization of the total security of people. Security and freedom are similar, which means that without security, equality (thereby gender equality) will not last a single day.

"Women security issues offen suffer from the fact that they are being double marginalized, first in the domestic – internal politics (as private "domestic" family work), and then in international politics as well (as private, domestic, sovereign state matter)."[17]

On the basis of the previous findings, we may conclude that without complete and quality realization of gender security (in conditions of peace and war), there is no complete realization of quality and comprehensive human security. The quality and comprehensive human security represents a

[16] Taken from: Moon, K. (1997), Sex Among Allies: Military Prostitution in US – Korea Relations (NEW York: Columbia University Press).
[17] Ibid: pg.134

center of gravity for successful realization of the total national security of modern countries.

5. LITERATURE

- A. Wolfers, National Security of Ambiguous Symbol, Political Science Quarterly, 67/4, 1952.
- Ayoob, M (1977) "Defining Security : A Subaltern RN Realist Perspective", in K. Krause and M. Williams, Critical Security Studies, Minneapolis: University of Minnesota Press
- Burton, J. (1990). Conflict: Resolution and prevention. Basingstoke, England: Macmillan press
- Falk, R. (1999). Pursuing the quest for human security. In Worlds apart: Human security and global governance, edited by M. Tehranian, pp. 1-22. New York: I. B. Tauris.
- Frank N. Trager and Frank L. Simonie, „An introduction to the Study of National Security", bo F.N.Trager and P.S. Hronenberg, National Security and American Society Lowrense Kansas, University Press of Kansas, (1973).
- Humphreys, M.m., and Varshvey, A. (2004), Violent Conflict and the Millennium Development Goals: Diagnosis and Recommendation, CGSD Warkine Paper No 19
- Hugh, P. (2009), Notion of Global Security, Skopje: Tabernakul
- Котовчевски, М. (2013) Национална безбедност, Скопје, Бомат графикс-Скопје
- Lynn – Jones, S. and Miller, S. (1995) Global dangers: Changing Dimensions of International Security. Cambridge, MA, and London: MIT Press.
- Mathews, J. (1997) "Power Shift", Foreign Affairs 76 (1)
- Moon, K. (1997), Sex Among Allies: Military Prostitution in US – Korea Relations (NEW York: Columbia University Press).
- Newman, E. (2001). Human security and constructivism.Visions of international studies: International studies perspectives 2, pp. 239-251.
- Pettman, J.J. (1996), Worlding Women: A Feminist International Politics (St. Leonards: Allend Q Unwih)
- Rehn, E., and Sirleaf, E. J (2002), Women, War, Peace: The independent Experts Assessment of the impact of Armed Conflict and Women's Role in Peace – Building
- Ul-Haq, M. (1999). Global governance for human security. In Worlds apart: Human security and global governance, edited by M. Tehranian, pp 79-94. New York: I. B. Tauris

- Ullman, R. (1983) “Redefining Security”, International Security 8 (1)
- ICDI(1980) North-South: The Report on the International Commission on International Development Issues, London: Pan Books.
- UNDP (1994). United nations human development report, 1994. New York: United Nations
- UNDP (1999). United nations human development report, 1999. New York: United Nations
- Walt, S. (1991) “The renaissance of Security Studies” International Studies Quarterly 35 (2)
- Wheelek, N.J. and Booth. K. (1992), “The Security Dilemma“; in J.Baylis and N.J. Rengger (eds) Dilemmas of World Politics; International isues M A Changing world, Oxford: Oxford University Press

UDK: 355.45-027.511 "20"

SECURITY IN THE 21ST CENTURY: IN SEARCH OF NEW RESEARCH PARADIGMS AND APPROACHES

Astrid Orovcanec, MA

Doctoral candidate of Security, Defense and Peace Institute at UKIM, Skopje

Dimitar Mircev, PhD,

Professor Emeritus
Political Sciences, UKIM, Skopje

Abstract

The world is in permanent motion and alteration and so are the security risks, challenges and threats. The security field is one of the most dynamic areas of multidisciplinary researches whose evolution is taking place rather naturally. In the time of global interdependence, the contemporary security threats and challenges (climate changes, global terrorism, proliferation of weapons of mass destruction, economic crisis, famine, infectious diseases, cyber – attacks, etc.) are global in their scope, transnational in their effects and cannot be solved by military means. In that context the traditional security concept is little relevant. Therefore, the existing security paradigm is inappropriate to respond to the contemporary issues and because of that it is necessary to expand the security concept by taking into consideration the non – military components of security and to deepen it by encompassing all society aspects as well. On the other side, the numerous crises in the world today indicate that the national security paradigm is far from being exceeded, since the traditional armed conflicts as well as military and paramilitary threats to the human security are still very present. Research subject in this paper are the new security challenges and perspectives in the 21st century as well as the new research paradigms and approaches to those phenomena. Poverty, lack of perspectives, developmental gap, economic setback, inequality and weak rule of law are affecting the security of the individual and thereby the security of the states and the regions, that may lead to conflicts initiated by injustice. All of the

abovementioned requires new paradigms and approaches in scientific – research and subsequently in political - strategic sense on national, regional and international level. The research results are confirming the hypothesis of the paper that under the contemporary conditions of globalization, traditional security paradigm is insufficient and inappropriate in addressing the major issues and providing maximum possible security. In order to follow the changes and respond to the challenges of the new era, the security paradigm must continue to evolve. By promoting and implementing the human security and the collective security concepts, these problems will be overcome and regional stability, sustainable development and durable peace will be obtained.

Key words: security, security and research paradigm, human security, globalization

1. INTRODUCTION

Security studies represent a sub-discipline within the international relations and also a multidisciplinary field of research[1] that has been confirmed in numerous discussions of security. Actually they are one of the most dynamic areas of multidisciplinary research (Kroft 2012). The development process of the security studies as a scientific field is still ongoing, due to the constantly changing world, which causes changes of security threats, challenges and the security itself. Even so, the security logic is timeless and universal.

Within the social science there is not a wide consensus about the meaning of the security concept as it is a fairly controversial concept. The most frequent notion among the public is that the security is exclusively associated with the state and the armed forces, but it actually treats much wider scope of issues such as political, issues of use of force and military readiness, human rights, minority rights, migration, poverty, environment and other social topics. Within the international relations the security is referred to the security of the states, but lately it also refers to the security of the people that live in them, because security is essential for human life. Difficulties of the concept derive from the everyday insecurities which otherwise are not regarded as a security problem (Buzan 1991). Over the last few decades the field of security studies is an object of intense debates regarding the nature and the significance of the security as well as the future of the security studies. The reasons for that may be found in the discontent of some researchers with the foundations established by (neo) realists who are

[1] The security studies are located in more scientific disciplines in which the international relations have the tendency to dominate.

characterizing the security field, in the need to respond to the challenges that emerged after the cold war and the aspirations of the academic discipline to be relevant in considering contemporary issues and interests (Krause and Williams 1996, 229). Numerous definitions from the period after the cold war have attempted to answer "what" the term security means in accordance with the ideologies of those defining it and even more important "how" that security is to be achieved (Iglesias 2011).

Security is a flexible and multidimensional concept that can be comprehended in many ways. Security specifications are needed in order the concept to be useful for practical and scientific use. It can be determined regarding the actor i.e. the referent object whose value should be protected (individuals, societies, states, regions, international system, the planet and the like), the values that are subject of protection (physical security, economic wellbeing, sovereignty, territorial integrity, healthy environment, etc.), the necessary level of security, types of threats (wars, terroristic attacks, organized crime, epidemics, floods, droughts, economic crisis, budget deficits and others), means for obtaining the security, the expenses of doing so and the relevant time period. These security dimensions do not change by changing the security situation; what does change is the essential specification of the dimensions themselves. The number of dimensions that should be determined as well as their accuracy depends on a concrete research (Baldwin 1997).

This research paper is concentrated on the efforts of expanding and deepening of the security concept. In continuation the research will be presented in three parts and that is the evolution of the security concept through a review of dominant security paradigms, security implications of globalization and the interconnection of international relations, security and the right of nations. In that way the main assumption will be confirmed i.e. in contemporary conditions of globalization the traditional security paradigm is insufficient and improper in addressing the major part of the modern problems, which means that it has to continue to develop in order to answer to the complex global problems.

2. SECURITY CONCEPT EVOLUTION

In order to understand the security dynamics of the contemporary world with a purpose of creating proper security polices, it is necessary to review the relevance of different security approaches. For that purpose, dominant security paradigms in the international relations will be reviewed and explained. In that way we will understand the evolution that is to say modification of the traditional security paradigm that occurred during the last decades. Paradigm shift by itself is a respond to accumulated anomalies and

contradictions of the existing assumptions, concepts, values and practices (National Strategy Information Center 2011). As Kuhn (1970) estimates, paradigm shift leads towards scientific progress. However, the inability or the refusal to see beyond the present frame and way of thinking very often undermines the necessary change. These security paradigms have different purposes and it is very likely at some point of time requirements of one paradigm to come in conflict with another, so the proper one should be chosen for a given security situation (Jackson-Preece 2011).

2.1 National security paradigm

National security paradigm derives from the neorealist security concept that constitutes the core of the security field, which developed gradually into objective academic discipline in which laws are discovered or at least the correct method for their discovering (Walt 1991). "The national security concept is not a simple reaction to objective circumstances, but it is built based upon series of political and epistemological choices that define what is understood as security" (Krause and Williams 1996, 234). This paradigm was dominating the security field for a long time particularly during the cold war period that is characterized by domination of highly militarized and ideologically polarized confrontation of the super powers. Such a direct confrontation completely divided the world that was constantly facing the fear of possible nuclear war. Under such circumstances of bipolar power structure, political and war threats to international security were dominating. In that context the security studies can be defined as "Study of the threat, use and control of war power i.e. the conditions that make the use of force more probable, the ways in which the use of force affects the individuals, states and the society as well as specific politics that the states are adopting in order to prepare, protect or involve in a war" (Walt 1991, 212). National security paradigm refers to all the public polices through which the national state provides its own survival as a separate and sovereign community and in that way provides the security and prosperity of its citizens (Jackson-Preece 2011). Supporters of this concept are starting off from the general assumption that we are living in a world in which the states are basic security source and at same time basic security threat. The most important neorealist assertion is that the state is in the focus of the research and therefore the primary point of security. In that context the security of the citizens is identified and guaranteed with the security of the state, while the interstate relations are purely strategic or contractual in instrumental meaning. According to this paradigm, a state as a rational subject primarily is concerned with its own interests and its security even though on a long run its interests could be better served through cooperation (Krause and Williams 1996, 232). Consequently, global policies always assume struggle between

states for protection of their own national interests, thus they completely rely on military force. During the last century alliances were the basic form of regional security within this traditional security model out of which emerged the collective defense that indicates group of countries with similar ideology dealing with common military threats.

2.2 Collective security paradigm

The idea of collective security for the first time appeared in 1914 and during the First World War became subject of an extensive debate, so in 1919 it was realized in the Covenant of the League of Nations and after the Second World War in the Charter of the Organization of the United Nations (UN). The term "collective security" was used for the first time in 1930's and its meaning is "security for separate nations through collective means or through a membership in the international organizations consisted of all or at least the major part of states in the world, where they pledge for mutual defense from attack" (Stromberg, 2014). Collective security is a system through which the states are trying to prevent or stop war. According to the collective security agreements, the aggression against a state is considered as an act of aggression against all other states that are acting together in order to oppose the aggressor. Those agreements are always concluded as global in their scope, which actually distinguishes them from the regional alliances (Encyclopedia Britannica 2014). Nevertheless the term is also applicable to more narrow agreements for mutual defense such as the NATO. Confronted with the expansion of the security concept with regard to the referent objects of security as well as the security threats, the mechanism of collective security is inadequate to respond to nontraditional security threats and in some cases even to traditional security threats (Nasu, 2011). As a result alternatives to collective security emerged within the international relations. Common security emerged during the 1980's in order to build the trust between the countries and to promote the disarmament due to the concerns that unilateral measures of national security may escalate the race in nuclear weapons. The concept of Cooperative security began to develop in the early 1990's based on the idea that security has to be found on common institutions and norms which should be obeyed by the states. This concept is focused on nonmilitary means of obtaining security, which makes it particularly relevant in conditions of increased competition and tensions regarding the access to energy and natural resources. Integrated Security approach developed by OSCE encompasses political–military, economic–ecological and human dimension of security and in that way recognizes its multidimensional nature. These alternative approaches are introducing different multilateral forms of interstate cooperation that improves and even

overcomes the "security dilemma"[2] (Nasu 2011). The new approach to security which is a result of liberal political thinking is materialized in the collective security concept that prevents the use of violence for protection of national interests except in cases of self-defense (Iglesias 2011). International security acts in present stage of development can be found in the collective security system of the UN. The development of real security institutions and agreements has proved to be exceptionally difficult because they are mostly regional and without major influence except for the transatlantic region and possibly the ASEAN region.

2.3 International security paradigm

By developing the collective security system appeared the idea of international security as different from the national security. The UN Security Council was found with prime responsibility to maintain the international peace and security, so the states gradually accepted the idea that even the international security can be endangered (Nasu 2011). This way of security conceptualization became significant in the 20th century during the 1960's when the idea of global and institutionalized international society was developed.

The international security paradigms aspire towards achieving general state of stability, peace, order and lawfulness in the international society. In practice, the obligation for providing the international security fells on those states that are considered as great powers. Supporters of international security, pluralists or rationalists, differ from the realists in their assumption that states are not the only actors responsible for security, but this responsibility also refers to international community (Jackson - Preece 2011). Since the international society is global, the challenges and the threats are coming from inside. Most often, insecurity is a consequence of some state acts, but lately non-state actors have gained an increasing role. Today we are witnessing such actors in their most brutal acts. As a result, the international security is an internal problem for the international society as whole.

2.4 Human security paradigm

As Buzan explains, security has essential meaning for human life since the base of security concept is survival which implies concern for existential conditions. He defines security as "striving towards freedom from threats and capability of the state and the society to maintain the independent identity and functional integrity against the force of changes that are

[2] Security dilemma is a situation in which the efforts of one state to increase its security are decreasing the security of other states.

considered as hostile"(1991, 432). The base of the security concept is the need of geater human security expresses as a "freedom from fear and want". The roots of this paradigm can be found already during the period after the Second World War and are expressed in the universal protection of human rights, humanitarian laws and the idea of crimes against humanity and responsibility to protect. Still, this concept started to develop in 1994 when the United Nations Development Program (UNDP) called attention to the necessity that the security concept should be changed and the exclusive focus of the security studies should move from the national society to security of the people i.e. from "security through armament to security through human development, from territorial security to security of food, employment and environment" (Munck 2009). In that way UNDP for the first time identified the human security in its "Human Development Report" and expanded the traditional meaning of security focuse from military balance and capabilitis to a concept that includes security from some permanent threats such as: famine, diseases, repression, sudden and painful changes in the everyday life (UNDP 1994). Therefore, human security implies economic, food, health, ecological, societal and political security. For that reason, UNDP introduced the Human Development Index which is focused on the wellbeing of the people instead of the economies. In this way, the economic development and the military security are interrelated. This paradigm offers a new perspective to the security issues. The core idea incorporated in the human security concept is that the security of an individual, state, and society are closely interrelated (Jackson-Preece 2011). Limits of this paradigm are a direct consequence of the fact that the international relations are organized based on the state **sovereignty and plural values. Even though it is becoming more influential in the international relations, still it is not universally accepted and remains a subject of interest of the non-government organizations instead of state foreign polices (with exception of Canada, Ireland, the Scandinavian countries and the UN). The supporters of the human security concept consider the personal security as a fundamental problem of international relations and not of the state domestic policies. Human security refers to the security of the modern state and represents international responsibility** (Commission on Human Security 2003)**.**

The critics of this concept most often refer to its unclearness which leads to conflict interpretations and to its great extent that makes its operationalization very difficult. From national security aspect the human security approach dissolves the analytical power of security by introducing a

wide scope of different threats and complex and ambitious solutions (Munck 2009). Even though the human security concept gained a significant attention in the last few decades, its defining and application are still debatable.

3. SECURITY IMPLICATIONS OF GLOBALIZATION

Central issues while creating security policy are how to determine the referent object i.e. who / what should be secured and how certain issues become security issues. While doing so, it is fundamental to indicate the existential threats as well as their acceptance by significant part of the public (quoted in Krause and Williams 1996). Various states and nations define the threats in different way, so the central task of security analysis lately is determination of threats and their alternation that occures as a result of different state policies and political practices (Krause and Williams 1996, p. 245). Therefore, Copenhagen school developed the Securitization theory which is "an attempt for understanding the security as a process of constructing mutual understanding about what is considered as security threat" (Nasu 2011). Overall, there is a tendency that nontraditional security threats become important only if the states recognize their causal relation to the potential arm conflicts.

In order to understand security in the global era we have to look beyond the security paradigm. Contemporary security threats and challenges in major part are result of the modern globalization processes, which are unprecedented in history and which are constantly causing polemics and theoretical disputes. Globalization was primarily enabled with the fast development of transportation, communication and information technologies as well as the fall of communist regimes which led to erasing the ideological differences and domination of neoliberal capitalism. From the aspect of globalization security cannot be separated from the global political economy. Within the global economy, the national sovereignty is already disturbed by greater freedom of financial flaws, multinational companies and revolution in information technologies. The political economy of globalization in great degree dictates the living conditions and intensifies the feeling of insecurity because it is arbitrary, voluntary, accidental and unpredictable. The dominant neoliberal market globalization does not only generate, but also deepens the insecurity. Greater competitiveness creates insecurity and suppresses the social welfare and solidarity (Munck 2009).

Negative effects of globalization such as poverty, inequality, unfavorable world's wealth distribution, lack of perspectives and in many cases lack of basic living conditions, economic deterioration and weak rule of law lead towards wars and conflicts inspired by injustice. This particularly refers to weak and failed states which at the same time have difficulties in adjusting to the globalization processes. The disruption of the internal

security and stability as well as loosing of the internal control in such states may have serious negative consequences for the regional security. Due to that, the external military threats are less important to the developing countries rather than economic vulnerability and weak states. Today for these reasons, economic, ecological and societal security is gaining greater significance on account of the military security. Increasing economic, social, and cultural interdependence of the countries within the international system is a major globalization feature. In such conditions the contemporary security threats like climate changes, famine, global terrorism, proliferation of weapons of mass destruction, cyber-attacks, ethnical violence, global crime, trafficking of people, drugs and weapons, environmental degradation, contagious diseases and similar are global in their scope and transnational in their effects. This indicates that the territorial context of security has changed. New borders have been set because the security threats have spread geographically and in space (universe, cyber space, different meridians, the North and the South Pole, etc.). Consequently, the states are led to cooperation with each other in order to oppose the threats effectively. Occurrences from the beginning of the new millennia such as the terroristic attacks in the USA as of September 11, 2001, the war against terrorism in Iraq and Afghanistan, the great economic crisis of 2008 and 2009, the Arabian spring and later the crisis in Syria and Ukraine that are still ongoing as well as the expansion and brutality of ISIS, terroristic attacks in Paris and others created new security reality. From one side, globalization discourages the warfare because armed conflicts for territorial control make little sense Vis a Vis most nonmilitary and transnational threats and interests. On the other side, globalization did not suppress neither the traditional forms of conflicts that derive from racial, ethnical, tribal, or national forms of identity, nor did it decrease the military and paramilitary threats to human security. Thus follows the conclusion that the danger of armed violence, as well as the major war between the bigger states have passed and may repeat besides and even because of the globalization (Sholte 2008). The very situation in Ukraine confirms this. The crisis for the first time after the cold war caused such a great tension between Russia and the West. Opinions about what is happening in Ukraine are quite divided and many think that it is about a new cold war. The dominant world trends (globalization, democratization, liberalization) and the different level of economic and technological development direct the world to new divisions that will not result from ideological antagonism as during the cold war, but from the clash of interests.

4. INTERNATIONAL RELATIONS, SECURITY, AND THE RIGHT OF NATIONS

After all, the paradigms, as new and alternative as they could be, are not a direct answer to the present security challenges of the mankind. Challenges such as globalization, integrity, terrorism, religious fundamentalism or even the underdevelopment, poverty, etc. are neither born only in the defense, peace, and security sciences nor in the so called strategic studies' centers. It is evident, for instance, that during the last few decades there is a symbiosis of the research process in politology and political philosophy, international law and relations, and sustainable development sciences, jointly with defense and security sciences. Making a general review of the science for international relations, Kjell Goldmann from Stockholm University writes that there are "two major approaches to the task of reviewing the state of the discipline: by examination of its results or its foundations"; but as Goldmann states, this is very hard because there is rarely an insight into the whole discipline, it is also not determined whether it is a discipline or an "inter-discipline" and finally there is still no consent whether the discipline is concentrated on the role of the state within the present world politics, what is the significance and the purpose of the science for international relations and whether the theories for these relations are tentative assumptions or instruments of power (Goldmann 2000, p. 401 - 404). Here, we would like to add another difficulty: it is almost impossible to compare the discipline's results and findings regarding the different and inconsistent methodologies as for example empirical and theoretical, macro and micro, longitudinal and monophasic. Therefore, Goldmann makes an effort to put into final shape "the theory of international politics" in which will participate "realists" and "globalists", then structuralists and pluralists as well as those with approaches to the world society or "world interdependence". He also mentions George and Brown who similarly to him, make an effort for critical theory of international relations. And, while David Sanders considers that today, in the shaping of such theory, neorealism and neoliberalism are predominating, the known American political scientist, Robert Keohane estimates that it is still possible, but difficult to reach such a theory if there is not a concentration of researches about similar understandings and definitions. He assesses that according to the realistic understanding, the state action is based on necessity and interest. This leads to certain level of anarchy in the world politics and to security dilemmas that may be resolved only through self-support. The choice is not great since the states are limited with the variations of the states' social systems, ideas, quality of the elites as well as the material capabilities. Contrary to this, the liberal and institutional theories are focused on the

variations and not on the constants in the behavior of the states. Those variations greatly depend on the internal political processes and interests of the elites. That is why Keohane proposes to start rounding up the theory within the concept of "international society", which according to the liberal point of view, is an interaction of national and international actions that are interdependent (Keohane 2000, p. 468 - 473). He agrees with the definition that "the international society exists when a group of states, aware of some common interests and values, shape the society in regard to their agreement to oblige themselves to mutual sets of rules, in their interrelations and sharing the activity in the mutual institutions". In that way, the liberal institutionalism strengthens the neorealism, because it formalizes and gives democratic content to the common will, values, and action. But, the debate about the international society continued, particularly regarding the question of whether such society is a community of states and then, whether the international law and the legal-political order should consider the states as only actors. Related to this is the question of reform of the United Nations. Politology and political philosophy, as well as sociology, have given great contribution to answers with some innovative concepts and approaches. Majority authors such as Smith, Benedict, Gelner, Galston, Berman, Kimlika and others contributed to the debate specifically by dealing with topics of ethnicity, nations, minorities, majorities, etc. That brings us to the great political-philosophical and political-legal construction of John Rawls. It begins with his study "The Theory of Justice" (1971) which defines the civil and plural but "well ordered" society. Well-ordered society is such that has shared, mostly by everyone, the democratic regime in which the sharing is expressed in the public reason, while group aims and interests are reasonable and eloquent. The public reason is impartial to different aims and interests. It is not the reason of the state as in Hegel's meaning in which the citizens in order to become real citizens, should raise themselves to the level of state reason, neither is the utilitarian understanding of the group interest as dominant. Rawls links the idea of explained, eloquent and reasonable pluralism to the political pluralism and political conception of an individual; even to the "Societal agreement" but through the public reason as a supreme justice; and to communities and associations which in aristocratic and autocratic regimes do not face the public but the "sovereign" arbitrates.

Public reason is characteristic of democratic nations: that is the reason of its subjects that share the common status of equal citizens. Object of use of their reason is the public good: the one that the political conception of justice requires from the institutions of the society's basic structure and the aims and intentions to which they should serve" (ibid, p. 253 - 254). Finally, in the third known study "The right of nations and the idea of public reason revisited" (2001/2004), Rawls treats the liberal individuals as liberal

and democratic nations, not as subjects of world or international order of states, but as "society of nations". The principles are same, liberal, but the implications are different. First, Rawls makes a difference between nations and states. The states are not an active, but rather a derived nations' player, ownership of the nation, and they cannot be fair or not by alone.

Liberal nations have three main features: reasonable and just state authority (if they do) that satisfies their basic interests; then there are citizens that are joined by "common sympathies" and at the end the moral nature. But the nations and people are not the same category. Rawls talks about liberal people united by common a sympathy and an aspiration to share the same democratic state authority; but this feature would rarely exist or it would not at all if the sympathies would be completely dependent on common language, history, and political culture with common historical consciences (ibid, 33-35). At this point, Rawls definition of people is similar to the one of ethno-symbolists and modernists (already mentioned Gelner, Anderson, Smith and others), who leave the firm and fundamental specifications of a nation. Rawls says that the right of people within the society of people is realistic utopia because the philosophy is always one step ahead in regard to politics: it broadens the limits of what is politically possible, and justice is. The second source of people's right to jointly approach "People's agreement" is their right to choose their representatives (parties) that will represent them in making agreements and for whom it may be assumed that they will do it rationally and fair in regard to others as well. Finally, to review the principles on which is based the right of people (ibid, p. 47 - 50):

- People are free and independent and their freedom and independence should be respected by other people.
- People should obey the agreements and other undertaken obligations.
- People are equal and they are parties to the agreements that are obliging them.
- People should respect the obligation of noninterference.
- People have right to self-defense, but do not have the right to initiate war for any other reason except self-defense.
- People should respect human rights.
- People should respect certain special limitations in warfare.
- People are obliged to help other people that live in unfavorable conditions, which prevent them from having just and respectable political and societal order.

As independent, the author considers the right to self-determination as well, but under specific circumstances: for example, the right to self-determination and secession. Rawls rejects the idea of world state, but does not reject the idea of world order and he is more specific than Fukuyama

who classifies the states as liberal-democratic and non-liberal or non-democratic. Namely, people may be explicitly liberal, respectfully non-liberal, rebellious people, people that live in unfavorable conditions and people that have absolutistic authority on their own free will. People can talk and make agreements among themselves except with the rebellious ones and those that prefer absolutism. But the talks and agreements should be based on principles of justice and fairness, i.e. only if they do not undermine other people. At this point, certain problems may occur, but Rawls assures that most people will agree upon that. The second problem is regarding the applicability and compatibility of this theory with the present order of international relations or the world order. Today, within the theory of international relations, as it was mentioned predominate the directions of neorealism, liberalism, neoliberalism, constructivism, legal institutionalism and in a way cosmopolitism and globalism. The question is what if most world actors would not agree to the Rawls' principles, which reject the directions of real-politics and cosmopolitism. Lawyers and politologists such as John Rourke and Mark Boyer (2002) and Charles Kegley (2007) in their studies of "world politics" do not leave a lot of hope that something will change significantly in the direction of the world politics or that urgent reforms of UN will be introduced. The present reforms of UN provide for affirmation of principles of the Universal declaration of human rights and their expansion to communities, and people, while limiting the absolute sovereignty of states. Then, the Security Council expands and transforms into world government and the UN General Assembly into the world parliament. But, those authors and many others doubt that any changes may happen and if they do they will be only on a long run. However, Rawls' theory gains sympathizers specifically within the new intellectual circles and younger political elites. The problem is the realistic transfer of those ideas to the world politics. Some politologist pluralists as Dahl and Polsby, consider that only the axiom in accordance to which the interests expressed in action are a single base that is valid in the international community, but others, so-called participationists (for instance Bakrach and Bakrach, Gaventa and others) oppose this view. They consider that even the non-action, passiveness and non-happenings are also kind of participation particularly if the actors and their interests are excluded from the decision making. This is especially significant when it comes to issues such as conflicts, security, peace, stability, or development.

5. CONCLUSION

The current debate is focused on the concept of expanding and deepening the security. Besides the numerous discussions, the scientists still

have not reached a consensus how the broadened security concept should look like. On the other hand, the questions like what is security, what is its meaning and whether the basic characteristics that are common for the various definitions can be identified, do not have the required attention despite its importance. Therefore, it is necessary to keep on researching the analytical characteristics of the security concept (Mesjasz 2004).

The broadest call for redefining security appeared due to the claims that the environment degradation is a threat to the eco systems and the wellbeing of the people as well, which exceeds the national security concept. Serious consequences from permanent environment degradation may cause organized violence and because of that, they are considered as more urgent than the external threats. This indicates that the national interests and the sovereignty are less important than the wellbeing of the individual or the human kind (Krause and Williams 1996, p. 223). As Krause and Williams (1996) explain the attempts to expand and deepen the scope of security field outside the traditional focus on states and armed conflicts, initiated fundamental theoretical and practical questions, they are on the opinion that all new thoughts could be divided upon few lines. There are attempts to broaden the security concept by including the wider range of threats that are varying from economic and ecological problems to human rights and migration, then there are attempts for deepening the security agenda going all the way down to an individual level i.e. human security or all the way up to the level of international or global security, the regional and societal security are emerging as middle points. Also, there are opinions according to which the state-centric approach should be kept, but by introducing various adjectives as modifiers of the term "security". Common denominator of the new thoughts on security is that they consider the traditional security concept as an insufficient and improper way of understanding the security (Iglesias 2011). The changes of the traditional model started occurring after the cold war as a result of globalization when the nature of security threats changed and they are not purely military any longer. Within the newly occurred global conditions, the transnational global problems (organized crime, terrorism, environment degradation, disputes about natural resources, uncontrolled refuges' movements, illegal immigration, poverty, famine, etc.) appear as a risk for the humanity.

During the search for new research paradigms and concepts, many scientists are challenging the fundaments of the neorealist base. Once they are brought to question, the alternative approaches may be independently assessed and the questions that they are posing may be seriously researched as an inspiration for critical thinking in the security field. But not all scientists are challenging all the elements of the realists. The national security concept has not been overcome; on the contrary, it is considered as

an important historical solution to the central problems of political life (Weldes 1996). The war affairs will keep on being an important factor which contributes to the evolution of the international system.

Today, many occurrences, conditions, and dangers cannot be explained with the traditional security paradigm. Secession, irredentism, aggressive wars, conquests, illegal occupations, mass deportations, genocide and other activities that are breaching the international law and are threating to disturb general state of peace, order and lawfulness within the international society. All these changes question the validity of the defense system, undermine the legitimacy of the state, widen the horizon of the security issues and change the traditional relations between the state and the citizens. That was the meaning of the presentation and to a certain degree critical analysis of the current and innovative paradigms, approaches and theories of security, peace and stability of the world and the construction of a new world order.

6. REFERENCES

Baldwin, David A. 1995. "Security Studies and the End of the Cold War." *World Politics 48* p. 117 - 141.

Baldwin, David A. 1997. "The concept of security." *Review of International Studies 23* p. 5 - 26.

Buzan, Barry. 1991. "New Patterns of Global Security in the 21st Century." *International Affairs Vo. 67 No. 3* p. 431 - 451.

Commission on Human Security. 2003. "Home: Final Report." 1 May. Пристапено на November 22, 2013. http://www.unocha.org/humansecurity/chs/finalreport/index.html.

Encyclopedia Britannica. 2014. *Collective Security.* 17 December. www.britannica.com/EBchecked/topic/125567/collective security.

Goldmann, Kjell. 2000. "International Relations: An Overview." *A New Handbook of Political Science*, by R. E. Goodin and D. D. Klingeman. Oxford: Oxford University Press.

Iglesias, Mario A. Laborie. 2011. "Framework document 05/2011: The Evolution of the Concept of security." *Institute for Strategic Studies of Spain.* 1 June. www.ieee.es.

Jackson-Preece, Jennifer. 2011. *Security in international relations.* London: University of London.

Keohane, Robert O. 2000. "International Relations, Old and New." *A New Handbook of Political Science*, by E.E Goodin and H. D Klingeman. Oxford: Oxford University Press.

Krause, Keith, и Michael C Williams. 1996. “Broadening the Agenda of Security Studies: Politics and Methods.” *Mershon International Studies Review, Vol 40, No. 2* p. 229 - 254.

Kuhn, Thomas S. 1970. *The Structure of Scientific Revolution, 2nd ed.* Chicago: University of Chicago.

Mesjasz, Czeslaw. 2004. “Security as an analytical concept.” *www.afes-press.de.* September. http://www.afes-press.de/pdf/Hague/Mesjasz_Security_concept.pdf.

Munck, Ronaldo. 2009. “Globalization and the limits of the current security paradigms.” *Rethinking insecurity, war and violence: Beyond savage globalization?,* by Damian Grenfell and Paul James, p. 33 - 43. New York: Routledge.

Nasu, Hitoshi. 2011. “The Expanded Conneption of Security and International Law: Challenges to the UN Collective Security System.” *Amsterdam Law Forum.* http://amsterdamlawforum.org/article/viewFile/225/417.

National Strategy Information Center. 2011. *Adapting America’s Security Paradigm & Capabilities* . Accessed on January 16, 2015. http://www.strategycenter.org/programs/adapting-americas-security-paradigm-and-security-agenda/glossary-of-key-terms/.

Rawls, J. 1971 - 1999. *A Theory of Justice.* Cambridge (Mass): Belknap of Harvard University Press.

Rawls, J. 2004. *The right of the people and "Questioning of the ideas of the public mind".* Zagreb: Kruzak.

Rols, Dz. 1998. *Political Liberalism.* Beograd: Filip Vishnjic.

Rourke, John T, and Mark A Boyer. 2002. *World Politics. International Politics on the World Stage.* Guilford, CT: McGraw-Hill/Dushkin.

Stromberg, Roland N. 2014. *Collective Security.* 17 December. http://www.americanforeignrelations.com/A-D/Collective-Security.html.

UNDP. 1994. “Human Development Report.” *UNDP Web site.*

http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf.

Waever, Ole. 1995. “Security Analysis: Conceptual Apparatus.” Bo *Environmental, Economis and Societal Security: Working papers 10,* by Barry Buzan, Ole Waver and Jaap De Wilde, p. 1 - 13. Copenhagen: Center for Peace and Conflict Research.

Walt, Stephen M. 1991. “The Renaissance of Security Studies.” *International Studies Quarterly, Vol. 35, No. 2* p. 211 - 239.

Weldes, Jutta. 1996. “Constructing National Interests.” *European Journal of International Relations Vol. 2 (3)* p. 275 - 318.

Kroft, Steward. 2012. “What is the future of the security studies?” In *Security Studies: Introduction*, by Paul D Williams, p. 487 - 512. Skopje: Ars Lamina DOO.

Sholte, Jan Art. 2008. *Globalization.* Skopje: Akademski Pechat.

UDK: **316.344.5:321(4:612)**
316.344.5:32(4:477)

THE EU STRATEGY FOR DEMOCRACY IN LIBYA AND UKRAINE: LEGALIZING HUMAN SECURITY OR, RATHER, PROMOTING THE "EUROPEAN WAY OF LIFE" IN THE WIDER WORLD?

Paolo Bargiacchi

Faculty of Economic and Legal Science
Kore University of Enna, Italy
e-mail: bargiacchi71@yahoo.com

Abstract

Human security is the cornerstone of R2P (Responsibility to Protect) doctrine. Its legalization in the international legal system is still far from happening and, if so, it would produce significant political consequences. Yet, looking at the EU strategy in the 2011 Libyan War and in the 2013 - 2014 political unrest and revolution in Ukraine, one should start asking whether a single and unitary concept of human security actually exists among the global political actors and / or whether the EU is really promoting human security worldwide or, a rather different concept. We claim that, for the time being, there are two different interpretations of the apparently same concept of human security: the first envisaged by the ICISS in its 2001 Report on R2P; the second envisaged and applied by the EU in the Libyan and Ukrainian cases. Even if the scope and purposes of R2P doctrine and human security notion are clear, there is seemingly a "grey zone" where human security and western-supported "right" to a western-style form of democratic governance apparently overlap and leave some room for policy-oriented strategies and interpretations aimed at changing international rules and policies on the legitimacy of forms of government and the legality of military interventions. In the recent years, the EU is deeply delving this "grey zone" and trying to link its own peculiar interpretation of human security to the "right" to democratic governance in order to support and legalize the "democratic intervention" in lieu of the "humanitarian intervention". The consequence is the creation of an overall legal and political framework that has nothing to do with R2P doctrine and human security as envisaged by the ICISS Report in which "democratic

intervention" stands for "R2P", "democratic governance" for "human security", and "European way of life" for "the right of people to freely decide their own political, economic and cultural form of development". The apparently same notion of human security is applied by the EU pursuant to the doctrine of democratization (and the right to democratic governance) and not to the doctrine of R2P. Legalizing the European vision of human security would actually allow for even forcible democratization of international relations with substantial and epochal changes for international rules and policies. In Libyan and Ukrainian crises, the EU played an active role since the very beginning of the domestic crises in order to manage their development towards the EU's final goal, that is to say the change of former Governments and their replacement with pro-EU and western-style Governments. In both cases, the EU achieved its objective. However, those who had to be protected paid and are still paying a very high price in terms of human lives, violence and widespread instability inside and outside their own State. Whatever may be its interpretation, human security in Libya and Ukraine is today lower (Ukraine) or absent at all (Libya) than it was before the European democratic interventions for peace and prosperity would take place.

1. LEGALIZING HUMAN SECURITY AS ENVISAGED BY THE ICISS REPORT ON RESPONSIBILITY TO PROTECT

Human security is the cornerstone of R2P doctrine. Its legalization in the international legal system is still far from happening and, if so, it would produce significant political consequences. Yet, looking at the EU practice in the 2011 Libyan War and in the 2013 - 2014 political unrest and revolution in Ukraine, one should start asking whether a single and unitary concept of human security actually exists among the global political actors and / or whether the EU is really promoting human security worldwide or, instead, a different concept. We claim that, for the time being, there are two different interpretations of the apparently same concept of human security: the first envisaged by the International Commission on Intervention and State Sovereignty (ICISS) in its 2001 Report on R2P; the second envisaged (and proactively implemented) by the EU in the Libyan and Ukrainian cases. Depending on what kind of human security States or international organizations rely upon, the consequences of its legalization and political implementation significantly vary for international affairs. For instance, the EU's own geostrategic vision of human security actually turns into a global quest for spreading democracy in the wider world by any necessary means, i.e. a purpose never contemplated by the 2001 ICISS Report. Pursuant to R2P's interpretation contained in the ICISS Report, human security is not

only the logical and theoretical cornerstone of the doctrine but also its inherent limit that strictly circumscribes scope and purpose of R2P's application.

The Responsibility to React (the "core" of R2P) aims at legalizing the humanitarian dimension of international security (i.e, the armed response of the international community to large scale serious violations of fundamental rights like genocide, ethnic cleansing, killings, forced expulsions, acts of terror, and rape) in order to save human lives and to avoid abuses and / or misconducts during international military interventions in armed conflicts. To date, R2P is the most comprehensive and coherent effort to legalize and "refresh" the former and highly controversial concept of humanitarian intervention by stating clearer and stricter substantial and procedural rules for using the force in those "hard cases" where humanity and sovereignty might be at variance and trample each other. The main consequence is to link pre-existing notions of international and national security (of States affected by international interventions) and the new concept of human security by way of conditioning those former notions to the new concept. However, the Responsibility to React is just one piece of the larger R2P "puzzle" also composed by the Responsibility to Prevent and the Responsibility to Rebuild. Such puzzle must be systematically interpreted and applied according to the fundamental principle that human security essentially means to prevent rather than to react and rebuild. Systemic interpretation of R2P provides a clear guidance on this aspect: human security justification is neither a blank check for overthrowing non-democratic regimes, nor a constituent premise of an emerging "right" to democratic governance. In fact, the ICISS Report clearly states that military intervention in the name of R2P is not allowed «in relation to cases where a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over»[1].

The rationale behind this exclusion is twofold:

- Human security is not directly related to the exercise of political rights. It protects people from gross violations of fundamental rights, not from obstacles to the free exercise of their political rights. Legal protection afforded by human security is therefore different than the one provided by political rights and it is also different in its focus and purpose;
- Any democratic Government should virtually guarantee human security but the reverse is not always true: in fact, human security may be provided even by Governments that are not western-style

[1] ICISS (2001), *The Responsibility to protect*, Ottawa: International Development Research Centre, § 4.26, p. 34.

democracies or are not democracies at all (i.e., Brunei Darussalam, the Gulf Monarchies, etc.).

The political goal of R2P doctrine is only to protect human security of people against large-scale and serious violations regardless of the form of Government that is in place before, during and after the phases of prevention, reaction (military or not) and rebuilding. As anticipated, the main consequence of legalizing human security is the consolidation and clarification of the pre-existing and controversial rule on humanitarian intervention with no major changes for basic legal and political principles governing international relations. When the Responsibility to React is militarily implemented, the "human security exception" would only limit the principle of territorial integrity and political independence of the State in the name of humanity. Summing up, human security and R2P are not synonymous with the installing western-style democracies and / or launching humanitarian military interventions because the doctrine addresses welfare of people, not forms and structures of political systems. When States or the UNSC implicitly and hazily invoke R2P and / or human security (for instance, in the Libyan and Syrian cases), the focus is always on large-scale human rights' violations committed by whatever form of Government, not on the denial of people's right to democratic governance raised by a non-western-style Government.

2. THE EU STRATEGY FOR DEMOCRACY: LEGALIZING HUMAN SECURITY PURSUANT TO R2P DOCTRINE OR, RATHER, PROMOTING THE "EUROPEAN WAY OF LIFE" IN THE WIDER WORLD

The scope and the purposes of R2P doctrine and human security notion are clear. However, there is seemingly a "grey zone" where human security (protecting people's welfare and, if seriously violated, providing an international armed response) and western-supported "right" to a western-style form of democratic governance apparently overlap and, therefore, leave some room for policy-oriented strategies and interpretations aimed at changing international rules and policies on the legitimacy of forms of the government and the legality for military interventions. In recent years, the EU is deeply delving this "grey zone" and, by pulling out of R2P doctrine the military dimension of the Responsibility to React, is trying to link its own peculiar interpretation of human security to the "right" to democratic governance in order to support and legalize the "democratic intervention" in lieu of the "humanitarian intervention". The final consequence is the creation of an overall legal and political framework that has nothing to do with R2P doctrine and human security as originally envisaged by the ICISS Report.

In Libyan and Ukrainian crises, the EU chose to play a very active political role since the very beginning of the domestic crises (February 2011 in Libya; November 2013 / March 2014 in Ukraine) and to manage their development towards the EU's final goal, so to say, the change of the former Government.

The EU seeks legitimacy and authority for its strategy by resting on the general assumption that its fundamental values enshrined in Article 2 of the Treaty on European Union are universal, absolute and imperative. Accordingly, they have to be promoted and spread across the wider world by transforming the societies of the "others" in the image of the European societies (Article 21)[2].

This people-centered view of expanded security therefore requires new approaches and policies in the international relations, and the EU makes the case that its own values and standards must prevail over contradictory values and standards regardless of how many States support and uphold them. In other words, the EU's external action in the wider world is founded on that «European way of life», that was expressly invoked as the guideline and the final goal of its actions all along the development of the political crisis in Ukraine between November 2013 and March 2014[3]. At least, since 2009, this is the worldwide European strategy both in the context of the revised European Neighborhood Policy (ENP) with its southern and eastern neighbors (Article 8) and in its relations with the wider world (Article 3)[4].

---

[2] Article 2: «The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail». Article 21(1): «The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law». Article 21(2): «The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (b) consolidate and support democracy, the rule of law, human rights and the principles of international law».

[3] *Statement by President of the European Council Herman Van Rompuy at the occasion of the signing ceremony of the political provisions of the Association Agreement between the European Union and Ukraine*, Brussels, 21 March 2014, EUCO 68/14, p. 1.

[4] Article 8(1): «The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness,

The European strategy to advance universal and indivisible human rights, and pursue its own peculiar interpretation of human security in the wider world, shape relations, and dialogue with the other countries. The EU's comprehensive approach aims at promoting and exporting worldwide its own democratic and neo-liberalistic model and foreign countries are therefore supposed to become more and more similar to the European States from a legal, political and economic point of view.

2.1 The Libyan Case

In Libya, as we already said, under the pretext of humanitarian intervention, the EU actually disclosed the will to export, even by the use of force, the democratic «European way of life» in the name of the absolute, universal and mandatory European values and interests[5]. The UNSC and the NATO, however, justified the use of force against the Libyan Government on the only legal ground of protecting «civilians and civilian populated areas under the threat of attack» according to the doctrine of humanitarian intervention with no reference to right of third States for democratic intervention and / or to the related (or implied) people's right to democratic governance[6]. International military intervention had only the "humanitarian" (legal) objective to protect civilians from acts of violence committed by the Government (and, since March 2011, from the non-international armed conflict between the Government and the insurgents) and the "neutral" (political) nature to not interfere in Libyan domestic affairs by supporting one of the belligerents or by promoting regime change[7].

---

founded on the values of the Union and characterised by close and peaceful relations based on cooperation». Article 3 (5): «In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens».

[5] Paolo Bargiacchi, *Did the European Union Implement the Human Security Concept in the Libyan War in 2011? A Case Study*, in *Twenty Years of Human Security. Discourse and Practice* (Proceedings of the Second International Conference on Human Security), University of Belgrade, Faculty of Security Studies (Belgrade, 6 - 7 November 2014), pp. 435 - 446.

[6] United Nations Security Council, Resolution 1973 (2011), adopted on 17 March 2011, § 4.

[7] This is the reason why the non-international armed conflict between the Government and the insurgents was qualified by the UN Human Rights Council and the UNSC as «legally separate» and «coexistent» to the continuing international armed conflict between the foreign States participating in the military operations and the Libyan state. See Human Rights Council, *Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, A/HRC/17/44, 1 June 2011, § 66, p. 31.

When applied to the reality on the ground, however, this humanitarian and neutral framework (as well as the related paradigm of two «legally separate» and «coexistent» armed conflicts) strains against the facts to the extent that it proves formalistic and artificial, if not instrumental. The implementation of the UNSC Resolution 1973 during the 2011 Libyan War reveals several serious inconsistencies with the international law[8].

Even if the EU also paid lip service to the humanitarian paradigm of the Security Council, its political statements (including those of the European States sitting as Permanent Members of the Security Council) actually had a completely different tenor. In line with its geo-strategic vision for democracy, the Extraordinary European Council of March 2011 soon and openly disclosed the objective «to rapidly embark [Libya] on an orderly transition to democracy» and to this end:

- it urged Colonel Khadafi to «relinquish power immediately, having lost all legitimacy and being no longer an interlocutor for the EU»;
- it «welcomed and encouraged the interim national council based in Benghazi» and considered the insurgents as a «political interlocutor»;
- it stood «ready to help Libya build a constitutional state and develop the rule of law».

NATO's military intervention achieved the "democratic" objective set out in the EU's declarations (the regime was changed and a democratic system was installed) rather than the narrower "humanitarian" objective set out in the UNSC Resolution of 1973. In fact, military intervention did not aim at protecting civilians but at providing active support to the insurgents against the other belligerent Power.

A new and different analytical framework matches the EU's political statements and military actions of 2011. Objectives and consequences of foreign military operations would be no longer "humanitarian" and "neutral", but "democratic" and "interventionist" and legal consequences for the international legal system would be quite relevant. First, third States would have the right to provide rebels and insurgents who fight authoritarian regimes with political and military support for the purpose of changing the regime and installing a democracy. Secondly, third States would have the

[8] For instance, the purpose and the limits to the use of force set out by the UNSC Resolution 1973 were not respected by military operations and the lawful objective to provide humanitarian protection actually turned into the unlawful attempt to change the Libyan Government. Moreover, the protection of civilians from on-going hostilities by means of weakening the Government's military strength was a co-belligerence in the "someone else's" armed conflict regardless of the formalistic paradigm of two «legally separate» and «coexistent» armed conflicts and, therefore, a clear denial of the alleged "neutral" nature of NATO's military intervention.

right to launch "interventionist" military operations and to fight alongside insurgents against authoritarian regimes for the very purpose of participating in hostilities, influencing their outcome, and eventually defeating the other belligerent.

2.2 The Ukrainian Case

The EU's practice in the Ukrainian crisis is particularly relevant both in the very early phase of the crisis (21 to 29 November 2013), when demonstrations and civil unrest against the Government of President Viktor Yanukovych started, and in the phase of his ousting and escape to Russia (21 February 2014 and following days).

As to the early phase, the crisis began when, on 21 November 2013, the Cabinet of Ministers of Ukraine decided to temporarily suspend the preparations for signing the Association Agreement and Deep and Comprehensive Free Trade Area (DCFTA) with the EU at the Eastern Partnership Summit to be held in Vilnius, Lithuania, on 28 and 29 November 2013. The decision taken by President Yanukovych followed talks between Ukraine and Russia for the signing of an alternative trade agreement in lieu of the one with the EU. Soon, the suspension deeply polarized the political debate in Ukraine and those supporting the political association and economic integration with the EU immediately staged protests and occupied the main square in Kiev (*Maidan Nezalezhnosti*) that was renamed "Euromaidan" ("Eurosquare").

Pro-EU opposition and civil society led public protests, demonstrations and rallies against the political and economic choice made by the Government on November 21. The tense situation in "Euromaidan" swiftly turned into unrest, riots and clashes between the protesters and the police that will eventually last for months with casualties on both sides. Between November 2013 and February 2014, political confrontation and violent clashes between pro-EU opposition / demonstrators and Government / police never triggered the application of relevant humanitarian international law because their effects, dimensions and modalities never turn into a non-international armed conflict and, therefore, the situation had to be qualified as one of the internal disturbances and riots[9]. The disproportionate use of

[9] «Internal disturbances are marked by serious disruption of domestic order resulting from acts of violence which do not, however, have the characteristics of an armed conflict. They encompass, for example, riots by which individuals or groups of individuals openly express their opposition, their discontent or their demands, or even isolated and sporadic acts of violence. They may take the form of fighting between different factions or against the power in place. For a situation to be qualified as one of internal disturbances, it is of no consequence whether State repression is involved or not, whether the disturbances are lasting, brief with

force on behalf of police and demonstrators was a crime under the Ukrainian criminal law, but not a crime under the international law. Being the "Euromaidan situation" as one of the internal disturbances, the prohibition on the intervention in domestic affairs strictly applied to third States.

Since the very beginning of the demonstrations and civil unrest in Ukraine, however, the EU clearly and expressly supported the pro-EU opposition and parties. Instead of only engaging in direct political negotiations with legitimate counterparts to de-escalate the crisis (the Ukrainian Government and the Russian Government blamed by the EU with putting «external pressure» on Ukraine in order to force the country «to choose between the EU or any other regional entity»), the EU openly and directly addressed the «Ukrainian citizens». For instance, already on 25 November 2013, a Joint Statement by the Presidents of the European Council and the European Commission declared «the EU stands ready to be more open and more supportive to those who are willing to engage in reforms and modernization». The Joint Statement also recognized that «Ukrainian citizens have again shown these last days that they fully understand and embrace the historic nature of the European association»[10].

The EU played the game of power politics against Russia concerning the future of the Ukrainian economic and political relationships also by directly supporting the pro-EU political opposition and parties while they were protesting against a democratic and non-authoritarian Government in a so harsh way to create internal disturbance and riots. All above considered, the EU's statements as well as the explicit political support to pro-EU opposition and parties since the very beginning of the crisis were a clear breach of the prohibition on intervention in the domestic affairs. In the same Joint Statement, the EU also explicitly declared the purpose of its support to anti-Government forces: the European Institution considered the signing of the Association Agreement and of the DCFTA as an «opportunity to accompany our common neighbors towards modern, prosperous and rule-based democracies»[11]. After the ousting of President Yanukovych, the already cited Statement by the President of the European Council at the occasion of the signing ceremony of the Association Agreement on 21

---

durable effects, or intermittent, whether only a part or all of the national territory is affected or whether the disturbances are of religious, ethnic, political or any other origin» (Marion Harroff-Tavel, *Action taken by the International Committee of the Red Cross in situations of internal violence*, in *International Review of the Red Cross*, May - June 1993, No. 294, pp. 203 - 204).

[10] Joint Statement by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso on Ukraine, MEMO 13-1052, Brussels, 25 November 2013, p. 1.

[11] *Ibidem.*

March 2014 (see footnote 3) further confirmed the "democratic purpose" behind the EU's actions and policies during the crisis. According to the EU rhetoric, the Association Agreement was the recognition of the «aspirations of the people of Ukraine to live in a country governed by value, by democracy and the rule of law, where all citizens have a stake in the national prosperity, and the popular yearning for a decent life as a nation, for a European way of life»[12].

Only four months after President Yanukovych took the decision to suspend the signing of the Association Agreement and of the DCFTA, the EU signed the two Agreements with a new pro-EU Government formed after months of internal disturbances and riots and the overthrow of a President whose removal by the pro-EU oppositions and "de-recognition" by the EU were simultaneous. As in the Libyan case and obviously taking into account the factual and legal differences between the two situations, the overall final objective of EU's statements and actions was always the same, namely to promote a (more) western-style form of democracy («a rule-based democracy») more aligned to the EU's political and economic *desiderata* than the democratic system of President Yanukovych.

As to the phase of the ousting and escape to Russia of the President (21 February 2014 and following days), the EU changed overnight its position and policy. On 21 February 2014, in fact, on behalf of the EU the Foreign Ministers of Poland, Germany and France brokered the "Agreement on the Settlement of Crisis in Ukraine" between President Yanukovych and the opposition leaders. The Agreement provided, *inter alia*, for the restoration of the Constitution of 2004 within 48 hours of the signing; for the creation of a national unity government among signatories within 10 days; for a process of constitutional reform (balancing the powers among the President, the Government, and the Parliament) to be started immediately and to be completed by September 2014 for Presidential elections to be held under the new Constitution, no later than December 2014.

The day after, on 22 February 2014, the Ukrainian Parliament was to ratify the Agreement. On the contrary, under the pressure of the more radical elements of the opposition who had been demanding President's resignation in any case and had called traitors the opposition leaders who had signed the deal, it voted to remove the President (who fled to Russia) and soon elected new interim authorities. From Moscow, the ousted President Yanukovych expressed his intention to re-enter in Kiev, restore his constitutional powers and apply the 21 February Agreement for the orderly transition to the new political system envisaged by the Agreement.

[12] *Statement by President of the European Council Herman Van Rompuy*, cit., p. 1.

For the international law, revolutions are an internal affair of the concerned States: in fact, while obviously «no constitutions establish a cognizable right to revolution, in the sense of a legal entitlement enforceable at law [...] the international law, which similarly recognized no such hard-law right to revolution, nevertheless accepts that revolutions are not prohibited and, thus, are permitted»[13]. With respect to the relevant EU's practice, the point is which policy the EU adopted towards the interim Government and the ousted President soon after these events happened, i.e. in the weeks following the signing of the 21 February Agreement.

In fact, when a State (or part of its national territory) is seized by another State or a Government is toppled by internal disturbances and / or riots, the new factual situation is obviously a violation of the legality of the former. Under the international law, the two principles may theoretically apply: the *ex iniuria ius non oritur* principle (law does not arise from illegal acts) which affirms the legal continuity of the seized State and / or the toppled Government, and the *ex factis ius oritur* principle (law arises from the facts), also termed as the principle of effectiveness, which by overriding the former legal and factual situation attaches legal consequences to the new situation. The international law did find a balance between these two conflicting principles: law does not arise from illegal acts unless (and until when) the new factual situation is sufficiently effective, that is to say it consolidates for a certain amount of finality and time. In other words, when existing new facts also turn into effective situations, then new legal consequences override the former ones and legal continuity between past and present situations falls apart. When seizures of foreign territories and overthrows of Governments happen, new factual situations do not soon and immediately prevail against the legality of the former situation.

The turning of facts into new effective legal situations depends on several elements. Political recognition and attitudes of third States towards the new facts (in our case: the new interim government) is certainly one of the elements to understand when "factuality" turns into "effectivity" but it is not the only one and / or the most important. If third States' recognitions and attitudes towards other States' domestic affairs (in our case: the ousting of a President) were the only and / or the main element to establish the effectiveness of a new and revolutionary fact (and, accordingly, the only and / or main condition to create new legal consequences within that domestic legal system), then the principle *ex factis ius oritur* would be allowed to «degenerate into what may be termed a primitive principle of effectiveness» with serious and dangerous consequences for the political stability of States

[13] Anne F. Bayefsky (ed.), *Self-determination in International Law: Quebec and Lessons Learned*, Kluwer Law International, 2000, p. 78.

and international community and legal certainty of intra-State and inter-State relations[14].

Locating the tipping point between "factuality" and "effectivity" is primarily a matter of time and other elements like, for instance, the rootedness of the act that «must be final beyond doubt, and / or that every reasonable chance of a *restitutio ad integrum* must be excluded» and / or the victim (the seized State or the toppled Government) acquiesced[15]. Summing up, a final and (almost) unopposed consolidation of the new situation is required before its "new" international legality might prevail against the former: until the tipping point is reached; thus the former situation survives in terms of legality, at least for a reasonably limited period of time.

In the Ukrainian case, only a few hours after the Parliament voted to remove the President, the EU immediately recognized the interim Government and took note of the ousting of President Yanukovych. When from his Russian exile, in the very next days following the 21 and 22 February events, he expressed the intention to re-take his office and apply the 21 February Agreement, already the EU did no longer consider him a legitimate interlocutor (as in the Libyan case). European recognition of the interim Government and de-legitimization of the ousted President took place when conditions for consolidation of parliamentary removal certainly have not been materialized yet taking into account, among the others, that: 1) only a few hours (or days) had elapsed since the removal; 2) the political situation in Ukraine was very fluid and polarized with pro-EU and pro-Russian factions, activists and civil society sectors confronting each other with any means and arguments, including violent clashes in the streets. In a case like that, an ousted President who still enjoys political support from some sectors of civil, military, and institutional society cannot lose any legitimacy and power only in a couple of days (even if he has fled abroad). As in the Libyan case, the interpretation of the EU's practice in the Ukrainian case may be twofold:

- the EU "simply" the violated international law principles concerning continuity of legal situations in hard-cases like Governments' overthrows or internal disturbances against State's Institutions and interfered and / or intervened in Ukrainian internal affairs during those crucial days. Even in Libya, the EU took a clear-cut political stance against the Government at mid-February, that is to say just a few hours / days after the first demonstrations and rallies in the street had happened; or, otherwise,

[14] Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2nd ed., 1968, Libraire Droz S.A., Genève, p. 329.
[15] *Ibidem.*

- the EU, for the second time in three years (February 2011 - March 2014), reaffirmed its "right" to intervene in domestic affairs of third States in the name of democracy and by any necessary means.

In Ukraine, demonstrations and rallies never turned into a non-international armed conflict (like, instead, happened in Libya) and the EU's intervention only provided unconditional political support to the pro-EU fractions, parties and opposition acting in the Ukrainian streets and within political Institutions by immediately recognizing and standing by the new interim Government. Even in the Libyan case, at the beginning of March 2011, the European Council immediately recognized the insurgents as the only political interlocutor and urged the Government to «relinquish power immediately». In Ukraine, the ousted Government was democratic and not authoritarian like in the Libyan case. The European democratic intervention did not aim at installing a democracy *tout court*, but at supporting the installation in office (even by way of an overthrow or, however, a violent process of transition) of a pro-EU Government in lieu of the pro-Russian former one.

3. CONCLUSIONS

In both Libyan and Ukrainian cases, the European practice and political premises correspond to the content of the "right" to democratic governance or, better, to a democratic western-style system of governance (as to forms, structure and types of Institutions) that would also be aligned to EU's political and economic policies, values and interests (as to contents of Government's actions). Under this vision, the human security concept has a completely different content and scope than those envisaged by the ICISS Report on R2P. Far from "simply" legalizing clearer and stricter rules for the controversial concept of humanitarian intervention (the ICISS Report's goal), the EU is actually trying to legalize its own policy-oriented peculiar approach to human security, that is to say protect and proactively promote its own political and economic model by any means necessary.

In Libya, the EU provided armed support (until co-belligerence) to insurgents fighting against an authoritarian regime. In Ukraine, since the very beginning of the crisis, the EU provided unconditional political support (until denying any legitimacy to the ousted President notwithstanding the "factuality" of his removal had not turned yet into legal "effectivity") to pro-EU opposition and parties violently clashing with a Government that was democratic but not aligned with its political and economic models and policies.

The main consequence of the legalization of this policy-oriented approach would be the creation of a new international rule (the right of

military and / or political intervention in domestic affairs for democratic reasons) introducing major changes to legal and political fundamental principles governing international relations.

As regards R2P, the EU's vision deeply re-define the contents of its three-step structure because the "human security exception" did not apply in the name of humanity but in the name of (western-style) democracy. The Responsibility to Prevent would therefore require to prevent from taking power or being elected authoritarian or democratic but anti-EU politicians and parties. The Responsibility to React would then a requirement to militarily or politically intervene for changing authoritarian regimes or non-aligned democracies and install western-style and pro-EU democracies. The Responsibility to Rebuild would eventually require to create neo-liberal and EU-styled economic and political systems and environments.

Frankly speaking, this European vision of R2P has nothing to do with R2P policy formulated by the ICISS Report in 2001. In fact, it is not by chance that the EU expressly invokes "democracy", "democratic governance" and the "European way of life" rather than "R2P", "human security" and the "right of people to freely decide on their own political, economic and cultural form of development".

In the new millennium, the ultimate political goal of the EU is to create a new world order of democratic and neo-liberal States. To achieve that goal, the EU needs a new and different legal rationale for its own actions in the wider world. The scope and limits of the "humanitarian" and "neutral" discourse are too narrow and clear-cut, while the more comprehensive and loose "democratic" and "interventionist" discourse might guarantee a larger legal umbrella for a more proactive political and military European action. The democratic intervention would amend the prohibitions on the use of force and on the political and military intervention in domestic affairs, and the principle of self-determination of people. Under this worldwide strategy for democracy, the principle of non-intervention would yield to third-States' right of democratic political and / or military intervention. The scope of the prohibition on the use of force would narrow when the military intervention aims at installing democracies in lieu of authoritarian regimes. The content of self-determination would widen to the extent that it would encompass a newly born "democratic" dimension according to which political parties and oppositions have the right to forcibly or violently overthrow authoritarian regimes or democratic governments whose policies are no longer welcomed by them for the purpose of installing a western-style and pro-EU democracies.

The apparently same notion of human security is applied by the EU pursuant to the doctrine of democratization (and the right to democratic governance) and not to the doctrine of R2P. Legalizing the European vision

of human security would actually allow for even forcible democratization of international relations with substantial and epochal changes for international rules and policies. In Libya and Ukraine, the EU achieved its objective to change an authoritarian regime and an anti-EU Government. In both cases, however, those who had to be protected paid and are still paying a very high price in terms of human lives, violence and widespread instability inside and outside their own States. Whatever may be its interpretation, human security in Libya and Ukraine is today lower (Ukraine) or absent at all (Libya) than it was before the European democratic interventions for peace and prosperity would take place.

UDK:**321.74(4-672 EU)**

DOES THE EU SUFFER FROM A DEMOCRATIC DEFICIT?

Fabiola Deliaj, MA

SHPAL"Pavaresia" Vlore
e-mail: fabiola.deliaj@unipavaresia.edu.al

Abstract

European integration was always, and as the recent events have shown, continues to be, an elitist project. Today, the size and complexity of the enlarged Union with 27 member states weakens the economic and political performance of the Union. Necessity of change is determined by the fact that the integration process is going along an unknown path. The apparent process of alienation of its citizens creates a distance in the relation Union - citizen which is the key element for efficient functioning of any political system. Still, communication between the Union and its citizens remains insufficient; there is a lack of exchange of information between them. After more than fifty years of a very dynamic evolution and deepened integration, the European Union has come to a stage when it needs to strengthen its democratic capacities in order to go further. Leaded by this problem of conceptualizing the demos, the EU is facing the problem of democratic deficit - without demos there cannot be any democracy.

The study of the topic for democratic deficit became relevant as soon as the European Union achieved stronger impact on the life of its citizens. Policy makers and opinion leaders use different approaches to point out the reasons for the lacking of democratic legitimacy and this paper is based on the researches and analysis of the most famous authors like Dahl, Mayone, Moravcsik, Hix, Weiler, Decker, Sifft, Schmitter, etc. This paper speaks about this interested approach including both parts 'More Europe' and 'Less Europe'.

It is a qualitative study based on secondary literature. This paper will first draw upon the reasons that have caused the appearance of the democratic deficit in the complex multi-level governance with diffuse mechanisms of democratic control of the Union. The main question that appears is whether this process of democratization may be observed in the European Union and could the mechanisms prove efficient to be called democratic or "Does the EU suffer from a democratic deficit in other words?" The unique political construction of the Union cannot be compared

to any other model of a nation state in order to use the comparison method to come closer to the reasons that cause the democratic deficit. To its critics, the European Union was born in sin: a project devised by and for the elites, lacking democratic legitimacy. All attempts to make good the 'democratic deficit', a term coined in the 1970s, have failed.

One hears everywhere today that the European Union suffers from a "democratic deficit". It is unaccountable and illegitimate. It is a distant technocratic superstate run by powerful officials who collude with national governments to circumvent national political processes, with regrettable consequences for national democracy. Although the development of the Union has proved that it is possible to build a system based on the basic principles of liberty, democracy, respect for human rights and fundamental freedoms, the rule of law, respect and preservation of representative democracy, etc. by integration of different European countries, different nations, cultural and linguistic diversities. And this is the reason that we should view European politics as normal everyday politics.

Key words: democratic deficit, standart version, credibility crisis, legitimacy, social legitimacy.

1. INTRODUCTION

For more than fifty years, the 'democratic deficit' has been a widely used expression, a fashionable catchword of the debate around the EU. Why is this so? It can be explained by the fact that the term does not have a consensual and a clear-cut definition. It is used in the academic debate with different connotations and the various authors imply different meaning in it. The question which political and intellectual debates focus on have been whether the EU is democratically legitimate, in other words, whether there is a democratic deficit in the European Union. The question has been debated within political and academic areas widely. While most politicians, scholarly commentators and members of the European public agree that the EU experiences democratic deficit. As we know, the EU has evolved as a uniqye system (sui generis). After more than fifty years of a very dynamic evolution and deepened integration, the European Union has come to a stage when it needs to strengthen its democratic capacities in order to go further. Led by this problem of conceptualizing the demos, the EU is facing the problem of democratic deficit - without demos there cannot be any democracy. The study of the topic for democratic deficit became relevant as soon as the European Union achieved stronger a impact on the life of its citizens.

2. SO MANY DEFINITIONS OF 'DEMOCRATIC DEFICIT'

The question of what a democratic deficit reflects, on an abstract level, we consider the specific model of democracy to be appropriate for the EU. The more the EU diverges from that ideal, the more pronounced the democratic deficit is usually considered to be. This is very obvious in the writings of Dahl[1]. He sees the question of size as a dilemma intractable to representative government, because size and participation are negatively correlated in his view: As the size of a polity increases, the possibility of effective citizen participation decreases as a function of the time needed to express one's views.[2]

Hence, in large polities delegation is almost inevitable, which in turn brings with it bargaining among the political and bureaucratic elites. As the scale increases from individual nation-states to international organizations, the need for delegation becomes even more pronounced and the possibility of effective participation diminishes correspondingly. If the democratic ideal is maximum citizen participation, then the large-scale representative structures will inevitably fall short in comparison with those of their smaller counterparts. In Dahl's view, international organizations must be subjected to popular control in order to claim being democratic, just as with the democratic countries. This requires the development of institutions able to guarantee opportunities for political participation, influence and control equivalent in effectiveness to democratic countries. Furthermore, political elites would have to be willing to engage in public debate at the level of those institutions, and in order for such debate to be effective an international equivalent to national political competition would have to be created. Finally, elected representatives would have to be able to exercise control over international bureaucracies just as effectively as in (most) democratic countries.[3]

Weiler [4]et al. defines what they see as the "standard version" of the democratic deficit. This view highlights the transfer of powers from member states to the EU, effectively removing these powers from the scrutiny of national parliaments. This situation is further exacerbated by the relative weakness of the European Parliament. Weiler et al. also points to the lack of proper European-wide elections, arguing that the European Parliament

[1] Robert Dahl, A. *On Democracy*. Yale University Press 1998

[2] Robert Dahl, A. *On Democracy*. Yale University Press 1998, p. 107

[3] Robert Dahl A..*Democracy and its Critics*. Yale University Press 1998, p. 31

[4] J. H. H. Weiler, "The Transformation of Europe", in Yale *L. J. V.* 100, 1991, p. 2455

elections are mere second-order elections, or effectively national popularity contests. In addition to this, national elections might fail to result in policies that a national electorate wants, if for example a center-right government is part of a center-left dominated Council. The democratic deficit is in essence a democratic overload caused by insufficient possibilities for a majority to actually exercise its powers.[5]

According to Schmitter[6], there is compelling evidence that citizens in the EU member states have become increasingly aware of the impact the EU legislation has on their everyday lives, and that they consider the EU to be secretive, remote, unintelligible and unaccountable. All in all, it is argued, the EU has a shaky foundation. This view is influenced by the ideal of demos as prerequisite to democracy: 'The EU legitimating requires not just the public monitoring of EU governance, but also a common European discourse and some sense of belonging to a common commitment. The central worry that the lack of a demos conjures up is captured very precisely in Jolly's statement that "*without this [the demos] the legitimacy of the political unit will be contested, however impeccable its procedures*"[7]. According to De Beus, the rise of a European identity is a necessary pre-condition to the development of a commitment to a public sphere beyond the nation-state. The distance between citizens and the EU is also seen as problematic by these authors. The democratic deficit of the EU has been identified in a number of ways. The most accepted concept is the standard version of the democratic deficit. According to this concept, the main problem of the EU is the fact that there is a shift of political control from the democratic parliamentary systems of government at national level to the executive-centred systems of government at the European level.[8] The executive of the European Union is consisted of the European Commission and the Council of Ministers. The only EU institution that is directly elected by the voters is the European Parliament. The Parliament is too weak to control the executive, and the Commission and the Council are not accountable to the Parliament, unlike the model of clear separation of powers. The decisions are taken without taking into account the citizens requests and interests. In general, the arguments of the standard version of the democratic deficit can

[5] Yves Meny, "De la democratie en Europe: Old Concepts and New Challenges". *Journal of Common Market Studies* 4, 2002, p. 9

[6] Philippe C. Schmitter, "Making Sense of the EU; Democracy in Europe and Europe's Democratization" *Journal of Democracy* 14, 2003, p. 83

[7] Mette Jolly, "A Demos for the European Union"? *Politics* 25, 2005, p. 13

[8] Simon Hix, "The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition", 2003 http://personal.lse.ac.uk/HIX/Working_Papers/Hix-End_of_Democracy_in_Europe.pdf, p. 6

be categorised into a few sets. According to Simon Hix[9] , the current standard version of the democratic deficit in the European Union involves five main claims:

- Increased executive power / decreased national parliamentary control: EU decisions are made primarily by the executive actors - the Commission and the national ministers in the Council, meaning a reduction of the power of national parliaments as governments can either ignore them while making decisions in Brussels or be outvoted by QMV (Qualified Majority Voting) where it is applied.
- The European parliament is too weak: power increase of the European parliament is not enough to compensate the loss of national parliament control and the Council still more or less has the final word on the passing of the EU's legislation.
- No "European" elections: national elections are fought on domestic rather than European issues while the European Parliament elections, treated as a mid-term national contest, are less about Europe either.
- The European Union is too distant: citizens cannot understand the EU - the Commission is somehow neither a government nor a bureaucracy while the Council more or less legislates secretly.

So the last argument is Policy drift: as the result of all these factors, it is of large possibility that the European Union adopts policies that are not supported by a majority of the citizens.

3. WHY IS THIS SO?

There is no doubt that Europe's political institutions are inadequate. Frankly, they are as messy as a scrambled egg. As one small example, only the most ardent Europhile can tell the difference between the European Council, the Council of the European Union (also known as the Council of Ministers, or simply 'the Council') and the Council of Europe. All of them have their own president, as does the European Commission and the European Parliament. Presidents and councils, everywhere you look, with names so similar that few can tell them apart. Beyond that, lines of authority are vague and esoteric and the public hardly knows who does what. To the public, it all looks like a tangled mess of bureaucrats nestled in Brussels. At the most basic level, more imagination needs to be put into naming these important bodies and leadership positions with distinctive titles that make them easily distinguishable. But, this is just the beginning. A huge contributor to the democracy deficit is the fact that the average voter is

[9] Simon Hix, "*The Political System of the European Union*". 2nd edition, Basingtoge: Palgrave MacMillan, 2005, p. 177 - 178

stupefied by being four times removed from the chief legislative and executive body of the European Union, which is the European Commission. The Commission is a powerful body, increasingly so in reaction to the economic crisis, endowed to be both the enforcement arm as well as the only body that is permitted to initiate European-level legislation. Yet, it is not even remotely elected directly by 'We the People.'

As more and more powers have been transferred to the Commission, giving it unprecedented ability to intervene in national economic policies, these structural defects matter more. Electorates are used to voting directly for or against their national government and its policy proposals, playing a decisive role in the national politics. But, when it comes to the European governance, they can only vote to change the electors which themselves only nominate the members of the Commission. Contrary to what its harshest critics say, the Commission actually is accountable to lots of bodies and people — but it is not directly accountable to 'We the Voters.' There are too many degrees of separation between the governed and those doing the governing. And that must change.

At this point, Europe's political institutions are looking like a strange, mangled beast that has emerged after being tossed in a clothes dryer. As Habermas said :'*If you compare European political institutions to those of most national governments, the problem is plain to see. Whether the nation is Germany, the United Kingdom, France, Japan, Brazil or the United States, there is a directly elected legislature and a more or less popularly declared and in some cases directly elected chief executive*[10]. It is fairly simple, structure-wise. And simpler is better, as a foundation for fulfilling the goals of transparency, accountability and representation. The ugly truth is that the policy-making process is not as prominent as seen in the European Parliament, but it is very present among the concentrated interests and multinational firms that have strong lobbyists at European level. They create the policies "behind the curtains" and are dominant, compared to smaller trade unions and consumer groups.

But, according to Mayone[11] there is no "democratic deficit" in Europe. 'Whether we define it as an absence of public accountability or as a crisis of legitimacy, the empirical evidence for the existence of a "democratic deficit" is unpersuasive. According to Moravcsik, '*this system has worked*

[10] Hill, S. "Europe's Democracy deficit: Putting some meat on the bones of Habermas' Critique", Social Europe Journal.06/2013. web article on http://www.social-europe.eu/2013/06/europes-democracy-deficit-putting-some-meat-on-the-bones-of-habermas-critique/

[11] Majone, G. "Europe's 'Democratic Deficit': The Question of Standards". *European Law Journal* 4, 1998, p. 5 - 28

well for a half century – and continues to do so'[12]. '*Despite the misguided constitutional experiment, the EU has just completed an extraordinarily successful period of 15 years: the completion of the Single Market, the establishment of a single currency, the expansion of the Schengen zone, the enlargement to 27 members, and deepening of crime prevention, foreign and defense policy cooperation – to name only a few recent achievements. We do not view indirect democratic accountability via ubiquitous constitutional institutions like constitutional courts, central banks, regulatory authorities and foreign policy authorities as illegitimate or undemocratic'*[13]. Yet, the development of the Union has proved that it is possible to build a system based on the basic principles of liberty, democracy, respect for human rights and fundamental freedoms, the rule of law, respect and preservation of representative democracy, etc. by integration of different European countries, different nations, cultural and linguistic diversities. And this is the reason why we should view European politics as a normal everyday politics.

The EU should embrace the mode of indirect democratic oversight currently employed, whereby national governments representing national parties manage EU policy via the European Council, the Council of Ministers, and the directly elected European Parliament. It is time we stopped holding the European Union to a democratic double standard, a standard no nation-state can meet, on the basis of innuendo.

4. CONCLUSIONS

One hears everywhere today that the European Union suffers from a "democratic deficit." It is unaccountable and illegitimate. It is a distant technocratic superstate run by powerful officials who collude with national governments to circumvent national political processes, with regrettable consequences for the national democracy. Some critics focus on the extent to which the EU institutions fail to provide for objective democratic controls, as measured by transparency, checks and balances, national oversight, and electoral accountability. Others focus on the extent to which the EU institutions generate a subjective sense of democratic legitimacy, as measured by public trust, popularity and broad public acceptance. The two are linked.

---

[12] Follesdal, A. and Hix, S. "Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik" *European Governance Papers (EUROGOV), 2005.No*. C0502 http://www.connexnetwork.org/eurogov/pdf/egp-connex-C-05-02.pdf p. 7 - 9

[13] Andrew Moravcsik, "The myth of Europe's democratic Deficit," Intereconomics: Journal of European Public forum policy, 2008, p. 331 - 340

Lack of opportunity to participate in the EU politics, it is said, generates disillusionment, distrust, and dislike of the EU, which further reinforces ignorance and unwillingness to participate in EU politics. The EU is caught in a vicious circle that may be fatal unless major reforms are undertaken to expand popular participation. This perception has dominated EU politics for the last decade. The unique political construction of the Union cannot be compared to any other model of a nation state in order to use the comparison method to come closer to the reasons that cause the democratic deficit. To its critics, the European Union was born in sin: a project devised by and for the elites, lacking democratic legitimacy. All attempts to make good the 'democratic deficit', a term coined in the 1970s, have failed.

Certainly, Europe is no worse off, overall, than its constituent member states. Reforms to increase direct political participation, moreover, would almost likely undermine public legitimacy, popularity, and trust without generating greater public accountability.

5. REFERENCS

Economist.com/blogs/charlemagne (http://www.economist.com/blogs/charlemagne

Follesdal, A. and Hix, S. "Why is there a Democratic Deficit in the EU: a Response to Majone and Moravcsik" *European Governance Papers (EUROGOV), 2005. No*. C0502, http://www.connexnetwork.org/eurogov/pdf/egp-connex-C-05-02.pdf, p.7 - 9

Habermas, J. Democracy, Solidarity and the European Crisis" Social Europe Journal, 05/2013 web article on http://www.social-europe.eu/2013/05/democracy-solidarity-and-the-european-crisis-2/

Harding, G. "How to close the EU 's democratic deficit" web article on

http://www.foreignaffairs.com/articles/141529/gareth-harding/mind-the-gap

Hill, S. "Europe's Democracy deficit: Putting some meat on the bones of Habermas' Critique", Social Europe Journal. 06/2013. web article on http://www.social-europe.eu/2013/06/europes-democracy-deficit-putting-some-meat-on-the-bones-of-habermas-critique/

Hix, S. "*The Political System of the European Union*". 2nd edition, Basingtoge: Palgrave MacMillan, 2005, p. 177 - 178

Hix, S. "The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition", 2003 http://personal.lse.ac.uk/HIX/Working_Papers/Hix-End_of_Democracy_in_Europe.pdf, p. 6

J. H. H. Weiler, "The Transformation of Europe", in Yale *L. J. V.* 100, 1991, p. 31

Jolly, M. "A Demos for the European Union"? *Politics* 25, 2005, p. 13

Majone, G. "Europe's 'Democratic Deficit': The Question of Standards". *European Law Journal* 4, 1998, p. 5 - 28

Meny, Y. "De la democratie en Europe: Old Concepts and New Challenges". *Journal of Common Market Studies* 4, 2002, p. 9

Moravcsik, A. "The myth of Europe's democratic Deficit," Intereconomics: Journal of European Public forum policy, 2008, p. 331 - 340

Moravscik, A. "In the Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union", JCMS, 40/4, 2002, p. 603 - 634

Philippe C. Schmitter, "Making Sense of the EU; Democracy in Europe and Europe's Democratization" *Journal of Democracy* 14, 2003, p. 83

Robert Dahl A. *Democracy and its Critics*, Yale University Press, 1989, p. 107

Robert Dahl, A. *On Democracy*, Yale University Press, 1998

UDK: 355.45(497.2):327(4-672 ЕУ)”2011/20120”

EUROPEAN UNION STRATEGY FOR THE DANUBE REGION (2011-2020) AND THE NATIONAL SECURITY OF THE REPUBLIC OF BULGARIA

Tihomir Lichev

Academy of Economics "D. A. Tcenov" Svishtov, Bulgaria
e-mail: tlichev@uni-svishtov.bg

Katia Licheva

Academy of Economics "D. A. Tcenov" Svishtov, Bulgaria
e-mail: klicheva@uni-svishtov.bg

Ivanka Borisova

Academy of Economics "D. A. Tcenov" Svishtov, Bulgaria
e-mail: iborisova@uni-svishtov.bg

Abstract

In the recent years within the European Union, the interest in solving a number of intra-regional cohesion issues is constantly increasing. In the present study, the regional aspects are discussed in chronological plan of the regional development aspects of the European Union - from its inception to the present day. It is considerably emphasized at the process of "cohesion" and the development of the cohesion funds; formation and development of Euro-regions, cross-border cooperation and others. Object of the present study are the territorial scope, the different aspects of development, and the main problems in the functioning of the Danube macro-region. Significant attention is paid to the role of science, regional development and economic geography, especially in the context of national security of the Republic of Bulgaria. At present, the Danube macro-region is facing many problems. Among them are some environmental threats such as pollution, floods, climate change, the unused navigable resource, insufficiency or lack of road and rail connections, unbalanced socio-economic development of the different territorial units, limited financial flows, investment and innovation. All these issues must be addressed in the context of national security. The argument is that without researches being created by geography, the

development of strategies for the Danube macro-region is unthinkable. Such studies can be used in solving a number of problems within the European future for the Balkan countries.

Keywords*: Danube hiper-region, Danube macro-region, the Danube strategy, economic geography, national security*

1. INTRODUCTION

In recent years, in the world there is a constantly growing geopolitical and scientific interest in the area of the Balkan Peninsula. All countries in the region are in a difficult situation to be located very closely to two major military conflicts - in eastern Ukraine, as well as in the countries of the Middle East and North Africa, where the so called "Islamic State" acts (Syria, Iraq, Libya, etc.). All this exacerbated the international situation in the region and the intervention of NATO and the European Union (in which Bulgaria is a member, and many of the Balkan countries including Macedonia, are candidates) is mandatory.

Last but not least, the European Union has also numerous internal problems to solve. The present study considers the European Union Strategy for the Danube Region (from 2011 to 2020) in the context of national security of the Republic of Bulgaria. Such studies can also be used in solving a number of problems within the European future of the Balkans in the context of national security. The world economy is a combination of all national economies participating in the international labor division and connected with international treaties. In the conditions of modern globalization, in the business of the world economy all types of economic activities are involved, having their direct or indirect impact. In the dynamism of the conduct of all businesses and industries, the significant role of the individual "economic poles" of global development does make sense.

After the World War II, two main economic and political systems stood out competing for world domination. After the collapse of the socialist system, the world is not unipolar again. There is a growing importance of the role of the individual "economic poles" - North America, European Union, Japan and the “dragons" of Southeast Asia. Essential to the global development become the G-7 (US, UK, Germany, France, Italy, Canada, and Japan). In the beginning of the XXI century, a group of countries, which are often called "the new G7" reached and even overtook in 2013 the traditional **"Great Powers".**[1] Within the European Union, in which the Republic of

[1] According to the annual report of the IMF for 2013, "The New G-7" have a GDP of $ 37,8 trillion, against $ 34,5 trillion of the traditional forces. The group of "The New G-7" includes Brazil, Russia, India, China, Mexico, Indonesia, and Turkey.

Bulgaria has been a member since 2007, many tasks should be resolved. They can be divided in two main groups - internal and external. The first group includes a number of political, economic and other measures contributing to the perseverance of the EU positions in the globalizing world. Besides the external, the EU has to decide on internal problems caused by the different levels of development of individual regions and country members of the Union. Depending on the tasks, peculiar methods and tools are used, which form the basis of the future regional policy.

In the early years of the founding of the EU, regional policy was mainly focused on aid for the needy areas. Later in the 50s and 60s of XX century, laws started being made, as well as government programmes for individual regions, industries, and other. Fundamental changes were observed already in the 80s, when regional policy was expressed primarily in direct or indirect financial support of the private capital; promoting the development of small and medium businesses; building "technology parks", "entrepreneurial laws," and others. [3], [4], [7]. Gradually, the role of the regional direction in the EU has been constantly growing. In 1997 at a meeting of regions and cities in Amsterdam, all participants agreed on the need for reform of the EU regional policy. Amendments were accepted in relation to the objectives and rules of action of the Structural Funds and regional development programmes. The main reason for these changes was with regard to the adoption of the new country members, which led to a significant increase in intra-regional socio-economic differentiation. This called for the intervention of the EU in solving new acute regional problems. [1]

2. A EUROPE OF REGIONS - COHESION ASPECTS

The weakening of interstate barriers within the EU, transfer of part of the state functions from national to the supranational level, strengthening of the economic integration - all these factors increase the role of the regions in economic and political life of the EU. The notion of a "Europe of regions" reflects the revolutionary transition to a single political and economic space, to a system of interacting regions and to a single federation. [1] There have been an ongoing process of convergence of socio - economic development between the different territorial units and regions within the EU. Processes of significant "cohesion"[2] are ongoing. Recently, the term "cohesion" has also

---

And, according to the World Trade Organization for 2013, China ranks first in the world by turnover, ahead of the former leader - the United States.

[2] The term **"cohesion"** has a Latin origin **"coheare"** which means to bind, hold together. Very often, this term is used in a number of science activities - physics,

been used in the social sciences and policy. It is an approach and process of cohesion and inclusion in society based on overcoming inequality and injustice. Social cohesion cannot solve and eliminate social problems, but is intended to mitigate the social contrasts and reduce the economic burden on the poor.

Cohesion Funds in the EU worked from 2000 to 2006 and then from 2007 to 2013. For the last contract period they have covered 63,4 billion Euro and can be used in all regions which have a GDP below 90% of the EU average, thus reducing regional disparities in the 15 EU Member States. Besides those cohesion funds, a higher form of economic integration within the EU is the international economic cooperation. The border regions are most intensively developing. Only in 1996, 122 borderline municipalities located along the internal borders of the EU have developed 2, 500 projects. [1]. Naturally, since then these processes have increased significantly. Along all of the internal and external borders of the EU, large areas of cross-border cooperation are formed, such as **the Atlantic Arc** (stretching from Scotland to Gibraltar), pools of the North, Baltic, Barents, and Black Sea. The most intense is the cooperation along the Mediterranean, where MEDA international programme has been working since 2010. In the internal spaces of the EU, **west - central - European border from the Baltic to the Adriatic** has been successfully developing involving 14 countries, members or candidates for EU membership. **The Alpine Arc** includes 26 regions of France, Greece, Italy, Austria, Switzerland, and Liechtenstein with over 70 million population. [1] Compact Euro-regions have been formed - such as industrial agglomerations Maastricht - Liege - Aachen (on the border between the Netherlands, Belgium and Germany); Saarlorlux (Saarland, Lorraine, Luxembourg), Pas de Calais (France, Belgium), the Naas River region (Germany, Czech Republic, Poland), and others.

As development of the above-mentioned regional development programmes, in 2009, on the incentive of the European Parliament, the European Commission introduced a concept for the creation of pan-European macro-regional strategies. The first strategy concerns the Baltic macro-region, and the next - the Danube river. In this case the focus is on natural water bodies - not only within the European Union, but also with the countries along the river. Thus the European Union Strategy for the Danube Region (EUSDR) was created. [9] A subject of this study is precisely the Danube macro-region with its territorial scope, various aspects of the development and the main problems of functioning of the region.

---

chemistry, informatics, and others. In all of them the term is used to denote a special force of attraction and adhesion of molecules in a substance. [10]

3. DANUBE MACRO-REGION - TERRITORIAL SCOPE AND THE DANUBE STRATEGY

In the system of the European area, the Danube River Basin can be viewed in several aspects. Above all, the great river is a **European cross-border corridor №7** and integration Danube axis. In a number of documents of the European Union, the entire Danube basin is called the **Danube hiper region**. Three macro-regions enter in its structure. The first includes the coasts of FR Germany and Austria (from 2411 km to 1790 km; Kelheim - Gyoknu, or a total 621 km) This represents **the Upper Danube** macro-region. **The Middle Danube** macro-region has a length of 860 km (1790 km to 930 km), namely from Gyoknu to Vashkatu. It covers the coasts of 4 Danube countries - Czech Republic, Slovakia, Hungary and Serbia. **The Lower Danube** macro-region has a range of 930 km to the delta in the Black Sea. The territories of four countries are included here - Bulgaria, Romania, Moldova and Ukraine. In Bulgaria particularly, the Lower Danube macro-region comprises the territory of the three areas of planning, 9 districts, 73 municipalities, 21 of the centres of which are located on the Danube bank. [8] In the documents of the European Union "Europe 2020" and the European Union Danube Region strategy, a special emphasis was put in two directions, namely:]. 1. **Vertical** - the objective is to improve the functioning of the EU single market which is essential to the competitiveness globally, and 2**. Horizontal** - whose objective is to achieve integrated macro-regional development. [6], [10], [11]. 9] **The Danube Strategy** is an essential tool for the development of separate regions for the period from 2011 to 2020. It is a kind of "umbrella" that incorporates various strategies, programmes, incentives, and others. It is expected that the "big Danube strategy" will become a new model for regional development. [9] The Danube is a connecting link for integration and cooperation between the countries and the regions. Logically, the Danube space covers the entire river area including springs, tributaries, and the main river. Thus, solving a number of economic, social and environmental problems can begin from the upper stream and gradually reach the river delta in the Black Sea (using the so-called "cascading principle"). In this way a considerable synergistic effect is achieved. European Commission has defined the Danube Strategy as:

- a focus, which gathers wishes of various countries;
- a means by which the "old" Europe improves its position in the region;
- an example of cooperation between different countries - the oldest ones, old, new, and future EU member states;

- Stressing that the Danube is a symbol of an enlarged Europe;
- Creating a sustainable framework for policy integration and coherent development of the Danube region.[8]

The European Commission has set some super goals related to the Danube hiper region which are reflected in the Danube Strategy.

- The **horizontal super goals** of the Danube Strategy include improving connectivity within the Danube hiper region as well as with other European and non-European regions.
- The **vertical super goals** are related to the increased attractiveness and competitiveness of the whole Danube hiper region and its various macro regions.

Of great importance is the ambitious goal of the Commission, often referred to as "smart Danube" ("beautiful river" or "smart Danube") and "good Danube housekeeping" ("the Danube of good order"). This goal has been certainly achieved by a symbiosis between economic development and environmental protection. [9]

According to the European Commission, the priority areas for the Danube strategy are based on three "pillars": **connectivity, environment, and unlocking of the potential of the population in the Danube hiper region.** Economic geography and regional science contribute to solving all major tasks enshrined in the Danube Strategy.

4. ECONOMIC GEOGRAPHY AND REGIONAL SCIENCE – THE DANUBE STRATEGY AND NATIONAL SECURITY

One of the most exploited topics in economic geography and regional science in recent years has been about the role of the Danube for accelerating the cross-border cooperation and European integration of the Danube region with the countries in the Danube basin. This is in line with the Danube Strategy 2020. At the same time this territory has also clearly expressed characteristics of the border region, with all the negatives that come with it. Modern development of Bulgaria and the Lower Danube macro region is impossible without the use of the achievements and research of the economic geography and regional science. [4] Undoubtedly, the most important thing is to undertake a research devoted to the determination of benefits for the territory of Bulgaria due to its **geographical location.** Bulgaria occupies a central, “cross-road”, and key location within Europe, the Balkan Peninsula, and the European Union. Our country may constitute "eastern gate" of the Lower Danube macro region and respectively the European Union. Unfortunately, Bulgaria is lagging behind in terms of degree of construction of transport infrastructure. Through Northern Bulgaria, which falls under the

transport, water and environmental impact of the Danube, three cross-border corridors pass: № 4,7,9. [5]

Along the **Euro corridor №4**, a bridge at Vidin - Calafat was built. The transport links Vidin - Sofia - Thessaloniki (roads and railways) have not been reconstructed and modernized yet. Similar problems exist for Euro corridors №9. After the bridge at Ruse - Giurgiu, the infrastructure to the Aegean Sea is insufficient and outdated. There are projects to build streamlined roads and railways: Bucharest - Ruse - Varna, Ruse - Veliko Tarnovo - Svilengrad which will significantly improve the transit of goods and passengers. The potential of the Danube, which is **the Euro corridor №7**, is underutilized. Also, there is an insufficient transport of passengers and goods all along the Lower Danube. It is necessary to build port terminals providing multimodal transport including the transit to the Black Sea, the Middle East and Asia to Central and Western Europe. For decades, there has been a project to build the Panoramic road Bregovo - Silistra. [2] It needs financing mainly under the "Transport" EU programme of the missing sections and reconstruction and modernization of the existing ones.

There is an insufficient connectivity of the territory of Bulgaria through the Danube with Romania. So far there have been built only two bridges at Ruse - Giurgiu and Vidin - Calafat and six ferry connections Vidin - Calafat, Oryahovo - Beckett, Nikopol - Turnu Magurele, Svishtov - Zimnicea, Ruse - Giurgiu, and Silistra – Calarasi.The ferries at Ruse and Vidin are likely to be closed, due to limited traffic. Options exist for building of new bridges at Oryahovo, Nikopol, Silistra and possibly a second as a duplicate of the one already built at Ruse.

The coastal zone of the Danube is subject to significant risky natural processes. This is especially true for the areas of flooding at Vidin, Lom, Nikopol and Ruse; the landslides and landslips at Slivata and Orsoya, Oryahovo, Nikopol, and Svishtov Municipality. With the help of the natural geography and GIS, they can be significantly reduced. All along the Danube and its tributaries there is a minimal use of the possibilities for early warning of torrential rainfall and significant flooding. Establishment of an information system would significantly reduce losses for the economy and population. In the Lower Danube macro region, there are many environmental problems, e.g. significant air pollution in industrial centers: Nikopol, Svishtov, Ruse and Silistra. It is mainly of cross-border origin.

The waters of the Danube and its tributaries are seriously polluted. Since the territory of our country is in its lower river valley, a significant portion of the pollutants come from the upper and middle river valley. Bulgaria significantly lags behind in the construction of sewage treatment plants in many villages.

In the three planning areas in northern Bulgaria there are significant geo-demographic differences. Economic geography can provide a particularly important analysis and vital statistics. The huge differences are apparent in individual units. The same applies to the peculiarities in the functioning of various economic sectors. Measures are needed to improve the status of manufacturing infrastructure in the Danube region. [5]

A number of Bulgarian scientists point at the existing of the Danube tourist region and its significant natural and cultural potential. The islands of the river have also attractive value. Three of the ten wetland complexes in Bulgaria are located here: "Belene Islands", Ibisha Island, and "Srebarna" lake. Of particular importance for the development of ecological tourism are "Tsibar" nature reserve, "Persina" Nature Park, and "Srebarna" nature reserve, the latter being included in the list of UNESCO World Heritage. On the territory of the Danube coast there are 108 protected areas included in the European ecological network NATURA 2000.

In the Danube region, many remains of ancient civilizations have been found. The more important towns from the Roman period are Bononia (today's Vidin), Ratsiaria (today's Archar), Almus (today's Lom), Novae (today's Svishtov), Sexaginta Prista (today's Ruse), and Durostorum (today's Silistra). In the latter, the ancient tomb of the same period is located. From the period of the Second Bulgarian State, several fortresses have been preserved; Bdin Fortress / Baba Vida fortress, Cherven near Ruse, and Drustur. The remains in Svishtov and Nikopol have not been used yet for the development of cultural - historical tourism. The area also has many cultural - historical monuments from the Revival, the most important of which are in Ruse, Svishtov, and Silistra. Of tourist interest for visitors are the objects from the newer history of Bulgaria: the "Monuments" near Svishtov, the Pantheon of the Bulgarian Revival Heroes in Ruse, the monument of Hristo Botev in Kozloduy, Tutrakan, and others. Another specific anthropogenic tourist resource are the numerous acting churches and monasteries, such as the monastery "Pokrov Bogorodichen," church of the Holy Trinity in Svishtov, Ivanovo rock churches near Ruse, which are added in UNESCO's list as an important monument of the world and history heritage. In the Danube tourist area, the existing tourist infrastructure is concentrated mainly in a few well-known tourist destinations like Vidin, Svishtov, Ruse, and Silistra. The serious problem here is related to the availability of facilities in small municipalities that have tourism resources, such as Ivanovo, Dve mogili (Rousse), Archar (Vidin), and others.

As a general assessment, it can be pointed out that the Danube region is characterized by rich and qualitative natural and cultural-historical potential for tourism development: health (spa) tourism, cultural, rural, ecotourism, hunting, cognitive, wine tourism, and more. For many attractions

including the river itself, opportunities for exploitation of their potential are not created.[6] The natural and economic geography can "construct" and establish the main types of tourism to develop in the region, and the main tourist destinations.

The present study shows only some of the possibilities for using economic geography and regional studies for the development of the Lower Danube macro region. Thus a number of problems can be solved with regard to the national security of the Lower Danube macro region.

5. REFERENCES:

1. Granberg, A.G., Bases of Regional Economy, M., G-UVSHE, 2003, p. 492.

2. Deliyev, Iv., The river Danube and the territory around Danube in the Bulgarian geo-strategy. In: The future of the Danube region: the role and the place of the local government organs, Svishtov, 1996.

3. Krstev, K., Slavev, S., Marinov, Khr, Karakashev, Khr., Geneshki, M., Regional Economy S., "Science and art", 1989.

4. Lichev, T., Economic and geographic science and regional researches, Svishtov, AI "Tsenov", 2003, p. 150

5. Lichev, T., Borisov, B., Gabrovski, R., Zakhariyev, A., Prodanov, S., P"tev, P and S. Iliychovski Social and economic development of the Danube region (state, potential, perspectives), Svishtov, AI Tsenov 2001 p. 212

6. Lichev, T. and N. Ivanova Danube strategy and economic geography, in: Third Scientific Conference "Geographic Science and Education", SHU "Episkop K. Preslavski", Shumen, 2014.

7. Slavev, S., and T. Lichev, Economic Geography (short course), Svishtov, 1996, p. 280

8. Strategy of the European Union on the Danube region, European Commission, 8 December 2010

9. Yankov, N., Marketing of the concept "integral relation" in: The lower Danube macro-region, sp. "Business Management", 2011, book 5

10. Dictionary of words in the Bulgarian language, S., AI "M. Drinov", 2013.

11. Macro Regional Strategies in the European. Union, 2009, p. 1

12. Europe 2020: strategy for an intelligent, sustainable, inclusive increase. 2010. European commission

www.datourway.eu

http://www.imf.org/external/index.htm

http://www.wto.org/

UDK: **355.45:316.344.5(100)**

HUMAN SECURITY CONCEPT – A CONTROVERSIAL ATTEMPT TO REDIFINE AND BROADEN THE SECRUTY CONCEPT

Blagica Kotovchevska, MA

MIT University – Skopje, Republic of Macedonia
e-mail: blagica.kotovcevska@gmail.com

Abstract

Human security concept first appeared in 1994, presenting a broader interpretation in which inevitably seven areas were incorporated (economic security, food security, health security, environmental security, personal security, community security, and political security). During the 70s and 80s the academic community and the community of policymakers made serious attempts to comprehensively and seriously redefine and expand the meaning and the essence of the security. It meant a new attempt to redefine and boost the security – especially the national security in the concept of broader security means in non-military terms. Basically, the new concept of security or human security was focused on the safety of people, not as previously, on the security of the state or government. This paper will put the accent on the comparative analysis of the concepts of national and human security, as well as on a comprehensive analysis of the objectives of human security in the years after the Cold War. In this context, in this paper will be analyzed all the scientific debates concerning the expansion of the idea of security on the non-military threats, as well as the imminent rise of the idea that, in the field of the security, the individual is emphasised and placed in a central position. Additionally, this paper will offer a comprehensive analysis of the vertical and horizontal expansion of the traditional idea of the national security defined as a protection of the state sovereignty and territorial integrity of military threats. In order to fully clarify the phenomenon of human security, the human security will be analysed through the three main elements that clarified its basic essence: the subject of the security is the individual / people; its multidimensional nature; its universal or global scope (all states and societies from the north and from the south). Finally, human security will be analysed through its agenda for improvement, expansion and enhancement of the security of the people through protection from threats of violence.

Key words: security concept, national security, human security, military threats, non-military threats

1. INTRODUCTION

The word security originates from the Latin term *sine cura* that means "without care" and as such it represents a slightly elastic term considering that "care" may represent the biggest fear of smallest frustration. In this regard, there's an interesting analysis of the term security in our language – security (bezbednost) = "bez beda (without misery)" – material, spiritual etc., which once again associates of the Latin roots of this term – something that lives without misery has larger probability to live carelessly as well, that is, to live in a setting where cares will be reduced to the least possible extent, to live in freedom, peace and welfare. This term with an identical base is also present in the Russian language – "bezopasnost" = "without danger" (military, political, diplomatic, economic, social, identifying, natural – ecological, technical-technological and other forms of danger). Complete freedom from care is almost impossible, unpractical, and undesired due to philosophic, ethical and psychological aspect. Human life without everyday care is unthinkable, and the entire absence of risk taking in the society would eliminate any scientific progress, fun and adventure in life, that is, it will also deny the sense of life as well as the existence of the human and the society. Since absolute security does not exist, absolute carelessness, safety, risklessness neither exist nor are required. If the conclusion from the text of the entire military era of the twentieth century was that security of people was inseparably connected to the safety of the countries, now that era is leaving in the museum of history. Today, the researches of security within global politics are focused on the greatest fears: the threats to the lives of people.

The security of people is the most important political care, that is, in the new era, the focus towards the discipline of security of people has been changed to a great extent instead of a focus towards the country: it is the human security (individual security). The human security concept, unlike the traditional national security concept, emphasizes the security of the individuals as primary, rather than the security of the country as an entity. The new security concept started to develop at the end of the eighties of the last century, a period when modern societies and the world as a whole increasingly started to face the variably security paradigm and the radically changed (diversified) security environment. Security is subjective in that individual fears do not always comply with the reality of threats. This reality is very important because it leads through the questions that are important, instead of the priorities of governments. The security of governments is not

the same with the security of people they should represent (for example, the Development of global human rights, the existence of global systemic failures: the spread of hunger and curable diseases in a world with limited food and medications so that they can oppose them).

"The security concept would have to change in the future from an exclusive emphasis on national security to a much greater emphasis on human security, from security through weapons to security through human development, from territory to food, employment and social security"[1] The importance of security is not only a mystery of the academic science, its weight comes to the fore as an important attribute in the "real" objective political matters. This conclusion also arises from the fact that the threats to the security of states represent a priority for the governments, but also the threats to the lives of people should represent the highest priority of the contemporary states and their governments. Their comprehensive understanding of security should not be exceptionally limited on pure military aspects. "Our survival does not depend only on the military balance but also on the global cooperation to create a sustainable biological environment based on equally distributed resources."[2]

2. NOTION AND ESSENCE OF THE NATIONAL SECURITY

Although the term national security in the initial period of its emergence did not have a sufficiently clear content, with time its clear determination and specifying occurred. The focus of the national security started to consider and analyze the totality of the political, military and economic efforts undertaken by governments in the realization of the internal and external security of their countries.

In the international encyclopedia in social sciences, national security is defined as " the ability of a country (nation) to protect its internal values from external threats", (one-sided definition in regard to the "dangers" – author's note). Other authors define national security as a "function of the national countries by means of which, in accordance with their possibilities, now and in future, respecting the global changes and development of the world, they protect their own identity, survival and interests".[3] According to

[1] (UNPP (1993) Human Development Report. Peoples Participation, Oxford: Oxford University Press.)

[2] ICDI(1980) North-South: The Report on the International Commission on International Development Issues, London: Pan Books.

[3] A. Huwaydi, Militarization and security in the Middle East, PrinterPublishes, 1989., p. 16

Walter Lippmaun, "the country has security when it does not have to sacrifice its basic values without war or with it".

From the analysis of the content of this definition we can conclude that it is also imprecise and incomplete and it is focused more on determination and elaboration of the level / the extent of security of one country. Coping with the threats of the basic values it is considered by the author exceptionally by applying classical standard instruments without specific clarification of the phenomenon of national security. Arnold Wolfers has a more complex determination of national security, in an objective sense he measures it with "absence of threat of the basic social values, and in subjective sense it refers to the absence of fear for the society that its basic values will be threatened",[4] (quite a useful definition that deviates from the strict methodological criteria for creation of definitions). Kenn Booth in his analyses concludes that stable security is achieved only by those people and countries that do not deprive others from security, and this can be achieved only if security is understood as a process of liberation."[5] Barry Buzan and his fundamental book "Peoples, States and Fear"[6] represent the core for the formation of the so called Copenhagen school in 1983. In his book for the first time, except the military, other key areas of security have been identified: political, social, economic and ecological. Military security broadly refers to the mutual relations of armed (defensive and offensive) abilities of the countries, as well as the familiarization of the countries with the intentions of other countries.

Political security refers to the organizational ability of the country, the system of effective state management and the ideology that guarantees legitimacy. Economic security is related to the "guarantee of resources, funds and markets, necessary for the maintenance of the acceptable level of welfare of people and the power of the country."

The social field of security implies the existence of acceptable conditions for development of the traditional forms of language, culture and national identity in general (national traditions of the nation) by providing possibilities of its evolution. Economic security is defined as preservation and support of the local and planetary biosphere as a key environment – a system that all human activities rely on.

---

[4] A. Wolfers, National Security of Ambiguous Symbol, Political Science Quarterly, 67/4, 1952, p. 167 - 168

[5] K. Booth, Security Emancipation, Review of International Studies 17(4), 1991., p. 313 - 326

[6] B. Buzan, (Peoples, States and Fear: An Agenda for International Security Studies in the Post Cold War Era, Harwester Wheatsheaf, London, 1991, p. 19 - 20

All these fields are fundamental fields for analysis of the security policy of the modern countries. In his important work, Buzan critically reviewed the existing definitions of national security considering that they are useful, however not sufficient to understand national security. In order to contribute for the determination of the term national security, Buzan reviews national security at three levels and in few fields of human activity. The levels of review are individual, national (state) and international, while the fields for review include the military, political, commercial, social and economic field. The critics of this study (particularly neorealists) indicate that if one follows the path of extension of the spectrum of security, there would be no end practically. In their opinion, all important issues of the state and social management will always be able to transform into problems of security and due to the equal position according to the presumption of the priority to reach to blockage of management (in security).

According to his critics, if overload with this problematic occurs, there would not be sufficient resources for its realization whereby the process of destruction of the trust in the political management will be inevitable. According to the analyses of Buzan, the national (state) level is the most important one because it determines the other two levels of security. In modern conditions, the standard unit of security continues to be the sovereign territorial country together with the previously pointed out five basic fields (military, political, economic, social and ecological). Also, according to him, in the case of security the discussion is related to the search for liberation from the threat. When this discussion is within the context of the international system, the security refers to the ability of the countries and the societies to maintain their independent identity and their functional integrity.

When it comes to realization of stable security according to the interpretations by Wheeler and Booth "stable security can be achieved by people and groups if they do not take away that security from someone: it can be achieved if the security is considered a process of emancipation."[7] According to Michael X. X. Louw, national security includes traditional defense policy and "non-military actions for a country to ensure its total capacity to survive as a political entity in order to exercise influence and to accomplish internal and international goals."[8]

[7] Wheeler, N.J. and Booth. K. (1992), „The Security Dilemma"; in J.Baylis and N.J. Rengger (eds) Dilemmas of World Politics; International isues M A Changing world (Oxford: Oxford University Press).

[8] Michael H.H. Louw, National Security Pretoria, iss-University of Pretoria, 1978, according to the quotes from "The Purpose of the Symposium".

In terms of the function of national security in the protection of important national values, we will present the definition of Frank N. Trager and Frank L. Simonie, and according to them "national security is part of the governmental politics the goal of which is the creation of national and international political conditions favorable for protection or expansion of the important national values against the existing and potential enemies."[9]

In all presented definitions, simply due to semantic reasons, it is difficult to avoid the absolute sense of security, which is not convenient in terms of the idea of measurable graduated spectrum. These definitions, despite the determination of some criteria of national security, do not offer a complete representation about the firmness of the concept. Most of these definitions avoid the essential questions, the essential values, unreleased from contradictions with (non)separation of the subjective and the objective aspects of security, by pointing out only war as the only form of danger that is relevant for the national security – complete disposition toward an absolute view of security.

According to Kegly and Wirtkopf, national security is "Psychological freedom of the country from the fear that the country will not be able to oppose the threats of its existence and the national values that come from the inside or the outside".[10] According to our considerations, we can define national security as "Ability of the country to full and successful protection its vital national, state and social values, and survival from all forms and types of threats."

"Condition of the country and the society to timely oppose and eliminate real dangers, threats and risks and provide psychological liberation from the fears of threatening their values, survival, identity and the peaceful independent, unobstructed and overall development." From the previously presented opinions and attitudes regarding national security, a conclusion can be made that national security on one hand implies the condition of security of the national country, and on the other hand it implies the awareness and organized action of the country and the society in order to ensure survival, development and existence of the individual, the society and the country, that is, their securing from all sources of threats and at all levels, in all fields of the country and the society.

The priority of national security should be the provisioning of freedom, independence and integrity of the country, the sovereignty and the

[9] Frank N. Trager and Frank L. Simonie, „An introduction to the Study of National Security", bo F. N. Trager and P.S. Hronenberg, National Security and American Society Lowrense Kansas, University Press of Kansas, (1973) p. 36

[10] Source: Charles W. Kegly. Jr. and Eugene R. Wirtkopf (2001) World Politics-Trend and Transformation, Wadsford, a division of Thompson Learning, inc. p. 655

territorial integrity, the human liberties and rights of the citizens and the subnational and national groups, the political and social stability and prosperity of the society and the country, stable and dynamic development and unobstructed functioning of the legal country, stable and sustainable public order and personal security of the citizens, as well as a healthy living environment.

The creation of the social country changed the role of the country that obtained a double function in this field – securer and protector. This is a critical point that radically changes also the notion of what national security comprises of. As the country changes in the new conditions of globalization and the new complex international surrounding, the new variable role of the country also implies a new – modified function of the national security. Many authors today claim that the term globalization implies "weakening of state structures and the autonomy and power of the country".[11]

Faced with the new globalizing economic and security problems, many modern countries become less able to satisfy / realize an important part of the functions that the citizens expect from them. The country is no longer capable of being a simultaneous securer for the population, guarantor of the internal social stability and competitor of the increasingly complex and increasingly mutually dependent international arena.

"The innate" contradictions of these state roles are increasingly deepened and their negative impact is multiplied in a period of change or crisis. The changed role of the country (weakened or strengthened) enforces the country to adjust and find new ways to react to the new global economic trends that can often harm its security. In this regard, it is also important to emphasize the transformation of the political to the identity. Individuals often "lose" their identity of become distant from "state identity" and they decreasingly identify themselves with their own country, rather they identify themselves with numerous non-state groups. It is another serious impact on the national state concept because the patriotism and the nationalism of citizens is eroded to a great extent – and this is an important factor for identification of the citizens with the values of the modern country and attraction of their loyalty.

3. NATIONAL AND HUMAN SECURITY

The human security concept is a vertical and horizontal expansion (or deepening) of the traditional idea of national security, defined as protection of the state sovereignty and the territorial integrity from military threats.

[11] Ulkich Beeck, World Risk Society, Polity Press / Blackwell Publishers, Canbridge, UK. 1999

The concept of human security is mentioned for the first time in the edition *Report on human development* from 1994, an edition of the United Nations Development Programme (UNDP 1994). The report defines the scope of human security and it covers seven fields:

- Economic security – secure basic income for individuals, usually from production or mercenary work, or as the last option, from some public financed network of social protection.
- Security of food – care for all the people to have constant physical and economic access to the most necessary food.
- Health security – guarantee of minimum protection from diseases and unhealthy lifestyle.
- Security of the environment – protection of people from the short-term and long-term devastation of nature, threats in the environment as a result of the human and setback of the natural environment.
- Personal security – protection of people from physical violence, from the country or other countries, from violent individuals or sub-national factors, from domestic violence and abuse by adults.
- Security of the community – protection of people from the loss of traditional relations and values and from sectarian and ethnic violence.
- Political security – care for the people to live in a society that respects basic human rights and guarantees the freedom of individuals and groups, protecting the attempts of the government to impose control of ideas and information.

The aspect of human security is mostly related to social security, because people in the human environment where they exist, are surrounded, that is, exposed to social, economic and political impacts and consequences that cannot be avoided. "Social threats come in many different forms, however there are four obvious basic types: physical dangers (pain, injury, death), economic dangers (seizure or destruction of property, having no access to workplace or resources), threats related to rights (prison, denial of normal civil liberties) and threats for the position or the status (degradation, public humiliation)".[12] In this regard, security of individuals cannot be defined so easily and simply. All included factors that are necessary for the operationalization of this term – life, health, status, wellbeing, freedom, are much more complex, with many layers, and often they are contradictive. These variables are often burdened with the differences between the objective assessment, most of them cannot be replaced (life, extremities,

[12] Barry Buzan, (1983). PEOPLE, STATES AND FEARS, The National Security Problem in International Relations, Weatsheaf Books, LTD. p. 31

status), while the casual relations that refer to threats are unclear. "The definitions in the sentences give the nuance of this ambiguity by mentioning how it is to be protected from danger, to feel safe and be free from doubts. The referent threats (the danger and the complex ones) are very unclear, and the subjective feeling of security has no relation to being truly secure."[13]

The paradox, of course, is that the country also becomes a serious source of social danger for the individual that always sees it as a mechanism for achieving adequate levels of security in terms of social threats. Although this conclusion unequivocally emphasizes the paradox between the great expectations and the recognition of the individual by the country, still the security of individuals is inseparably related to the state security. Today, when modern societies and countries are becoming more unrecognizable, logically a dilemma is imposed: "what is the security of individuals that is irrevocably related to the country, that is, whether its non-recognition is not related to their insecurity". In the new and variable social and international ambience, the country is becoming a source of controversies and dangers. In such circumstances and conditions, the conflict between individual and state interest may be significantly large. "It should not be unusual or a paradoxical thing for the individuals to depend on the country for maintenance of the general security in their environment, while at the same time the country is considered an important source of their individual security."[14]

Citizens are faced with many dangers that arise directly or indirectly from the very country. The dangers from the country have an important impact on the overall functioning of the human during his life. The dangers produced by the very country and directed towards individuals can be grouped into four general categories:

- dangers generated by domestic legislation and its non(implementation);
- dangers that arise from the direct political activities of the country against the individuals or the groups;
- dangers that are a product of the fight to control the state machinery and
- dangers that arise from state policies.

There is also another variant of a serious potential for conflict between the individual and the national security. The seriousness of this variant arises from the existence of nuclear weapons and the types of politics

[13] Ibid: p. 30
[14] Ibidem: p. 37

for national security that these weapons are based on (threats of alternating nuclear attacks).

4. CONCLUSION

The alarming ambiguity of security as a concept results with the irreconcilability of the two viewpoints on national and human (individual) security. Probably it is impossible to reconcile the two viewpoints, as well as the two concepts that seek for fulfillment of the usual strive and expectation to realize security as a value.

These arguments unequivocally confirm the conclusion that the necessary harmony between the national and the human security cannot exist. Also, one must point out the inevitable contradiction between the individual and the national security – contradiction that is rooted in the very nature of political collectivities. "The fight" and the eternal opposition of these two concepts and interests that also have different variations in specific historic circumstances can be reflected through the following conclusions:

- That security is important regardless of the country at a level of individuals.
- That human security is subjected to positive and negative impacts by the country and that the foundation for non-harmony between human and national security is a permanent contradiction.
- That the human search for security has different impacts on the national security, both as a problem and as a stimulant and limitation."[15]

The harmonization and the reduction of the contradiction between the concept of the human and the national security for a long time will occupy the national thought and practice both as a problem and as a stimulant and limitation.

5. REFERENCES

Axworthy, L. (1999). NATO's new security vocation. Nato rewiew.

A. Huwaydi, Militarization and security in the Middle East, PrinterPublishes, 1989.

A. Wolfers, National Security of Ambiguous Symbol, Political Science Quarterly, 67/4, 1952.

Burton, J. (1990). Conflict: Resolution and prevention. Basingstoke, England: Macmillan press

[15] Ibidem: p. 48 - 49

Carnegie Commission on preventing deadly conflict (1997). Preventing deadly conflict. Final report. New York: Carnegie Corporation of New York

Charles W. Kegly, Jr. and Eugene R. Wirtkopf, (2001) World Politics-Trend and Transformation, Wadsford, a division of Thompson Learning, inc.

Falk, R. (1999). Pursuing the quest for human security. In Worlds apart: Human security and global governance, edited by M. Tehranian, p. 1 - 22. New York: I. B. Tauris.

Frank N. Trager and Frank L. Simonie, „An introduction to the Study of National Security", bo F.N.Trager and P.S. Hronenberg, National Security and American Society Lowrense Kansas, University Press of Kansas, (1973).

Hans J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace, Fifth Edition, Revised, New York: Alfred A. Knopf, 1978, p. 4 - 15

K. Booth, Security Emancipation, Review of International Studies 17(4), 1991.

Kotovcevski, M. (2013) National Security, Skopje, Bomat graphics - Skopje

Mishael H.H. Louw, National Security Pretoria, iss-University of Pretoria, 1978, according to a quotation from "The Purpose of the Symposium".

Newman, E. (2001) Human security and constructivism.Visions of international studies: International studies perspectives 2, p. 239 - 251

Ul-Haq, M. (1999). Global governance for human security. In Worlds apart:Human security and global governance, edited by M. Tehranian, p. 79 - 94. New York: I. B. Tauris

Ulkich Beeck, World Risk Society, Polity Press / Blackwell Publishers, Canbridge, UK. 1999

Thomas, C., and P. Wilkin, eds (1999). Introduction to Globalization, human security and African expirience, p. 1 - 19 London: Lynne Rienner.

ICDI(1980) North-South: The Report on the International Commission on International Development Issues, London: Pan Books.

UNDP (1994). United nations human development report, 1994. New York: United Nations

UNDP (1999). United nations human development report, 1999. New York: United Nations

Wheelek, N.J. and Booth. K. (1992), "The Security Dilemma"; in J.Baylis and N.J. Rengger (eds) Dilemmas of World Politics; International isues M A Changing world (Oxford: Oxford University Press).

UDK: 343:811.111'276.6'37]:811.163.3'255.6
344:811.133.1'276.6'37]:811.163.3'255.6

SEMANTIC ANALYSIS OF SELECTED CRIMINAL LAW TERMINOLOGY IN ENGLISH AND FRENCH AND THEIR TRANSLATIONAL EQUIVALENTS IN MACEDONIAN

Vesna Trajkovska, PhD,
Faculty of Security Skopje
e-mail: trajkovska_vesna@yahoo.com

Aneta Gjurovska, MA
e-mail: anarso_mk@yahoo.fr

Abstract

Lexical richness of a given language is reflected in the extent of the lexical repertoire used for lexicalization of concepts developed among members of the respective language community. Depending on the level and pace of their lexical growth, different languages use different words for naming a particular concept. When translating from one language into another, in a majority of cases it is possible to find one-to-one lexical correspondence between the languages in question, but there are also numerous cases when one concept is lexicalized with several synonyms only in one of the languages participating in the translation process. These synonyms often carry certain semantic specificities, which may cause problems for translators in their attempts to provide adequate lexical equivalents in another language.

Taking into account the fact that tendencies described above can be identified in both general and specialized terminology, the paper deals with determining the semantic specificities of a limited number of words and expressions from the area of criminal law in English and French on the one hand, and the lexical solutions for their translation into Macedonian, on the other. For the purpose of this paper, the authors specifically focus on the analysis of: concepts with multiple lexical options in one of the given languages, various meanings of single lexical items, semantic differences of synonymously used lexical forms in one of the languages in question and their corresponding equivalents in the other languages, and other specific

cases which the authors considered challenging for a detailed semantic analysis.

Key words: language, translation, meaning, English, French, Macedonian

1. INTRODUCTION

Successful translation of words from one language into another is based on the accurate transfer of the semantic content contained in the concepts being lexicalized by the respective words or expressions which are subjects of translation. In order to be able to achieve this challenging and demanding goal, translators have to carry out detailed semantic analysis of the concepts and try to find out the nearest translational equivalent in the target language, taking into consideration the fact that it is impossible to find absolutely synonymous lexical solutions in all cases. To a great extent, this impossibility is due to cultural differences of the language communities behind those languages which, as we all know, reflect the cultural specificities, the ways of live, and the perception of reality of their speakers. This is the reason why, in many cases, translators face the problem of untranslatability of certain concepts in other languages, or their adaptation to the perceptions and experiences of the speakers of the target culture, thus "domesticating" the term and making it comprehensible to the target speakers. The problem is particularly emphasized when the languages in question are not equally rich in lexical items denoting seemingly synonymous concepts, so the translator is faced with a lexical gap in the lexically "poorer" language. This lexical gap is usually filled by coining new words from the existing ones, by providing descriptive alternatives, or by importing the word from the source language adapting it to the target language morphologically and phonologically in the form of a foreignism.

The complexity of the translation process can also be witnessed in the translation of words and expression in the area of criminal law. In different languages we can find different definitions for certain criminal law terms, depending on the laws defining that specific area in the respective countries. However, in many cases, words used in these areas in different languages derive from Latin, which means that they share the same etymology, and their modern day usage is to a great extend based on the semantic notions covered by the original term, with certain modifications in the form of semantic narrowing or extension. This is particularly true for criminal law concepts with longer tradition and history. As far as the new criminal law concepts are concerned, with regards to new, modern types of crimes in particular, we can notice a tendency of an increased English lexical influence on their lexicalization in other languages. Being the world lingua franca in

the last few decades, and especially in the 21st century, new concepts in most area including criminal law are coined in English and then imported into other languages, equally affecting both "bigger" and "smaller" languages.

Taking into account these arguments, in the sections that follow we will give an analysis of a limited number of criminal law terms in English, French and Macedonian. We selected words and phrases with specific common denominators in terms of their etymology and meanings, analyzing their semantic specificities and the ways in which they are lexically shaped in all three languages.

2. WORDS WITH LATIN ETYMOLOGY WHICH HAVE DEVELOPED DIFFERENT MEANINGS IN CONTEMPORARY MACEDONIAN, ENGLISH AND FRENCH

Taking into consideration the fact that Latin used to be the most productive "exporter" of words into the lexical corpora of most European languages for centuries, we should not be surprised by the great number of words originating from Latin, and then adapted to the morphological systems of the respective languages. In this process of morphological domestication, the borrowed word in the other languages usually keeps the meaning rooted in the Latin word. However, there are cases when the Latin-rooted words may develop a semantically wider or narrower concept in one language compared to other languages, and examples of this type are of specific interest for translators and linguists, in general. To illustrate this phenomenon for the purpose of this paper we took the example with the English word *author*, the French word *auteur*, and their Macedonian equivalent *avtor*. These three words are derived from the Latin word "auctorem" (with its nominative form "auctor") meaning "enlarger, founder, master, leader", or "one who causes to grow", as the agent noun from "auctus", the past participle form of "augere", meaning 'to increase".[1] It was introduced into the English lexical corpus through the Old French word "auctor, acteor" with the meaning of "author, originator, creator, instigator".[2] In contemporary English, *author* usually refers to "a writer of a book, article, or document"[3], but more generally, and in formal communication, *author* may refer to "the person who starts a plan or an idea" (Longman, 74). Thus, we may say that *Arthur is the author of the novel about the infamous criminal*, or that *Arthur is the author of the hijacking plan*. In both cases, the

[1] http://www.etymonline.com/index.php?term=author
[2] Ibid
[3] http://www.oxforddictionaries.com/definition/english/author

key semantic element of creating, i.e. instigating something is retained, and the book, document, article, plan etc. can generally be related to any area of human experience. In French, on the other hand, we can follow further development of new, more specific meaning, which is restricted to a limited area in which it is used. The noun *auteur* is primarily used with the meanings "créateur, personne dont un objet est l'œuvre"[4], and "écrivain, créateur d'une œuvre littéraire"[5], denoting the same concept as the English equivalent *author*. However, within the field of Criminal Law, the French noun *auteur* denotes perpetrator of a crime act. This meaning was introduced with the publication of "Le Grand Larousse Universel" in the 19th century where the term was included as *auteur principal* and was defined as "one who directly and materially participates in the commission of a crime"[6]. The widespread use of this noun denoting perpetrator of a crime can also be supported by the fact that it served as the root word for the derived noun *coauteur* which is also widely used for a person who helps in the commission of a crime with another person(s). It is believed that this meaning of *coauter* was first mentioned in "*Manuel élémentaire de droit constitutionnel"* in 1949[7]. In Macedonian, the noun avtor refers to a writer, inventor or creator of something which corresponds to the meanings of the English noun author. As regards the additional meaning found in French, for a perpetrator of a crime, Macedonian speakers usually use the nouns *storitel* or *izvršitel.*

3. FRENCH WORDS BORROWED IN MACEDONIAN AND ENGLISH WITH DIFFERENT MEANINGS

It is a fact that English and French lexical corpora are to a great extent based on Latin words and served as the intermediary languages for exporting these words into other languages. As we could see from the examples in the previous sections, these words often have several meanings, but for the purpose of our paper we limited our analysis to the borrowed which have developed a specific meaning in the area of Criminal law, inter alia. In this section we will elaborate on a very interesting phenomenon, when a Latin-based word exports the same form in French and English for a criminal law term, while the same form is imported in Macedonian, but not in the same field. To illustrate this phenomenon, we chose the English and

[4] http://www.le-dictionnaire.com/definition.php?mot=auteur
[5] Ibid
[6] QUEMADA B., 1968, *Les dictionnaires du français moderne 1539-1863. Étude sur leur histoire, leurs types et leurs méthodes*, Paris, Didier.
[7] Manuel élémentaire de droit constitutionnel - Réédition 2002, Georges Vedel, Guy Carcassone, Olivier Duhamel

the French noun *jury* which has the identical form in both languages. In the area of Criminal Law, according to the Online Oxford dictionary, the English noun *jury* has the meaning of "a body of people (typically twelve in number) sworn to give a verdict in a legal case on the basis of evidence submitted to them in court"[8]. With this meaning, *jury* is actually derived from the Old French noun "juree" meaning "oath, legal inquiry", i.e. from the Old French verb "jurer" meaning "to take an oath, swear" (ibid). This meaning of jury in the area of Criminal Law coincides with its respective meaning in French, where, according to Hachette encyclopedic dictionary *jury* is defined as "ensemble des citoyens susceptible d'être jures, ensemble des jures d'une cour d'assises, appeles de prendre part au jugement d'une affaire criminnelle". (Hachette, 1999:1021) In a more general use, the noun *jury* refers to "commission d'examinateurs, d'experts" (ibid), which coincides with the English meaning of "a body of people selected to judge a competition"[9]. What makes this term interesting for our analysis is the fact that in Macedonian we can find both concepts, but lexicalized by two different words. It is interesting to note that Macedonian speakers use the French borrowing *žiri* only for referring to a group of people selected to judge a competition and is typically used within the wider phrase *žiri komisija*. As far as the Criminal law field is concerned, the English / French noun *jury* is translated into Macedonian as *porota*.

4. METAPHORICAL EXPRESSIONS IN THE AREA OF CRIMINAL LAW ENGLISH FRENCH AND MACEDONIAN

In the area of Criminal Law, there are also cases when certain analogies or metaphors are used for naming a specific type of crime. These analogies are usually derived from the language in which the expression was coined and are exported into other languages. To illustrate this practice, in this section we chose the expressions *money laundering* and *Trojan horse*.

Money laundering is an expression which was originally coined in English and exported into other languages. This expression is used metaphorically and denotes a type of financial crime which consists of "the passing of money from illegal activities, such as drug trafficking, through apparently legitimate businesses to allow it to be used further without being detected" (Collin, 2003: 131 Dictionary of Economics), or in other words "legitimizing money from organized or other crime by paying it through normal business channels" (Martin, 2003:319). The original link between money laundering and laundering in its basic meaning is obviously based on

[8] http://www.oxforddictionaries.com/definition/english/jury
[9] http://www.oxforddictionaries.com/definition/english/jury

the concept of washing, with different referents or "objects" of the washing process. Within the context of money laundering, the object of the laundering action is the money which has been made "dirty" by "dirty" i.e. illegal or suspicious financial activities. The same expression, covering the same semantic content, can be found as a loan translation in Macedonian, where it is literally translated as *perenje pari*. As far as its French counterpart is concerned, we noticed that French speakers use a slightly different metaphor, but keeping the original idea of the English expression. Namely, they use the corresponding French equivalent *blanchiment d'argent* where the metaphor is based on the noun "blanchiment", as a nominal form derived from the verb "blancher" which corresponds to the English verb "bleach" and the Macedonian verb "izbeluvanje". As opposed to *blanchiment d'argent* the French speakers also use the expression *noircissement d'argent*, which denotes the opposite process from the one involved in money "bleaching".

In this group of metaphorical expressions we will also mention the expression *Trojan horse*. It is a term that belongs to cyber crime terminology since it can be used for performing cyber crime activities. The metaphor of the ancient Greek concept of a Trojan horse was most probably coined in English due to its status of the lingua franca of computer science and then it was introduced into the lexical corpora of other languages. The "inventors" of this cyber crime term were obviously inspired by the myth of the Trojan horse from Ancient Greece, where the Greek soldiers hid in a wooden horse which was presented to the Trojans as a gift. When the Trojans brought the "gift" inside the city walls, the hidden soldiers used the chance to open the city gates, allowing the Greek soldiers to conquer the city. The identical idea is preserved within the context of cyber crime as well, where a Trojan horse program is presented as a useful computer program, or is attached to a useful software, but when it is executed it can cause harm to the computer system. To put it differently, this concept actually refers to a type of a malware program which contains malicious code, which may cause loss or theft of data[10]. Maintaining the original semantic specificities, this expression is mainly accepted in other languages in the form of a loan translation. In Macedonian, Trojan horse is literally translated as *trojanski konj*, or simply *trojanec*. In French, it is also accepted in the form of a loan translation as *cheval de Troie*.

5. ANGLICISMS IN FRENCH AND MACEDONIAN

In the second part of the 20th century, after the Second World War, English was promoted as the world lingua franca, i.e. the language of

[10] http://en.wikipedia.org/wiki/Trojan_horse_(computing)

international communication at a global level. The lingua franca status of English has made it the main "exporter" of lexical influences on other languages, including both French and Macedonian. This tendency continues in the 21th century, and it is particularly evident in the areas where new concepts occur as well as the need for finding appropriate lexical solutions. In the area of criminal law, anglicisms are most likely to be found in the new types of crime, such as cyber crimes and modern types of economic crimes, but they can also be identified among the words of older origin. Thus, one of the most exploited anglicisms in the area of Criminal Law is derived from the English verb *kidnap*, which is imported into Macedonian as *kidnapira*, and into French as *kidnapper*. The English verb *kidnap* is etymologically rooted in the words "kid", with the meaning "child", and the word "nap", meaning "to snatch away". Defined this way, *kidnap* primarily referred to kidnapping children, and was later semantically broadened to include all age categories. According to Longman Dictionary, *kidnap* is now used with the meaning "to take someone away illegally, usually by force, in order to get money for returning them" (Longman, 777). It is with this semantic extension that the verb *kidnap* was imported into the lexical corpora of Macedonian and French. Thus, according to Larousse online dictionary, *kidnapper* is defined as the verb form of the noun *kidnapping* which means "enlèvement de quelqu'un, en particulier pour extorquer une rançon"[11] and the same meaning is transferred in Macedonian, as well, through the verb *kidnapira*. In Macedonian, we can also notice expansion of the concept, and its use with reference to other objects, apart from humans. Thus, we can often find it in collocations with means of transportation which are hijacked, as well as metaphorically with some abstract notions, such as ideas, documents, etc.

In the area of economic crimes, we will single out the English noun *racket*, with the meaning of "a dishonest way of obtaining money, such as by threatening people or selling them illegal goods" (Longman, 1164). In the Macedonian lexical corpus *racket* is adapted in the form of *reket* with the same meaning as the one provided in Longman's definition, with the derived nominal form *reketar* for the doer of the action and the verbal form *reketira*. In French, this type of crime is lexicalized with the noun *racket*, defined as "extorsion d'argent par intimidation ou violence"[12]

[11] http://www.larousse.fr/dictionnaires/francais/kidnapping/45512
[12] http://www.larousse.fr/dictionnaires/francais/racket/65935

6. WORDS WITH THE SAME FORM AND SIMILAR MEANINGS IN ENGLISH, FRENCH AND MACEDONIAN

In this section we will give an example of a word having the same root and similar meanings in all three languages. One of the most exploited words in the area of Criminal Law, more specifically in the area of economic crime is the English noun *corruption*, its French counterpart *corruption*, and the corresponding Macedonian equivalent *korupcija*. As regards to its etymology, this noun is derived from the Latin word "corruptionem"[13], from the past participle stem of "corumpere", meaning "to destroy; to spoil"[14]. According to Longman Dictionary of Contemporary English, the noun *corruption* is defined as "dishonest, illegal, or immoral behavior, especially from someone with power" (Longman, 310). According to online Oxford dictionary, the definition of *corruption* is expanded and covers the notion of "dishonest or fraudulent conduct by those in power, typically involving bribery"[15]. According to French-Macedonian dictionaries within the context of criminal law, the noun corruption is defined as "Moyens utilisés pour circonvenir quelqu'un, le détourner de son devoir" (Atanasov, Poposki, Dimovska-Kalajlievska, 1992:443). In the same context, the English noun *corruption* is translated into Macedonian as *korupcija*, but it can also be translated as *podmituvanje, potkupuvanje, korumpiranje* and even *mito*. (Murgoski, 2001:279).

Apart from being a translational equivalent of the English noun *corruption*, the French noun *corruption* is often found as a translational equivalent of the English noun *bribery*, which is a different concept from *corruption*, although, as we could see from the Oxford definition *bribery* can be an important element in the semantic content of *corruption* as a concept. *Bribery* can be defined as "the offering, giving, receiving, or soliciting of anything of value in order to influence the actions of a public official" (Oran, 68). This is actually very similar to the French noun *concussion*, defined as "délit consistant à recevoir ou à exiger des sommes non dues, dans l'exercice d'une fonction publique" (Hachette, 2000: 411). As for the action of bribing, the French speakers can also use the verb *soudoyer,* meaning "payer quelqu'un pour s'assurer sa complicité, son soutien[16], while for bribe itself, mainly in colloquial interaction they use the metaphorical expression of *pot-de-vin*. The history of the use of this term goes back to the 16th century, to denote the action of leaving a tip to a waiter in a restaurant, and the tip itself

[13] http://www.etymonline.com/index.php?term=corruption&allowed_in_frame=0
[14] http://www.etymonline.com/index.php?term=corrupt&allowed_in_frame=0
[15] http://www.oxforddictionaries.com/definition/english/corruption
[16] http://www.larousse.fr/dictionnaires/francais/soudoyer/73610?q=soudoyer#72784

was a glass of wine or beer, as suggested by its etymology: pot (glass) and vin (wine). The term was then semantically broadened and acquired a pejorative meaning and now has become a kind of a synonym for illegality and corruption. According to modern dictionaries, it is used for denoting "somme d'argent, cadeau payé, hors du cadre legal d'une tractation, pour obtenir"[17].

7. CONCLUSION

On the basis of the examples presented in this paper, we can draw a conclusion that providing adequate translational equivalents when translating English, French or Macedonian words denoting identical or similar concepts requires detailed their semantic analysis by the translators. In choosing the appropriate translational equivalents when translating from / into one of these languages, they have to be aware of their semantic specificities, so as to reduce the risk of semantic misinterpretation of the original concepts and their inaccurate or wrong translation.

8. REFERENCES

Collin, P.H. 2003, Dictionary of Economics, London: A&C Black Publishers Ltd

Dictionnaire HACHETTE encyclopédique édition 2000, Hachette Livre 1999, Paris

Longman Dictionary of Contemporary English (1995), Longman Group Ltd.

Manuel élémentaire de droit constitutionnel - Réédition 2002, Georges Vedel, Guy Carcassone, Olivier Duhamel

Martin, Elizabeth A. (2003), *Dictionary of Law*, Oxford: Oxford University Press

Martin, Elizabeth A. 2003. Dictionary of Law, Oxford: Oxford University Press

Oran, Daniel (2000), Oran's Dictionary of the Law, Canada: West Legal Studies

QUEMADA B., 1968, *Les dictionnaires du français moderne 1539-1863. Étude sur leur histoire, leurs types et leurs méthodes*, Paris, Didier.

Atanasov, Petar, Poposki Aleksa, Dimovska-Kalajlievska, Ljubica (1999), French - Macedonian Dictionary, Skopje: Prosvetno delo

[17] http://www.larousse.fr/dictionnaires/francais/pot-de-vin/62984?q=pot-de-vin#62274

Murgoski, Zoze (2001), Big English – Macedonian Dictionary. Skopje: author
http://www.etymonline.com/index.php?term=corruption&allowed_in_frame=0
http://www.etymonline.com/index.php?term=corrupt&allowed_in_frame=0
http://www.oxforddictionaries.com/definition/english/corruption
http://www.larousse.fr/dictionnaires/francais/concussion/17989?q=concussion#17863
http://www.larousse.fr/dictionnaires/francais/soudoyer/73610?q=soudoyer#72784
http://www.larousse.fr/dictionnaires/francais/pot-de-vin/62984?q=pot-de-vin#62274
http://www.larousse.fr/dictionnaires/francais/kidnapping/45512
http://www.larousse.fr/dictionnaires/francais/racket/65935
http://en.wikipedia.org/wiki/Trojan_horse_(computing)
http://www.etymonline.com/index.php?term=arrest
http://www.oxforddictionaries.com/definition/english/arrest
http://www.oxforddictionaries.com/definition/english/jury
http://www.oxforddictionaries.com/definition/english/jury
http://www.etymonline.com/index.php?term=author
http://www.oxforddictionaries.com/definition/english/author
http://www.le-dictionnaire.com/definition.php?mot=auteur

INTERNATIONAL POLICY AND INTERNATIONAL HUMAN RIGHTS

UDK: 341.231.14(4-672 ЕУ)

DEMOCRACY AND HUMAN RIGHTS IN THE INTERNAL SECURITY POLICIES OF EU – AN IMPERATIVE TO THE SECURITY OF THE REGION

Zorica Saltirovska, PhD

Institute of security, defence and peace, Faculty of Philosophy – Skopje

e-mail: *zorica_ind@yahoo.com*

Abstract

In any society, democratisation and the respect of human rights are basic prerequisites for a stable and secure society which will not generate violence in the internal relations, and even less against its citizens as individuals, or against social and other groups. Regardless of whether we validate the claim that the already established democracies do not resort to violence in their internal and foreign policies, we are still witnesses that even in countries with a long democratic tradition, conflicts do escalate, democratic principles and human rights are being suspended, and the functioning and power of democratic institutions and processes are being limited. This is especially true when a country is experiencing and facing a security threat. Moreover, in several countries in Europe, democracy has begun developing in the last decades of the 20th century - a process which was fraught with ethnic conflicts, violent acts of nationalism, etc. The integration of these countries into the international and regional organisations seems to have become not only an opportunity for overcoming certain undesirable conditions and tendencies for disruption of security, but also an opportunity for speedy democratisation and participation in common mechanisms for human rights protection. By signing the agreements, conventions and human rights charters, the countries are obliged to respect and adhere to them consistently, and implement them in their standards for human rights in the national legislative. Some agreements also create mechanisms for monitoring the implementation of the standards for human rights set by governments, thus exerting internal and external pressure for a more efficient implementation. These mechanisms could be set at international, regional or national level. However, regardless of the level, their enactment by the governments is an implicit obligation to avoid any

actions that could harm or create conditions for harming the human rights. The European human rights system arose from the existing organisations – OSCE and the EU, and was build on the basis of greater regional agreements, such as the European Human Rights Convention. Within the EU, this Convention, along with the common constitutional tradition of Member States, was at first accepted as a general principle of the Community's law, and with the Maastricht Treaty, as a legal principle of the TEU. In 2007, the text of the EU Human Rights Charter was published, and the Lisbon Treaty defines its legal nature as a legal force identical to the other EU treaties. The accession of the new legal subject of the international law – EU, to the European Human Rights Convention, as foreseen, means that the entire EU law will be interpreted from the aspect of this Convention, and not that it will be treated as a general principle in EU law. Thus, a great advance has been made in the establishment and development of the concept of Europe as a single area of freedom, security and justice, and the development of policies and actions, which strengthen the security of this region.

Keywords: *democracy, human rights, internal security, security policies of the EU*

1. INTRODUCTION

The European Union is based on the principles of democracy, rule of law, and respect for human rights. The respect for human rights is one of the most fundamental and universal values in the international community; hence the promotion of human rights is a universal responsibility. The EU takes this responsibility very seriously, and is implementing an active policy regarding human rights through political dialogues, human rights clauses in agreements with partner countries, international fora and development assistance programs, such as the European Initiative on Democratisation and Human Rights (EIDHR). It includes integration of human rights and democratisation in the policies, programs, and projects of the EU, as well as funding specific projects on promotion and protection of human rights. The foundation of the EU is the firm resolution of its Member States to maintain and promote peace and stability in the region. In the centre of the internal security policies, it places individuals and their overall security, which also includes freedom from fear and meeting the needs which enable development and realisation of their individual and collective potential. Living in dignity, freedom, and security is only possible in open and democratic societies in whose basis lay the respect for human rights and the rule of law. Consequently, sustainable peace, development, and prosperity should be based in the respect for human rights, strengthening of the rule of

law and democracy – both of which areas in which the EU is especially active, including these principles into all aspects of the security policies, aware that there is no prosperity without respect for human rights, whether they be civil, political, economic, or cultural rights.

1.2 Development of the EU concept of human rights and freedoms

Regarding importance and treatment of human rights in the EU, they can be reviewed in two phases in the development of the concept of human rights and freedoms of the EU. The first phase encompasses the concept of the EU as an economic community. The Treaty on the European Union of 1957 did not comprise the protection of the human rights within the Community, but it created a common control mechanism for provision of fundamental civil rights, and the common market was to be realised by providing fundamental economic liberties within the Member States. The respect for the common constitutional tradition and the European Convention on Human Rights (ECHR) which was binding for all members of the European community, were accepted by the European court of justice as general principles of the Community. The process of European integration in this phase is based on the consistency in the implementation of the international and European standards in the Member States' respect for human rights and freedoms. The fundamental treaties of the European communities include mainly economic and other rights connected to the common market, as well as economic freedoms. Until the 1970s, in the legal order of the Communities there was a lack of any guarantee for fundamental human rights, and the European Court of Justice rejected the jurisdiction over the sphere of their protection, under the pretext that accepting such jurisdiction would signify meddling into the internal order of Member States. As a result of the activism of the ECJ in this phase and its first verdict on a case of human rights violation, the principle of supremacy of community law was established over the law of the Member States, and the treatment of human rights and freedoms was elevated to a community level.

The second phase in the development of the EU concept on human rights and freedoms corresponds to the strengthening of the EU as a political community. In this phase, the fundamental human rights and democratic principles were integrated into the economic community as a first pillar of the Union, and into its policies within the justice and internal affairs as the third pillar. This new track of human rights has been marked after the fall of the Berlin wall and the historical agreement of the previously ideologically disparate countries on the fundamental European values embedded into the Vienna Declaration on Europe as an area of democratic security and source of hope, namely: consolidating peace and stability on the European continent and accepting a pluralist parliamentary democracy for all European

countries, the inviolability and universality of human rights, the rule of law and enrichment of cultural heritage through cultural diversity (Leuprecht, 1994:145). At the 1993 Vienna Conference on human rights, the stance that all human rights devolve from human dignity and person, and that provisions in international documents (Universal Human Rights Declaration, ECHR, etc.) are held as general standards for all peoples, was reaffirmed. In the Maastricht Treaty, the development and consolidation of democracy, rule of law, and respect for human rights and freedoms, has been identified as one of the goals of European integration. Hence, the process of evolution of the concept of universal rights into a new model was opened, a model in which the standards of human rights have been elevated within the common area of freedom, security and justice. The Maastricht Treaty, in its sixth Article, lists the respect for human rights as a legal principle of the TEU.

The 1999 Amsterdam Treaty marks a step forward in the direction of integrating human rights into the legal order of the EU. According to the Treaty, the Union is based on the principles of freedom, democracy, respect for fundamental human rights and freedoms, as well as the legal state. These principles are common to all EU Member States, which respects the rights guaranteed in the ECHR, freedoms and rights which are the results of a common constitutional tradition and general principles of community law. The Treaty strengthened the significance of the fundamental social rights established in the European Social Charter of 1961 and the 1989 Community Charter of Fundamental Social Rights of Workers. Apart from the directives on tackling discrimination, the law on petition by citizens of the Union was extended. Concerning human rights policy, apart from establishing sanctions against regimes outside the EU which are violating human rights, a mechanism to sanction EU Member States whose practices are constantly and seriously in violation of human rights has been established leading to their eventually losing contracting rights (Suspension clause from Article 7 of the TEU). What is of special importance is that the first pillar contains the prohibition of discrimination, measures concerning asylum, immigration, refugees, certain competences in the sphere of employment, working conditions, and social protection, as well as the Schengen acquis which signifies elimination of internal borders. Introducing these fundamental rights into an exceptional function of the EU implies the strengthening of competences of its organs in the sphere of human rights (especially the ECJ), the greater cooperation between Member States in their affirmation, protection and strengthened influence of EU law regarding harmonisation of law of Member States regarding human rights (Shaw, 2000:350). The Treaty is binding to Candidate countries for accession to the Union, binding them to respect the fundamental human rights principles, while the ECJ has a general

authorisation to control how EU organs adhere to human rights and freedoms.

In spite of the progress made by the EU in the creation of a new approach towards the rights and freedoms, certain provisions, such as European citizenship, still has a limited scope. The corps of civil rights and freedoms remained further nationally determined whereby each country had a separate system of rights which were only selectively recognised to citizens of other countries. The inequality of civil rights was neither surpassed by the imposing of a prohibition of discrimination by the Amsterdam Treaty, since the prohibition had no direct action regarding unequally awarded rights due to the non-unified legal systems and systems of protection of Member States. Furthermore, policies concerning rights and freedoms of citizens of third countries inside the EU (asylum, immigration, refugees) ought to have been defined in compliance with the universal standards on human rights and the principle of solidarity, as well as include equal mechanisms for integration of citizens of third countries who are legal residents or employees in EU Member States.

2. HUMAN RIGHTS WITHIN THE CONCEPT OF A COMMON AREA OF FREEDOM, SECURITY AND JUSTICE

The evolution of the concept of fundamental human rights of the EU contributed to enriching the area of justice and internal affairs with new contents shaped through the concept of a unique area of freedom, security and justice, whereby this concept was set as a goal toward which the area of justice and internal affairs is aiming. The content of the new concept places European human rights standards in the centre of attention: free movement within the EU with control over external borders, equal rights for all EU citizens, unique immigration policy, judicial and police cooperation among Member States in the prevention and dealing with crime. Regarding content, the concept covers the rights of citizens of Member States, but also enables access to these rights to citizens of third countries. Freedom is a fundamental principle in the implementation of fundamental human rights into the common area of freedom, security and justice; security (internal and external) implies an efficient struggle against all types of crime; while justice (civil and criminal) implies an equal access to the institution providing justice. In 1999, the Council enacted a special regulation for development and consolidation of democracy, rule of law and respect for human rights and fundamental freedoms. The regulation provides special support for non-governmental organisations in the development of the civil society and promotion of human rights.

The Union's efforts to promote human rights and freedoms were overshadowed by the lack of a catalogue of fundamental rights which caused suspicion regarding the level of their protection. This fact, along with the unsuccessful effort for accession to the ECHR (due to the need of a previous amendment of the Treaty), led the Chiefs of countries and governments at the Cologne Summit in 1999, to invigorate the idea for the creation of a catalogue of fundamental rights of the EU. At the 2000 Nice Summit, the draft-charter for fundamental rights of the EU was set forth, composed of a preamble and seven chapters:

- Human dignity (fundamental human right);
- Right to freedom (civil rights to defence, asylum, protection during deportation, expulsion and extradition, free choice of profession, freedom of science and art, etc.);
- Equality (equality in front of the law, non-discrimination, respect of differences, rights of children, the elderly and persons with disabilities, etc.);
- Solidarity (social and economic rights);
- Citizenship (electoral right, right to access to documents and EU organs, right to mediation by the EU, right to filing lawsuits in front of the Parliament, freedom of movement and residence, diplomatic and consular protection, etc.);
- Justice (right to judicial protection and access to an impartial court, presumption of innocence and right to defence, prohibition of retrials for the same crime, etc.); and
- General provisions which similarly regulate the area of application, guarantees for the rights provisioned by the Charter, the level of protection of the rights and prohibition of their misuse (EU Charter of Fundamental Rights, 2000 and 2007).

Although the Charter did not have a status of Community law, it strengthened the rights stemming from constitutional traditions of the Community and international commitments of the Member States, and consequently served as aid in the interpretation of the judicial practice. Its value was further increased by the fact that it was an integral part of the European constitutional treaty. Despite the fact that the Treaty failed, Member States remained resolute to enforce the Charter as a legally binding document. Bearing this aim in mind, the Commission and Council on 12 December 2007, re-published the text of the Charter, leading to the Lisbon Treaty invoking the Charter in the amended Article 6 (1) of TEU. This Article defines the legal nature of the revised Charter as an identical legal force to all other EU documents. This, in turn, opened the possibility of recognising and interpreting Charter rights in new ways (Петрушевска,

2011:92). However, the minutes (item 7) determine that social and economic rights are not yet legally binding, unless certain legal commitments are also included in national legislative. Article 6 (2) of the TEU in the version from the Lisbon Treaty undertakes the legal basis from the Constitution on the accession of EU to ECHR, except for the specific situations of Member States regarding the Convention, especially its imposition of a state of emergency, For this reason, the next Treaty of accession of the EU to ECHR must clarify the details of the scope of its ties to the EU, as well as the institutional influence on the European court of human rights. The possibility of future external control in the implementation of the Charter is not excluded, similarly to the existent implementation of national standards of human rights (Hoffmeister, in Weidenfeld and Wessels, 2009:106).

The fundamental issue regarding progress of the concept of Europe as a single area of freedom, security and justice, is the issue of integration of the Charter into the basic EU treaties. This issue, as well as the issue of EU's accession to ECHR, was posed at the London Summit in 2001 (De Schutter, 2001:1). The answers to these questions implicitly involve changes in the accession structure and competencies of the EU in the direction of integral placement of the area of freedom, security and justice, which implies an efficient system of protection of the freedoms and rights proclaimed. Thus, fundamental rights and freedoms (identified as common values), are transformed from peripheral issues of European integration, to its deciding factor. Transforming the EU into a political community (which secures the implementation of common standards of human rights and freedoms, turning the vision of Europe as a single area of freedom, security and justice into a legal concept) means that the Charter, along with all guarantees of human rights, should have been integrated into the EU's legal system (primary and secondary law), and an efficient system for respecting and protecting them should be provided (Камбовски, 2005:163). With the Lisbon Treaty's coming into force, the Charter became a legally binding act for EU Member States whose citizens can invoke the Charter when disputing verdicts reached by EU institutions, if they consider those verdicts in violation of some guaranteed right or freedom. This means that the EU institutions are obliged by the Charter's provisions to enact legislative, and in case of dispute, the Court of Justice is to preside over the verdict. However, the Charter is implemented when Member States implement EU law, i.e. the Charter is 'null and void' over EU authorities which are not governed by the founding treaties. Consequently, the EU can regulate only rights embedded into the Charter for which there is an explicit authorization in the founding treaties (Ванковска, 2010:251). The Lisbon Treaty does not take into account the suggestions on expanding the jurisdiction of the Union through the establishment of a new human rights policy (encompassing all necessary

instruments which correlate to such a policy), which is an essential weakness of this part of the Treaty. The planned accession of this new subject of international law – the EU, to ECHR, enables the EU and its partners to be called to account on cases of violations of the Convention in front of the Court of Strasbourg, but is also a possibility for a direct invoking of the rights from the Convention in front of European courts in Luxembourg. The accession also implies interpretation of the sum of EU law from an aspect of the European Convention, rather than its treatment as a general principle in EU law (Петрушевска, 2011:92).

3. HUMAN RIGHTS AND FREEDOMS IN THE INTERNAL SECURITY POLICIES OF THE EU

The single area of freedom, security and justice ought to be a stabile, permanent, and accessible reality for all EU citizens. For this reason, the Stockholm programme places their interests and need in the centre of attention. The commitment of the Union and its members to protect the citizens ought to go in parallel with the respect for human rights and civil liberties and provide the highest standards in the guaranteeing of their security. This means that between security measures on the one side and measures for protection of rights and freedoms of the citizens on the other side, there ought to be a constant balance. Although a main priority of the Programme is the defining and development of an internal security strategy, it also outlines other priorities for the period of 2010 – 2014, as follows:

- Promotion of civil rights with a full realisation of the right to free movement, protection of the most vulnerable categories of citizens, protection of individual rights in criminal procedures, protection of personal data, and right to privacy, protection of the right to participation in the democratic life of the Union, and protection of the right of EU citizens to enjoy the same rights even outside the Union's borders;
- Alleviating the life of people through strengthening and respect of European law and justice, and providing an easier access to it;
- Promotion of commitment and solidarity in the issue of immigration and asylum, encompassing a global approach towards the immigration policy, a common procedure on asylum, a common solution on the problem of mass numbers of refugees, etc.;
- Consistent and decisive action outside the borders of the Union, i.e. with third countries, regional, and international organisations. The external dimension of EU policy promotes the highest values of rule of law, security, and justice abroad. Actions are being implemented mainly through the promotion of rule of law, democracy, respect for

fundamental rights and international commitments (The Stockholm Programme, 2009).

The action plan for the Stockholm Programme, among other things, provides measures for protection of the fundamental rights and freedoms, which encompasses the promotion of protection of data, implementation of laws, prevention of crime, fight against all types of discrimination, racism, xenophobia, and homophobia, child protection and protection of vulnerable groups from crime and terrorism, protection of individual rights in criminal proceedings, free movement, promotion of integration and migrant rights, development of new regional protection programmes, etc. Tackling diverse security threats implies implementing a series of measures by security and other bodies and institutions in charge, whose successful implementation can oftentimes endanger the rights of citizens. Consequently, the fundamental principles which determine the course of action in the EU Internal Security Strategy 'On a European Security Model' from February 2010, aim to protect the rights and freedoms of citizens and act in the function of meeting their needs and interests. The principles in question are as follows:

- Respect for fundamental human rights, international protection, rule of law and privacy;
- Protection for all citizens, especially the most vulnerable groups, victims of crime and terrorist acts, who are in need of special attention, support, and societal recognition;
- Transparency and responsibility in security policies, allowing for greater clarity for citizens, and encompassing their needs and opinions;
- Dialogue as a means for overcoming differences, in compliance with the principles of tolerance, respect and freedom of expression;
- Solidarity when facing security threats; and
- Mutual trust, which is essential for a successful cooperation (Draft Internal Security Strategy, 2010).

These principles are in the basis of all EU strategies for dealing with security threats, especially terrorism, organised crime, human trafficking, etc. Hence, in the Strategy for fighting terrorism, one of the basic activities in the prevention against terrorism is the promotion of good governance, human rights, democracy, education, but also judgement against inequality and discrimination. When enforcing activities against terrorists and their criminal prosecution, their human rights and the international law ought to be respected, the rights of citizens ought not to be violated (rights to free movement, privacy, and secrecy of data) and the rights of terrorism victims ought to be protected. The respect for human rights, embedded into the EU Charter on fundamental rights is a key prerequisite for the promotion of

mutual trust between the national governments, and generally among the public. Regarding respect for fundamental rights and freedoms during the implementation of the EU Internal Security Strategy:

The Commission adopted a Strategy on effective implementation of the EU Charter of fundamental rights (COM (2010) 573) and is monitoring its implementation, presenting the achievements in annual reports;

- The Commission composed operational guidelines for respect of fundamental rights (SEC (2011) 567), and in 2012, it proposed a package for protection of data (COM (2012) 9, COM (2012) 10, COM (2012) 11), which is still under discussion;
- The EU Fundamental Rights Agency – FRA, presented many opinions and reports for various issues from the area of internal security, and in December 2013, it presented the manual for police training, enacted on the basis of respect for human rights;
- Measures for protection of victims against crimes have been undertaken: The Directive for minimum standards on rights, support and protection of victims of crimes (Directive 2012/29/EU, OJ L 315), Regulation on mutual recognition of protection measures in civil matters (EU, NO 606/2013), and Directive on European protection order (2011/99/EU);
- Good progress has been made in the development of the European area of justice, based on a mutual recognition and mutual trust (3 Directives in procedural rights of suspects and convicts: on the right of detaining and interpretation during criminal proceedings (Directive 2010/64/EU), the right to information (Directive 2012/13/EU), and the right to access a lawyer, an impartial actor, and communication with third persons and consular authorities (Directive 2013/48/EU)).

Candidate Countries need also comply with general principles of EU law, common for all Member States, outlined in the key provision (Article 6 of the TEU) regarding fundamental rights: freedom, democracy, respect for human rights and fundamental freedoms, and rule of law. One of the criteria (Copenhagen criteria from 1993) which must be met by these countries in order to be eligible for accession to the EU is to build and maintain stability of institutions which guarantee the adherence to these principles. The criteria uphold the values which lie in the basis of the EU, among which the protection of fundamental rights plays a key role. This is a great challenge for Candidate Countries, since their societies are still facing numerous hostilities and discriminatory treatment towards vulnerable groups, such as Roma people, members of non-traditional sexual orientation groups, members of minority groups, etc. Consequently, the Commission proposed that Candidate Countries, which participate in the FRA as monitors, to support the efforts of the EU to promote the respect of human rights. The EU

provides financial support to projects which are being conducted by the civil society, mainly within the framework of the European instrument for Democracy and Human Rights (EIDHR) or the IPA programme. These projects are focused on: minority rights, children's rights, gender equality, rights of people with disabilities, rights of people with non-traditional sexual orientation, respect for human rights in prisons, promotion of access to rights, freedom of expression and freedom of the media, sustainable return of migrants, rehabilitation and reintegration of torture and violence victims, support for development strategies for Roma communities, etc. In 2013, in the Republic of Macedonia, the EIDHR finances 8 projects on: greater inclusion of minorities on a local levels, youth activism for encouraging of acceptance of differences, participation in creation of public policies, equal treatment of persons with special needs, inclusion of Roma waste collectors in formal waste schemes, strengthening of the cooperation between organisations and media regarding human rights and the freedom of expression in the civil society, promotion of democracy, and youth's endeavours in freedom of expression. The IPA programme, on the other hand, allocated 0.3 million euro for funding projects for promotion of criminal justice (EU Annual Report on Human Rights and Democracy in the World in 2013). One of the aims of EU internal security policies for the upcoming period, is to strengthen the adherence to fundamental rights as part of the approach whose focal point is the citizen. Fundamental rights strengthen EU's internal policy through maintaining and increasing citizens' confidence among themselves, and between citizens and government institutions. The Fundamental Rights Agency has to contribute to the development of EU internal security and criminal matters policies. Furthermore, it ought to strengthen the cooperation with human rights institutions, as well as the dialogue with third countries, international organisations, the private sector, and the civil society (COM (2014) 365 final). EU's new internal security strategy needs to strengthen the integration of fundamental rights into the internal security, increase operational connections between the internal and external security, consolidate old and create new synergies between the area of human rights and freedoms and other areas of policy connected to the internal security of the EU.

4. CONCLUSION

Respect for human rights and fundamental freedoms, democracy, and rule of law are the basic principles of the EU and an indispensable prerequisite for its legitimacy. EU holds human rights to be universal and indivisible, and for that reason, it works actively on its promotion and protection. Sustainable peace, development, and prosperity cannot exist

without respect for human rights. They are in the basis of each and every one of EU's policies, as well as in its relations with countries outside its borders. Respect for human rights raises the dignity of people and it allows them to reach their full potential, but it also creates peaceful and stabile societies. Security, democracy, and prosperity of people are an achievable reality, but only in societies which has a deep respect for human rights and freedoms. The EU is actively working on promotion and protection of human rights, including them in all aspects of internal security policies. Their basic goal for the upcoming period is to strengthen the integration of fundamental rights into internal security and thus increase the chances of security and prosperity for all citizens.

5. REFERENCES

EU Annual Report on Human Rights and Democracy in the World in 2013, Council of the European Union, 11107/14. Brussels, 23 June 2014.

Communication from the Commission to the European Parliament and the Council, The final implementation report of the EU Internal Security Strategy 2010 - 2014, COM (2014) 365 final, Brussels, 20.06.2014.

Draft Internal Security Strategy for the European Union "Towards a European Security Model", Council of the European Union, 5842/2/10, REV 2, JAI 90, Brussels, 23.02.2010

The Stockholm Programme: An Open and Secure Europe serving the Citizen, OJ C 115/1, 4.05.2010.

Petrushevska, Tatjana, (2011): Introduction into the Law of the European Union, Grafohartija, Skopje.

Vankovska, Biljana, (2010): Institutions of the EU: To Lisbon and afterwards, Faculty of Philosophy, Skopje.

Kambovski, Vlado, (2005): Justice and internal affairs of the European Union, Iustinianus Primus Faculty of Law, Skopje.

De Schutter, Olivier, (2001): Les questions à résoudre – La protection des droits fondamentaux, un enjen de la Convention pour l'avenir de l'Europe, http://europa.eu.int/comm/justice.

Weidenfeld, Werner, Wessels, Wolfgang, (2009): Europa von A biz Z, Taschenbuch der Europäische Integration, Institut für Europäische Politik, Berlin.

Declaration on the basic laws of the European Union, 7.02.2000, (Official Gazette C 364/2000) and from 14.07.2007 (Official Gazette C 303/2007)

UDK: 327.36:327.88]:341.231.14(4:093.2)

PROTECTION OF THE RIGHT TO LIFE AND THE USE OF FORCE IN COUNTERTERRORIST OPERATIONS THROUGH THE PRISM OF THE EUROPEAN CONVENTION FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Aleksandar Doncev, PhD
MIT UNIVERSITY-Skopje
alekdoncev@yahoo.com

Vesna Poposka, LL.M
MIT UNIVERSITY-Skopje.
vpoposka88@gmail.com

Abstract

The factual wider environment in which counterterrorist operations are conducted is hard to be simplified to a unique solution and a framework that "fits them all". In most cases, counterterrorist operations include allowance for use of lethal force, which gives utmost sensitivity to the problem and need for special knowledge and skills of the people who are to operationalize orders. After the 9/11 events, the approach to terrorism has changed rapidly. For the first time terrorist attacks were approached as an act of war. Those events influenced the doctrines of the states worldwide, European countries especially, since many of them joined the international coalitions in Afghanistan and Iraq. Those cases are especially interesting from the legal point of view, due to the extraterritorial application of the human right law in the general spirit of the European Convention, and the recognition of the right to life as a non-derogable, a peremptory norm. The text aims to distinguish the different contexts in which the Court invoked the right to life in the spirit of the Convention, as a human right instrument that prescribes the right to life in a narrower manner. The paper examines the concept and definition of the right to life and its transposing into Court's practice. Additionally, it examines the applicability of the human rights law norms in counterterrorist operations. The aim of the paper is to examine the conceptualization of the right to life in the real world and the efforts for reaching the so-urged balance between the human rights protection and the security needs. Those considerations also have an important role in the

national practice of the Republic of Macedonia, both as a member state of the convention and troop contributor in international missions.

Key words: human rights, security, counterterrorism, ECHR, extraterritoriality

INTRODUCTION:

A whole decade after 9/11, terrorism still gets new and different dimensions and directions. A phenomena as old as the society is, terrorism has most probably took the utmost elasticity of adaptation, perceiving the same effects in greater and wider dimensions, and still lacking comprehensive definition and approach. This is due to the many forms and contexts of manifestation it receives. An act of terrorism can be conducted through different criminal activities, all together with the same goal : political pressure and change.

During the long period of self-determination of the peoples and decolonization struggles, terrorism was perceived as a tactic of the weaker side. Nowadays, it is the tactic of asymmetric warfare, recognized as a key security priority to be addressed by both EU and NATO. No country in the world remained immune to this developing security threat. No matter if the basics were religious fundamentalism or ideas of separatism, acts of terrorism are reported on daily basis around the world, all of them bringing different challenges to be faced by the authorities.

A balance has to be reached between security needs and the urge for respect for human rights, and in a digital and globalized world, it is a really hard task, especially when multiculturalism goes above nationalism, and liberal individualism faces the urge for respect of collective cultural rights.

"Terrorism has been described variously as both a tactic and a strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination. Obviously, a lot depends on whose point of view is being represented. Terrorism has often been an effective tactic for the weaker side in a conflict. As an asymmetric form of conflict, it confers coercive power with many of the advantages of military force at a fraction of the cost. Due to the secretive nature and small size of terrorist organizations, they often offer opponents no clear organization to defend against or to deter."[1]

The inconsistency in the form and effects led to inconsistency in the approaches given by the states. So far, terrorism has been addressed as criminal act, as internal armed conflict or as equivalent of armed attack that provoked a state of war. It occurred in completely different environments.

[1] "International Terrorism and Security Research" available at <http://www.terrorism-research.com/>

Attacks in Madrid, Moscow, London or Kabul are hard to be connected with the circumstances and perpetrators. And in accordance with the background-they all bring different legal regime to be applied.

On the other hand, terrorists-both individuals and organizations have not been recognized as subjects of international law. Transnational terrorist activities led to the opening of additional questions, such as the questions of jurisdiction and attribution when considered for criminal and prevention matters.

Many international organizations, both governmental and nongovernmental took different steps and provided essential attention to those matters. Agencies and governments have gone through long-lasting processes for allocating appropriate solutions. International treaties, especially those from the corpus of international human rights standards have been interpreted and revised in spirit, especially through the practice of the bodies in charge of their effectuating. This especially goes for the need of planning of counterterrorist operations in different contexts. Many of them occur in wider context of international peace enforcement mission in the Middle East, in very sensitive surroundings, when one single extra bullet fired may endanger the whole mission. In such regions, the legal regime that is applicable can vary from one to another extent in the framework provided by the mandate of the mission.

In such situations, the corpus of non derogable rights comes under pressure. Those rights are protected by both the human rights law and international humanitarian law, speaking in the manner of international legal framework.

Chapter 1: The European Convention on Human Rights and Fundamental Freedoms

The most influential institution that provides effective judicial protection of rights is, of course, the European Court of Human Rights (ECHR), and its practice has been widely increased in the area of protection of the right to life in challenging security circumstances. The right to life has been revoked both for material and procedural aspects.

European Convention on Human Rights and fundamental freedoms protects the right to life as fundamental and non derogable in article 2 [1]. The European Court of Human rights in its Grand Chamber (GC) judgment in the case of McCann and others v. the United Kingdom notes that: "*Article 2 ranks as one of the most fundamental provisions in the Convention – indeed one which, in peacetime, admits of no derogation under Article 15. Together with Article 3 of the Convention [the prohibition of torture], it also*

enshrines one of the basic values of the democratic societies making up the Council of Europe.[2]*"*

Still, article two gives clarifications, there are a few certain exceptions that recognize in which situation the deprivation of the right to life would not be unlawful, that makes the European Convention of Human Rights and Fundamental Freedoms a regional instrument with deepest clarifications provided. The first exception are the executions – in the meaning of capital punishment (this question was later adjusted to the 6th additional protocol, signed and ratified by all the Member States of the Council of Europe, except Russia, that has signed it but not yet ratified). The second part of article two, however, gives three situations in which deprivation of life shall not be regarded as contrary to the provisions of the Convention.

"Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

*(c) in action lawfully taken for the purpose of quelling a riot or insurrectio*n…"[3]

Article 15 of the Convention, which refers to the exceptions in case of emergency (war or situations that threatened the survival of the nation), recognizes the provisions of article 2 as cogent norms of international human rights law, which means that jointly with the prohibition of torture and prohibition of inhuman treatment, the right to life is guaranteed in every case, in the manner they are prescribed within the Convention. Assessment in accordance with the provisions of article 15 and with Court's practice is given, to the national authorities (**Case of Aksoy v. Turkey).** What must be taken into consideration is the fact that sometimes, for political reasons, states restrain from invocation of article 15. For example, in the Isayeva judgment the Court considers that using the specific weapon-the [heavy free-falling high-explosion aviation bombs with a damage radius exceeding 1 000 metres] in a populated area, outside wartime and without prior evacuation of

[2] McCann and others v. the United Kingdom, GC judgment of 5 September 1995, § 147, with reference to Soering v. the United Kingdom, judgment of 7 July 1989, paragraph 88

[3] European Convention on Human Rights available at <http://www.echr.coe.int/Documents/Convention_ENG.pdf>

the civilians, is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. No martial law and no State of emergency have been declared in Chechnya, and no derogation has been made under Article 15 of the Convention […]." [4]

Chapter 2: The practice of the European Court of Human Rights

Circumstances that can justify the deprivation of life, were given by the Court for the first time in the case of McCann and others against the United Kingdom[5] in 1995, followed by an extensive series of cases of the Court, which concluded that the state's obligation to protect the right to life consists of three main aspects:

1. To refrain, through its agents, from unlawful / intentional killing
2. The duty to investigate unsolved and suspicious deaths,
3. The positive obligation to take steps for prevention of the loss of life

The Court in the judgment of McCann interpreted that what is considered absolutely necessary means that the extent of force used must be absolutely proportional.

In addition, in order to pass the test of justification for the force used, the bona fide belief that the security agent acted properly is not enough, so it is recquired that this belief be placed on a reasonable basis, in light of the information possessed at the time given. The Court accepted that in this context the soldiers who carried out the operation should not be charged. Considering the fact that the identity of the three terrorists was known to the authorities and that there was an opportunity for them to be arrested before setting the bomb, the Court with only one vote more decided that there is a violation of Article 2, but in terms of planning of the operation.Violation of article two was not settled during the execution of the operation.

Security forces were put in a position in which they did not have a choice to act differently. Therefore the burden of inappropriate planning and lack of opportunity to be able to make another choice for the security forces

[4] Isayeva v. Russia judgment, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68381#{%22itemid%22:[%22001-68381%22]}

[5] The case was submitted to the Court by the relatives of three Irish Republican terrorists that were liquidated by British security forces (SAS) in Gibraltar. Terrorists set a car bomb in a residential area, with opportunity to activate it remotely by touching a single button.
UK Government in this case has recalled the above circumstances as a legitimate exception to the rule, in the meaning of protection of individuals against unlawful violence. Government recalled that the use of deadly force was absolutely necessary in this case in order to protect the huge number of civilians who could suffer. Full text of the judgment available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57943#{%22itemid%22:[%22001-57943%22]}

is put on the state, not on the direct perpetrators. Nine judges in dissenting opinion did not agree that there was a violation of Article 2.

On the other hand, the question is how this decision of the Court would be feasible, because, in an imaginary situation of arresting before committing the crime or in this specific case, before placing the bomb, if police executes arrest, there might be no obvious evidence available, so the security agents will have no other choice but to unleash the potential perpetrators, without a chance to prevent the further attempts to perform terrorist acts.

Another interesting case is the case of Güleç v.Turkey, where the use of deadly force during riots and demonstrations has been examined. Government claimed that between protesters there were also terrorists from the PKK, but failed to prove it. The Court again found violation of Article 2, on the grounds that the force used was disproportionate or excessive. This judgement poses another question: what about the cases in which the victims are people that are not the carriers of terrorist activity at all? For example, in the case of Ergi against Turkey[6] , when the Court decided that although the bullet that was fatal for the girl might not have been fired by the governmental forces, it does not mean that the state did not commit a violation of Article 2 of the Convention. The violation established by the Court is the unsuccessfulness of warning measures and the fact that civilians were caught in the crossfire. The fact that the authorities brought the victim in a risky situation, was sufficient for the Court to decide that there is violation of the right to life.

In the case of Isayeva, Yusupova and Bazayeva against Russia[7], the Court expressed understanding of the specific security situation, but found a violation of the essential requirements of Article 2. Although the operation was planned, the government failed to protect the civilian population, in terms of taking effective warning measures. Additionaly, the Court found that the force used was not proportional.

In the above-mentioned case of Isayeva, the village was attacked because the authorities had information that Chechen terrorists were hiding

[6] A girl was killed by a bullet during clashes between the Turkish authorities and the PKK. See more at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58200#{%22itemid%22:[%22001-58200%22]}>

[7] Which treats an indiscriminate attack, or bombardment from the air on a convoy of civilians in Grozny, Chechnya, that were escaping in their cars while trying to avoid clashes between Russian troops and Chechen guerrillas through a humanitarian corridor supposedly established in October 1999, Full text of the judgment available at < http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-68379#{%22itemid%22:[%22001-68379%22]}>

there. This leads to another challenge - the importance and relevance of intelligence in fight against terrorism and protection of the right to life. It is necessary to stress that Russia has never recognized the existence of an internal armed conflict on its territory, and though armed forces were involved in operations, Chechen rebels were treated as terrorists-criminals. In any case, for the anti-terrorist activities that took place there, the European Court of Human Rights neither found the use of lethal force problematic, nor did it evaluate it in accordance with Article 2.2, but still found, for example, ineffectiveness or lacking of the measures taken to warn civilian population. For such situations, the Court takes into account the fact that the conducted operations were not spontaneous, but planned and continuous. That's why the Court pays attention to the need for planning of operations by the military.

The European Court of Human Rights on 20.12.2011 brought another particularly interesting and especially important judgment in this area. This is the case of Finogenov and others against Russia, which refers to the hostage crisis caused by Chechen guerrilla in the theater "Dubrovka" in Moscow in October 2002[8].

This drama was resolved by usage of nerve gas, whose formula remained secret even nowadays. Applicants are actually close relatives of the hostages who died during the rescuing operation or later because of the effects of the nerve gas or because of lacking of medical assistance, as well as persons who were themselves hostages and had malware health consequences due to the effects of the nerve gas. They had several demands, and they claimed violations of the right to life on three grounds:

- The decision of the authorities to resolve the hostage crisis by force and specifically by the usage of nerve gas;

[8] The terrorists held almost 900 people hostage for three days, demanding Russian authorities to withdraw all military forces deployed on the territory of Chechnya. More than 40 terrorists and 76 kilograms of explosives were located in the building of the theater. Although a small group of hostages, mostly children, were released, there was an existent and imminent threat for the lives of the hostages. Terrorists committed several murders due to attempted escape, or because they considered that there was infiltration of Russian Special Forces among the hostages. Russian Special Forces after the conduct of the operation neutralized all of the terrorists. The extraction of hostages lasted nearly four hours, and the whole operation was performed, as applicants stated later, fairly chaotically. In addition, 125 people died from the effects of inhaling the nerve gas, strangulation (swallowing their tongue while they were transported by the buses unconscious and without medical escort) or overdose with "naloxone" or because they were not given a "naloxone" (injection that was supposed to neutralize the adverse effects of the nerve gas).The full text of the judgment available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108231#{%22itemid%22:[%22001-108231%22]}>

- Inadequately planned and conducted rescue operation;
- Failure to conduct effective investigation;

The Court finds no violation of the right to life under the first listed ground, but finds it in the second and the third case. Such reasoning gives an interesting overview of the proportion of negative and positive obligations of the state in terms of protection of the right to life. Especially interesting is the Court's view on the nerve gas as lethal force. Applicants require that nerve gas be treated as a lethal weapon with indiscriminate effect, but the Court has accepted the position of the government that the gas was not used to kill, citing the basic principles of the use of force and firearms by law enforcement of the UN. In the context of this case, although the Court finds that the nerve gas had deadly effects and is non-discriminatory, the gas was used without intent to kill, and provided an extent chance for surviving. On that basis, there is not a violation of Article 2. This may at first seem contrary to the verdict for Isayeva, but the Court emphasizes that it is a reaffirmation of the same context in a different factual situation. The Court is on the position that, although the gas was breathed by all people that were caught at Dubravka theater, and as such is non-discriminatory, and although it is dangerous and potentially lethal, people had a great percent of chance for survival, which, in turn, leads the principle of proportionality as a condition to evaluate whether the use of force is legitimate or not.

Regarding the general principles of the judgment, the Court emphasized that the justification of the use of force does not mean "carte blanche" per se. When deadly force is used in police operations it is extremely difficult to separate the positive from the negative obligations of the State. In such situations, it must be considered whether the operation was planned and controlled in a way that will minimize the need and extent of deadly force used and the loss of human lives, and to investigate whether state organs took all possible measures of caution and warning.

The authorities are obliged to take specific measures only when there is a real and imminent risk to life, and when they have control over the situation. The execution of the operation should not impose a disproportionate burden on the authorities considering the security problems that modern societies face nowadays, plus the unpredictable human nature and the choice that is available at the moment in terms of operational and human capabilities. Force as a means may be used only if it is absolutely necessary for preservance of the democratic society and, if used, it must pass the test of proportionality, in the context in which it is used, and in the context of the potentially achieved goal. This means that the criterion is more stringent than in the case of necessity. However, considering the individual use of force by security agents, what is required from them is sincere belief,

based on sound arguments that there is a real and imminent need to use force.

CONCLUSION:

From the acknowledged practice of the European Court of Human Rights it can be concluded that the Court carefully considers all circumstances before making a decision and extensively interprets the state's obligations with regard to the protection of the right to life. As for the new context of terrorism, it should be particularly emphasized that the Council of Europe was the first international organization after the attacks on the World Trade Center in the United States that issued a document giving the guiding principles for the protection of human rights while countering terrorism. Secretary General of the Council of Europe, in the foreword to the document, recognizes the fight against terrorism as a "top political priority", and defines the guiding principles as “the first international document that will help states to find the exact balance." The right to life and the prohibition of inhuman and degrading treatment remain in the body of cogent norms of international law, meaning that those rights cannot be derogated in any way, and as an extension of human rights protection, introduce the obligation of states to protect their citizens from acts of terrorism. Thus “act of terrorism does not exempt the state from the obligation to respect the peremptory norms of international law."[9]

Considered in total, although terrorism causes victims, counterterrorism can cause even more victims. Legality and legitimacy in every part of the process of planning and conducting counterterrorist actions have to be taken into consideration carefully. In the cases of counterterrorist operations that occur during an armed conflict or its equivalent, it is especially important for the security agents to have clear and specific Rules of engagement. This especially goes for multinational missions where different national caveats occur. Therefore, it is extremely important for the states to give special attention to the legal background and the framework they provide for counterterrorist opeartions.

REFERNCES:

1. Bouvier A., Antoine; Sassoli, Marco, How does law protect in war? 2-nd edition, International committee of the Red Cross, Geneva, 2006;

[9] Full text of the document available at https://www1.umn.edu/humanrts/instree/HR%20and%20the%20fight%20against%20terrorism.pdf

2. Cassese, Antonio, International Law, Oxford University Press, 2001;
3. Duffy, Helen (edited by): The 'War on Terror'And the Framework of International law, Cambridge University Press, New York 2005;
4. Dunne, Tom and J. Wheeler, Nicholas, (edited by) Universal human rights: A critique in Human Rights in World Politics, Cambridge University Press, Cambridge, 1999;
5. Dutertre, Gilles, and Key case-law extracts: European Court of Human Rights, Council of Europe Publishing, printed in Germany, December 2003;
6. Jacobs and White, The European convention on human rights, 4-th edition, Oxford University press, 2006;
7. Korff, Douwe, The right to life - A guide to the implementation of Article 2 of the European Convention on Human Rights, Human rights handbooks;
8. Miller, Sarah, Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention;

• Guidelines on human rights and the fight against terrorism
Adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies

UDK:341.231.14-054.73(4-672ЕУ:497.7)

THE LEGAL FRAMEWORK OF THE RIGHT TO ASYLUM IN THE EUROPEAN UNION AND THE REPUBLIC OF MACEDONIA

Mirjana Ristovska MA.
Assistant, Kliment Ohridski University-Bitola
e-mail: mimaristovska@yahoo.co.uk

Natasa Pelivanova PhD
Associate Professor, Kliment Ohridski University-Bitola
e-mail: n_pelivanova@yahoo.com

Abstract

According to the Universal Declaration of Human Rights of 1948, the right to asylum[1] is one of the fundamental human rights. States recognize the right of asylum to persons in accordance with the principle of discretion, if there is a real risk of persecution in their countries of origin because of their affiliation to race, religion, nationality, membership of a particular social group, or political affiliation. Persons, who receive an international protection, actually obtain legal status in the country of asylum i.e. acquire certain rights and obligations. The subject of this paper is to scrutinize the right to asylum. The paper consists of an introduction, three parts and a conclusion. It begins by presenting the theoretical definitions of the right to asylum incorporated in the national legal systems and in the legislative of the international organizations. In the first part, the legal framework for asylum in the European Union is analyzed, while in the second part, the legal and institutional framework for asylum in the Republic of Macedonia is considered. The third part includes an empirical data on asylum, published by the competent authorities, as well as certain assessments and recommendations regarding that empirical data.

Keywords: *asylum, subsidiary protection, security*.

[1] The term asylum derives from the ancient Greek word asylon (ἄσυλον) and denotes place of religious kind, where certain categories of people have been hidden.

1. INTRODUCTION

The system for a person's international protection at universal level has started to develop with the adoption of the United Nations Convention relating to the Status of Refugees on 28 July 1951.[2] This Convention is the centerpiece of the international refugee protection today; it determines the legal definition of a refugee, as well as, the procedures, protection and the rights and obligations of persons who are acquired with this status. The main feature of this Convention is the introduction of the so-called "Principle of non-refoulement," set in the provision of Article 33 paragraph 1, according to which, *"no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."* Pursuant to the provisions of Article 1 of the Convention, *"a refugee is a person who has a certain fear of persecution because of his race, religion, nationality or membership of a particular social group or political opinion."* Additionally, in 1967 the Protocol Relating to the Status of Refugees has been adopted.[3] Although the 1967 Protocol represents an independent international legal document, it is actually an integral amendment to the 1951 Convention.[4]

The European law on person's international protection has been gradually developing under the direct influences of the international law. Thus, within the European Union, the first and the most important document in this regard was the Schengen Agreement of 1985.[5] Furthermore, an act of a great importance was the Dublin Convention of 1990, which determines the jurisdiction of the states in terms of deciding on applications for asylum.[6] The aim of this Convention was to establish objective criteria for each Member State when reviewing applications for asylum and to avoid the so - called phenomenon "*refugees in orbit*", i.e. cases where Member States do not accept the obligation to decide upon the application. With the adoption of the Treaty of Amsterdam in 1997, a new, qualitatively improved basis for the

[2] The 1951 Convention relating to the Status of Refugees, UNHCR, Resolution 2198 (XXI) adopted by the United Nations General Assembly

[3] The 1967 Protocol, UNHCR.

[4] Other important international documents are: the 1967 UN Declaration on territorial asylum, the 1969 Convention of the Organization of African Unity (Convention Governing the Specific Aspects of Refugee Problems in Africa), the 1984 Cartagena Declaration on Refugees.

[5] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22 September 2000, p. 19 – 62

[6] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, OJ C 254, 19 August 1997, p. 1 – 12

right to asylum development had begun, considering the fact that the policies of asylum and migration were transferred from the third to the first pillar of the EU. Today, the legal concept of asylum within the European Union is governed by primary and secondary sources of the law. Thus, the provision of Article 78, paragraph 1of the Treaty on the Functioning of the European Union[7] stipulates that: *"the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties."* Furthermore the second paragraph determines the types of measures that should be taken by the European Parliament and the Council on Common European Asylum System.[8] In the provision of Article 18 of the Charter of Fundamental Rights of the European Union[9] which regulates the right of asylum it is noted that: *"the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community."*

Strategic orientation of the Republic of Macedonia to achieve full membership in the European Union, according to the Stabilization and Association Agreement, imposes the need for harmonization of the national legislation with the international standards and rules, among other fields, in the field of asylum as well. In the legislation of the Republic of Macedonia, the constitutional proclaimed right of asylum, which the Republic, guarantees for foreigners and persons without a native country expelled because of democratic and political beliefs and activities[10], is regulated by

[7] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47 - 390

[8] For the purposes of paragraph 1, the European Parliament and the Council acting in accordance with the ordinary legislative procedure shall adopt measures for a common European asylum system comprising: *(a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; (c) a common system of temporary protection for displaced persons in the event of a massive inflow; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for reception of applicants for asylum or subsidiary protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum, subsidiary, or temporary protection.*

[9] Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, C 364 / 1.

[10] Article 29 paragraph 2 of the Constitution of the Republic of Macedonia, Official Gazette 52/1991

the Law on Asylum and Temporary Protection.[11] Previously, this subject was governed by the Law on Movement and Residence of Aliens.[12] The provision of Article 2 of the Act provides that: *"The right to asylum is an international protection granted by the Republic of Macedonia under the conditions and in the procedure defined by this Law, to the following categories of persons:*

- Recognized refugee (refugee according to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees); and,
- a person under subsidiary protection.

Consequently, the international protection in our country may be granted to two categories of people: recognized refugee[13] and person under subsidiary protection.[14] In the Macedonian positive law as an asylum seeker is considered any person who *"is an alien who seeks protection from the Republic of Macedonia from the day he has approached the Ministry of Interior until the day of issuance of a final decision in the procedure for recognition of the right of asylum."* Main features of the Law on Asylum and Temporary Protection are: the joint responsibility between the administrative authorities; the concept of regular and accelerated, urgent procedure; the principle of non-refoulement; the subsidiary protection; two instances of decision making.

2. LEGAL FRAMEWORK OF THE RIGHT TO ASYLUM IN THE EUROPEAN UNION

Within the European law, in accordance with the international standards, a separate system for people who need to be placed under international protection is developing, that is characteristic only for the European Union, taking into account the specificity of the European Union

[11] Official Gazette of the Republic of Macedonia, No.: 49/03, 66/07, 142/08, 146/2009, 166/2012

[12] Official Gazette of the Republic of Macedonia, No. 36/1992

[13] Recognized Refugee is a person who, because of well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the state of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that state or who, not having a nationality and being outside the state in which he or she had a habitual residence, is unable or, owing to such fear is unwilling to return to it.

[14] A Person under subsidiary protection is an alien who does not qualify as a recognised refugee but to whom the Republic of Macedonia shall recognize the right of asylum and shall allow to remain within its territory, because substantial grounds exist for believing that if she or he returns to the state of his / her nationality, or if he / she is a stateless person, to the state of their previous habitual residence, they would face a real risk of suffering serious harms. A serious harm, in the sense of paragraph 1 of this Article consists of: death penalty or execution; torture or inhuman or degrading treatment or punishment; or serious and individual threats to a civilian's life or person by reason of indiscriminate violence in situation of international or internal armed conflict.

as an organization *sui generis*.[15] This kind of system is primarily implemented through regulations and directives, as secondary sources of EU law.

The first act that is particularly important in this sense is the *Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin convention*[16], named as the Eurodac Regulation. With this Regulation an EU asylum fingerprint database is established, which in turn enables an easy way of determination of the first entrance of the person in a particular Member State. This Regulation shall be replaced by a new *Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013.*

Establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person and on requests for the comparison with Eurodac data by the law enforcement authorities of the Member States and the Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom security and justice (recast)[17] starting from 20 July 2015. The new Regulation improves the functioning of Eurodac in three ways: a) it provides shorter deadlines for transmission of asylum fingerprints data, b) it enhances data protection and c) it provides an extended cooperation between Europol and national police authorities, which under strictly controlled circumstances, will have an access to the Eurodac database for the purpose of the prevention and detection and investigation of serious crimes and terrorism.

The second important act is the *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*[18], known as the Dublin II Regulation. This Regulation on 01 January 2014 was replaced by a new *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an*

[15] Hathaway James C., *E.U. Accountability to International Law: The Case of Asylum*, Mich. J. Int'l L. 33, No. 1 2011, 1 - 7
[16] Official Journal of the European Union, L316, 15.12.2002
[17] Official Journal of the European Union, L 180/1, 29 June 2013
[18] Official Journal of the European Union, L 50/1, 25 February 2003

application for international protection lodged in one of the Member States by a third-country national or a stateless persons (recast)[19], named as Dublin III Regulation. The fundamental principle on which the Dublin regime is based on is that the responsibility for examining asylum applications lies primarily with the Member State which played the greatest part in the applicant's entry or residence in the EU. The new Regulation improves the status of asylum seekers through the following mechanisms: compulsory personal interviews with the asylum seeker; legal assistance free of charge upon the asylum applicant request; the right to appeal against a transfer decision; the possibility for appeals to suspend the execution of the administrative decisions; a single ground for detention and strict limitation on the duration of detention for asylum seeker; increased protection of minors; increased efficiency of the procedure between two Member States, i.e., the entire "Dublin" procedure cannot last longer than 11 months.

The Council Directive 2003/9/EC of 27 January 2003 laying down the minimum standards for the reception of asylum seekers[20] known as the Reception Conditions Directive, as well as, is an important source of EU law. This Directive deals with the reception condition for asylum seekers, while the asylum procedure is ongoing in the Member States. Namely, asylum seekers, according to the Directive, have access to food, housing, healthcare services, employment, as well as, doctoral and psychological care. This Directive is to be replaced by a new *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down the standards for the reception of applicants for international protection (recast)*[21], from 21 July 2015. The new Directive will ensure better standards for asylum seekers protection, such as: access to free legal assistance; mandatory access of asylum seekers to fresh air; mandatory communication with legal representatives, NGOs or family members; limited grounds for imposition of detention; limited application of this measure in terms of minors; access to employment.

Another important asylum directive was the *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as person who otherwise need international protection and the content of the protection granted*[22], well-known as The Qualification Directive, which from December 21, 2013 has been replaced by the *Directive 2011/95/EU of the European Parliament and of the Council od 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as*

[19] Official Journal of the European Union, L 180/1, 29 June 2013
[20] Official Journal of the European Union, L 31/18, 6.February 2003
[21] Official Journal of the European Union, L 180/1, 29 February 2013
[22] Official Journal of the European Union, L 304/12, 30 September 2004

beneficiaries of international protection for a uniform status for refugee or for persons eligible for subsidiary protection and for the content of the protection granted (recast). The Qualification Directive practically regulates the grounds for granting international protection. This Directive also regulates the specific rights for the asylum applicants, including: protection from refoulement, the right on residence permit; the right on travel documents; the right on employment; the right on social protection; the right on healthcare insurance; and the right on housing. Its provisions also foresee special rights and interests for minors and vulnerable persons.

The Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status[23], or The Asylum Procedures Directive, also represents an important legal source. This Directive sets out the rules on the whole process of claiming asylum, including on: how to apply, how the application will be examined, what help the asylum seeker will be given, how to appeal and whether the appeal, will it allow the persons to stay on the territory, what can be done if the applicant absconds, or how to deal with repeated applications.[24] This Directive shall be replaced with the new *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*[25] from July 21 2015. The new Asylum Procedures Directive sets out rules which ensure more efficient asylum procedure, primarily in favor of asylum seekers interests, as follows: clearer rules on how to apply for asylum at borders; asylum procedure must not last longer than six months; obligatory assistance for persons with disabilities; introduction of new procedures: "accelerated" or "border" procedures for cases that are not well-founded; special procedures for minors and vulnerable people based on the principle of the best interest; improved legal protection for asylum seekers.

3. LEGAL FRAMEWORK OF THE RIGHT TO ASYLUM IN THE REPUBLIC OF MACEDONIA

Macedonian Law on Asylum and Temporary Protection is in compliance with Council Directive 2003/9 / EC, Council Directive 2004/83 / EC and Council Directive 2005/85 / EC.

[23] Official Journal of the European Union, L 326/13, 13 December 2005
[24] A Common European Asylum System, 2014, available at:
http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf
[25] Official Journal of the European Union, L 180/1, 29.6.2013

3.1 Asylum Procedure in the Republic of Macedonia

The international protection under this Act may be provided by the State or entities controlling the State or most of its territory. Competent authorities for the recognition of the right of asylum in the Republic of Macedonia are:

- The Ministry of Interior, through the Section for Asylum, as its organizational unit in charge of asylum, which makes a decision in the first instance, and
- The Administrative Court and the Higher Administrative Court, as bodies that provide judicial protection for asylum seekers.

According to the Law, the competent bodies shall cooperate with the United Nations High Commissioner for Refugees in all stages of the procedure for recognition of the right to asylum. That kind of cooperation particularly refers to the access to information on individual applications for recognition of the right to asylum which refers to the course of the procedure and to the decisions taken. There are two kinds of procedures for recognition of the right to asylum in Macedonia: a) regular and b) accelerated. An asylum seeker must apply for recognition of the right of asylum. While submitting an asylum application, the asylum seeker shall be photographed and fingerprinted.[26] The Section for Asylum shall issue to the asylum seeker a sealed attestation within three days after the submitting of an asylum application, with a reference number and the date of submission, that is certifying his or her status as an asylum seeker and proves that the asylum seeker is allowed to remain on the territory of the Republic of Macedonia during the period of the procedure upon his / her application for recognition of the right to asylum. Additionally, the Section for Asylum of the Ministry of Interior shall inform the asylum seekers within a timeframe not exceeding 15 days from the day of submission of the asylum application on: the manner of implementation of the procedure for recognition of the right to asylum, on the rights and obligations of asylum seekers during that procedure, the possible consequences should not meet their obligations and not cooperate with the authorities, as well as of the right to communicate with persons providing legal assistance, the representatives of the High Commissioner for

[26] The asylum application shall be submitted in writing or orally upon minutes, a) in the Macedonian language; b) in the language of the country of origin; c) in some of the foreign languages in common use; or d) in a language the asylum seeker may reasonably be supposed to understand.

Refugees and the non-governmental humanitarian organizations in all stages of the procedure and wherever the asylum seekers are.

The Section for Asylum implements the regular procedure for recognition of the right to asylum in the first instance and it is obliged to take the decision within six months from the day of submission of the application. The asylum seeker may instigate an administrative dispute against the decision of the Section for Asylum to the Administrative court within 30 days from the day of delivery of the decision. The lawsuit is suspending the execution of the decision. The competent court shall take the decision within two months from the day of submission of the lawsuit. The accelerated procedure is to be implemented when the asylum application is manifestly unfounded, unless an unaccompanied minor or a mentally disabled person has submitted the application. The decision in this case is to be issued within 15 days from the day of the submission of the asylum application. The asylum seeker has the right to a lawsuit against the decision rejecting the asylum application in accelerated procedure within seven days from the day of delivery of the decision. The lawsuit in this case also suspends the execution of the decision. The Administrative Court as a competent court shall decide upon the lawsuit within 30 days from the day of submission of the lawsuit. From the day of submission of the asylum application to the day of issuing of the final decision, the Law on Aliens is not applying. In this sense, the submitted asylum application is to be regarded as a withdrawal of the application for issuance of residence permit to an alien, pursuant to the provisions of the Law on Aliens. An asylum seeker must apply for recognition of the right of asylum when entering the Republic of Macedonia. The request is to be declared to the police at the border crossing point or to the nearest police station. Upon the declared request for asylum, the police officer shall escort the asylum seeker to the Section for Asylum or to the Reception Centre for Asylum seekers. On the other hand, an asylum seeker who resides within the territory of the Republic of Macedonia shall submit an asylum application to the Section for Asylum. Regarding cases of family reunification, the application can be submitted to the diplomatic or consular mission of the Republic of Macedonia abroad. An asylum-seeker *who has illegally entered or has been illegally staying* in the territory of the Republic of Macedonia, and is coming directly from a state where his / her life or freedom have been threatened, shall not be punished, according to the Law on Aliens, if he immediately applies for the recognition of the right of asylum at the Section for Asylum or report themselves at the nearest police station and give explanations for their application for recognition of the right of asylum as well as the valid reasons for his illegal entry or stay. Consequently, in this case of migrant who illegally entered the territory of the Republic of Macedonia, they can avoid temporary detention in the

Reception Center for Foreigners of the Ministry of the Interior, according to Article 108 of the Law on Aliens, if they immediately apply for the recognition of the right of asylum, i.e. they can avoid appropriate punishment according to the Law on Aliens. Thus, we can conclude that, in these cases, there is a risk of abuse of the provisions of the Law on Asylum and Temporary Protection by migrants. Should the rejected person, asylum seeker, not leave the territory of the Republic of Macedonia within the time limit foreseen in the decision of the Section for Asylum, the expulsion from the Republic of Macedonia will be carried out in compliance with this Law and the provisions of the Law on Aliens.

3.2 Rights and obligations of asylum seekers

In the legal doctrine there is an opinion that persons who have been granted with right of asylum are considered as quasi-citizen in the internal justice system, and as aliens, foreigners in the international system.[27] The asylum seekers until the final decision for recognition of the right of asylum is made, have the right to: residence; free legal aid; Interpreter; Identification Document[28]; accommodation and care in a Reception Centre or other place of accommodation assigned by the Ministry of Labour and Social Policy; basic health services; right to social protection; right to education; work only within the Reception Centre or the other place of accommodation assigned by the Ministry of Labour and Social Policy as well as the right of free access to the labour market for an asylum-seeker whose application for recognition of the right of asylum has not been decided upon during the period of one year, after the expiry of the one year period; and communication with the High Commissioner for Refugees, as well as with non-governmental humanitarian organizations for the purpose of providing legal assistance in the course of the procedure for recognition of the right of asylum. The asylum seeker is obliged: to reside in the Reception Centre or other place of accommodation assigned by the Ministry of Labour and Social Policy and must not to leave the place of residence assigned by the competent authority without informing it, or without having permission to leave; to cooperate with the asylum bodies, in particular to give their personal data, to hand over the identity and other documents which they may possess, to allow their photographing and fingerprinting, their person searched as well as search of their luggage and the vehicle by which they

[27] Gavroska Poliksena, Deskoski Toni, International Private Law, Skopje, 2011, p. 194

[28] The identification document for the asylum seeker shall be issued within 15 days from the day of submission of the application for asylum. The identification document for asylum seeker is valid until the issue of a final decision in the asylum procedure that is until the expiration of the time period within which the person is obliged to leave the territory of the Republic of Macedonia after the final decision rejecting his application comes into legal force.

have arrived in the Republic of Macedonia; to give data about their property and income; to subject themselves to medical examinations, treatment and omitted immunization upon request of the bodies competent for activities in the field of healthcare, in case of a threat for the public health; to respect the house rules of the Reception Centre or other place of accommodation assigned by the Ministry of Labour and Social Policy and not to demonstrate violent behavior. If the asylum-seeker commits serious breaching of the obligations, the authorized organ may take a decision to withdraw the right to accommodation in the Reception center.

If not otherwise determined by this or any other law, the recognized refugees have the same rights and obligations as the nationals of the Republic of Macedonia, exclusive of the following: a) they do not have the right to vote; b) they are not subject to the military draft; and c) they cannot practice a profession, engage in wage-earning employment or fund associations of citizens or political parties in cases when, as a condition, it is prescribed by law that the person is to be a national of the Republic of Macedonia.

Accordingly, recognized refugee may acquire the right of possession of movable and immovable property; the right to engage in wage-earning employment or practice a profession, under conditions defined by the law which regulates this right for aliens in the Republic of Macedonia; has the right to possess an Identity Card[29] and a Travel Document[30]; recognized refugee shall be equal with the citizens of the Republic of Macedonia in relation to the exercise of the rights of social protection and the right to basic health services, as well as, the rights in the labour legislation, healthcare, pension and invalid insurance.

With the day of delivery of the decision for recognition of the right of asylum for subsidiary protection, the person under subsidiary protection shall acquire the right of residence in the territory of the Republic of Macedonia; shall be provided with accommodation; shall be equal with the citizens of the Republic of Macedonia in relation to the exercise of the rights of social protection and the right to basic health care. In all other cases, the persons under subsidiary protection have the same rights and obligations as the aliens under temporary residence permit in the territory of the Republic of Macedonia.

---

[29] The identity card for recognised refugee shall be issued with validity of five years and for a person under 27 years of age with validity of three years. The identity card for person under subsidiary protection shall be issued with validity of minimum one year. The identity card for recognised refugee and persons under subsidiary protection establishes the right of residence. The recognised refugee and person under subsidiary protection shall be determined a personal registration number for an alien.

[30] Upon the application of the recognised refugee over 18 years of age, a travel document with a two-year validity shall be issued. The validity of the travel document may be extended. The application for issuance of a travel document for a person under 18 years of age shall be made by their legal guardian.

4. EMPIRICAL INDICATORS FOR THE RIGHT OF ASYLUM IN THE EUROPEAN UNION AND THE REPUBLIC OF MACEDONIA

Table 1 displays the total number of submitted asylum applications in the European Union and in the Republic of Macedonia during the period from 2008 to the first quarter of 2014. The first conclusion that can be noted is that the number of asylum applications is constantly growing in the EU, as well as in the Republic of Macedonia. In particular, there was a gradual increase in the number of applications for 2013 for almost 30% compared to 2012 in the EU, and around 20% compared with the number of asylum applications submitted in 2012 in Macedonia. The reasons for these migration movements are, primarily, the war riots in Syria, Afghanistan and Egypt, where the largest numbers of asylum seekers in the EU and in the Republic of Macedonia are coming from. Also, in our country, there are asylums applicants from Pakistan, Algeria, Bangladesh, Mali, Somalia, Mauritania, Côte d'Ivoire, Eritrea, Nigeria, Senegal, Tunisia, Ghana, etc.[31] In the same time in the European Union or in its Member States, there are asylum applicants from almost all countries in the world, with the exception of North America. The largest numbers of asylum requests are coming from Syria, Russia, Afghanistan, Ukraine, Somalia, Pakistan and Nigeria.[32]

As concerning the number of asylum applications submitted by citizens from Macedonia in the European Union, it can be concluded that this number varies from year to year. Thus in 2010, this number increased, while in 2011 it decreased by almost 27% in relation to the year before. However, the number of applications submitted in the coming years has increased again, reaching a peak in 2013. Eurostat data show that the highest number of asylum applications from Macedonia is submitted in the Federal Republic of Germany.[33]

[31] Lembovska Magdalena, Analysis of the National Policy and Practice in dealing with illegal migration and the asylum seekers, Skopje, 2013, p. 22.
[32] http://ec.europa.eu/eurostat
[33] http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Five_main_citizenships_of_(non-EU)_asylum_applicants,_2013_(number,_rounded_figures)_YB15.png

Table 1: Total number of asylum applications in EU and RM

Year	Total number of asylum applications in RM	Total number of asylum applications in EU	Total number of asylum applications from RM in EU
2008	44	226 330	805
2009	96	226 395	930
2010	171	260 835	7 550
2011	811	309 820	5 555
2012	630	336 015	9 625
2013	651	436 125	11 060
2014 (first quarter)		399 630	9 755

Source: Eurostat

In Table 2, on the other hand, the numbers of final decisions adopted in the first and the second instance, in terms of requests for recognition of the right of asylum in the European Union are represented. From quantitative indicators, it can be concluded that the number of positive decisions is almost three or four times lower than the number of negative decisions on asylum applications. The greatest discrepancy in these regard was in 2013, when the number of positive decisions was about five times lower compared to the negative decisions on asylum applications. This dynamics is also applicable for decisions on asylum applications from Macedonian citizens.

Table 2: Final decisions on asylum applications in EU

Year	Total for applicants from RM	Positive decisions for applicants from RM	Negative decisions for applicants form RM
2008	8 7175/ 410	19 140/ 25	68 035/ 385
2009	93 620/ 470	20 070/ 30	73 550/ 445
2010	97 890/ 815	20 245/ 15	77 645/ 800
2011	128 780/ 3210	24 705/ 40	104 070/ 3170
2012	132 310/ 4000	25 240/ 50	107 075/ 3950
2013	134 885/ 5575	24 675/ 55	110 210/ 5520
2014 (first quarter)	15 145/ 210	2 630/ 5	12 515/ 205

Source: Eurostat

In the Republic of Macedonia there is also a restrictive policy regarding the decisions on asylum applications. In this respect, we would like to emphasize the fact that there are not available statistical data for the total number of decisions on asylum applications in our county, so we will

quote European Commission Progress Reports, as valid sources.[34] Thus, according to the 2014 Report: *"in 2013, 1 323 applications for asylum were made (a significant increase from 527 in 2012); however in 1266 cases (96 %) the asylum procedure was discontinued because the applicants were considered to have implicitly to withdraw their application by leaving the reception Centre. The Administrative Court continues to process asylum appeals largely on technical rather than substantive grounds. The asylum recognition rate remains very low. In 2013 the refugee status was granted to 1 person, and in the first half of 2014 to 10 persons."* In 2013 Report it is stated that *"in 504 cases (95%) the asylum procedure had to be stopped due to the applicants leaving the reception Centre prematurely."* The remaining Reports do not contain specified data regarding this issue.

5. CONCLUSION

As a result of previous legal analysis, it can be concluded that the system and mechanisms determined in the EU law are comprehensive and modern solutions that have in mind the interests of the Member States, especially in terms of security, and also, the interests of asylum seekers. In this context it can be concluded that the legal rules contained in the new directives are designed for more enhanced protection and humane treatment for persons who are seeking an international protection. At the same time, it can be noted that Macedonian law is harmonized and consistent with the International and European standards to some extent. In this regard, in the future, it will be necessary for harmonization with the provisions of the new revised EU Directives, as an obligation arising under the Stabilization and Association Agreement. Nevertheless, given the presented comparative data analysis above, it can be noted that although the legislature in the EU and RM with respect to the asylum is highly developed, still both legal systems are characterized with a pretty restrictive policy towards the asylum applications, characterized with small number of positive asylum decisions.

One of the most important reasons noted, explaining this trend, is the security aspect of the states, especially in the present context of the rise of terrorism and other crimes related to terrorism. However, our opinion is that in future the number of positive decisions taken in the EU and in the Republic of Macedonia should be increased, especially taking into account the fact that the asylum seekers who are coming from particularly risky countries have a genuine need for international protection. Consequently, in the future, social and humanitarian dimension of asylum should prevail in

[34] http://www.sep.gov.mk/content/?id=73#.VOoVH__IyHw

applying the legal norms by the administrative authorities and courts, as competent bodies.

6. REFERENCES

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, OJ C 254, 19.8.1997.

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

Charter of fundamental rights of the European Union, Official Journal of the European Communities, C 364/1.

Gavroska Poliksena, Deskoski Toni, International Private Law, Skopje, 2011.

Hathaway James C., E.U. Accountability to International Law: The Case of Asylum, Mich. J. Int'l L. 33, no. 1, 2011

Law on asylum and temporary protection, Official Gazette of the Republic of Macedonia No.: 49/03, 66/07, 142/08, 146/2009, 166/2012.

Law on Aliens, Official Gazette of the Republic of Macedonia No. 36/1992

Lembovska Magdalena, Analysis of the National Policy and Practice in dealing with illegal migration and the asylum seekers, Skopje, 2013.

The 1951 Convention relating to the Status of Refugees, UNHCR.

The 1967 Protocol, UNHCR.

The Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No. 52 / 1991

http://ec.europa.eu/eurostat

http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Five_main_citizenships_of_(non-EU)_asylum_applicants,_2013_(number,_rounded_figures)_YB15.png

http://www.sep.gov.mk/content/?id=73#.VOoVH__IyHw

UDK: 343.293:341.33/.34

LEGALITY OF AMNESTY UNDER INTERNATIONAL HUMAN RIGHTS LAW

Marija Milenkovska, PhD
Assistant Professor Faculty of Security – Skopje,
email: marijamilenkovska@yahoo.com

Abstract

The paper deals with the question of amnesty. It aims to contribute to on-going debate in the literature about the legality of amnesties under international human rights law. Is amnesty a permissible mean for dealing with the crimes that occurred in the past? Can a state grant amnesty for grave human rights violations bearing in mind its obligations under the international human rights law? In order to answer these questions the paper analyses the international treaties and international case law relevant for the matter under discussion. Based on the analysis it underlines a growing tendency in international law to see amnesties for grave human rights violations as unacceptable. The paper also examines the Macedonian amnesty experience. In this context, it puts particular attention on the authentic interpretation of Article 1 of the 2002 Amnesty Law adopted by the Macedonian Assembly in 2011 which has applied the Law on all cases returned to Macedonia for prosecution from International Criminal Tribunal for the former Yugoslavia.

***Key words**: amnesty, international human rights law, legality, Macedonian Law on amnesty*

1. INTRODUCTION

Described in the literature as "probably the most well-known and controversial alternatives to prosecutions"[1] amnesties are always an appealing subject of scholarly interest. A number of issues in relation to amnesties have been addressed in the literature so far: Why states grant amnesty? Can a state trade justice for peace? The paper does not involve in such debates but focuses on the question of legality of amnesties under the

[1] Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst, An introduction to Criminal Law and Procedure, 2nd Edition (New York: Cambridge University Press, 2010), p. 563.

international law. Can a state grant amnesty for grave human rights violations bearing in mind its obligations under the international human rights law (IHRL)? A brief review of the literature reveals that the question of legality of amnesties for grave human rights violations and serious violations of international humanitarian law under international law has been discussed in the literature many times so far. One may find very hard to claim that there is a consensus in the literature regarding this issue. Some authors, as Cryer et al. observed, claim that "amnesties for international crimes are always unlawful."[2] Not small number of them explains their position by pointing out to the duty to prosecute those crimes under international law? Others, like Freeman and Pensky take different position and argue that the international law "cannot offer clear guidance regarding the legality of domestic amnesty for international crimes."[3] They could not identify strong legal arguments to support the thesis that such amnesty is contrary to the international law (but at the same time they talk about principled versus unprincipled amnesty). Can one reconcile these different positions? It seems that Mallinder does that by making difference between certain types of amnesties that may and others that may not fulfill the state's obligations under the international law.[4] Can one make such difference bearing in mind states' obligations under IHRL? The paper attempts to answer the question through analysis of international treaties and case law relevant for matter under discussion. Despite the controversies, the practice testifies that not a small number of amnesties have been granted in many different circumstances across the world. Maillinder's database provides information on more than 500 amnesties. Macedonia is one of the states with such experience. Macedonian Law on Amnesty was adopted in 2002 (after the 2001 ethnic conflict). The paper determines the scope of the law and assesses its compatibility with the state's obligations under IHRL. In this context, it puts particular attention on the authentic interpretation of Article 1 of the Law (adopted in 2011) which has applied the Law on all cases returned to Macedonia for prosecution from the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The paper is divided into four sections. The first part of the paper determines the term amnesty and discusses the differences between the

---

[2] Ibid, 564.

[3] Mark Freeman and Max, Pensky, "*The Amnesty Controversy in International Law*" in Amnesty in the Age of Human Rights Accountability Comparative and International Perspectives **(**eds.**)** Francesca Less and Leigh A. Payne (New York: Cambridge University Press, 2012), p. 64.

[4] See Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bringing the Peace and Justice Divide, (Portland: Hart Publishing, 2008).

various types of amnesties. In addition, it identifies the motives of the states to grant amnesty and methods by which an amnesty can be introduced by referring to the existing literature. The duty to prosecute and the obligation of the state to provide effective remedy under IHRL is considered in the second part of the paper. The third part of the paper examines Macedonian amnesty experience. In the conclusion the paper underlines the growing tendency in the international law to see amnesties for grave human rights violations as unacceptable and identifies certain future challenges in relation to the matter under discussion.

2. AMNESTY: DEFINITION, TYPES, SCOPE AND OBJECTIVES

Black's Law Dictionary defines amnesty as: "a sovereign act of forgiveness of past acts granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offences - treason, sedition, rebellion, draft evasion, and often conditioned upon their return to obedience and duty within a prescribed time."[5] According to Bull, amnesty has traditionally been understood in a legal sense to denote efforts by governments to eliminate any record of crimes that have already occurred by barring criminal prosecutions and / or civil suits for particular categories of crimes or individuals.[6] One may agree with Mallinder's observation that no accepted international definition has been developed so far and that the term amnesty may be defined differently on a national level.[7] But, one can find it very hard to dispute that in the essence of the amnesty is providing impunity for wrongful acts. Another question that arises in this context is amnesty to whom or for which kind of acts. The theory and practice testify that there are various types of amnesties. Thus, one can speak about the following distinctions (made based on different criteria: scope, subject to which it is granted, whether amnesty process is conditional or not etc.) in relation to amnesties:

---

[5] Faustin Z. Ntoubandi, Amnesty for Crimes against Humanity under International Law (Leiden/Boston: Martinus Nujhoff Publishers, 2007), p. 9.

[6] Bull in Louise Mallinder "Amnesties" in The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimizations and Post-Conflict Justice Volume 1, (ed.) M. Cherif Bassiouni (Intersentia, 2010), p. 794.

[7] See in Louise Mallinder, "Amnesty Challenge to Global Accountability Norm? Interpreting Regional and International Trends in Amnesty Enactment" in Amnesty in the Age of Human Rights Accountability Comparative and International Perspectives **(**eds.**)** Francesca Less and Leigh A. Payne (New York: Cambridge University Press, 2012), p. 75.

- Blanked amnesty[8] ("which prevents from legal proceedings against all persons without distinction"[9]) or limited amnesty ("excludes certain categories of crimes (serious human rights violations) or certain individuals such as the leaders and intellectual authors of the polices of oppression and violence or members of particular organization"[10]);
- Self-amnesty ("introduced by the authorities in bad faith partly or wholly to protect themselves against sanctions for their own behavior"[11]) or amnesty offered by the state to former opponents[12]);
- Conditional amnesty (that requires applicants "to perform tasks such as surrendering weapons, providing information on former comrades, admitting the truth about their actions or showing remorse to benefit from amnesty"[13]) or unconditional amnesty.

Some authors also make distinction between internal amnesties ("frequently granted after revolutions or civil wars by municipal authorities, and they are political acts of primarily domestic significance"[14]) and external amnesties ("those which are usually included in treaties of peace after international wars"[15]). Different types of amnesty can be introduced through different methods. Mallinder identifies the following four: "(i) exercise of executive discretion; (ii) negotiated peace agreements; (iii) promulgated amnesty laws; and (iv) referenda."[16] But, why states grant amnesties? The

[8] For blanked amnesty see more in William W. Burke-White, "Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation," *Harvard International Law Journal* 42, no. 2 (2001): p. 482 - 493.

[9] Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst, An introduction to Criminal Law and Procedure, 2nd Edition (New York: Cambridge University Press, 2010), p. 563

[10] Louise Mallinder "Amnesties" in The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimizations and Post-Conflict Justice, Volume 1, (ed.) M. Cherif Bassiouni (Intersentia, 2010), p. 794.

[11] Cath Collins, Post-transitional justice Human rights trails in Chile and El Salvador (Pennsylvania State University Press, 2010), p. 29.

[12] Ibid.

[13] Louise Mallinder "Amnesties" in The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimizations and Post-Conflict Justice Volume 1, (ed.) M. Cherif Bassiouni (Intersentia, 2010), p. 795.

[14] Faustin Z. Ntoubandi, Amnesty for Crimes against Humanity under International Law (Leiden/Boston: Martinus Nujhoff Publishers, 2007), p. 12.

[15] Ibid.

[16] Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bringing the Peace and Justice Divide, (Portland: Hart Publishing, 2008), p. 30.

proponents of amnesty justify it as a necessary "evil" for achieving peace[17] or putting end to a violent conflict. Furthermore, they claim that amnesties promote the process of reconciliation although (as Cryer et al. observed) this is not empirically proved.[18] The opponents of amnesty challenge the idea that lasting peace and reconciliation are possible if a state (post-conflict) remains silent to the victims' right to truth, justice and reparation. At the same time, some writings[19] reveal that not the internal (including the controversial self-amnesties) but the international pressure can be a key factor in the decision of the states to grant an amnesty. But, how can one objectively assess the state's motives for providing impunity for criminal acts? Can a state have multiple goals for granting an amnesty including the long-term ones? It probably can. However, the paper does not involve in such debates but gives priority to the question of legality of amnesty under international human rights law.

AMNESTY AND IHRL: CAN A STATE GRANT AMNESTY FOR GRAVE HUMAN RIGHTS VIOLATIONS?

An analysis of the existing human rights treaties reveals that a treaty which explicitly forbids granting amnesty for human rights violations has not been adopted so far. Therefore, can one argue that the compatibility of amnesties with IHRL is not questionable? Hardly! What about the duty of the state to prosecute and punish grave human rights violations? But, do human rights treaties contain provisions that explicitly require a state to prosecute the perpetrators of those violations? Some of them do (for instance, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987) but some of the core human rights instruments do not, for instance, the International Convent on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR) contain no provision that explicitly impose duty on the state to prosecute the violation of the rights recognized by them. However, these

[17] See for instance see in Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bringing the Peace and Justice Divide, (Portland: Hart Publishing, 2008); Faustin Z. Ntoubandi, Amnesty for Crimes against Humanity under International Law (Leiden/Boston: Martinus Nujhoff Publishers, 2007); Rutti G Teitel, Transitional Justice, (New York: Oxford University Press, 2000).

[18] Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst, An introduction to Criminal Law and Procedure, 2nd Edition (New York: Cambridge University Press, 2010), p. 569.

[19] See for instance Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bringing the Peace and Justice Divide, (Portland: Hart Publishing, 2008), 37-41; p. 61 - 63.

treaties contain provisions which require a state to respect and ensure to all individuals within its jurisdiction the rights protected by them and to provide an effective remedy. Does the term "to respect and ensure" the rights imply the duty to prosecute the violations of rights recognized by the treaties? Some authors take position that it seems difficult to conclude that states are prepared to interpret this term to provide for a duty to prosecute all serious violations of human rights,[20] others[21] take different position and argue that the term implies duty to prosecute the perpetrators of the human rights violations. The latter frequently refer to interpretation of treaties' provisions by the bodies which have competence with respect to the matters relating to the implementation of commitments undertaken by the states. What does the grooving body of jurisprudence, generated by these institutions, say regarding this issue? The Human Rights Committee (HRC) in its General comment no.20 noted that "some states have granted amnesty in respect of acts of torture" and observed that such amnesties "are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future."[22] It made clear that "states may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as it may be possible."[23] Ten years later in its General comment no. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant the Committtee observed that a failure to investigate as well as a failure to bring to justice perpetrators of violations of the rights guarantee with the ICCPR "could in and of itself give rise to a separate breach of the Covenant."[24] In response to the communication by an individual in the case *Hugo Rodrigues v Uruguay* the HRC observed that amnesties for gross violations of human rights are incompatible with the obligations of the State party under the Convent.[25] The Committee noted with deep concern that the adoption of the amnesty law by Uruguay "effectively excludes in a number

[20] Steven Ratner "New Democracies, Old Atrocities: An Inquire in International Law"*The Georgetown Law Journal*, Vol 87 (1999): p. 707 - 748.

[21] See Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review* 78 (1990):p. 462 - 474.

[22] General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 15.

[23] Ibid.

[24] General comment no. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add 13, 26 May 2004, para. 18.

[25] H.R.C., Case of Hugo Rodríguez v. Uruguay, Communication No. 322/1988, UN Doc. CCPR/C/51/D/322/1988, Report of August 9, 1994, para.12.4.

of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses."[26] Furthermore, at several occasions, the HRC expresses its concerns on amnesty process in other countries including Argentina.[27]

The Inter-American Court of Human Rights (IACtHR) made one step forward in affirming positive duty of the state to prosecute serious human rights violations. In the case *Velásquez-Rodríguez v. Honduras* it observed that "the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[28]" A bigger step in this regard was made by the Court in 2001. Namely, in the case ***Barrios Altos v. Peru*** the Court faced the question of legality of the Peruvian amnesty laws and stated that "all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent from the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by the international human rights law."[29] It considers that the amnesty laws adopted by Peru are not in compliance with: (1) article 8 (1) of ACHR - they prevented the victims' next of kin and the surviving victims in this case from being heard by a judge; [30] (2) Article 25 of ACHR - they violated the right to judicial protection; [31](3) Article 1 (1) of ACHR - they prevented the investigation, capture, prosecution and conviction of those responsible for the events that occurred in Barrios and they obstructed clarification of the facts of this case; [32] (4) Article 2 of ACHR – by adoption of self-amnesty laws Peru failed to comply with the obligation to adapt to the internal legislation.[33] In addition, the Court emphasized that "in the light of the

[26] Ibid.

[27] See HRC, Report of the Human Rights Committee, A/50/40/ 3 October 1995, p. 36.

[28] I/ACourt H.R., Case of Velásquez-Rodríguez v. Honduras, Judgment July 29, 1988, Series C No.4, para.174.

[29] I/A Court H.R., Case of Barrios Altos v. Peru. Merits. Judgment March 14, 2001. Series C No. 75, para. 41.

[30] Ibid, para. 42

[31] Ibid,

[32] Ibid.

[33] Ibid.

general obligations established in Articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention."[34] At the end, the Court noted that the right to true is subsumed in Article 8 and 25 of the ACHR. Despite the different approaches in interpretation of the judgment (narrow and broad) the literature testifies that the case ***Barrios Altos v. Peru*** **had a profound impact on transitional justice processes in Peru and provoked annulment of the amnesty laws adopted in many states in Latin America**[35] The IACtHR has not found a legal basis to depart from its position regarding the incompatibility of amnesties for grave human rights violations and in the case *Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil* (referring to the case ***Barrios Altos v. Peru*****)** considered that the non-compatibility with the Convention includes amnesties of serious human rights violations and is not limited to those which are denominated, 'self-amnesties"[36] It took the similar position in 2012 in the case *The Massacres of El Mozote and Nearby Places v. El Salvador.*[37] Despite some claims that the case law of the IACtHR is a response to the specific circumstances it was dealing with[38] other human rights bodies referred to its jurisprudence in relation to amnesties including the European Court of Human Rights (ECtHR). The ECtHR is established to ensure the observance of the engagements undertaken by the states parties to the European Convention on Human Rights (ECHR). The Convention contains no provision that explicitly requires states to prosecute the perpetrators of the violations of the rights protected by it. However, it contains provision that requires a state to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. Also, Article 13 of the ECHR requires the state to provide domestic remedy which is

[34] Ibid, para. 43.

[35] See Lisa J. Laplante, "Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes," *Virginia Journal of International Law* 49:4 (2009): p. 974 - 982.

[36] I/A Court H.R., Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No.219, para. 175.

[37] I/A Court H. R., Case of the Massacres of El Mozote and nearby places v. El Salvador. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 19, 2013. Series C No. 264.

[38] See Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst, An introduction to Criminal Law and Procedure, 2nd Edition (New York: Cambridge University Press, 2010), p. 70 - 71.

effective in both law and practice. So, are amnesties for grave human right violations compatible with the obligations under ECHR?

The ECtHR examined (among other things) the question of amnesty in the case *Marguš v Croatia* (the case was referred to the Grand Chamber) and in its judgment it referred *inter alia* to the case law of the IACtHR (as it has been mentioned above). If one analyses the judgment of the Grand Chamber in this case one may underline the following Court's observations in relation to the amnesties: (1) "granting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the State's obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible";[39] (2) "a growing tendency in the international law is to see such amnesties [amnesty for acts which amounted to grave breaches of fundamental human rights] as unacceptable because they are incompatible with the unanimously recognised obligation of the States to prosecute and punish grave breaches of fundamental human rights;"[40] (3) "by bringing a fresh indictment against the applicant [who was granted amnesty for grave human rights violations] and convicting him of war crimes against the civilian population, the Croatian authorities acted in compliance with the requirements of Articles 2 and 3 of the Convention."[41] What bears noticing here is the fact that the existing body of the Court's case law reveals that the state's obligation under Article 2 read in conjunction with Article 1 to conduct an effective investigation "is not confined to cases where it has been established that the killing was caused by an agent of the State."[42] Based on the Court' judgment in the case of *Marguš v Croatia* (2014) one may observe that the Court has departed from its position in the case *Tarbuk v. Croatia* (2012) where it considered that "even in such fundamental areas of the protection of human rights as the right to life, the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso, however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public."[43] But, did the Court adopt a total ban on amnesties? It seems it did not. In the concluding remarks of judgment it stated the following: "Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a

[39] Marguš v. Croatia [GC], no. 4455/10, § 127, ECHR 2014 (extracts).
[40] Ibid, para. 139.
[41] Ibid, para. 140.
[42] Ergi v. Turkey, 28 July 1998, § 82, Reports of Judgments and Decisions 1998 - IV.
[43] Tarbuk v. Croatia, no. 31360/10, § 50, 11 December 2012.

reconciliation process and / or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances."[44] It follows that according to the Court, some particular circumstances might justify amnesty.

At the end of this part it also bears noticing that a number of international bodies have passed resolutions, declarations, recommendations or other nonbinding acts requiring a state to investigate and prosecute grave human rights violations. Based on the foregoing, one may ask the question whether a duty (generalized) to prosecute grave human rights violations has been developed under the customary international law. Have the state practice and *opinion juris* regarding prosecution of the grave human rights violations been established? As Robertson observed the state's (treaty based) obligations to bring to justice those responsible for genocide, acts of torture and grave breaches of the Geneva Convention of 1949 are now widely considered to be reinforced by equivalent customary international law obligations.[45] What about crimes against humanity and some other crimes under the international law? One may not argue that the state is not permitted to prosecute the crimes against humanity or other grave human rights violations under the customary international law? But, is the state obliged to do so? Can existing literature resolve the dilemma? Hardly! There is still a dispute over this issue in the literature. On one side of the debate are those[46] who argue that states are not obliged to prosecute certain international crimes like crimes against humanity under the customary international law (permissible but not mandatory). On the other side of the debate are those who reject this argument and claim that state is not permitted to grant amnesty for such crimes. Yes, the state practice does not speak (clear enough) in favor of a duty (generalized) to prosecute under customary international law. Yet, one may not forget that many states have annulled their amnesty laws in response to different events (as it has been mentioned above). What is the Macedonian story? Does the Macedonian case support

[44] Marguš v. Croatia [GC], no. 4455/10, § 140, ECHR 2014 (extracts).

[45] Daril Robertson. "Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court,"*European Journal of International Law* 14 (2003): p. 490 - 491.

[46] See for instance Michel P. Scharf "Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?" *Texas International Law Journal*, Vo l31:1 (1996): p. 39.

Ratner and Abrams's view that "it seems premature to speak of a revolution in favor of accountability"?[47]

3. MACEDONIAN AMNESTY EXPERIENCE

The Ohrid Framework Agreement (OFA) signed on 13 August 2001 put an end of the armed conflict (between the National Liberation Army (NLA) and the Macedonian security forces) in the Republic of Macedonia. Did the Agreement provide answers to all challenges at that moment? What was the state's response to crimes related to the 2001 conflict? More precisely, does the OFA contain explicit provisions on amnesty of NLA's members? The amnesty of the NLA's members was not formally part of the OFA. However, the President of the Republic of Macedonia was under great pressure by the international community (particularly by NATO) to sign a letter promising the amnesty of NLA's members, which he eventually did.[48] The international pressure had played a significant role in introducing of amnesty process country.

The Law on Amnesty was adopted by the Macedonian Assembly in 2002. But to whom amnesty was granted? According to the Law all citizens of the Republic of Macedonia, the persons with legal residence as well as the persons who have property or family in the Republic of Macedonia who reasonably doubted to have prepared or have committed crimes relating to the 2001 conflict by the date of 26th September 2001 are exempt from prosecution, all criminal proceedings against them are stopped and they are completely exempt from execution of the prison sentence[49] (if the criminal proceedings against them had finished). The amnesty also applies on persons who prepared or committed a crime relating to the 2001 conflict before January 1 2001. Bearing in mind the material scope of the Law one may observe that the amnesty introduced by it is limited – it does not cover certain categories of crimes. Namely, the Law does not apply on persons who committed crimes relating and in connection to 2001 conflict which are under jurisdiction of ICTY and for which the Court will start a procedure.

The Law on Amnesty (particularly its scope) was (during the adoption) and it is still subject of dispute in the country (not only within the

---

[47] Steven R Ratner and Jason S. Abrams, Accountability for Human Rights Atrocities in International law. 2nd Edition, (New York: Oxford University Press: 2009), xlii.

[48] See more in Mark Layty, Preventing war in Macedonia, Pre - Emptive Diplomacy for the 21 st Century (Skopje: Foundation Open Society-Macedonia, 2009), p. 52 - 56.

[49] See Article 1 of the Law on Amnesty, Official Gazette of Republic of Macedonia, 18/2002.

academic community). The authentic interpretation of Article 1 of the Law on Amnesty adopted by the Macedonian Assembly in 2011 as part of the post-election agreement between the political parties that formed the Government (including the political party that emerged from the former NLA) has not put an end to the debate, but it has sparked it. The 2011 decision of the Assembly (not supported by the major Macedonian opposition party) has applied the Amnesty Law on all cases returned to Macedonia for prosecution from ICTY. Namely, in 2002 five cases from Macedonia were deferred to the jurisdiction of ICTY: (1) NLA Leadership case; (2) Lipkovo Water Reserve case; (3) Mavrovo Road Workers case; (4) Neprosteno case; and (5) Ljuboten case. The ICTY issued indictment only in the last case (only one person form Macedonia was found guilty and was sentenced by the Court). In 2008 the other four cases (the investigative files) were returned to Macedonia for prosecutions.As it has been mentioned above the 2011 authentic interpretation of Article 1 of the Amnesty law has applied the Law on all of them. All activities regarding the cases have stopped. The events which had preceded the 2011 decision (training programs targeting all potential actors in the four cases conducted by the ICTY in cooperation with other international and national institutions;[50] re-establishment of a special department of investigative prison in Skopje according to ICTY standards and sketch; investigations were being conducted; the trail on Mavrovo Road Workers case begun) did not suggested this kind of epilog. However, when justice becomes a matter of political bargaining the outcome can be a real surprise.

The 2011 Assembly's decision was and it is still criticized as unconstitutional and contrary to the international law on national and international level. On the other hand, the Constitutional Court of the Republic of Macedonia reject to consider the petition[51] (for an institution of a procedure for assignment of the constitutionality of Article 1of Amnesty Law and the authentic interpretation of the article) submitted by some of the victims' relatives.

The judiciary (Macedonian) has not challenged the 2011 decision adopted by the Assembly in any way so far. But, as the European commission stresses in its last progress report one of the main challenges of the country "is the growing concern voiced about the selectivity of, and

[50] See for instance: ICTY, The fifteenth annual report of the International Criminal Tribunal for the Former Yugoslavia covers the period from 1 August 2007 to 31 July 2008, A/63/210 S/2008/515, August 2008, para. 15.

[51] See Constitutional Court of Republic of Macedonia, Decision, U. no. 158/2011, 31 October 2012.

influence over, law enforcement and the judiciary."[52] This raises a dilemma whether Macedonia has an adequate legal infrastructure to respond to the grave human rights violations that occurred in the armed conflict. The investigations and prosecutions of the cases return for prosecution from ICTY termined in response of the 2011 decision. Is this a result of the interference of the executive in the work of the Office of the Prosecutor (as Amnesty international suggested[53]) or just a simple recognition that state (bearing in mind social and political reality) does not have the capacity to prosecute these cases? The paper will not involve in such debates but it will briefly analyze the compatibility of the 2011 decision with the Macedonian obligations under IHRL. Macedonia is a state party to many human rights treaties including ICCPR an ECHR. So, it failed to comply with certain human rights obligations by applying the Amnesty Law on the cases (involving serious human rights violations) returned for prosecution from ICTY: to provide the victims of the abuses access to justice and reparation. Also one may not forget that the state has obligation under Article 2 of the ECHR to conduct effective investigation when individuals are killed or it could be presumed that they are dead (as some of the victims).

4. CONCLUSION

The paper addressed the issue of legality of amnesty under the international human rights law. In order to answer the question of whether the states can grant amnesty for grave human rights violations it analyzed the international treaties and case law relevant for the matter under discussion. The analysis showed that some of the human right treaties explicitly impose a duty to prosecute those responsible for violation of the rights protected by them, but some of the core human rights instruments do not. The paper focused on ICCPR, ACHR and ECHR. These treaties contain no provision that explicitly impose duty on states to prosecute the violation of the rights recognized by them. However, they contain provisions which require a state to respect and ensure (ECHR-to secure) to all individuals within its jurisdiction the rights protected by them and to provide an effective remedy. But, how such obligations are interpreted? The paper showed that the human rights bodies which have been established to monitor the implementation of commitments undertaken by the states under these treaties are not willing to accept amnesties for grave human rights violations. One must underline that

[52] European Commission, 2014 Progress Report, October, 2014, p. 11.

[53] See Amnesty International, Macedonia: Submission to the UN Universal Period Review 18th Session of the UPR Working Group, January – February 2014, Amnesty International, EUR 65/003/2013, June 2013, p. 4.

there is a growing tendency in the international law to see such amnesties as unacceptable. The IACtHR has made the biggest step in affirming a positive duty of the state to prosecute serious human rights violations. It concluded that amnesties for serious human rights violations (and not only the self-amnesties) are not compatible with ACHR (*Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil***)**. On the other hand, it seems that the ECtHR has not adopted a total ban on amnesties yet. In the *Marguš* case it underlined a growing tendency in the international law to see amnesty for acts which amounted to grave breaches of fundamental human rights as unacceptable and stated that granting amnesty in respect of the killing and ill-treatment of civilians is not in accordance with ECHR. However, one sentence of the judgment in this case suggests that it might accept amnesty in a case where some particular circumstances (such as a reconciliation process and / or a form of compensation to the victims) exist. But, it did not accept it in this case. One the other hand, who can objectively measure the impact of amnesty on the process of reconciliation?

Despite the controversies many countries have granted amnesty in different circumstances so far. Macedonia is one of the states with amnesty experience. The Law on Amnesty was adopted in 2002 and it applies to all citizens of the Republic of Macedonia, the persons with legal residence as well as the persons who have property or family in the country who reasonably doubted to have prepared or have committed crimes relating to the 2001 conflict by the date of 26th September 2001. Amnesty introduced by the law is limited - it doesn't apply on crimes which are under jurisdiction of ICTY and for which the Court will start a procedure. However, the authentic interpretation of Article 1 of the 2002 Amnesty Law adopted by the Macedonian Assembly in 2011 has applied the Law on all cases returned to Macedonia for prosecution from ICTY. Although the general conclusion regarding the amnesty process in Macedonia cannot be achieved just based on the brief analysis provided above, the paper provided solid arguments that the state failed to comply with certain human rights obligations by adopting the 2011 decision.

5. REFERENCES

1. Burke-White, William W. "Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation." *Harvard International Law Journal* 42, no. 2 (2001): p. 467 - 533

2. Cath Collins. *Post-transitional justice Human rights trails in Chile and El Salvador*. Pennsylvania State University Press, 2010

3. Cryer, Robert, Friman, Hakan, Robinson, Darryl and Wilmshurst, Elizabeth. *An introduction to Criminal Law and Procedure*, 2nd Edition, New York: Cambridge University Press, 2010.

4. Freeman, Mark and Penskym Max. "*The Amnesty Controversy in International Law*" in Amnesty in the Age of Human Rights Accountability Comparative and International Perspectives (eds.) Francesca Less and Leigh A. Payne, New York: Cambridge University Press, 2012

5. HRC, General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment).

6. HRC, General comment no. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004.

7. HRC, Report of the Human Rights Committee, A/50/40/ 3 October 1995.

8. ICTY, The fifteenth annual report of the ICTYcovers the period from 1 August 2007 to 31 July 2008, A/63/210 S/2008/515, August 2008.

9. Laplante, J. Lisa. "Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes." *Virginia Journal of International Law* 49:4 (2009): p. 915 - 984

10. Layty, Mark. *Preventing war in Macedonia, Pre - Emptive Diplomacy for the 21 st Century*. Skopje: Foundation Open Society - Macedonia, 2009).

11. Less, Francesca and Payne, Leigh A. "Introduction" in *Amnesty in the Age of Human Rights Accountability Comparative and International Perspectives* (eds.) Francesca Less and Leigh A. Payne, New York: Cambridge University Press, 2012.

12. Mallinder, Louise "Amnesties" in *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimizations and Post-Conflict Justice Volume 1*, (ed.) M. Cherif Bassiouni Intersentia: 2010.

13. Mallinder, Louise. Amnesty, Human Rights and Political Transitions: Bringing the Peace and Justice Divide. Portland: Hart Publishing, 2008.

14. Mallinder, Louise. "Amnesty Challenge to Global Accountability Norm? Interpreting Regional and International Trends in Amnesty Enactment" in in Amnesty in the Age of Human Rights Accountability Comparative and International Perspectives (eds.) Francesca Less and Leigh A. Payne, New York: Cambridge University Press, 2012.

15. Ntoubandi, Faustin Z. *Amnesty for Crimes against Humanity under International Law*. Leiden/Boston: Martinus Nujhoff Publishers, 2007.

16. Scharf, Michel P. "Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?" *Texas International Law Journal*, Volume l3 (1996): p. 1 - 42

17. Ratner, Steven. "New Democracies, Old Atrocities: An Inquire in International Law". *The Georgetown Law Journal*, Vol 87 (1999): p. 707 - 748.

18. Ratner, Steven and R., Abrams, Jason S., Accountability for Human Rights Atrocities in International law. 2nd Edition, New York: Oxford University Press, 2009.

19. Robertson, Daril. "Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court." *European Journal of International Law* 14 (2003): p. 481 - 505

20. Roht-Arriaza, Naomi, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review* 78 (1990): p. 449 - 513

21. Teitel, Rutti G., Transitional Justice. New York: Oxford University Press, 2000. *Case law*

22. Constitutional Court of the Republic of Macedonia, Decision, U. no. 158/2011, 31 October 2012.

23. Ergi v. Turkey, 28 July 1998, Reports of Judgments and Decisions 1998 - IV.

24. H.R.C., Case of Hugo Rodríguez v. Uruguay, Communication No. 322/1988, UN Doc. CCPR/C/51/D/322/1988, Report of August 9, 1994.

25. I/ACourt H.R., Case of Velásquez-Rodríguez v. Honduras, Judgment July 29, 1988, Series C No. 4.

26. I/A Court H.R., Case of Barrios Altos v. Peru. Merits. Judgment March 14, 2001. Series C No. 75.

27. I/A Court H.R., Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No.219, para. 175.

28. I/A Court H. R., Case of the Massacres of El Mozote and nearby places v. El Salvador. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 19, 2013. Series C No. 264.

29. Marguš v. Croatia [GC], no. 4455/10, ECHR 2014 (extracts).

30. Tarbuk v. Croatia, no. 31360/10, 11 December 2012.

UDK: 355.357:341.33/.34

TITLE: DEMOCRACY, LEGAL STATE, HUMAN RIGHTS: THE "ARMED HUMANITARIAN INTERVENTION AS TRIUMPH OF THE HUMAN RIGHTS OVER THE SOVEREIGNTY

Jana Ilieva, LLD.
UTMS University Skopje,
Email: ilieva80gmail.com;

Blagoj Conev, PhD. Cand.,
MIT University Skopje,
Emai: b.conev@gmail.com

Abstract

The humanitarian intervention in its modern and frequently used form - armed intervention is among the problems with prime importance for the international relations, international security and international law. The discussions about the armed humanitarian intervention intertwine with the theories of realism and institutionalism, as basic theories explaining the international relations. From within the same debate, the principles of sovereignty and non-intervention in internal affairs contravene with the protection of human rights i.e. various aspects and interpretations of international law arise. The debates related to the armed humanitarian intervention, affect various scientific fields, i.e. philosophers, politicians, lawyers, theologians, sociologists and other social activists that are somehow related to this issue. These discussions of humanitarian intervention have an essential significance, not only for the expression of its content and meaning but also for achievement of better explanation to the processes and changes that are typical for the contemporary international relations.

In this paper we aim to explore the modern idea of humanitarian intervention and through comparative analyses and deduction of various papers and resolutions of the UN and the International Court, to prove the thesis that: In modern time the humanitarian intervention is a legal method for protection of the basic human rights.

The main research questions in the paper are: What is a humanitarian intervention? What's the difference between *droit d'ingérence* and *devoir*

d'ingérence? Is the humanitarian intervention in accordance with the international law?

Keywords : *humanitarian intervention, international law, relationships*.

1. INTRODUCTION: HUMANITARIAN INTERVENTION

If we take into consideration the fact that the problems related to the humanitarian intervention are interdisciplinary, i.e. are subject of the international law, international relations, political science, philosophy, and even psychology and sociology, it often comes to use terms which in fact have different meanings. Therefore it is first necessary to distinguish the term "humanitarian intervention" from other related terms that are used in the scientific and professional literature, such as "humanitarian aid", "humanitarian interference"; "intervention with humanitarian purposes"; "intervention with humanitarian character"; "right for democratic intervention" and many others related or very similar terms. It is characteristic that with the end of the Cold war, the renewed discussions and interests for the humanitarian intervention lead to the emergence of the whole new terminology related to the humanitarian intervention. With the escalation of the civil and international conflicts, the violence of ethnic and religious motives, different scientists and researchers introduce different terms, which lead to lack of mutual understanding between the representatives of different sciences, states or organizations. According to Iv Sandoz this leads to endless polemics about what should be defined and with which term[1].

First, it is of great importance the distinction between the terms "humanitarian intervention", on the one hand, and "humanitarian aid" or "humanitarian actions" on the other hand, which are very often renamed in the contemporary international relations and the international law, and are related to different political and legal principles.

The main difference is that the humanitarian intervention is related to the use of force, while the humanitarian aid is characterized with every kind of actions that are used to reduce the suffering of certain group of people. The humanitarian aid unlike the humanitarian intervention is implemented with approval or consent of the sovereign state, in which should be practiced. Accordingly, an operation with humanitarian character, implemented with approval of legitimately elected government in certain state, even if its purpose is the protection of human rights, cannot be defined as

[1] Sandoz, Y. 1992. Droit or Devoir d'Ingérence and the Right to Assistance: the Issues Involved, *International Review of Red Cross*, No. 288, pp.215-227

"humanitarian intervention" i.e. can be characterized as "humanitarian aid" (term introduced by the European Union, although the meaning is not quite clear).

It is also necessary to emphasize that in case of humanitarian intervention it is of great importance the nationality of the people, which should be protected by the state which is intervening i.e. military actions taken by state A on the territory of state B, and whose purpose is protection of citizens of state A, who are not considered as "humanitarian intervention". Under these circumstances the state that intervenes has the right to invoke to the rights of its citizens, i.e. the right of collective self-defense according to article 51 of the UN Constitution. The current practice is familiar with many cases as the above mentioned example when military actions are justified with reference to the right to save your citizen on foreign territory, if the life of that person is in danger. If we look back to history, since the XIX century, the international law recognizes the right of one state to intervene in order to protect the lives of its citizens abroad. In 1946, Great Britain mobilizes their forces on the Iran-Iraq border in order to protect their citizens on the territory of Iran. Between 1960 and 1964, Belgium and USA, with the help of armed forces, succeed to protect the lives of their citizens in Congo. There are numbers of other analogue examples as these in history when is used "the right" to be saved the lives of the citizens of one state who are located on the territory of other sovereign state.

To complete the terminological defining of these terms it is necessary to emphasize that in the French language there are two terms: „droit d'ingérence"– the right to intervene and „devoir d'ingérence"– the obligation to intervene, which are subject of discussion to the intellectual elites worldwide. According to Sandoz these terms of the French language do not have exact equivalents in English and in many other languages as well, which allows connection of these two terms – "right to intervene" and "obligation to intervene" in one much more simplified "humanitarian intervention", which additionally complicates the explanation of what exactly means the term "humanitarian intervention".[2] In the official UN documents, it is frequently used the term „droit d'ingérence", which in Macedonian is translated as "right to intervene" (for humanitarian reasons).

Regardless of this, some researchers emphasize that the above mentioned term cannot be considered as "determined" definition in the international law. Perhaps it would be most accurate the explanation of Will Verwey who says that the doctrine of humanitarian intervention is interpreted widely by the political sciences, sociology and international

[2] Sandoz, Y. 1992. Droit or Devoir d'Ingérence and the Right to Assistance: the Issues Involved, *International Review of Red Cross*, No. 288, pp.215-227

relations, while in the international law, the concept is distinguished by its more narrow interpretation.[3] When studying the "humanitarian intervention" we are facing the basic obstacle – comparative analysis of a number of documents and literature and it becomes clear that today in the international law exist very few terms that are so indistinct and legally controversial, as is the term "humanitarian intervention". That is a result of the differences in the interpretation of "intervention" and "humanitarian". As for "intervention", more analysts lately consider and claim that this term means "interference in internal affairs", often with help of a military force, of other state in order to support or change the current political situation in that other state. It concerns, at first place, the independent foreign politics of that other state, as well as its supreme authority over its territory and population.

When we interpret the term "intervention" we usually associate it with military intervention and for this defining a major contribution has Bhikhu Parekh[1].According to him, for one action to be determined as "intervention" it is necessary to follow the following four conditions:[4]

1. First the state subject of the intervention should be recognized and sovereign. The intervention is violation of the autonomy and is expected the state-subject to use such intervention. It is not "intervention" action of one state, on the territory of another state, which is an action only on certain part of the population, which is unilaterally determined as independent.

2. Intervention is an action whose objectives are to achieve influence on the internal affairs of other state without conquer and annexation

3. The intervention should create disputing in the concerned state for these determined actions, i.e. if the "intervention" is at request of the concerned state, or with its permission, that is called "humanitarian aid" and not an intervention

4. The intervention is an interference in the internal affairs of other state and violation of its territorial integrity with the use of armed force. It is not an "incident" but a direct and targeted action.

In order to be used the term "humanitarian" in the right for humanitarian intervention, there should exist conditions (evidence) for

[3] Verwey, W.D. 1985. "Humanitarian Intervention under International Law", *Netherlands International Law Review*, No. 31, 1985

[4] Parekh, B. 1998. Humanitarian Intervention and Beyond in World Orders in the Making. London: Macmillan, p.144

serious violation of human rights i.e. large and fundamental violation of the rights and freedoms of the human, such as genocide, system destructions, criminals against the humanity and other barbarian and inhuman actions. Many contemporary analysts and professors consider that the armed humanitarian intervention is closely related to the loss of human lives and protection from suffering. In that sense it is very difficult to determine when and which human rights are violated in order to be justified one humanitarian intervention because violation of the rights of education and labor for example, cannot be used as a basis for performing actions under the pretext of humanitarian action. From this can be concluded that the humanitarian intervention is always related to the right to live in situations when this right is violated or seriously threatened. The word renowned authorities in international law, such as L.F.L. Oppenheim and H. Lauterpaht, explain the possibility for humanitarian intervention in a situation when the state itself makes repressions against its population and manages the state in a way which shortens the basic rights to its people and thereby shocks the entire humanity.[5]

2. DEVELOPMENT OF THE IDEA AND THE PRACTICE OF THE ARMED HUMANITARIAN INTERVENTION AFTER THE END OF THE COLD WAR

In the 90's of the XX century the balance between the sovereignty and noninterference in the internal affairs of other state and the protection of human rights starts to change dramatically in favor of the fundamental human rights and freedoms. This, to a great extent, is due to the end of the Cold war, the end of the opposition between the East and the West and the increased opportunities for reaching agreement between the states, which are permanent members of the Security Council of UN, i.e. taking common solutions for collective activities for the issues which affect the international security. The situation which is typical for the period following the fall of the Eastern bloc is marked with greater connection between the violation of the human rights and the international security. The huge changes made in the structure of the international relations enhance the opportunities for humanitarian intervention with or without sanction by the Security Council of the UN. Many of the operations made by different states, states coalitions or international organizations pretend that they fulfill the doctrine of the humanitarian intervention in practice.

[5] Oppenheim, L. and H. Lauterpacht. 1995. International Law. London: Longman.

The end of the Cold war led to essential changes in both the theoretical conception and the practice of the "humanitarian intervention". These changes are stimulated by the action of several different factors:

- The changing of the structure in the international relations, i.e. the disintegration of the bipolar model;
- The end of the rivalry between the two superpowers, which leads to interruption of the practice of limitation and noninterference in the internal affairs of other states. Throughout the whole period of existence of the bipolar system, the superpowers only "interfere" in conflicts that are territorially at their periphery i.e. they refrain of violation of the territorial borders established after the end of the World War II;
- The end of the ideological opposition leads to situation of termination of the support for "friendly" repressive regimes in order to prevent their passing in the opposite bloc (this refers especially to the USA).

Since the Cold war contributed for transformation of the "noninterfering" in the internal affairs of other state into *universal principle*, its end led to strengthening of the other tendency – protection of human rights and their conversion into important principle, especially for the states of the West. In this way was created a good political basis for practical renaming of the idea for "humanitarian intervention".

The humanitarian intervention is not only a reaction to the protection of the human lives from the repressive regimes or political systems, but also an act for prevention of internal conflicts or disintegration of states, in which cases the rights of the population are seriously violated. This can be concluded from the facts that most of the conflicts with which is facing the international community after the fall of the Eastern bloc are internal instability or civil wars. That is the reason for the drastic increase of the number of concrete situations, which are claimed to represent "humanitarian intervention", as well as the increasing number of resolutions brought by the Security Council of the UN, according to Chapter VII of the Constitution of the organization. In some of the cases (Resolution 688 for Iraq, Resolution 770 for Bosnia and Herzegovina, Resolution 929 for Ruanda and Resolution 1199 for Kosovo), the Security Council found serious violations of the human rights and defines them (together with the civil conflicts) as "threat to the international peace and security", and recommends establishment of economic sanctions and use of military force.

In the period between 1989 and 2001, the Security Council has established economic sanctions in 14 cases (unlike the period between 1945-

1989 when were established twice more sanctions of economic character) and has allowed the use of a military force in 11 conflict situations.[6]

The humanitarian component expressed through the definition of the humanitarian crisis is spread not only with protection of the human rights but also in the international humanitarian law (the right in time of armed conflicts) and delivery of humanitarian aid. On the other hand, the strict determination of the humanitarian intervention from the period of the Cold war contributes to the creation of the idea that the same is illegal *per se* because contradicts with the principles of the sovereignty and self-determination.

The change of the balance of article 2 paragraph 4 of the Constitution of UN, which reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" and paragraph 7 which reads: "this principle shall not prejudice the application of enforcement measures under Chapter VII", opens up new possibilities for interpretation. As pointed by Christopher Greenwood, we are in a situation in which it is no longer possible to support the positions in which the government kills its own people or the state is in a process of disintegration or anarchy regime and the international law prohibits military intervention.[7]

Most of the interventions made after the end of the Cold war, are regional or global interventions and are legitimate, i.e. are approved with resolutions by the Security Council of the UN, which contributes to the participation of the universal organization in solving the most important problems in the world politics.

3. UN AND THE ARMED HUMANITARIAN INTERVENTION

According to the international law, the Security Council of UN is the only authority that is competent in making decisions related to the use of force including the use of force in humanitarian purposes. Historically, it is extremely important the compromise between the great powers and the small states, which is in fact a balance of their interests. This compromise is reached in exceptional circumstances after the second world conflict and if disturbed, for its renewal will take the same enormous desires and efforts which were made for its creation. The Security Council as institution aims to

[6] Kadras, S. 2001. Humanitarian Intervention: the Evolution of the Idea and Practice, *Journal of International Affairs*, Volume VI, num. 2.

[7] Greenwood, C. 1993. Is There a Right of Humanitarian Intervention? *The World Today*, p. 40.

achieve passing over the contradictories between the moral and the legal standards and between the legal order and the justice. The ninety years of the XX century are marked with an extraordinary progress in reaching consensus in the Security Council in order to increase the effectiveness of its actions. The last decade, however, is related to the idea that the Security Council is an inseparable part of the new international order.

All this contributes to the fact that the Security Council is a necessary component in any strategy which aims to protect the fundamental human rights and freedoms, or to solve the contradictories between the right and the moral. In this context Richard Falk applies that idea for intervention doesn't change the politics of "interfering (in the internal affairs)", but contains the development of different forms of collective intervention.[8]

The main question that arises is how to take appropriate actions when in the situations with humanitarian crises it is necessary a direct and immediate intervention, in order to stop serious violation of the human rights, and at the same time the Security Council with its way of work delays the decision-making process and the operation acts.

One of the possible solutions is the establishment of permanent forces for rapid reaction in UN, which consists of the member states armies which are able to react fast and effectively (and to be used) in case of necessity including the situation of humanitarian crises. The creation of such type of military forces is not something new, but a renewed idea that was once suggested during the foundation of the organization, i.e. a creation of a personal military structure which will include "military committee" and a mechanism for acting. However, for realization of this idea it is required willingness and determination by the powerful states.

Another possible solution is the usage of the potential of the regional international organizations. The main advantage of this concept is that the humanitarian intervention performed by regional organizations is going to be a result and expression of already existing standards in certain region, and not a result of externally dictated standards. In this sense, the regional organization can achieve better results than the universal regarding the community concerned with the humanitarian crisis. Furthermore, the humanitarian intervention performed by regional organization shall be more effective due to the greater experience in solving problems of local character, and also the participants in the conflict would probably prefer intervention of regional subject. And last but not least, the regional organization has less bureaucratic procedures i.e. the entire process of taking decision is easier because in neither regional organization is not in practice the right of veto as

[8] Falk, R. 1999. Kosovo, World Order, and the Future of International Law in *American Journal of International Law* 93, pp. 847-857.

in the case of the permanent members of the Security Council of the UN. In the whole situation with the regional organizations the major problem is that, except NATO, no other state is in possession of financial and military potential for such actions. It can also come to a situation when both concerned sides are states members of the organization. However, the basic problem is the same as in the UN, i.e. the slowness with which the international organizations are involved in the process of solving some humanitarian crisis.

Many of the issues that concern the problems of the humanitarian interventions can be considered as part of the "big question" for reformation of the Security Council of UN. The main proposals for changes are directed towards the change of the number of representatives in that authority. This means increasing the number of the permanent member states in the Council or giving the right of veto to non-member states, such as Germany, India, Japan and Brazil, mostly due to their financial contribution to the organization, as well as due to the fact that these states are regional leaders, i.e. regional superpowers.

A major problem is taking responsibility for the decisions made by the Council, i.e. the transparency of the work (there are many accusations that the five permanent members, make most of the decisions, behind closed doors), i.e. to discontinue the practice the permanent members to make the decisions in accordance with their external and security politics, without coordination with the other ten states, which are rotating members of the Council.

Another problem is the non-existing coordination between the Security Council and the General Assembly of UN. The lack of coordination between these two extremely important authorities of the organization contributes to slowness in the reaction i.e. the practicing of the humanitarian intervention.

The aspiration to link the humanitarian intervention with the Security Council of UN is obvious. In this way the humanitarian intervention would be given legal legitimacy because it is in accordance with the decisions of the universal organization, i.e. it is approved by the highest authority of the international community. Therefore, one of the main criteria for allowance of one humanitarian intervention is that the same can be performed only with engagement of the universal organization. The big question is what should be the form and where should be extend that commitment because every attempt for limitation of the humanitarian intervention within the world organization or its equivalent would mean non perception of the real situation in the contemporary international relations.

4. CONCLUSION: ESSENCE AND MEANING OF THE RESOLUTION 688 OF THE SECURITY COUNCIL OF UN

The development of the idea and the practicing of the armed humanitarian intervention after 1990 from legal point of view is based on the principles of these particular case and continence of codification of the rules and criteria that should be taken as generally accepted. Besides, some of researchers[9] consider the Resolution 688 of the Security Council of UN as an extremely important document in the history of the organization. According to them, that resolution creates a solid legal basis for intervention by the allies for creation of *safe harbors* and for introduction of *prohibited air spaces*. In that way, the Resolution sanctions the first military operation (on Iraq), in context of Chapter VII of the Constitution of UN and opens up the possibility for intervention with humanitarian character, directed towards the massive violations of the human rights and the violent actions conducted against the civilian population (the Kurds in North Iraq) by the regime of Iraq. The Resolution is considered also as a triumph of the human rights regarding the sovereignty of the state which is inviolable in the international law. J. Gallant says: "The Resolution 688 is the first document of the Security Council, which sanctions the right on intervention (for reasons of humanitarian character) in the internal jurisdiction of a certain state".[10] The claims that the humanitarian intervention is completely illegal due to the fact that it cannot invoke neither to the right of self-defense (article 51 of the Constitution of UN) nor to the measures provided in Chapter VII of the Constitution of UN are already exceeded.

The Resolution 688 was adopted on 5th April 1991 by the Security Council of UN with ten votes for and three against (Cuba, Yemen and Zimbabwe) and two abstained (India and China). Four of the member states of the Security Council (including India and Yemen) clearly express their opinion that the measures for forcing provided by the Resolution (with help of military force) are illegal. With this it was proven the fact that in the discussions for the humanitarian intervention between its defenders and the opponents are renewed the old theories for international relations, i.e. the realism and the idealism oppose. It is interesting the fact that the Resolution 688 neither mentions Chapter VII of the Constitution of UN nor exists reference for assumption of collective safety measures in accordance with

[9] Duke, S. Eisner, D. Gallant, J.A.

[10] Gallant J.A. 1991-1992. Humanitarian Intervention and Security Council Resolution 688: A Reappraisal of Light of Changing World *Order in American University Journal of International Law and Policy,* vol. 7.

article 42 of the Constitution of the organization. Furthermore, in the preamble of the Resolution it is spoken about sovereignty, territorial integrity and political independence in Iraq and other states of the region. Special attention should be given to the fact that there is no reference neither to article 45 and 46 of the Constitution, which are regulating the undertaking of common and individual interventions for achieving the goals related to the respect of the human rights. Instead of referring to these articles as a legal base the situation is defined as "threat or violation to the international peace and safety". This means that the operations are not justified as "humanitarian" but are related to the problems of the peace and safety in the world. Another interesting fact is that in the Resolution 688, as well in the Resolution 1199 for Kosovo, there is a lack of a clear legal sanction by the Security Council of UN and the armed actions are based on *implied right* on humanitarian intervention, i.e. as a result of the already determined situation – "threat to the world peace and safety".

The Resolution 688 actually does not have any legal basis to perform humanitarian actions, and that can be seen in the text of the Resolution, as well in the interpretation given by UN: "the resolution does not invoke to Chapter VII of the Constitution of UN … and is not obligatory"[11] and also in the interpretation by the Legal Committee of the American State Department, where it is explained that the document "has a humanitarian character and is voluntary because it does not invoke to Chapter VII of the Constitution of UN".[12]

What seems important from theoretical point of view is that in the collective system for safety of the UN can be taken actions in accordance with Chapter VII of the Constitution of UN, for improvement of situations related to the violation of the human rights, due to the fact that those situations are a threat to the international peace and safety. But it remains controversial if these interventions can be characterized as part of the doctrine for humanitarian intervention.

From legal point of view such determination and intervention are inadmissible because the measures contained in Chapter VII of the Constitution of UN, regardless the size, the content or the essentiality, are directed exclusively towards maintenance and restoration of the world peace and safety. That would mean that the introduction of new terminology could lead to ambiguity in the interpretation of the Constitution and the resolutions of the UN.

[11] Speech of the Under Secretary General on January 21 1993

[12] Duke, S. 1994. The State and Human Rights: Sovereignty versus Humanitarian Intervention in *International Relations*, XII/2.

5. REFERENCES

Cyrillic:

- Устав на Организацията на обединените нации, Статут на международния съд.

Latin:

- Duke, S. 1994. The State and Human Rights: Sovereignty versus Humanitarian Intervention in *International Relations*, XII/2.
- Falk, Richard. 1999. Kosovo, World Order, and the Future of International Law in *American Journal of International Law*, 93.
- Gallant J.A. 1991-1992. Humanitarian Intervention and Security Council Resolution 688: A Reappraisal of Light of Changing World Order in *American University Journal of International Law and Policy*, 7.
- Greenwood, C. 1993. Is There a Right of Humanitarian Intervention in *The World Today*, February.
- Kardas, S. 2001.Humanitarian Intervention: the Evolution of the Idea and Practice in *Journal of International Affairs*, Vol. VI, No. 2.
- Sandoz, Y. 1992. Droit or Devoir d'Ingérence and the Right to Assistance: the Issues Involved in *International Review of Red Cross*, May-June, No. 288.
- Oppenheim, L. Lauterpacht, H. 1995. International Law. London: Longman.
- Parekh, B. 1998. Humanitarian Intervention and Beyond in World Orders in the Making. London: Macmillan.
- Verwey, W.D. 1985. Humanitarian Intervention under International Law in *Netherlands International Law Review*, No. 31.

UDK: 323.11:342.722(4)

THE CONCEPT OF GROUP-DEFINED RIGHTS IN MULTIETHNIC MULTICULTURAL AND POLYETHNIC MULTICULTURAL STATES

Nikola Ambarkov, MA,
St. Cyril and Methodius University – Skopje
e-mail: ambarkov_ve@yahoo.com

Abstract

The theme of this paper is the concept of group-defined rights in the multiethnic multicultural and polyethnic multicultural states. The main issue that we will attempt to tackle is whether there are uniform strategies for granting group rights that should be enjoyed by the minority or ethnic communities in these societies. Certain countries, such as Switzerland and Belgium, which are a paradigmatic example of multiethnic states that have developed arrangements for managing their multicultural diversity through the so-called regional variant of multiculturalism – the consociational democracy, will be the subjects of the comparative analysis in this paper. These countries, however, due to the very personal and family migration, in terms of modernity not only do they recognize that they are multiethnic, but because of such a surge of immigrant-asylum wave, recognize that they have become poly-ethnical states. Another aspect that will also be analyzed in this paper is the degree in which this multiethnic society managed to solve such poly-ethnicity as a part of their multicultural complex. At the end of the XX century and the beginning of the XXI century, globally, the most common conflicts were those of ethno-cultural nature. The international community through constitutional and consociational engineering, considering the success of the consociational model that has occurred in some of the aforementioned countries (Belgium, Switzerland), makes an example of it in such conflict society in order to resolve the crisis in a manner acceptable to a democratic society. 'Dayton' Bosnia and 'Framework' Macedonia were part of the countries that faced this kind of strategy implemented by the international community, which will be the subject of a separate analysis in this paper. The set of group defined rights, which were developed in Dayton, and the OFA, were laid down in such a way that ethnicity was separated from the sphere of identity, culture and language, and were directly transferred to the sphere of politics, institutions, and law. In this manner,

formal political power in these countries continues to flow from the said collectives. The conclusion of this paper should show how such a set of group defined rights, through which an attempt to improve the situation of these de-privileged communities in this multi-ethnic societies has been made, managed to consolidate and stabilize them. It seems that the results remain to be slow and unsatisfactory. The reason for this lies in the fact that these were states that cannot impose their own national paradigm for dealing with their ethnic diversity, because they were served ready-made solutions from the theoretical and empirical (Switzerland, Belgium, etc.), ignoring the fact that a number of complicated conflicts can be resolved as separate cases.

Key Words: group rights, multi-ethnicity, poly-ethnicity, minorities and ethnic communities;

1. INTRODUCTION

In modern times, only 10 to 15% of the countries globally can be categorized as ethnically homogeneous. Most of the conflicts that occurred in the late 20th century were, in their basis, essentially conflicts of ethno-cultural nature, and ethnic (minority) groups that participated in them were confronted with the dominant ethnic group because of their structural inequality in the institutions of the system.[1] Other authors such as Kymlicka[2] point out that in a number of countries that have a heterogeneous nature "minorities and majorities increasingly collide on issues such as language rights, regional autonomy, political representation, education, the right to land, immigration, naturalization policy, and even national symbols, such as the selection of the national anthem and national holidays."[3] In all of these societies there appears to be an urgent need to find more durable models of policy that would be morally defensible and politically feasible, because the

[1] Petar Atanasov, *Multiculturalism as a theory, policy, and practice. (Skopje: Euro Balkan Press*), p. 10

[2] Kymlicka, Will. *Multicultural citizenship*. (Skopje: IDSCO, 2004), p. 11

[3] For an overview of the requirements for minority rights around the world, see: Jay Sigler, *Minority Rights: A Comparative Analysis*, (Wesport Connecticut: Greenwood, 1983); Ted Gurr, *Minorities at Risk: A global View of Ethno-political Conflict* (Washington DC: Institute of Peace Press, 1993); Vernon Van Dyke, "The Individual, the State, and Ethnic Communities in Political Theory," *Journal of Politics*, 44: (1977) p. 21 - 40; F. Capatori, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities. UN Doc. E/CN 4/Stub, 2/384 Rev. 1 (New York: United Nations, 1979); Hurst Hannum, *Autonomy, Sovereignty and Self-Determination: The Adjudication of Conflict Rights*, (Philadelphia: University of Pennsylvania Press 1990), p. 2 - 24

ethnic diversity that is present or is produced in these societies are unlikely to disappear overnight.[4]

In this sense the proponents of the liberal approach appreciated that in those societies where individual rights are protected there will certainly be no need of introducing additional rights for members of certain ethnic or national minorities. They were convinced that national minorities might exercise their rights by guaranteeing fundamental individual rights regardless of their ethnic origin.[5] Thus, "the doctrine of human rights was introduced to replace the concept of minority rights, with emphasis on the fact that minorities whose individual members enjoy equality of treatment can legitimately require funds to maintain their ethnic particularism."[6] Numerous authors[7] did not approve of the idea that the approval of specific ethnic or

[4] See Atanasov, *op.cit.*, Kymlicka, *op. cit.*,

[5] Kymlicka, op. cit., 14

[6] Inis Claude, *National Minorities: An International Problem*, (Cambridge, Massachusetts: Harvard University Press, 1995), p. 211

[7] Russel Barsh and James Henderson, *The Road: Indian Tribes and Political Liberty*, (Berkly, California: University of California Press, 1980), p. 241 - 9; Russel Barsh and James Henderson, "Aboriginal Rights, Treaty Rights and Human Rights: Indian Tribes and Constitutional Renewal", *Journal of Canadian Studies*, 17: p. 69 - 70; Robert Clinton, "The Rights of Indigenous People as Collective Group Rights," *Arizona Law Reviewe*, 32/4 (1990): p. 739 - 47; Milton Gordon, "Toward a General Theory of Racial and Ethic Group Relations," in *Ethnicity, Theory and Experience*, ed. Nathan Glazer and Daniel P. Moynihan (Cambridge, Massachusetts: Harvaerd University Press, 1975); Milton Gordon, *Human Nature, Class and Ethnicity*, (New York: Oxford University Press, 1978); Milton Gordon, "Models of Pluralism: The New American Delemma," *Annals of the Academy of Political and Social Science*, p. 454 (1981): p. 178 - 88; Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy*, (New York: Basic Books, 1975); Vernon Van Dyke, "Collectiv Entities and moral rights: Problems in Liberal-Democratic Thought," *Journal of Politics*, 44 (1982): p. 28 - 30; Frances Svensson, "Liberal Democracy and Group Rights: The Legacy of Individualism and its Impact on American Indian Tribes", *Political Studies*, 27/3 (1979): p. 430 - 3; Heribert Adam, "The Failure of Political Liberalism," in *Ethnic Power Mobilized: Can South Africa Change?* ed. Heribert Adam and Hermann Giliomee (New Haven, Connecticut: Yale University Press, 1979), p. 258 - 85; Johan Deganaar, "Nationalism, Liberalism and Pluralism," *Democratic Liberalism in South Africa: Its History and Prospect*, ed. J. Butler (Middletownn, Connecticut: Wesleyan University Press, 1987) p. 236 - 398; Rainer Knopff**,** "Liberal Democracy and the Challenge of Nationalism in Canadian Politics," ***Canadian Review of Studies in Nationalism***, 9/I 9 (1982): p. 29 - 39; Guy Laforest, "Liberalism et nationalisme au Canada a l'heure de l'accord du Lac Meech," *Carrefour,* 13/2 (1991): p. 68 - 90; Janet Ajzenstat, *The Political Thought of Lord Durham*, (Kingston: McGill-Queen's University Press, 1988); Desmond Morton, *The New Democrats, 1961 - 1986: The*

national groups should be given permanent political identity or constitutional status.

However as Will Kymlicka noted, "Over time it became increasingly clear that minority rights cannot be brought under the category of human rights (...) the Liberal Theory of Minority Rights must explain how minority rights are limited to the principles of individual liberty, democracy and social justice."[8] A particular challenge, as noted by the same author, is to determine the difference on how cultural diversity that occurs in "multinational" states (in which cultural diversity is caused by the inclusion of the once autonomous, territorially concentrated cultures in a wider state) and "polyethnic" states (in which cultural diversity arises from individual and family migration) occurs. In this sense, a distinction is made between "national minorities" (in multinational states) and "ethnic groups" (in polyethnic states).[9] "A country that contains more than one nation is not a nation-state, but a multinational state, and smaller cultures form national minorities. The inclusion of different nations in one state may not be their will (...) But the creation of a multinational state can also occur when different cultures willingly agree to create a federation of mutual interest."[10]

Therefore, modernity discusses in greater detail that all liberal democracies to a greater or lesser degree are either multinational or polyethnic, or both, simultaneously. Due to the presence of ethnic groups and national minorities in many polyethnic or multiethnic societies, the concept of multiculturalism is debated as a strategy which "has a significant potential as an alternative model of policy (...). Multiculturalism, as prominent authors mention, does not consist of a specific type of program or strategy. Its effects depend on the cumulative effects of different strategies (...). In a society where subnational regions play a significant role in political decision making, where minorities are territorially concentrated, multicultural strategies are of particular importance."[11] That is why "the challenge of

---

Politics of Change, (Toronto: Coop Clark, 1986), p. 78 - 83; Brian Schwarz, *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft* (Montreal: Institute for Researchh and Public Policy, 1986); Howard Brotz, "Multiculturalism in Canada: A Muddle," Canadian Public Policy, 6/I (1980): p. 44 - 5; Michael Ash, *Home and Native Land: Aboriginal Rights and the Canadian Constitution*, (Toronto: Methuen, 1984), p. 75 - 88, 100 - 4; Sally Weaver, "Federal Difficulties with Aboriginal Rights in Canada," in *The Question of Justice: Aboriginal Peoples and Aboriginal Rights*, ed. M. Boldt and J. Long (Toronto: University of Toronto Press, 1985), p. 141 - 22, 139 - 47

[8] Kymlicka, *op. cit.*, p. 16 - 19

[9] Ibid., p. 19

[10] Ibid., p. 26

[11] Atanasov, *op.cit.*, p. 8 - 9

multiculturalism" is to accept and accommodate these national and ethnic differences of a stable and morally acceptable way.[12]

The purpose of this paper is to show that there is a substantial and meaningful difference between such strategies that polyethnic, or multiethnic states, and that the polyethnic and multiethnic simultaneously apply them in order to respond adequately to their ethno-cultural and national diversity. For this purpose, we will use examples from some multiethnic states (such as Bosnia and Herzegovina and Macedonia), and states that are simultaneously both polyethnic and multiethnic (Switzerland or Belgium). When we talk about these strategies, authors such as Will Kymlicka narrow them down to three forms of group-differentiated rights (1) the right to autonomy, (2) polyethnic rights, and (3) special parliamentary rights.[13]

For Kymlicka autonomy is central liberal values, and membership in the nation or national community is a necessary basis for autonomy. Autonomy should ensure meaningful and valuable options to members of a respective community that will cultivate their individuality and particularity. In culturally homogenous societies there is no need for such a strategy because all members of that society enjoy the benefits of the stability of the community. The problem is heterogeneous societies where minorities cannot enjoy the same rights as the majority community. In such situations, the classical liberals advocate the assimilation model, but according to Kymlicka, such an approach should theoretically and empirically be rejected, since every minority community has a right to their own culture, and according to him, forced assimilation has never been an effective solution because it physically and morally disorients the person that is subject to it.[14] Kymlicka distinguishes different kinds of minorities. In territorial terms he differs concentrated and non-concentrated. He also makes a clear distinction between national minorities that have the strongest requirements, primarily in terms of language and culture and therefore should enjoy self-government, and immigrants that have the lowest requirements, while all others lay in-between.[15]

Thus, the issue of how to manage multiethnic and polyethnic multiethnic diversity in such a society immediately surfaces. It said that poly-ethnicity can be easily dealt with through the integration of ethnic

---

[12] Amy Gutman, "The Challenge of Multiculturalism to Political to Political Ethics," *Philosophy and Public Affairs*, 22/3, (1993): p. 171 - 206

[13] See Kymlicka, op cit, p. 51 - 60

[14] See in Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, (Cambridge, Massachusetts: Harvard University Press, 2000), p. 99 - 100

[15] See Atanasov, *op cit.*, p. 32 - 33

minorities into mainstream culture, while multi-nationality is problematic because the majority and minority communities do not have a common culture and common language, historical memories are different, and potentially may create a conflict. Such communities may even have some thread of shared values, but sometimes that may prove as insufficient for such a society to hold together. The differences in these societies between dominant and minority community, or communities, arise from issues such as the distribution of power, resources, regulation of the state, etc. If you have not developed a sense of community and a desire to live together then the society has no future, and the state can decay.[16]

2. CONCEPT OF GROUP-DEFINED RIGHTS IN A PLURAL SOCIETY

On a global scale, there are a pleiad of plural societies. Some of them are successfully maintained, while others not so much. This type of societies, as noted by Atanasov, is held by rules, and not through integration, especially when such a society is founded on common values and motivations.[17] To maintain such societies, a key rule is clearly differentiating the collective rights that are assigned to collectives. Collective rights, by definition, are not individual rights. They can even be challenged and the rights conferred on individuals which make up the collective.[18] The guarantee of group-differentiated rights is quintessentially important in maintaining a multicultural, multiethnic society, because to the individuals who belong to the group as a whole, this is a way to enable three important things: 1) equality to those of different ethnic or linguistic origin, 2) integration in society, 3) guarantee that you will not lose any of its distinction.

One of the most important strategies for managing multi-ethnicity is Lijphart's concept of consensual democracy, also known as a regional variant of multiculturalism. As a well-established concept for building a sustainable democracy in deeply divided societies, this model "intends to achieve non-discrimination, to ensure equality of treatment and to promote the identity of linguistic minorities through territory division, and federalization through multilevel arrangements of political representation"[19] These group-differentiated rights, "such as territorial autonomy, the right of veto, guaranteed representation in the central institutions, territorial rights

[16] Ibid., p. 33
[17] Ibid., p. 59
[18] Kymlicka, *op cit.*, p. 79
[19] Atanasov, *op cit.*, p. 73

and language rights can help to correct this injustice to mitigate the vulnerability of the minority cultures to majority decisions. These external safeguards provide members of the minority to have the same opportunities to live and work in their own culture, as well as members of the majority".[20] "Where minorities have the right to vote, to run for MPs, political organizing and publicly represent their views, it is often enough to ensure their interests to gain legal treatment".[21] If we also add the right to veto, which is a prominent feature of the various "consensual democracies" in Europe, through which national minorities are protected by majority in making some important decisions, in certain circumstances it can promote justice.[22]

Recent research of ethno-nationalistic conflicts around the world, made by certain authors,[23] points out that awarding some kind of autonomy to the de-privileged groups did reduce conflicts in these societies, while trying to eliminate autonomy in these societies resulted with an increase in conflicts. However, it is also true to conclude that the "requirements of autonomy usually lead to a desire for greater autonomy or even independence. Enabling local autonomy reduces the option for armed conflicts; however, the results of the agreements represent rare examples of harmonious cooperation between national groups".[24] They often become "only cooperation agreements in which arguing groups have agreed to discuss a limited number of questions, if they agree at all".[25] "There is a missing sense of solidarity necessary to promote the public good and implementing emergency injustice".[26]

3. MODERATION OF MULTIETHNIC AND POLYETHNIC DIVERSITY, THE CASE OF BELGIUM AND SWITZERLAND

Multiculturalism, as noted by Petar Atanasov, "is not a popular idea in Europe".[27] The statement of Angela Merkel at the gathering of young members of her conservative Christian Democratic Union (CDU) when she said, "Multiculturalism has been an utter failure in Germany", greatly testifies to this. Merkel's statements were later supported by the British Prime Minister David Cameron who also attacked the British policy of

[20] Kymlicka, *op cit.*, p. 178
[21] Ibid, p. 214
[22] See Ibid, p. 181
[23] Gurr *op,cit*, Hannum *op,cit.*,
[24] Kymlicka, *op cit.*, p. 300
[25] Peter Ordeshook, "Some Rules of Constitutional Design," *Social Philosophy and Policy*, 10/2 (1993): p. 223
[26] Kymlicka, *op cit.*, p. 300
[27] Atanasov, *op cit.*, p. 112

multiculturalism, saying truths encouraged "segregated communities" in the Islamic extremism can thrive.[28] This refers to states that represent powerful mono-states and mono-cultures, in which multiculturalism is of a polyethnic type. Notwithstanding the Kymlicka's view who said that such poly-ethnicity which creates individual and family migration is easy to understand, objections of Merkel and Cameron confirmed the contrary, that this, in fact, continues to be a serious problem. Multicultural discourse remains to be a serious problem in Europe due to "the tension between the European and national, and between the national and the individual. EU member states significantly differ in their policies towards minorities, and pressure to create a unified concept of multiculturalism is getting bigger with the EU enlargement".[29]

However, despite the pleiad of the powerful mono-national and mono-cultural societies in Europe, there are still states with a multiethnic substrate - Belgium and Switzerland. Even today they are mentioned in science as an ideal type of consociational model because of the highly developed institutional arrangements that provide an equal representation and participation of the main linguistic groups (germanophone, francophone, Italian and Romansh speakers in Switzerland, i.e. (Dutch, French and German speakers in Belgium) in legislative, judiciary, army, etc. On the one hand, this model, despite the fact that it had shown a certain vitality in Switzerland, or Belgium whose long stability, as Will Kymlicka notes "is not taken seriously"[30], due to the fact that this model focuses on territoriality (cantons in Switzerland, the regions in Belgium), which in turn strengthens political and economic inequality. On the other hand, highly complex institutional arrangements alone are insufficient mechanisms to strengthen social cohesion at the national level.[31] Hence, the common values are not sufficient for social cohesion. "The fact that some two national groups share the same values and principles of justice does not provide a strong reason for them to merge (or to stay) together, let alone to stay or be divided into two separate states. What more or what else is needed for social cohesion?" - Kymlicka would ask.[32] The ingredient that is missing, according to the same author, as it seems is not only the idea of one common concept of justice in a

[28] Quoted in Rustemi, Ferid Mustafa Ibrahimi, Dzeladin Murati, Agim Poshka and Linda Ziberi "Social-political status of the Albanian language in the Republic of Macedonia: Model of planning of the inequality". In "Ten Years after the Ohrid Framework Agreement", Does Macedonia function as a multiethnic country? Tetovo: UJIE, 2011): p. 251

[29] Rustemi and others, op cit., p. 255

[30] Kymlicka, *op cit.*, p. 302

[31] Atanasov, *op cit.*, p. 112 - 113

[32] Kymlicka, *op cit.*, p. 304

political community, but the urge to create a common identity, let alone a common civic identity that would replace rival nationalist identities.[33]

In this situation, social unity is possible only when the various national groups will manifest belonging to the general state, which is a necessary condition which allows for the cultivation, and not the negligence of their national identity and individuality.[34] As noted by the same author, "this is difficult even in a country that contains only two nations (for example Belgium). This becomes even more complicated in countries that are not only multinational, but also polyethnic and contain a number of national and local groups (often with very unequal sizes), but also immigrants from every part of the world".[35] Belgium and Switzerland are precisely those countries, because they "have long recognized that they have a national minority, whose language rights and autonomy must be respected. But they hardly recognize that they are becoming more polyethnic and that as a result, their traditional concepts of citizenship cannot fully accept immigrants".[36]

This means that the so-called regional variant of multicultural strategy, referred to as the concept of consensual democracy, the example of Belgium and Switzerland, shows that these arrangements include only rights, primarily the autonomy of national communities, but not for ethnic groups that create a polyethnic ambient in them. For example, the composition of the grand coalition government, as the primary consociational instrument in which the political power in Switzerland and Belgium is shared, is determined by the so-called magic formula (in Switzerland, which correspond to the share of each of the language groups in the total share of the Swiss population), or on the principle of parity (in Belgium Dutch speakers and francophone redistribute the ministerial portfolio in the ratio 50:50). Members of ethnic groups that are part of these societies as a result of individual or family migration are excluded from such arrangements. The growth of anti-system political parties in these countries, who have expressed strong anti-immigrant agenda as Flemish *Vlaams Belang,* Walloon *Front National,* Swiss *Mouvement citoyens genevois*, *Swiss Democrats* testify enough that this new setting in these polyethnic and multiethnic countries is always political-competitive for ethno political mobilization in the electoral process. Vlaams Belang and Front National can argue as much as they wish on the future of Belgium, because the Flemish nationalist from Vlaams Belang pulled towards separatism and Front National are committed

[33] Ibid.,
[34] See Ibid., p. 306 - 307
[35] Ibid., p. 307
[36] Ibid., p. 43

to the survival of the current Belgian federalism, however, they are both unanimous regarding immigrants. These two countries, Belgium and Switzerland, practically face a double challenge, because the rights that they should ensure to polyethnic communities in the state are one thing, while the rights of the constituent nations living in this multiethnic state is quite another thing, because "in any case, there cannot be an interference of these two conditions, because the first position reflects the status of the minority communities, which is guaranteed by the generally accepted international documents, while the second is not about minority rights, but about a parallel exercise of cultural, linguistic and political rights of different nations with maximum support of the legislation of the country in which they live."[37] Although the basic laws of Belgium and Switzerland guarantee the rights of the most important national communities, still other smaller groups, mostly immigrants, asylum seekers, are legally protected, and whose integration is in the process of being resolved as a part of their multicultural complex, primarily through greater social inclusion of these groups, by taking concrete measures by the central government to protect their distinctive religious and cultural practices.

4. THE CONCEPT OF GROUP-DEFINED RIGHTS IN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF MACEDONIA

In the beginning of the early 90s, and the beginning of the XXI century, the two countries, Bosnia and Herzegovina and Macedonia, were confronted by either a bloody war or an armed conflict, which was not only a point of crisis and the deepest possible discontinuity, but it was the beginning of a profound redefinition of their political system.[38] The changes that have occurred in the constitutional legal order in these two countries were in line with the idea of deploying elements of consociation "as a tool of post-conflict interethnic accommodation and enshrines group rights and political representation to varying degrees".[39] The ethnic diversity that exists in these countries is "unlikely to disappear overnight. The widely accepted model of assimilation in the nation-state is questionable, when it becomes

[37] Klimovski, Savo, Tanja Karakamisheva and Renata Deskoska. *Constitutional Law and Political System,* Skopje: Prosvetno delo, 2012, p. 264

[38] Vankovska, Biljana. *Political system.* Skopje: Bomat, 2007, p. 225

[39] Florian Bieber "Power Sharing and Democracy in Southeast Europe", *Taiwan Journal of Democracy*, Special Issue 2013: p. 129 - 148

evident that it is often unsuccessful and that there is a growing sense of alienation among many of those from an ethnic minority background".[40]

Because of this, political engineers, in order to respond to such ethnic diversity in these societies, resorted to "amputation" of elements of consociation in their political systems (as Dayton Agreement, 1995 OFA 2001). In this sense, the Dayton Peace Agreement envisaged sharing of power between the three disparate demographic groups, Bosniaks, Serbs, and Croats. This agreement, after the war in Bosnia and Herzegovina, envisaged a complex political system, which has no analogy in international theory and practice of political systems. Practically the three constituent peoples defined collectives that emanated the formal political power in this country. As for the institutions of the Macedonian political system of 1991, although they seemingly meet the criteria of the European constitutional categories, they still created conflict potential, because they were only seemingly Western and liberal. In this situation, Vankovska does not blame the liberal model but the political culture of the collectivist philosophy and ethno-nationalism, in which individual rights have less value than the rights of the collective.[41] "In spite of the fact that this system generated certain misunderstandings, still, at certain periods these were channeled through the institutions and mechanisms of the state in some areas".[42] *According to the Constitution of 1991 an opportunity was given for recognition of equality, arising from civil affiliation and recognition of the differences in terms of the ethnic, cultural, linguistic and of the religious identity of the various groups in society. Because recognition is central to multiculturalism, this condition was met, or at least an opportunity was given to articulate individual rights - the fundamental rights and freedoms of person and citizen, and some special rights in terms of socio-demographic and cultural particularity of different ethnic communities primarily in terms of language and cultural rights. In relation to this framework, Macedonian society meets the criteria of a modern society that promotes equality for all, and respect for cultural specificity of minorities.*[43]

However, a group of authors from the Albanian academic community in the Republic of Macedonia believe that some of the most forward-looking activity in the Balkans during the 90s was a violation of human rights on a large scale, which they deem was expressed in the most typical fashion in Bosnia and Herzegovina, Kosovo, and the Republic of Macedonia. According to them, it looks like all the former Yugoslav republics were

[40] Atanasov *op. cit., p.* 8
[41] Vankovska, *op cit.,* p. 225
[42] Atanasov *op. cit., p.* 132
[43] Ibid., p. 119

competing with one another as to who would cause the greatest damage to the "others".[44]

Therefore, the Dayton Agreement, which brought an end to a bloody war in Bosnia and Herzegovina, and the Ohrid Framework Agreement, which after the conflicting developments of 2001 advanced the collective rights of communities, is aimed to overcome such situations of violations of the rights of communities living in these countries. In this sense "the Venice Commission said that the Dayton Agreement was a great tool for the implementation of peace, but a terrible tool as a device to create a functional state, while the main goal of the EU in the creation of the Ohrid Framework Agreement is that it has the capacity to create a functional state".[45] "The Solutions in the Framework Agreement, later incorporated in the constitutional amendments of November 2001, meant not only the expansion of the rights of communities (then called nationalities) but also meant a kind of raising their ethnicity as the sphere of identity, culture and language and transfer directly into the field policies, institutions, and law".[46]

Practically, both countries, Bosnia and Herzegovina and Macedonia, in the early 90s were faced with the mismatch between the political elites as to the direction in which this multiethnic society will develop. They were faced with two strategic choices. Either to favor liberal pluralism which will lack ethnic characteristics, and there will be no room for ethnic discrimination, or at least it will be mostly eliminated and there will be no special treatment for ethnic communities, or to adhere to corporate pluralism that assumes the presence of ethnic characteristics, their official recognition, presence of quotas, special treatment of ethnic groups, creating equal conditions for participation in all segments of society. The Macedonian society found itself somewhere halfway, because up until 2001 it alternated between these two concepts, while Bosnia and Herzegovina, immediately after Dayton had a substantial and meaningful acceptance of the corporate approach, because of the strong elements of consociation in its post-war political system.[47] However, in Bosnia and Herzegovina, despite the fact that it is an example of an ideal type of consociation, in which all three denominations have a minority status, and are made up of consociation arrangements, this political system still discriminates other smaller nations in

---

[44] Reka, Blerim, ed., *Social-political status of the Albanian language in the Republic of Macedonia: Model of planning of the inequality, in "Ten Years after the Ohrid Framework Agreement", Does Macedonia function as a multiethnic country?* Tetovo: UJIE, 2011, p. 151

[45] Rustemi and others, *op cit.*, p. 254

[46] Vankovska, *op cit.*, p. 226

[47] See Atanasov *op. cit.*, p. 128

the country such as the Roma and the Jews, a fact which was confirmed by the European Court of Human Rights (ECHR) in the case "Sejdić and Finci against Bosnia and Herzegovina", which directly determined the way the delegates are elected to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina and the manner of election of members of the Presidency of Bosnia and Herzegovina is "discriminatory, and the Article 9 of the so-called unconstitutional nationalities provides them with a passive (or equal) right to vote and as such it is contrary to the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols 1 and 12".[48]

The problems in the Republic of Macedonia, in turn resulted from the "situation in societies that do not favor any assimilation or cultural pluralism. The state having problems of higher priority such as political, economic, and security ones, seemed to think that ethnic tensions will be "painlessly" resolved over time and that no open interethnic conflict will occur. In the Republic of Macedonia in the past years there was no vision or a strategy for development in any of these directions, neither assimilation, nor cultural pluralism. The development of the society was more reflexive, almost on daily-politics pace. Assimilation, however, at this point in society seems impossible because of the distinctive cultural differences".[49] Cultural pluralism, which is fundamental for the development of any one multicultural society, is absent in the Republic of Macedonia, due to a lack of "public space in which communities can interact, to enrich their culture where they will recognize the reflections of their own identity".[50] But, some authors are skeptic about the future of the Macedonian multicultural model because it was developed in conditions of war and pressure from the so-called international community (EU and USA).[51] This is also the reason why Macedonian ethnic community still sees the multicultural concept as ideologically imported and out of context, or just as an attractive phrase that tries to substitute the old-fashioned politics of ethno-control.[52]

---

[48] Adis Arapović and Bedrudin Brljavac, "Election System of Bosnia and Herzegovina: Catalyst of Unsuccesful Democratization", in *Khazar Journal of Humanities and Social Sciences,* (2012): p. 24

[49] Atanasov *op. cit.*, p. 126

[50] Bhikhu Parekh and Bhabha Homi, "Identities on Parade, Marxism Today," quoted in*:* "*Sociology review"* No 1, Year I, Skopje, 1995

[51] Dragan Staniševski, Hough Miller, "The role of government in managing intercultural relation: Multicultural discourses and the politics of culture recognition in Macedonia," *Human Rights Review*, 9 no1. (2007): p. 55 - 69

[52] Rustemi and others., *op cit.*, p. 254

5. CONCLUSION

"Many complicated conflicts can be resolved as separate cases, while bearing in mind the specific history of the group, its status in the wider society and the elections and the conditions in which its members are".[53] Also, "many international organizations have created a number of mechanisms and tools as examples to follow the politicians of the world for the implementation of policies in a multi-ethnic society. Of course, these rules are more "valid" for smaller countries that do not have the power to impose their own national paradigm".[54] The international community, especially the EU, manifests such pressures for democratization, followed by implants of multicultural values, in failed (unsuccessful) states (Macedonia or Bosnia and Herzegovina for example), which it uses as an experimental ground for techniques for dealing with conflict and democratization. It even requires a certain level of multiculturalism of such countries, the type that it believes it possesses and nurtures, although it is not aware of the disagreement of the multicultural concept among its Member States.[55]

Therefore these heterogeneous societies, while building their own political structure, face two challenges. On the one hand, a strong sense of community among its own citizens has to be encouraged; otherwise the community will be able to make collective decisions and to resolve conflicts. On the other hand, the deeper the division in society is, the bigger the need to double its efforts to strengthen the cohesion of that society through nurturing and recognition of diversity. Societies that have a heterogeneous structure, but which are poorly connected lack of diversity and the will to deal with them is doomed to internal instability.[56]

"Volatility seems to be a chronic feature of culturally plural countries, and the management of inter-ethnic relations seems to be a new challenge. The history of the deepest divided multiethnic society is a real reservoir of various experiments and experiences in regulating inter-communal living. The solutions represent a repertoire that stretches from the division of power and consociation on the peaceful side of the continuum, to communal repression and exploitation of the dominated country. In between there lay many modalities".[57]

---

[53] Kymlicka, *op cit.*, p. 213

[54] Atanasov *op. cit., p.* 8

[55] Rustemi and others., *op cit.*, p. 256 - 257

[56] Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge: Massachusetts: Harvard University Press, 2000), p. 196

[57] Ralph R. Premdas, Public policy and Ethnic conflict. www.unesco.org/most/premdas.htm

The task is to search for new modalities of constitution of the modern state and perhaps even new types of common political establishment, which is particularly acute in multicultural societies. According to Parekh, it should be done in a way to pluralize the state without undermining its stability and determination to act in the interests of the collective. Every society must develop its own strategy, starting from its own political structure, historical experience, cultural tradition, and scale and scope of diversity. What is important here, as Parekh himself highlights, is that such a society should be free of the imagination of the dominant theories of universal and valid models of the constitution states, because the ideal multi-ethnic society is actually the ideal for a multicultural society. It is a unitary state in the public area, a state that encourages diversity in the private area.[58] History, according to Atanasov, provides us little facts that would confirm that cultural pluralism and democracy are natural partners. This does not need to lead to the conclusion that a multicultural society cannot sustain the democratic institutions and respect for individual rights.[59] However, as he underlines, the coexistence of different cultures on a territory or a society usually result in the triumph of an administrative or authoritarian government or as supremacy of members of one over the members of other cultural groups. "Harmonization" of these relationships is only a distant perspective.[60]

6. REFERENCES

Adam, Heribert. "The Failure of Political Liberalism" In *Ethnic Power Mobilized: Can South Africa Change?* edited by Heribert Adam and Hermann Giliomee, p. 258 - 85. New Haven, Connecticut: Yale University Press, 1979

Ajzenstat, Janet. *The Political Thought of Lord Durham*. Kingston: McGill-Queen's University Press, 1988.

Arapović, Adis and Bedrudin Brljavac. "Election System of Bosnia and Herzegovina: Catalyst of Unsuccesful Democratization." *Khazar Journal of Humanities and Social Sciences*, (2012): p. 18 - 37

Ash, Michael. *Home and Native Land: Aboriginal Rights and the Canadian Constitution*. Toronto: Methuen, 1984

Atanasov, Petar. *Multiculturalism as a theory, policy, and practice. Skopje: Euro Balkan Press*, 2003.

Barsh, Russel and James Henderson, *The Road: Indian Tribes and Political Liberty*. Berkly, California: University of California Press, 1980.

[58] Parekh, *op.cit.*, p. 195
[59] Atanasov *op. cit.*, p. 151
[60] Ibid.,

Barsh, Russel and James Henderson, "Aboriginal Rights, Treaty Rights and Human Rights: Indian Tribes and Constitutional Renewal." *Journal of Canadian Studies*, 17, (1982): p. 55 - 81;

Bieber, Florian. "Power Sharing and Democracy in Southeast Europe" *Taiwan Journal of Democracy*, Special Issue, (2013): pp. 129 - 148.

Brotz, Howard. "Multiculturalism in Canada: A Muddle." *Canadian Public Policy*, 6/I (1980): p. 41 - 6.

Capatori, F. Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic

Minorities, UN Doc. E/CN 4/Stub, 2/384 Rev. 1 New York: United Nations, 1979.

Claude, Inis. *National Minorities: An International Problem*. Cambridge, Massachusetts: Harvard University Press, 1995.

Clinton, Robert. "The Rights of Indigenous People as Collective Group Rights" *Arizona Law Reviewe*, 32/4 (1990): p. 739 - 47;

Deganaar, Johan "Nationalism, Liberalism and Pluralism" In *Democratic Liberalism in South Africa: Its History and Prospect*, edited by J. Butler, p. 236 - 398 Middletown, Connecticut: Wesleyan University Press, 1987

Glazer, Nathan. *Affirmative Discrimination: Ethnic Inequality and Public Policy*. New York: Basic Books, 1975

Gordon, Milton. "Toward a General Theory of Racial and Ethic Group Relations" In *Ethnicity, Theory and Experience*, edited by Nathan Glazer and Daniel P. Moynihan, Cambridge, Massachusetts: Harvaerd University Press, 1975.

Gordon, Milton. *Human Nature, Class and Ethnicity*. New York: Oxford University Press, 1978.

Gordon, Milton. "Models of Pluralism: The New American Delemma" *Annals of the Academy of Political and Social Science,* 454 (1981): p. 178 - 88.

Gurr, Ted. *Minorities at Risk: A global View of Ethno-political Conflict.* Washington DC: Institute of Peace Press, 1993.

Gutman, Amy. "The Challenge of Multiculturalism to Political Ethics" Philosophy and Public Affairs, 22/3, (1993): p. 171 - 206.

Hannum, Hurst. *Autonomy, Sovereignty and Self-Determination: The Adjudication of Conflict rights*. Philadelphia: University of Pennsylvania Press (1990): p. 2 - 24.

Klimovski, Savo, Tanja Karakamisheva and Renata Deskoska. *Constitutional Law and Political System*, Skopje: Prosvetno delo, 2012.

Knopff, Rainer. "Liberal Democracy and the Challenge of Nationalism in Canadian Politics" *Canadian Review of Studies in Nationalism*, 9/I 9 (1982): p. 23 - 39.

Kymlicka, Will. *Multicultural citizenship*. Skopje: IDSCO, 2004.

Laforest, Guy. "Liberalism et nationalisme au Canada a l'heure de l'accord du Lac Meech" *Carrefour*, 13/2 (1991): p. 68 - 90

Morton, Desmond. *The New Democrats, 1961 - 1986: The Politics of Change*. Toronto: Coop Clark, 1986.

Ordeshook, Peter. "Some Rules of Constitutional Design" *Social Philosophy and Policy*, 10/2, (1993): p. 198 - 232.

Parekh, Bhikhu and Bhabha Homi, "Identities on Parade, Marxism Today." cited in: "*Sociology review"* No 1, Year I, Skopje, 1995

Parekh, Bhikhu. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Cambridge: Massachusetts: Harvard Uviversity Press, 2000.

Premdas, Ralph R. Public policy and ethnic conflict, www.unesco.org/most/premdas.htm

Reka, Blerim, ed., *Social-political status of the Albanian language in the Republic of Macedonia: Model of planning of the inequality, in "Ten Years after the Ohrid Framework Agreement", Does Macedonia function as a multiethnic country?* Tetovo: UJIE, 2011.

Rustemi, Ferid Mustafa Ibrahimi, Dzeladin Murati, Agim Poshka and Linda Ziberi. "Social-political status of the Albanian language in the Republic of Macedonia: Model of planning of the inequality". In "Ten Years after the Ohrid Framework Agreement", Does Macedonia function as a multiethnic country? Tetovo: UJIE, 2011): p. 213 - 263.

Schwarz, Brian. *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft*. Montreal: Institute for Researchh and Public Policy, 1986.

Sigler, Jay. *Minority Rights: a Comparative Analysis*. Wesport Connecticut: Greenwood, 1983.

Staniševski, Dragan Hough Miller. "The role of the government in managing intercultural relation: Multicultural discourses and the politics of culture recognition in Macedonia". *Human Rights Review*, 9 No. 1 2007: p. 55 - 69

Svensson, Frances. "Liberal Democracy and Group Rights: The Legacy of Individualism and its Impact on American Indian Tribes." *Political Studies*, 27/3 (1979): p. 421 - 39;

Van Dyke, Vernon. "The Individual, the State, and Ethnic communities in Political Theory" *Journal of Politics*, 44: (1977) p. 21 - 40;

Van Dyke, Vernon. "Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought" *Journal of Politics*, 44 (1982): p. 21 - 40;

Weaver, Sally. "Federal Difficulties with Aboriginal Rights in Canada," In *The Question of Justice: Aboriginal Peoples and Aboriginal*

Rights, edited by M. Boldt and J. Long, p. 139 - 47. Toronto: University of Toronto Press, 1985.

Vankovska, Biljana. *Political system.* Skopje: Bomat, 2007.

UDK: 342.571(100)(091)
342.571(497.11/.17)

IMPLEMENTATION OF THE RIGHTS OF THE CITIZENS TO PUBLIC ASSEMBLY

Mirela Jokić, PhD
College of the Internal Affairs Banja Luka, Univesity of Banja Luka
e-mail: mirelajokic@rocketmail.com

Abstract

In this article we will try to analyze in details the rights of the citizens on public assembly and other forms of public expressions of their ideas, opinions, etc. through historical preview of this matter, and through legislative solutions in this area in some countries in the region. Also, we compare law solutions of some countries in the region with the law solution in Bosnia and Herzegovina in this area and we pointed their similarities as well as some main differences, especially in the matter of legal restrictions about the place of public assembly. In this analysis we tried to value certain legal solutions, as well as to give an opinion or suggestion on this issue, and in the same time to point all the positive sides of certain legal provisions, and also the negative ones for which we propose appropriate amendments.

Key words: *public assembly, public meeting, freedom of assembly, freedom of speech and thought*

1. THE CONCEPT OF PUBLIC ASSEMBLY - A HISTORICAL REVIEW

The freedom of public assembly is one of the oldest and most fundamental human freedoms. This freedom is guaranteed by a number of international conventions, declarations, treaties and other international documents, and is incorporated into the most of the contemporary constitutions.[1] Freedom of public assembly as a political right is a

[1] Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests." (Article 11 of the Convention on Human Rights), "Everyone has the right to freedom of peaceful assembly and association." (Article 20 of the Universal Declaration of Human Rights).

manifestation of the political emancipation of man and is an instrument which enables the participation of citizens in the political life and governance (Kuzmanović and Dmičić, 2011: 133). The concept of public assembly of the citizens encompasses any organized assembly of a certain number of people which is held for the purpose of public expression and promotion of political, social, national and other beliefs and goals (Ivanda, 2004: p. 272). This right is an expression of the government's aims to enable citizens to express their convictions in a way and under the conditions which are determined by proper regulations. Public assembly as a concept has been historically treated in different ways by the legislation and that can be noticed not only in its definitions, but also in its relations with the circumstances which restrict the scope of the right. The concept of public assembly is closely linked with the concept of freedom of public assembly which enables citizens to assemble publicly for different legally allowed purposes so that the citizens who hold the same convictions can express their thoughts on various political and other social issues (Legal dictionary, 1964: p. 848). Public assembly is one of the oldest institutions of direct democracy which, in the narrower sense, includes social events, parades and rallies in the open or in another public place in accordance with the proper regulations and with the consent of the authorities tasked with preserving public peace, order, and security (Ibid, 1088).

Historically viewed, public assembly of their citizens and their public expression dates back to ancient times and that means to the times of the first written records of such events. In ancient Greece, there were citizens assemblies then known as *ecclesia*, where citizens could publicly speak about certain crucial state issues. There was also a practice of public debates in the city squares and similar places where philosophers and enlightened citizens held public speeches and lectures which were aimed at the educations of the free youth (Forum of the astronomical magazine).

In a similar way, citizens of ancient Rome expressed their convictions in forums - places in which free citizens assembled for open discussions. Forum, in a broader sense, meant a meeting or an assembly. At first, the forum was an open space with unrestricted access where people assembled during market days or religious festivities to vote, as well as conduct other important business. Later, forums became political centers with civil and administrative buildings, important temples, etc (Ancient philosophy).

During the middle ages, a special kind of local self-government was developed, which was a public assembly that functioned as a form of direct decision-making of citizens. An example of that are the parish meetings in England. In England, free public assemblies were a part of the constitutional reality and had their legal grounds in *Magna Charta Libertatum* from 1215 and in the Bill of Rights from 1689, even though the English legislation has

not developed a special concept of the freedom of public assembly. The freedom of public assembly was derived from the right to personal freedom and the freedom of speech, which receive special attention in the English political culture. A special right to petition was developed in England and it is deeply rooted in its political tradition. It received its final confirmation in the declaration of the principle that every Englishman has a right to submit a petition to the Parliament according to the Bill of Rights (Čepulo, 1999: p. 399). In Switzerland, citizens realized their right of public assembly through citizens' assemblies, similarly as in the United States of America where freedom of public assembly was of a special importance, because free assembly and association, which where and still are deeply rooted in the fabric of the society, preceded the government. For the purpose of public expression also, among the other mechanisms, are the city assemblies and other forms of public assembly (Kuzmanović and Dmičić, 2011: p. 153).

In the continental legal systems, such as the German, French or Swiss legal system, the right of public assembly is closely linked with the right of free expression and it is given less attention or it is placed under more restrictions. France, which has been under a strong influence of the Roman law, had a negative attitude towards public assembly. The will of the citizens could have only been expressed in the general assembly, though such attitude changed during the French Revolution. That change manifested in the early acts of the French Revolution, namely the Declaration of the Rights of Man and of the Citizen of 1793, as well as in the French constitutions of 1793 and 1848. Freedom of expression is mentioned in these documents, but freedom of assembly is not. These rights were not guaranteed in the constitutions of 1795 and 1799. Still, these documents had a great impact and they influenced most states in Europe. European states under such influence included in their constitutions the right of public assembly of citizens with restrictions prescribed by the law (Čepulo, *ibid*).

Serbia, while under the Turkish rule, did not have a developed tradition of democratic decision-making and public assembly. That changed after the formation of the independent Serbian state. The article 24 of the Constitution of the Kingdom of Serbia of 1881 provides that Serbian citizens have the right to assemble peacefully and without arms in accordance with the law. If the assembly is to be held in closed space, notification of the authorities is not necessary, but if the assembly is to be held under the open skies, the authorities must be notified beforehand (Vugdelić, 2004: p. 94). The Public Assembly Act of the Kingdom of Serbia of 1891 in articles 2 and 3 made a distinction between public and private assembly. According to the Public Assembly Act, public assembly is the assembly in which the part can be taken by certain categories of citizenship or by all citizens, while private assembly is the assembly which is called for by someone personally and

which can be attended only by those who are invited (Alimpić, 1925: p. 123). Also, the Public Assembly Act prescribed that political assembly cannot be held in schools, churches or their yards and that it cannot be organized by foreigners. The assembly is governed by the presidency which organizes the assembly. The presidency ensures that the assembly is and remains peaceful, but if that is not possible, the presidency has a duty to inform the authorities so that they can help to ensure that the assembly continues to function peacefully or so that the assembly can be disbanded in the presence of authorities.[2]

The Constitution of the Kingdom of Serbs, Croats, and Slovenes from 1921 also provides for certain rights and freedoms of citizens, among which is the right of public assembly. Article 24 of the Constitution prescribes that "citizens have the right of public assembly, under the condition that assemblies which are to be held under open skies must be reported to authorities at least 24 hours in advance. Assemblies cannot be attended by persons under arms. Assemblies can be public or private (Ibid, 129). The citizens right of public assembly was legally regulated in Croatia by its first and only Public Assembly Act of 1874 which was modeled after the corresponding Austrian legislation from 1867. It regulated the public assembly of citizens and was in force until 1918 when Croatia became a part of the Kingdom of Serbs, Croats and Slovenes. Similarly as in most European countries, the right of public assembly in Croatia was linked with the right of association and the right of petition, because the right of public assembly had a special importance due to the low level of development of

[2] As soon as the assembly is disbanded in accordance with the Article 11 of the Public Assembly Act, all those who are present must disperse. Should someone remain in place and continue the disarray, after it is three times proclaimed loudly that the assembly is disbanded, he will be fined with a penalty of 150 to 300 dinars or will be imprisoned for 15 to 30 days and the representative of the authorities is authorized to use force against those who resist. During the assembly, no criminal charge or any other act in criminal procedure can be publicized until it is read before the court, as well as the information regarding the movement of troops during war, threat of war or general mobilization". "Every speech given during the public assembly which incites crime or felony or which is a provocation of military personnel with a goal of deterring the military personnel from fulfilling their military duties shall be punished with 15 to 30 days of imprisonment or with a fine of 50 to 100 dinars". "Also, an insult of the King made during the public assembly shall be punished with two months to two years of imprisonment". "Insult made to the religion or public morality during a public assembly shall be punished wih ten days to two months of imprisonment or with a fine of 100 to 300 dinars, and if the representative of the authorities illegaly disables the public assembly, he will be released from state service and will be imprisoned for up to two months. (Ibid, 124.)

the country. Even though the public assembly of citizens was of great importance during that period in the Croatian history, there is not much legal literature on that subject from that period (Čepulo, 1999: p. 399). The Public Assembly Act brought the security and stability of legislative rules in relation to that sensitive political issue, because, before its enactment, the political rights of the citizens were largely regulated by the acts of the executive branch of the government.

Assemblies as mechanisms of the direct democratic decision-making and as a way of resolving crucial issues had a special place in self-governing socialist states such as the Socialist Federal Republic of Yugoslavia. In socialist Yugoslavia, citizens expressed their convictions and opinions in various assemblies, such as the voters' assembly or the working people's assembly. Such assemblies were functioning in almost all collectives, institutions, enterprises - even in the smallest communities such as the assembly of the apartment tenants. The voters' assembly was understood as a form of semi-direct democracy which was constitutionally guaranteed especially in the self-governing socialist states such as the Socialist Federal Republic of Yugoslavia. In that sense, the voters' assemblies where not defined as authorities, but rather as democratic political institutions through which the citizens from a narrower area within a municipality had the opportunity to inform the authorities of their opinions, convictions, suggestions, etc., which contributed to the better functioning of the local authorities. All citizens of legal age inhabiting the area could take part in the voters' assembly and it was called for by the president of the municipal people's board (Legal dictionary, 1964: 1088). Working people's assembly, similarly to the voters' assembly, was functioning as a form of direct management of the working community members in the labor organizations and was called for by the workers' council which was one of the governing bodies in the labor organizations (Ibid, 1089). Freedom of assembly and public gatherings was an essential part of the people's political rights and of the socialist democracy in the Socialist Federal Republic of Yugoslavia. It was prescribed not only in the provisions of the Constitution of the Socialist Federal Republic of Yugoslavia from 1963, but also in the Basic Law on Associations of Citizens from 1965 and the Basic Law on Public Assemblies from 1965. This legislation regulated the framework through which the citizens could realize their constitutionally guaranteed freedom of public assembly, which was only limited in the circumstances and under the conditions prescribed by the law. The Basic Law on Public Assemblies from 1965 does not define a public assembly, but it determines its three fundamental elements and those are: gathering of a large number of people - massive scale of the gathering; public character of the gathering - the gathering must be more or less open to the participation of the public;

organized character of the gathering - there must be an initiative to hold the gathering. According to the constitutional and legislative provisions, the freedom of public assembly is not absolute, because it can be restricted by the law and most commonly for the following reasons:

- protection of public health;
- protection of public peace, order and morality,
- protection of the security of the state (Živković and Simović, 2008: p. 92).

In accordance with the aforementioned provisions of the Basic Law on Public Assemblies, the competent authorities of interior affairs can forbid the holding of the public assembly, if the activities of the assembly are aimed at:

- violently overturning of the constitutionally determined socialist order or another change of the social, political, or economic order of the Socialist Federal Republic of Yugoslavia in another way;
- breaking the brotherhood, unity or equality of the peoples of the Socialist Federal Republic of Yugoslavia or inciting national or religious hatred or intolerance;
- independence or territorial integrity of the Socialist Federal Republic of Yugoslavia or if that activity is endangering peace or equal international cooperation, and
- committing crime or inciting criminal and similar behavior.

In all of the cases, which are grounds for forbidding the public assembly, interior affairs authority has a duty to make a decision to forbid the holding of the public assembly by its own incentive in a special administrative procedure. That decision must contain the reasoning, because the authority has to bear in mind that the other party can initiate an administrative dispute and that the court which decides in that administrative dispute must be informed of all the decisive facts of the case. Holding of the public assembly can be forbidden if there is a reasonable expectation that the public peace and order will be disrupted during the public assembly or that the regular flow of public traffic will be disturbed because of the public assembly under the condition that neither the organizer of the public assembly nor the competent authority are able to preserve the public peace and order and to ensure the regular flow of the public traffic. The competent authority decides to forbid holding of the public assembly on its own discretion as well. The decision with which the holding of the public assembly is forbidden must contain the general reasoning which guided the competent authority. The organizer of the public assembly, on the other

hand, has all of the available legal remedies against such decision at its disposal.

It can be concluded from the aforesaid that the interior affairs authority is authorized by the legislation to make its decisions with which the public assembly is allowed or forbidden at its own discretion because the reasons for not allowing the holding of the public assembly are so broadly defined. Interpretation of the legislative provisions which regulate the possibility of holding a public assembly is primarily in the competence of the interior affairs authorities. Courts can decide on that matter in the administrative dispute only after the decision of the interior affairs authorities has been made.

With the dissolution of the Socialist Federal Republic of Yugoslavia, new states have emerged on its territory, each with its own legal regulation of human rights and freedoms, including the political rights and freedoms such as the right of public assembly and the freedom of expression. It is necessary to mention that all of these states have regulated the human rights and freedoms in a similar way. Human rights and freedoms are a constitutional and legislative category and are legally protected at the highest level.

2. THE RIGHT OF PUBLIC ASSEMBLY OF THE CITIZENS OF BOSNIA AND HERZEGOVINA AND ITS ENTITIES

In Bosnia and Herzegovina, political rights and freedoms of citizens in which the voting right, the right on peaceful assembly, the freedom of speech and public expression of opinion, the freedom of association, the freedom of press and expression, the right on petition, the right of public criticizing and the right on citizenship are included, are regulated by the Constitution of Bosnia and Herzegovina as well as by the constitutions of entities, with respect of the basic international rules and guidelines.

In the Republic of Srpska, the issues of public assemblies of citizens are regulated by the Constitution of the Republic of Srpska and by the Public Assembly Act of the Republic of Srpska. By this Act the public assembly for the purpose of public expressing of political, social, and other beliefs and interests are regulated, as well as the ways of organizing peaceful meetings and public protests and other public assemblies which are organized with respect of this Act. In accordance with the Public Assembly Act of the Republic of Srpska, the public assembly is defined as any organized assembly of citizens, as a peaceful assembly or as a public protest, which takes a place on, for that purpose defined public areas, and in a way that is determined by this Act (Article 2, 8 and 9). An area that is designed for public assemblies is a public place which is accessible and suitable for

meetings of unknown number of people or their identity, and which assembly of citizens does not lead to violation of other people's rights, public moral, security of people and assets, or people's health and obstruction of public transport. If it is a place where public transport takes place, then, if it is possible, there need to be temporary traffic changes. This area is determined by the city's or municipality's regulations, and in accordance whit the Public Assembly Act (Article 3). A Public assembly can be organized as walking of participants, and it is organized on specified place, but it must be manifested as walking of participants without stopping, with exception of the starting and finishing point. The Public Assembly Act of the Republic of Srpska provides limitation of the right on public assembly because of protection of the constitutional order, the public order and peace, public morality and health of citizens, and protection of freedoms and rights of other people[3].

Every assembly of citizens, either peaceful or public protest, must be organized by its organizer who may be legal or natural person, which usually depends on the nature of the public assembly and its purpose. The organizer of public assembly convenes, holds, and monitors the public assembly, and if the assembly is organized by a group of citizens or more legal persons, the organizer is obliged to name a representative which will do the necessary activities in accordance with the Public assembly Act.

One of the mandatory activities is to give notification for organizing of the public assembly which the organizer or his representative submits at least five days before the beginning of the assembly (especially if there are some important reasons, the notification can be submitted 48 hours before the beginning of the assembly), to the administrative authority of internal matters on which territory the assembly will be held. Notification for organizing of the public assembly is not required if the assembly has a form

[3] Often we have the cases when the institutions of the state do not allow organizing of the public assembly, e.g. France authorities banned the protests against cartoons about prophet Mohamed, published in one French magazine, and on which they slight the Islamic prophet. The Minister of internal affairs Manuel Vals said that the competent authorities across the county had orders to ban every protest from these reasons because of the possible violent disturbance (http://www.tanjug.rs/novosti/59904, accessed on September 22, 2012). In a similar way the institutions of the Republic of Serbia reacted when they made a decision to ban the "Pride Parade" in Belgrade for security matters, which was elaborated by the Minister of Internal Affairs Ivica Dačić (RTS, RS, the News, on September 4, 2012). Similarly, the Government of Ukraine banned any public assembly because of the pandemic of H1N1 flu virus in the period of pandemic: (http://www.24sata.hr/zdravlje/svinjska-gripa-sad-zatvara-granice-meu-drzavama-143926, accessed on November, 8, 2009.)

of a meeting, round table, or meeting of political parties, unions, or others organizations which are held indoors, as well as other public assemblies of citizens with a purpose of religious, humanitarian, cultural, artistic, sports, etc. character, which is not lucrative, unless if the expected number of citizens requires taking some security measures.

The Public Assembly Act provides conditions on which organization of public assembly can be banned (Article 5 − 12). In order to protect the Constitutional order, the public order and peace, the public morality or health of people, protect the freedom and rights of others, organizing of certain public assemblies can be banned or restricted in accordance with the Public Assembly Act. Because of that, public assembly cannot be organized by a person who is sentenced to the security measure "forbidding of public assembly". Also, the freedom of speech and the freedom to participate in a public assembly can be restricted in order to forbid encouraging of any type of violence, racial, religious, or some other hatred. Public assembly will be banned in case when it is planned for the assembly to take a place:

- near a hospital, in a manner to prevent access for vehicles of emergency / ambulance;
- near of nursery and primary school while children are inside;
- in national parks and protected natural parks, except for peaceful assemblies which aim popularization of protection of nature and environment, as well as celebrating some important historical dates;
- near monuments if the assembly could cause damaging or destroying it;
- on highways, regional and local roads if it threatens the traffic safety; and
- near buildings which are especially secured on distance of 50 m from them.

In every single case the administrative authority, after considering the notification for organizing the public assembly and analyzing of all circumstances makes a decision on whether will the public assembly be allowed or it will be banned. Decision on the banning of public assembly must be made at least 24 hours before the beginning of the assembly. Against this decision the organizer may appeal, and administrative authorities that made the decision in the first instance, are obliged to deliver the appeal together with the rest of the case to the Minister of Interior of the Republic of Srpska, who must make a decision within 24 hours. Appeals in this case do not delay the execution of the decision, and if the Minister does not decide on the appeal within 24 hours, the public assembly can be held. This is because of the short deadlines for decision on the appeal and because of the procedure, a very interesting legal solution, especially if we take into

consideration the fact that the legislator did not prescribe deadlines for appeal on the decision by which the public assembly is banned, so this situation can cause some concerns for the organizer as well as for the administrative authority. The competent authority of internal affairs will conduct proceedings to ban organizing of public assembly in cases:

- when the public assembly is organized against the Constitutional order;
- when the public assembly is not registered in time or the registration is not formally correct;
- when the public assembly is registered on place on which by the Public Assembly Act it cannot be held;
- when the purposes of the public assembly are against the fundamental human rights and freedoms, or they can incite violence because of various national, racial, religious, or cultural affiliation;
- when there is a real danger that holding an assembly will threaten the security of citizens and property or that it might cause violence or disturbance of the public peace and order;
- if it is necessary for preventing from threat to people's health, on request of the authority competent for health.

Thus, the competent authority for internal affairs, the police officer, has authorization to interrupt a public assembly in case that it is organized against the Constitutional order or encourages armed conflict, violence, or racial, religious, or other hate, as well as when there is a real danger that holding an assembly will threaten the security of citizens and property or that it might cause violence or disturbance of the public peace and order. In same way, police officers of the competent authority for internal affairs will act if the organizing of the public assembly was not registered or it was banned, as well as in case that it was supposed to take place in public, which was not mentioned in the notification. In these situations, the competent authority will act as soon as possible and make a decision on banning of the public assembly and will inform the organizer of the assembly about that. The Public Assembly Act prescribes in detail the responsibility of the organizer of the public assembly, and he is responsible:

- to organize sufficient number of security guards, but this responsibility can be done by a special agency for securing of persons and property, and to take precautions of medical protection and fire protection (tasks of keeping of the public order and peace in the area which is next to the area where public assembly should take place, will be entrusted to police officers from the competent authority for internal affairs, because in this case they should make a difference between the term public order and peace, and the term order and

peace, knowing the fact that the organizer of the public assembly is responsible for providing the order and peace on the assembly, and police officers are responsible for the public order and peace);

- to provide unobstructed way for police and emergency vehicles and fire trucks;
- to appoint the person in charge of the public assembly who will monitor the whole public assembly and who will takes precautions for providing peace and order, and in the same time will coordinate security agents and interrupt the assembly if there is a real danger for the security of the participants or property;
- to provide the security agents (monitors) who will be in charge for the order and peace on the public assembly and protection of the participants and property in the area where the public assembly takes place and which are obliged to cooperate with police officers (Article 15 − 22).

In respect of the administrative procedure in these cases, a rather final decision about these situations, the competent authority for internal affairs brings the appropriate decision about banning of the public assembly. This decision is way much different from other decisions of this authority in various other special administrative procedures. This is because the deadlines in this procedure are much shorter for making decisions of the authority for internal affairs as well as for deciding on the appeal. Here, we must say that these decisions about banning of the public assembly are under the oversight of the public, so that these authorities have a great responsibility and pressure about their judgment on the notifications for organizing public assemblies.

3. RIGHT ON PUBLIC ASSEMBLY OF CITIZENS IN SOME EX YUGOSLAV REPUBLICS

Realization of the right of citizens on public assembly, public protests, and other similar types of assemblies, is guaranteed by the Constitution and the relevant Acts in the counties in the region, such as the Republic of Serbia or Croatia. In the Republic of Serbia, the 2006 Constitution guaranteed the right on thought, the right on speech, and the right on assembly and joining, as a part of the personal human rights and freedoms (Constitution of the Republic of Serbia, part two, art. 43, 46, 54 and 56). These rights are also regulated by the Act on assembly of citizens of the Republic of Serbia in which it is prescribed that assembly of citizens is considered convening and organizing of assembly or similar meeting, on provided place, and terminological it is referred to the public assembly. This Act also prescribes the conditions under which the public assembly can be

registered and can take a place, and competence for deciding on the notification of the organizer (whether to allow or to ban the assembly) is given to the Ministry for Internal Affairs of the Republic of Serbia, i.e. to its organizational units by the place of the announced assembly. In a similar way this matter about the right of the citizens on public assembly, public protest and peaceful meetings, and the freedom of speech is regulated in Croatia. By the Constitution of the Republic of Croatia from 2003, the right on peaceful assembly of citizens is guaranteed (Article 42). Also, the Public Assembly Act of the Republic of Croatia prescribes that everyone has the right on public assembly under the conditions listed in this Act, and the term "public assembly" implies to peaceful assembly, public protests, public manifestations, and other forms of assembly. What is common for the aforesaid states, including Bosnia and Herzegovina, i.e. for their legal regulations for this area of the laws of the right on public assembly, is that in all states there are by Acts prescribed conditions for organizing of public assembly, and that all assemblies and similar public meetings must be authorized by the competent authority of Internal Affairs. Likewise, restrictions of the right on public assembly of citizens are prescribed by a competent Act, with respect of the international norms on the Human rights and freedoms, and the practice of the European court for human rights which is very clear about this, and it refers to certain suggestions about the conditions under which the public assembly can be banned. That can happen only if there is a real danger of an outbreak of riots or some other danger for lives and property of citizens which cannot be avoided by some other measures.[4]

In all mentioned acts on the public assembly, there are special prohibitions and a list of buildings in the vicinity of which public assembly cannot be organized. In the Republic of Croatia this has led to numerous discussions and even to constitutional complaint on this Public Assembly Act in front of the Constitutional Court of the Republic of Croatia. That is the reason why there is an open discussion on whether security of the state and citizens is in danger because of organizing of the public assembly nearby some buildings, because the freedom of expression is one of the fundamental freedoms in the democratic society, and peaceful assembly is a way of realizing of that freedom. This freedom should be restricted only for protecting of the rights and freedoms of citizens and their security, and that does not mean that organizing of the public assembly nearby some buildings will lead to endangering of the security of the state and the citizens. This is

[4] Decision of the Constitutional Court of Republic of Croatia, no. U-I-29, July, 15, 2011.

why the right and timely assessment by the competent authority for internal affairs is crucial.

On the other hand, the public assembly and peaceful protests are expressing of some dissatisfaction or demand, or sending some statement, so it is easy to assume that the organizers of the assembly want to organize an assembly on some important place or area, because of the greater possibility of hearing the messages from the assembly and for achievement of the objectives for which it was organized in the first place. Similar arguments were in the Decision of the Constitutional court of the Republic of Croatia, which ruled that the restriction on organizing of the public assembly nearby some buildings may be allowed only if it is in function of protection of the freedoms and the rights of the citizens and the public order, public moral and health, and every restriction on the freedoms and rights must be proportional to the nature of necessity for restriction in each and every case.

4. CONCLUSION

According to the aforesaid, we can conclude that it was much easier to ban organizing of a public assembly nearby some buildings, than to competent authority after the organizer's notification each and every time to do assessments, preparation for the maintaining of the security of all citizens, their property, as well as the security of all participants. Beside the ongoing discussions about the place of the public assembly, it is important to emphasize that in none of the mentioned states the right on public assembly is jeopardized. Speaking about the place of public assembly, at least when we talk about Bosnia and Herzegovina, maybe it is better to restrict this right and ban the assembly nearby some important buildings, because the democracy and democratic procedures which includes some responsibility of all participant in this area are quiet new, so that organizing of the public assembly in some places nearby special buildings which are very important for the state would be very risky for the security of the participants and the property.

5. REFERENCES

Alimpić, D., Police dictionary, Belgrade, 1925

Ancient Philosophy, http://www.sh.wikipedia.org/wiki/antička filozofija, accessed on April 11, 2014

Čepulo, D., The right on public assembly in Croatia 1848 - 1918, Collected Papers of Zagreb Law Faculty, 1999

Forum of the astronomical magazine, http://www.astronomija.co.rs/, accessed on August 25, 2014

Ivanda, S., Police administrative law, Zagreb, 2004

Kuzmanović, R. and Dmičić, M., Constitutional law, Banja Luka, 2011

Legal dictionary, Belgrade, 1964

Vugdelić, V., Constitutional law-practicum, Belgrade, 2004

Živković, M., Simović, D., Constitutional law, Belgrade, 2008

Decision of the Constitutional Court of Republic of Croatia, No U-I-29, July, 15, 2011

The Basic Law on Associations of Citizens, *Official Gazette of Socialist Federal Republic of Yugoslavia, No. 16/1965*

The Basic Law on Public Assemblies, *Official Gazette of Socialist Federal Republic of Yugoslavia, No. 16/1965*

The Public Assembly Act of the Republic of Srpska, *Official Gazette of the Republic of Srpska, No. 118/2008*

The Public Assembly Act of the Republic of Serbia, *Official Gazette of the Republic of Serbia, No. 51/1992, 53/1993, 67/1994 and 101/2005*

The Public Assembly Act of the Republic of Croatia, *Official Gazette of the Republic of Croatia, No. 129/1999, 90/2005, 139/2005, 150/2005, 82/2011 and 78/2012*

Universal Declaration of Human Rights, *http://www.un.org/en/documents/udhr/* accessed on September 14, 2014

POLICE AND INTERNATIONAL POLICE-COOPERATION ON THE BALKAN

UDK: 351.74:[37.035:17]:316.46.058.2

ETHICAL EDUCATION OF POLICE OFFICERS IN THE FUNCTION OF THE POLICE SERVICE ROLE IN A DEMOCRATIC SOCIETY

Temelko Risteski, PhD,
FON University, Skopje,
e-mail: temelko_mkd@yahoo.com

Tanja Popova, MA,
FON University, Skopje,
e-mail: tanja.popova244@yahoo.com

Emrah Mihtaroski,MA,
FON University, Skopje,
e-mail: emrah_mihtaroski@hotmail.com

Abstract
The ethics of the police officer is a set of moral rules of conduct which he has accepted as his own behavior when performing the police service and everything that is connected with it. The democratic society needs ethical, firm and first-class police officers as a guaranty for legal, efficient and effective service to all the citizens. This can be achieved by ethical education to form moral values of police officers in relation to the way of behavior, work and aims of the police; respect for legality, police behavior towards criminal judicial authorities and competent authorities to prosecute and punish perpetrators of misdemeanors; behavior to the police authorities; behavior of police officers towards their own education and training to perform official duties; behavior of officers in police training; police officers behavior in police interventions, behavior of the police authorities and responsible police officers to the selection, recruitment and training of police officers; their behavior towards the realization of the rights and performing the duties of police officers and their work in the field of international police cooperation. Education for the establishment of these values among police officers is an obligation of every police officer and the competent authorities of the Ministry of Interior Affairs and the Police, which, in the Republic of Macedonia results from the provisions of the Law

on Internal Affairs, Law on Police and the Code of Ethics of the Police Officers . The exercise of moral standards contained in these normative acts will contribute to the quality and efficient realization of the service role of the police in accordance with the principle " Community policing " that enables to establish relations between the police and the social community (public) and therefore, effective cooperation with other state bodies, local government units, civil associations and citizens, as an imperative for efficient service function of the police in a democratic society.
Keywords: ethics, education, police officer, police, service, role.

INTRODUCTION

Every profession includes a set of professional activities performed by a person who is designated for that profession. These activities in turn, comprise a set of the same or similar activities, or work to meet the needs of the operator and the users of his services.[1] All these works are different from that which citizen perform in their everyday life, outside their profession. The behavior of the modern man in his daily life is based on general priciples of behavior in his everyday life which are diferent from the principles he performs in his proffesion. Given the fact that proffesional acitivities of a citizen differ from his daily activities, they need special rules of procedure

[1] So, as a lawyer performs the following activities: writing applications for customers - demands, lawsuits, complaints; representing clients in major disputes litigation or main court debates in criminal proceedings, or oral debates in the administrative proceedings; provides legal advice to some clients that seek it; participate in meetings attorney chamber etc. Within each of these activities performed numerous works. Thus, within the activities of the parties representing the major debates in the litigation he must perform the following tasks: to obtain information on the subject of the debate from the client, with eventual required proof: to obtain authorization from the client; to obtain copies of the records of the case, to investigate the matter and at the scheduled time to appear before the court where the trial is; to represent the interests of the client in it, during the debate to ask questions of the opposing party and witnesses, to offer new evidence; to submit objections etc. A civil servant or a public servant within the activity of solving in administrative procedures for certain rights of the client, when it receives a request for exercising a right, he needs firstly to see if the party's request contains all the necessary data to allow for it to be handled; if it do not contain these data to return the client to amend it; then to investigate good a request; to investigate the evidence of the case, if necessary, to obtain ex officio and other evidence and to investigate it well; to study well law's provisions relating to the application of a client; to determine whether the client meets or does not meet the conditions his request to be accepted; to write a draft decision to the draft submitted to the clerk of competent for decision making (signing), to act on the remarks of the subordinated officer (if any exist) and to correct the draft, so corrected draft to submit to the decision maker; to copy signed act in required number of copies and one copy to deliver to client using the legally prescribed manner.

and behavior in their fulfilment. Most of these rules are prescribed by law for the actions in certain legal matters, laws for certain professions or activities, such as for example the Law on Attoreneyship, the Law on Civil Servants, the Law on Public Servants, the Law on Courts,the Law on Interior, Police Law and other laws. However, lawmakers and legislators are interested in legal relations, so if they prescribe rules of conduct for members of certain professions in the exercise of certain professional work they do it in order to effectively resolve legal relations. Legislators are not interested in moral relations. For example, the legislator is not interested in whether a civil servant will be polite or unppolite to the client, whether he smiles or he is sullen; whether and how he is ready to help the client; whether and how well he will study the subject of his request and so on. They are not interested in whether the lawyer will deliver realistic or less realistic promises of client opportunities for success of his case, whether he will explore the subject of the client or not,whether he will discuss and refer before the courts politely and professionally, or not, and so on. These are not issues of interest of the the legal normative regulation, but they are issues of ethics - moral regulation.

A moral regulation which covers moral rules or moral norms for conduct of members of certain professions in the exercise of their professional duties is called a professional moral regulation or a regulation of professional ethics.

In the literature often, instead of the term proffesional moral it is encountered the term professional ethics and in this context the term moral regulation is synonymous with the term professional ethics. Each profession has its own professional moral regulation, i.e. its own professional ethics or, in other words, its professional ethics as a set of ethical - moral rules or standards of conduct and behavior in performance of professional activities and duties.

The question is what is the relation between a general civic ethics and a professional ethics. Viewed through the prism of the dialectics, it is the ratio of general to specific and vice versa. The basic moral principles, rules or norms of behavior of citizens in their everyday life is the basis for their conduct in their profession. In a certain sense,their profession is part of their everyday life. Citizens spend part of their lives performing professional activities. Every citizen, especially intellectual citizens, think about their professional activities, even when they are not at work i.e. outside working hours. They thinks about the professional problems during leisure, at home, on vacation. Many intelectuals use a significant portion of their free time to prepare for work activities. Thus, the judge and the lawyer study subjects, read law and other professional literature, the same does a state or public official, the teacher prepares himself for teaching, writes lessons, books, thinks about certain scientific problems, takes notes, and so on. So, the rules of conduct in their profession affect the behavior of citizens in their everyday

life. Therefore, some people who practice proffesional behavior in their everyday life are called people with professional deformations.[2] Considering the correlation between the general rules of moral behavior in everyday life and the rules of professional morality, we can conclude that a valid holder of a profession can be only the citizen who is morally valid in his everyday life and vice versa, the citizen who is immoral in his everyday life cannot be a good moral and professional police officer, civil servant, judge, professor etc.

The ethical rules of certain professions are cherished in the ranks of the members of the profession and transferred orally from generation to generation. For example, among retailers with consumer goods there are accepted rules of courtesy to customers,[3] rules for honesty in measuring, rules of relevant information about the quality of goods and so on. Millennia ago, some professions such as, for example medical, have written ethical rules contained in the Hippocratic oath, so named after the famous Greek physician Hippocrates. Moral rules, such as professional ethics of judges and civil servants, have been contained in the provisions of canon law and in present days in the provisions of the laws that were regulated by judicial procedures.

Recently, there are practiced moral norms of professional conduct of the members of certain professions which are grouped into separate ethical normative acts called ethical codes. So, there are codes of ethics for judges, lawyers, notaries, etc. Moral behavior of state officials of the Republic of Macedonia is governed by the moral ethical codes. Thus, there are codes of ethics for civil and public servants, Code of Ethics for tax officials, Code of Police Ethics and other codes.

Ethical codes determine the normative ethical profile of members of certain professions, but this profile in order to be objectified in practice needs ethical education. The ethical education builds ethically formed member of a profession who will undoubtedly apply the knowledge of professional ethics that he found during this education.This means that members of the profession whose moral behavior is codified in this Code will fully adhere to the moral norms contained in the Code. It is a guarantee that the members of the profession to which the code is designed responsibly and effectively perform their official duties in the frameworks of their service to citizens.

---

[2] For example: teachers whose professional work mainly consists of counseling and teaching, are prone to do it at home. Officers who at work orders and command often giving orders and commands apply to home, and receive comments from their home like "Dad here there is not barracks" or "Dad, we are not your soldiers," many of tellers and other financial officers show emphasized thrift in private life, so their domestic prefrlaalt each more or less unrestricted spent dinar.

[3] If you do not know how to smile - do not open a shop, says the old Chinese proverb.

Any social service, and of course the police service, was formed by citizens and for citizens. Therefore, its members need to be effective in citizens servicing.

1.THE ETHICAL EDUCATION OF THE POLICE ABOUT INTERNATIONAL DOCUMENTS

According to Article 1 of the Code of Conduct for the People Responsible for Applying the Law, these people "should always perform the tasks that are provided by law, serve the community and protect all people from lawless actions with a high level of responsibility that their profession requires.[4] This provision of the Code imposes the need for police officers to familiarize themselves with the legal provisions for their behavior within the service provided by the laws of executives for the operations in the field of internal affairs. They should serve the community and by doing so, to protect its members from the violations of legality with the highest degree of professionalism, which derives from the principle of responsibility. Conceptual basis for the concept of "Community Policing" derives from this provision of the Code.

The Laws on performance of affairs of Interior (in Republic of Macedonia Law on Interior Affairs and the Law on Police) contain provisions of the ethical basis for preparation of the national ethical codes of the police officers. Being familiar with these provisions means having a profound knowledge of these codes.

According to Article 8, paragraph 1 of the Code "people responsible for the implementation of the law must respect the law and the Code. They also have to prevent any violation of the law and the code and vigorously oppose it in the best way they can. " Paragraph 2 of the Code provides that "those responsible for the application of the law that have reasons to think that someone violated or violates the code of their case indicate their supervisor and need other authorities, or authorities that control the application of this codex or the higher competent bodies or authorities. " These provisions of the Code are putting police officers in the position of initiators of control over violators of the law and Code. This, furthermore, points out the need for a profound knowledge of the laws in the field of internal affairs and the need to profound and essential knowledge of this code as an international act on which national codes of police ethics are based.

[4] Code was adopted by the resolution of the General Assembly of the United Nations, number 34/169, from December 17, 1979.

An important document for the work of police officers in the European areas is the Declaration of the Police.[5]

According to paragraph 2 of the Declaration "Every police officer should act honestly, impartially and with dignity.In particular,they should abstain from any kind of corruption and decisively oppose it. " Honesty, fairness and dignity are bases of the moral profile of a police officer. If he is honest he will be truthful and righteous, and if he is righteous he would be impartial. If he is dignified he will take account of his personal reputation in the areas in which he lives and works and he will always strive to be valued and respected in those environments as conscientious and responsible professional, always ready to serve the community in accordance with the principles of police work in the community. Therefore, the ethical education of police officers should be primarily directed towards the development of honesty, fairness and dignity as leading moral values that should grace the moral profile of each police officer.

The declaration specifically emphasizes the need for every police officer, before and during the service, to receive a general and vocational education as well as an adequate training in the field of social problems, public freedoms, human rights, especially for those which are prescribed by the European Convention of Human rights. Such education is in function of an honest, dignified and impartial performance of police duties because it provides to perform them with higher quality that relies on solid general education and profound professional knowledge of all the things that the police officer should perform for the community in order to be able to effectively solve the problems that arise in his work. The police officer needs to be well acquainted with the social situation of the ground on which he performs the service, especially with socio-pathological occurrences on the ground. He should especially be familiar with human rights because the performance of the police work carries risk of undermining and compromising those rights of the citizens, of course, if police officers do not know them.

2. ETHICAL EDUCATION OF POLICE OFICERS THROUGH THE PRIZM OF THE LAW OF INTERNAL AFFAIRS AND THE LAW ON THE POLICE OF THE REPUBLIC OF MACEDONIA

According to article 6 of the Law of Interior Affairs employees in the Ministry of Interior Affairs "are obligated to perform duties and tasks to protect and preserve the lives and property of citizens, to respect the rights

[5] Resolution is adopted by the Parliamentary Assembly of the European Council number 690 of May 8, 1979.

and freedoms of the man and the citizen and furthermore, to apply only those measures and means of coercion which are prescribed by Law and determined by this law or other regulation." This legal provision clearly indicates the fact that police officers, as employees in the Ministry of Interior Affairs, are in service of the citizens. Therefore, the ethical education of police officers should raise a sense of service orientation towards the citizens, a sense of respect for their rights and freedoms guaranteed by the Constitution and a sense of responsibility for the implementation of measures and means of coercion directed to it. These measures will be applied in accordance with the provisions of laws and regulations based on these laws.

The Law, furthermore, contains some general principles for employees in the Ministry in which the ethical dimension predominates. So, according to the principle of legality " employees in the Ministry perform activities and work tasks in accordance with the Constitution of the Republic of Macedonia, the laws and the regulations adopted on the basis of the law and international agreements ratified in accordance with the Constitution of Macedonia." To perform the duties and work tasks in accordance with the Constitution, the laws and other regulations enacted on the laws, means to adhere positive law and positive law is closely related to the ethical principle of fairness in the police work.An equitable person is the one who consistently implements the law. Therefore, in the ethical education of police officers, special attention should be given to the principle of legality for which is necessary to have profound knowledge of constitutional and legal provisions related to policing.

Besides this principle for ethical education of police officers the principle of professional ethics,impartiality and objectivity, is also important . This principle in law is prescribed as one principle, although it actually encompasses three principles: the principle of professional ethics, the principle of impartiality and the principle of objectivity. These principles are in close dialectical relationship with the principle of legality because the principle of legality requires professional policing to take place in accordance with the Constitution,the laws and regulations with the highest possible level of service orientation towards citizens. According to this principle, police officers, as employees of the Ministry, should be educated so that in the performance of activities and work tasks provide impartial and objective application of the laws and other regulations, and also provide protection and exercise of rights for the citizens and legal entities, but this should not be at the expense of other citizens and legal entities, or contrary to public interest defined by law.[6]

[6] This provision apparently, with some changes in the content, is taken from Article 5, paragraph 1 and 2 of the Law on Administrative Procedure, under which the authorities

Police officers should be educated in the spirit of transparency and openness towards citizens. They, in the system of community policing, together with citizens represent a system of security and a dialectical unity. That system cannot function if it does not share information among the police which functions as citizens service and among the citizens as users of police services. Police officers, as employees of the Ministry of Interior Affairs, should act with the highest level of responsibility when carrying out their tasks in the service and in relation with the service.The responsibility of police officers employed in an administrative authority such as the Ministry of Interior Affairs is manifested as three-dimensional social phenomenon.[7] The first dimension includes the responsibility of the individual to himself, to his consciousness, to his system of moral values in which responsibility as a moral value manifests itself as a sense of duty and concern for quality performance of work tasks, followed by a critical attitude towards himself rigor and toward other for their irresponsible behavior at work. This police officer is always ready to take on responsible and difficult tasks in the legal and quality service performance.

The second dimension of the responsibility includes responsibility of the police officer as a public official in relation to the citizens as clients and users of its services. It involves diligence and dedication in working. The conscientiousness implies right attitude towards work duties, promoting the work whose aim is to increase the quality and efficiency in the performance of work obligations, punctuality, diligence and discipline in the operation and vigorously opposes irresponsibility, parasitism and sloth as moral deviations in the sphere of employment morality. The diligence implies commitment and a positive approach to the work and the pleasure and joy that achieve the desired results of the work, and the good quality in realization of work tasks and fulfillment of the obligations according to their own opportunities. Sacrifice involves commitment and self-denial at work followed by a developed sense of duty and responsibility.

The third dimension of the responsibility includes responsibility of the police officer to the administration as a public service in general and the responsibility to the Ministry of Interior Affairs as the authority where he works - separately. It involves reporting every police officer to assume a

---

responsible for resolving administrative matters shall, performing the duties of public interest to comply with the law protected rights and interests of the cleints.

In the procedure in dealing and decision making, the authorities which are competent for resolving administrative matters are obliged to enable the clients they easier to protect and enforce their rights, taking into account the exercise of their rights not to be to detriment of the other clients, nor in contrary to the public interest established by law.

[7] R. Marjanovic: Radical Theory of Responsibility,, Nova 64, Belgrade, 1989, p. 211- 238th

superior police duty and the accountability to governmental organ or the managing officer responsible for the control and supervision over his work as well as the readiness of the police officer for omissions in the work to fit himself under the penal provisions of the disciplinary law, misdemeanor and criminal law and responsibility for damage caused in the work, according to the law's provisions of the financial resposnibility.

Ethical education of police officers can equally cover all these dimensions of the responsibility because they represent the dialectical unity and if any of these dimensions is not present or is not sufficiently represented in the work of the police officers they can not speak as responsible police officers.

According to the principle of preventing conflict of interests, workers in the Ministry do not bring tangible and intangible personal interests in conflict with the public interest and with their status that may cause a conflict of interest, which go beyond the law. In accordance with this principle, in the police officers need to develop a spirit of giving priority to the public interest in relation to their personal interests. That is so because every man lives in a community and the police officer is a comunity man, a citizen. If the community is advanced, prosperous and secure, he can, as its member, live a life with a standard which is dignified for a human being and in conditions of freedom and security. Under circumstances where the backward community does not respect law and order there is not a free and safe life.

The principle of economical use of funds is closely related to the previous principle of law. The resources of the police are resources of the community, of the society, procured by the budget money and the budget is completed by the taxes and other fiscal duties of citizens. Therefore, every police officer should know that every uneconomical and irrational use of money, technical means and equipment of the police, any kind of use of the funds for personal purposes by the police, is detrimental to the community and it sets out its progress. The damage to the community is an indirect damage to every citizen of the community .

The Police Law contains no special provisions for the ethic profile of the police officers. Article 2 of the Law is prescribed that the police is part of the Ministry of Interior Affairs which performs police work by police officers and the police officer is an authorized officer under the provisions of the Law on Internal Affairs, uniformed and plain member of the police with police powers, performing police work in accordance with the law. Accordingly, the provisions of the moral character of ministry employees that are proscribed by Law of Interior Affairs applies to police officers that, as a matter of fact, we analysed through our comments on those provisions.

3. THE CODE OF POLICE ETHICS AND ETHICAL EDUCATION OF POLICE OFFICERS IN THE REPUBLIC OF MACEDONIA

From the annalysis of the Code of police ethics we can conclude that the general objective of ethical education of the Macedonian police officers is the formation of moral values in relation to the manner of behavior, work and aims of the police; respect for legality, police behavior towards criminal judicial authorities and competent organs to prosecute and punish perpetrators of violations; the behavior to the police authorities; the behavior of police officers towards their personal education and training to perform the official duties;the behavior of officers in police training; police behavior in police interventions,the behavior of the police authorities and police officers responsible for the selection, recruitment and training of police officers; their behavior towards the realization of the rights and performing the duties of police officers and to work in the field of international police cooperation.

Educating police officers in the Police Code of Ethics is stipulated in a separate chapter dedicated to their training. According to the Code (Article 26, paragraph 1) the police training of the Macedonian police is based on democracy, the rule of law and respect for fundamental rights and freedoms of the man and the citizen. Therefore, in the education of police officers there should be developed a sense of respect for democratic rights of citizens and a respect to the Constitution and the legality and order in the society, perscribed by law. Moreover, their education should provide deep knowledge of constitutional provisions, freedoms and rights of citizens guaranteed by the Constitution.

The provision of paragraph 2 of Article 26 of the Code stipulates that police training is developed and is in accordance with the principles of the fight against racism and xenophobia. Racism is not a problem in the Macedonian society because it is enormously monoracial with a small number of members of other races who inhabit various grounds and live in the country. Also, xenophobia is not a problem for the society. Observing the behavior of our citizens to foreigners we note an emphasized and a high level of respect for them and we show xenophilia, which is the opposite of xenophobia. But, in any case, it is well, in the process of education and training, to tell the police officers that they should not show doughty to members of other races and foreigners, but to behave with them hospitable and friendly.

Furthermore, according the Code (Article 27, paragraph 1) the training of police officers, through different degrees of police education with clearly specified objectives, should provide a profile of police qualification and culture, a high degree of initiative, professionalism and expertise in the

performance of the police function. From this provision, it is obvious that the goal of education is building cultural people from police officers who, in the performance of police work, will culturaly and kindly refer to citizens.

High degree of initiative, professionalism and expertise are moral values without which we cannot imagine the efficient and effective performance of police duties. This is because police officers will often be in a situation alone, without the presence of their superiors and without the possibility to contact them, to perform complex and dangerous tasks in the citizens servicing. Therefore, through the process of education police officers should implant awareness of the need for action on their own initiative and the need for continuous professional improvement without which self-initiative cannot be imagined.

According to the Code (Article 27, paragraph 2) police officers need to obtain additional information from the social area and the culture of the community in the society. According to this, police officers need to conduct in a way which is compatible with the behavior of citizens in the social environment in which they perform their official duties.The police officer is required to adapt his behavior, both in private life and in service, to cultural, moral and customary norms in the social environment in which he lives and works. Otherwise, he will protrudes in that environment, and of course, as a result of that, he will not be well accepted by citizens who comprise it.

In addition to this interpretation of the above provision is the provision of Article 28 of the Code, according to which, the basic training of police officers should be open and transparent to the society, which also contributes to its regular dynamics and promotion of the above mentioned values of the police officers . Openness and transparency of training to society requires a close monitoring of the situations, events, changes and processes in the society, training and education of police officers in order to quickly adapt to them and effectively meet the needs and interests of citizens when servicing the community. Rapid adaptation to change and processes in the society is an imperative which is imposed to the police by the implementation of the principle named community policing that involves effective policing in the service to the citizens in the community based on effective cooperation with other state's organs, local self-government units, associations of citizens and the citizens themselves. (Article 18 of the Code).[8]

[8] To this provision of the Code it can note that it puts citizens at last place among the subjects that police should colaborate with. Having in view the fact that police is a service of the citizens, and the fact that other above listed d listed entities with which the police should cooperate are consisted of citizens employed or engaged in them, citizens should be placed in the first place among the subjects that police should cooperate with.

CONCLUSION

In a democratic society, the police services to the citizens. As a service to the citizens it performs many complex tasks within its basic function. The police officer takes care for the protection and respect of the fundamental rights and freedoms of man and citizen guaranteed by the Constitution, laws and ratified international agreements, protection of the legal order, prevention and detection of offenses, taking measures prosecution of offenders, as well as the maintenance of public order and peace in the society. It is accomplished through the exercise of police work by law in Article 5, which contains exhaustive lists. They are: protection of life, personal safety and property of the citizens; protection of the rights and freedoms of man and citizen guaranteed by the Constitution, laws and ratified international agreements; prevention of committing crimes and misdemeanors, detection and apprehension of the perpetrators and taking other measures specified by law for prosecution of offenders; maintenance of public order; regulation and control of road traffic; control of movement and residence of foreigners; control state border and control of crossing it; aid to and protection of citizens in case of urgent need; providing certain people and facilities and other duties prescribed by law.

From this overview of the tasks that police officers perform it can be concluded that it is a very complex and responsible duty that can be performed only by higly-qualified professionals and professionals with high moral integrity who have high degree of autonomous morality. Autonomous morality exists in every man who knows the moral norms, who is aware of them and their significance and who, therefore, possess moral awareness. It means that he accepted norms so that they became part of the structure of his personality and that he has a moral conscience. Such a man will act morally in every situation, regardless of whether there is someone who appreciates his actions or not. Therefore, the ultimate goal of ethical education of police officers should be the establishment of an autonomous morality as a major feature of their characters that are part of the structure of their personalities as human beings and members of the community, on the one hand, and on the other hand as professionals who perform complex tasks for protection of citizens' security and law and order in the state as a social organization. Only police officers with highly developed autonomous morality can meet the demands of the community policing, which is a fundamental imperative of service-oriented police in a democratic society.

REFERENCES:

1.Borchard Klaus – D.: The ABC of the Community Law, 2000, European Comision Brussels.
2. Boškoski B.: Philosophy's Ethical Systems, Faculty of Theology, "St. Kliment Ohridski" Skopje, 1981.
3. Code of Police Ethics ("Official Gazette or RM", No. 72/2007).
4. Collection, of Human Rights International Documents, 2001, Pearson Peacekeeping Centre, Cornwallis, Nova Scotia, Canada,
5. Constitution of the Republic of Macedonia, "Official Gazette of RM", No. 52/91.
6. Dojchinoska R .: Fundamentals of preventive policing, Ministry of Interior, Skopje, 2013
7. Jankuloski W .: Human Rights, 1993, The Open Society Fund of the Republic of Macedonia, Skopje
8. Law on General Administrative Procedure, ("Official Gazette of the RM", No. 72/2005).
9. Law on Internal Affairs ("Official Gazette of RM", No. 92/09).
10. Law on Police - Consolidation, electronic edition of MoI Skopje, March 2014.
11. Marjanovic R.: Radical Theory of Responsibility,1989 "Nova 64", Belgrade,
12. MC Lean I., Mc Milan A .: Concise Dictionary of Politics, 2003, Oxford University Press,
13. Risteski T.: Moral of the Society in Transition, and the Legal System of the Republic of Macedonia, 2005, The International Scientific Conference "The Functioning of the Legal System of the Republic of Serbia, Journal of Law, University of Nish, Nish.
14. Risteski T.: Ethics and Deontology, 2013,University FON, Skopje, , (electronic publication)
15. Vukasović A.: "Ethics, Morality, Personality - Moral Education in Theory and Practice of Raising",1993, School Books, Zagreb.

UDK: 343.982:[351.74:17

ON SOME ETHICAL ISSUES IN POLICING RESEARCH

Stojanka Mirceva, PhD.
Faculty of Security – Skopje, Macedonia
s.mirceva@gmail.com

Abstract

Policing research has occupied the interest of criminologist across Europe for many decades. Frequently, the need to gain a deep understanding of police, policing, organizational structure, culture and practice necessitates the usage of several research techniques. Apart from statistic data kept by the police, official reports and other documentary material, the most valuable data source are the police officers themselves and their everyday behavior. Thus, among the most fertile research techniques in policing research are interviews, questionnaire surveys and participatory observations. In addition, an important issue arises from the access to the police officers, having in mind that police organizations are rather hesitant to be open to scrutiny of researchers, especially outside of the police structure. This, in turn, opens a debate on the validity of findings, even when the access is granted by superior officers and correlated issues of research ethics. The issue of research ethics and especially research ethics in criminological research usually consist of defined research ethics in a particular socio-economic and historical context. Such approach entails the existence of detailed ethical guidelines or codes and operation of ethical committees. The aim of this paper is to discuss the main ethical standards, namely, informed consent, confidentiality and anonymity, particularly when research design encompasses data gathered by interviews or questionnaire surveys to police officers. However, the paper focuses only on the policing research practice in the Republic of Macedonia and the significance of the research ethics observance. Namely, the current situation in the country, in relation to research ethics, is rather 'foggy'. This vagueness in the field may be elucidated with the answer of two key issues: research ethics regulations and research committees. Regarding criminological research practice there has been very little attention paid to ethical regulations. The ethical committees do exist at the Universities level, but their operations and their mandatory ethical review of research designs are rather vague. Furthermore, publishing

practice in the country does not always impose an obligation for ethical review of the proposed research paper. The discussion pertains to the personal experience as a researcher in few policing research projects, the Comparative Police Studies in the EU (COMPOSITE), the project MAK-11/0011 "Assistance to implementation of Restorative Justice Concept" and HIV/AIDS and Police, conducted in the last decade.

Key words: police, research, ethical issues

1 INTRODUCTION

Nowadays there is still an intense debate among researchers over ethical issues and associated issues of ethical violations in social research. In particular, ethical issues concerned with the relationship between researchers and respondents are of main interest to this paper. As noted by Bryman, there are several stances adopted by the social research ethics authors, namely, "universalism, situation ethics, ethical transgression is pervasive, anything goes, and deontological versus consequentialist ethics" (2012,132). In the discussion of ethically correct, ethically questionable and ethically unacceptable research practice, the sensitivity of research topic and vulnerability of research participants demand special attention. Undoubtedly, "concerns about ethics should be considerably deeper when the research addresses sensitive topic and even more when the participants are vulnerable groups" (Kenig and Mirceva 2014,67).

Research in policing and the police, like any other social issue, is a complex task. Moreover, policing research is burdened not by the vulnerability of the participants, but we may identify two groups of issues: professionalism and credibility of the researcher and professionalism and openness by the access granters. In other words, the first issue is related to the confidentiality during the process of data collection. Namely, the confidentiality as one of the key ethical research principles, besides its meaning in the relationship between researcher and participants, has another perspective in criminological research and especially in policing research. One dilemma that deserves attention is at what point the researcher who comes across data that might be considered as a legally questionable police conduct shall report on that. For the researcher to become a "whistleblower" there are two possible dimensions. Firstly, the impacts on the whole research process and its potential termination. And, secondly, it is related to the credibility of the researcher among research participants and the possibility to gain access in future research (Westmarland 2001). The second issue is related to the concern over the interpretation of research findings and publication, which influence access granting and expectations from the

research, bearing in mind that the police organization is deeply concerned how the police will be represented in the published research findings.

Both issues are strongly related to research ethics. A very important issue arises from the access to police officers, having in mind that police organizations are rather hesitant to be open to scrutiny of researchers, especially outside of police structure. Moreover, the most valuable source of data in policing research are the police officers themselves and their everyday conduct, making interviews, questionnaire surveys and participatory observations which are regarded as the most fertile research techniques in policing research.

The aim of this paper is to discuss the main ethical standards, namely informed consent, confidentiality and anonymity, particularly when research design encompasses data gathered by interviews or questionnaire surveys to police officers. Therefore, the following questions are addressed: What makes researching police difficult and challenging? How is utilizing research ethics in policing research related to the quality of findings? In particular, how culture, organization, values and policing processes influence research findings?

Apart from the introductory notes, the paper is structured in two parts. In elaborating research ethics, the second section aims to extend meaning of ethical conduct to policing research, as well as to point out to the social context where ethical standards are defined and conditioned with. Nevertheless, due to the limited length, only three ethical standards will be elaborated. The third part provides an insight into the current situation with ethical standards, their regulation and observance in conducting policing research in Macedonia. In the concluding remarks the paper opens a further debate on the necessity not only to have set up clear written rules on research ethics, but also on the necessity for their upholding.

2 KEY ETHICAL STANDARDS

Before elaboration of three ethical standards it is important to address the issue of what is considered as an ethical research conduct. In general, what needs to be understood is that the social research happens in context that is shaped by already established set of values and standards. No social research is taking place in a value vacuum. Therefore, ethical research conduct is defined by what in a particular socio-economic and historical context is considered to be right and correct practice. In many EU countries as well as USA, guidelines about ethical practice or ethical codes are developed by professional associations or research ethics committees that are responsible for issuing ethical clearances based on rigorous examination of ethical implications from using certain research methodology (Israel and Hay 2012; Nicholls, Brehaut and Saginur 2012; Rawbone 2009). In general,

research ethics codes or guidelines are developed and shaped by the research community and the current societal values. Moreover, whether ethics review and ethics committee approval will be a precondition for conducting a research depends on the current research policy and community. It is a duty to observe ethical guidelines and the existence of ethical bodies, as pointed out by Lewis and Graham, "unlike in medical, health and social care research, ethical approval is not a standard practice in social research" (2007, 74). Namely, the first issue is whether we need written rules on research ethics. The latter is whether and to what extent funds allocation, access granting, conducting research and publishing findings are conditioned with observance of established ethical guidelines for research and approval from an ethical committee. The answers to these questions need to be allocated in the development of a particular research community. In the Republic of Macedonia there is poor evidence on the existence and operation of the ethical guidelines and committees. On the other hand, there is an ongoing debate among research authors in UK and USA on the operation of the ethical committees. Some social science researchers embrace the stance that social research abuses and the potential harm from social research are rare and therefore they should not undergo ethical review (Schrag 2011). At the opposite end are the social researchers that assess the necessity of ethical review against the risks and harms to the participants (Edwards 2010; Israel and Hay 2012; Nicholls et.all 2012). The necessity and the role of ethics committees, as pointed out by Edwards, is "in balancing the perceived social value of the research they review, against any risks for its human subjects" (2010,159). Besides preventing harm for research participants, ethical codes are also very useful for researcher and together with the approval from the ethical committees protect them from ethically unacceptable or questionable research conduct and potential damages to their reputation (Bryman 2012).

2.1 Informed consent

The issue of informed consent is highly related to the freedom and autonomy of an individual who is addressed as a research participant. What meaning and significance is given to the informed consent depicts the relationship between the researcher and the research participant. Worth noting are the social research designs for which consent may be unnecessary or it might preclude the research, such as covert or open participatory observation at public places that might be the only methods in exploring particular social realm. However, the paper is concerned only with the informed consent of participants when interviews and questionnaire surveys are employed.

Respecting the autonomy of the research participant assumes that the participant has the freedom to make a choice to participate or not before the

research commences and that the consent is based on the understanding of information provided by the researcher. There are two central points related to the informed consent of the research participants, understanding the information provided together with knowledge about the consequences and the voluntary choice to participate. The first point raises the question about what constitutes sufficient information, about what and what will assure the researcher that the research participant understood the information provided and the consent is given voluntary on the basis of understanding and knowledge. In a social research it is usual to provide participants with information on aims, purpose and methods, sources of funding, professional affiliation of the researcher, rights of research participants and nature of their involvement, potential risks or harm, confidentiality and anonymity assurances and possible limits on guaranteeing privacy on how data will be used, processed and stored, the expected outcome of the research and how the findings will be disseminated (Edwards 2010; Israel and Hay 2012). In addition, when research design encompasses vulnerable research participants a special procedure needs to be in place. Provision of sufficient information is solely the obligation of the researcher. However, the second point that the information is understood is more related to the personal characteristics of the research participants and their interests. Namely, gaining, understanding and processing information that result in a voluntary decision requires mental competence of the participants. In most cases social research involves participants with mental capacity. Still, mental competence of an individual does not necessarily prove informed consent. In this regard Edwards noted that "establishing a criterion to determine when someone has the mental capacity to consent to research is notoriously difficult" (2010,160). Namely, different individuals in different circumstances make their decisions in accordance with their preconceptions, particular wishes and interests, which do not necessarily entail a full understanding of all the information provided. Apart from precondition for mental capacity, the consent for participation needs to be freely and voluntary. This entails context and surrounding circumstances of the participant. Voluntary informed consent means that there are no actual or perceived threats or pressure that affects the freedom of choice of the participants. If the participants are under impression that they are required to participate, or fear that they will suffer sanctions or certain deprivation or negative personal consequences, if refusing to participate ,then the integrity of the consent itself is questionable. This in turn might affect the quality of the research. In this respect, it is clearly explained the absolute nature of the right to withdraw without consequences at any stage, which is of particular importance. The research participants should have knowledge that they are entitled to refuse participation in the research.

With regard to the significance of the consent, Rawbone pointed out that, "that consent should be based on a trust in the researcher, a trust itself based on partnership and not on paternalism, that consent needs to be set within the framework of an interactive communication between the researcher and the researched" (2010,116). In relation to the form of consent it may be written or oral by using written consent forms or recording the expressed consent. An obligation for the researcher is to secure that the consent is given based on the understanding of the information provided and the awareness for the consequences. At the end of the day, as Pothier noted, "written consent, in fact, largely aims to protect the researcher, not the participant" (2008, 78).

Next, a very important issue is whether consent giving is one-off event or a process, together with what consent is sought for. Namely, some questionnaire surveys may suffice with providing information sheet and informed consent before the data collection commenced, while other, especially interview researches might need to employ "a model of continuous or process consent, where the researcher reaffirms consent throughout the research process" (Allmark, Boote, Chambers, Clarke, McDonnell, Thompson and Tod 2009,49). It is a common practice in the social research to seek informed consent for voluntary participation, for use of collected data in writing research reports and scientific papers, including the use of quotes. However, the informed consent for using collected data by wider research community in further research is a different issue. This issue is highly related to maintaining confidentiality and anonymity during and after research. As noted by Van Den Eynden, ". Consent differentiates between consent to participate and consent to allow findings to be shared or re-used" (2008,38).

2.2 Confidentiality and Anonymity

The issue of confidentiality is related to risks and harms to the research participants. The obligation of the researcher to maintain confidentiality is in relation to the right to privacy and anonymity of the participants. Moreover, confidentiality extends to collecting, analyzing, storage and access to data and reporting of the research. Confidentiality needs to be approached as a distinct ethical principle, "in its own right" (Israel, 2012; Bryman, 2012). It is very important to observe confidentiality mainly for two reasons, the potential harm to participants and the associated harm for future research. Some authors suggest employing precaution measures in order to maintain a duty to confidentiality. These include confidentiality of the personal data of participants, which is a guarantee for privacy. Therefore, some research may require not recording names and other identifying details at all or making anonymous the data which include

removing or masking information that can identify the participant. Besides names of the participants, it may be necessary to exclude or alter the data on places or communities where participants are coming from. In this respect, a helpful suggestion is not to store list of participants with names and addresses or correspondence letters on a computer drive. Furthermore, transcripts need not to contain names of participant and they should be kept in a safe place. Last but not least, the suggestion is to avoid using the Internet for sending transcripts or other files that contain identifiable data. Besides confidentiality in collecting and storing data, due attention should be placed in publishing findings in order to ensure that the sources of data are not identifiable. While for quantitative research this requirement is much easier to fulfil, for qualitative research it might be very difficult to disable possible identification of individuals and place (Rawbone 2009). In this respect, particular attention deserves the use of quotes. Namely, even if the participants are not identifiable to the general public, they still may be identified within a particular group (Allmark et all 2009). Some authors opt for excluding from the findings all the quotes that make the participants identifiable, while other opt for public interest on the expense of breaching confidentiality. What might be a useful measure is to acknowledge to the participant at the stage of taking informed consent that the full confidentiality and anonymity may not be guaranteed, although the researcher will take all precaution measures. On one hand, offering limited guarantees of confidentiality enables the participant to wage the potential risks and harm if he /she would be identified and consequently to choose participation. This implies that confidentiality cannot be offered as an absolute. On the other hand, social researchers, and especially criminologists might be faced with witnessing or otherwise discovering crime or illegal activity. There is no consensus on how to handle such situations in terms of confidentiality. One approach is to leave to the researcher's conscious how to resolve the conflict between research confidentiality and legal requirement to disclose data on crime. Another approach places two options in front of the researcher, to hear about illegal activities and to keep them confidential, or not to conduct the research. The situation is getting very complicated when the researcher collects data on participant's illegal activities. The question posed by Lowman and Palys, "Which person would divulge information about crimes they committed knowing that the researcher would turn it over to a prosecutor or the police to be used against them?" sounds very rationale (2014,98). Even more, if the researchers involved in studying crimes embrace a role of informers, "the 'dark figure' of crime will become much darker" (ibid, 103). Consequently, they differentiated two stances among researchers, the first is in strict relation to "law obedience", while the second prefers "ethics perspective".

What might be a possible solution is to abandon total and strict confidentiality in research of sensitive topics since the primary ethical standard is to uphold promised confidentiality. Furthermore, if there is a reasonable possibility that the participant will speak about plans for committing serious harm or death to others, than he/she should be warned on the limits of confidentiality in advance. Such approach is based on balancing harm to participants and research against harm to others, where inevitably preventing serious harm to others prevails while respecting offered confidentiality. As Israel describes this as "limited offer of confidentiality" by using Farall's approach in studying ex-prisoners lives in UK, namely " anything said is confidential, unless they confessed plans to commit murder or offences which could hurt someone" (2012,504).

3 ETHICS IN POLICING RESEARCH IN MACEDONIA

Policing research in Macedonia, as elsewhere, faces primary challenge in gaining access. Peculiarity associated with access to police organization is linked to the characteristics of police organization itself, as a close circle with its own rules, language and culture. Widely accepted fact is that the police have a distinct culture that influence the way in which police operate (Chen 2012; Terpstra and Schaap 2013). On the other hand, gathering research knowledge about the police and about policing depends on the understanding of the police organization, the values and the police culture associated with internal solidarity, cynics and suspicious towards the outside word. In this light, the police organization needs to be observed when approached for research and to expect cautious in opening for scrutiny of researchers.

The above mentioned peculiarities need to be considered in relation to two very relevant issues in policing research, access and validity. Gaining access to research police is a difficult task by its own. It is clearly a political process. In Macedonia, access for policing research needs approval from very top level managers in the organization. Usually, access granters are interested in motives of the researcher, funding of the research, what aspects of police work will be researched and how, how long it will it take and most pressing is how police will be presented in the findings and what will be the effect of the findings on the image of the police. Experiences in Macedonia with access gaining to research in police organization vary significantly and depend on who funds the research, the type of institution that will conduct the research and the credibility of the principal researcher, the research design and the purpose of the research. Even when access is granted, this does not necessarily entails endorsement of the research at lower managerial and operational level.

It is worth noting that research conducted in three different research project encompassed data gathered by interviews or questionnaire surveys to police officers. All three research projects, Comparative Police Studies in the EU (COMPOSITE), project MAK-11/0011 "Assistance to implementation of Restorative Justice Concept", and HIV/AIDS and Police were funded by foreign organizations and subject to Government commitment. Thus, access was expected. The reaction to the research by police officers at operational and middle managerial level is a completely different issue. In general, there are two possible situations, hidden anxiety or indifference towards the researcher or much less openness and interest for the research. The attitude of police officers towards the research and researcher influence the validity of findings. Namely, previous extensive police experience on various operational and managerial position provided the researcher with particular knowledge, understanding and sense of the hierarchical processes, meanings attributed to certain terms and actions as well as being recognized by the participants "as one of us".

The ambiguity surrounding informed consent of police officers was particularly visible from a perspective of a former police officer. Namely, in several occasions in giving detailed information to the participants about the purpose, the method of the research and particularly about their rights to freely decide to participate and to withdraw at any time during the interview, some of them brought forward an argument of the commanding nature of the police context. Some research participants experienced their participation as part of their working obligations. As one of the participants pointed out, '…I received a written communication from my superior that you will come to make an interview with me, which means that it is my duty to do that'. Associate efforts to explain that their free choice not to consent and sign the consent form did not make any effect. Additionally, one of the respondents was curious what will happen if he refuses; if another respondent will be required. The latter raise the issue of trust relations between the researcher and the research participant. Before the interviews, the participants were offered confidentiality and anonymity. The participant got detailed information about the data use and identity protection of the participants. For this purpose each participant was assigned a code during the fieldwork and no names were used for transcripts. Furthermore, places and organizational units were coded, too. Although the identity of the participants was protected, at least they were not identifiable to the public; it was difficult to conceal the identity of participants from the other in the police organization since the superior of each unit poses written communication with names of participants from that organizational unit. This was not preventable since the researchers have no access to the list of police officers. Therefore, the

sampling pertained only to sampling the number of police officers from the sample of organizational units.

Voluntary participation in the research, together with degree of trust among researcher and the participant, influence the quality of gathered data. Communicating the findings to the participants and seeking validation prior to publishing research result proved to be the most efficient tool in maintaining confidentiality and building trust.

4 CONCLUSIONS

The future policing need to be developed based on sound empirical evidence. This in turn requires the police organization to open the gate for research. Gaining access to police organization is undoubtedly of utmost importance. However, openness and supportive attitude of the police officers towards the research and the researcher is a prerequisite to the reliability of findings. The researcher's primary ethical focus is to care about research participants. This entails respect for autonomy and freedom of participants, building relationship of trust with research participants and upholding privacy and confidentiality as promised to the most possible extent. Care for participants and ethical conduct extends beyond data collection and analysis. It demands due attention to be placed on storage and access to data, as well as dissemination of findings. The future policing research will benefit from upholding privacy and confidentiality of participants and data. The dissemination of findings and making decision not to publish findings that might compromise identity of participants may prove to be very encouraging for police officers in developing supportive attitudes for further research.

5 REFERENCES

Allmark, P. Boote, J., Chambers, E., Clarke, A., McDonnell, A., Thompson A., Tod, A. 2009. Ethical Issues in the Use of In-Depth Interviews: Literature Review and Discussion. *Research Ethics Review 5 (2): 48–54*

Bryman, A. 2012. *Social Research Methods.* New York: Oxford University Press.

Chan, J. 2012. Researching police culture: A longitudinal, mixed method approach. In Gadd.D., Karstedt, S., Messner, S.F. (Eds). *The SAGE Handbook of Criminological Research Methods*. London: SAGE.

Edwards, S. 2010. The Role, Remit and Function of the Research Ethics Committee - 4. Limits to Consent? *Research Ethics Rewiew 6 (4):159-163.*

Lewis, J. and Graham J. 2007.Research participants' views on ethics in social research: issues for research ethics committees. *Research Ethics Review 3 (3): 73–79*

Israel, M. Hay, I. 2012. Research Ethics in Criminology. In Gadd.D., Karstedt, S., Messner, S.F. (Eds). *The SAGE Handbook of Criminological Research Methods*. London: SAGE.

Kenig, N, Mirceva, S. 2014. Ethical principles and research quality in the empirical study of domestic violence. *Horizons 15:63-72.*

Lowman, J and Palys, T. 2014. The betrayal of research confidentiality in British sociology. *Research Ethics 10(2): 97–118.*

Nicholls, S.G., Brehaut, J., and Saginur, R. 2012. Social science and ethics review: A question of practice not principle. *Research Ethics Review. 8(2): 71–78.*

Pothier, D. 2008. Written Consent: Sometimes More Trouble than it is Worth? *Research Ethics Review 4 (2): 78–79*

Rawbone, R. 2009. Social Research and Ethics Review. *Research Ethics Review 5 (2):43–44.*

Rawbone, R. 2010. Consent: informed or not informed, that is the question. *Research Ethics Review 6 (4): 115–116.*

Schrag, Z. 2011. The case against ethics review in the social sciences. *Research Ethics*

7(4): 120−131.

Terpstra, J. and Schaap, D. 2013. Police culture, stress conditions and working styles. *European Journal of Criminology 10 (1): 59-73.*

Van Den Eynden, V. 2008. Sharing Research Data and Confidentiality: Restrictions Caused by Deficient Consent Forms. *Research Ethics Review 4 (1): 37–38*

Westmarland, L. 2001. Blowing the Whistle on Police Violence: Ethics, Research and Ethnography. *British Journal of Criminology, 41: 523 –35*.

UDK: 351.74:005.5]:316.344.5

MANAGEMENT IN POLICE WITH A SPECIAL REVIEW ON MANAGEMENT IN COMLEX SECURITY SITUATIONS

Nikola Dujovski, PhD
Faculty of Security - Skopje
e-mail: ndujovski@gmail.com

Snezana Mojsoska, PhD
Faculty of Security - Skopje
e-mail: smojsoska@gmail.com

Abstract

Governance is part of the management in police, an activity which is recognized in all phases of management, and refers to procedures and activities in the time of performing security tasks. Special cases of police procedures require a special approach towards governance. An adequate planning and organizing of the police activities as well as the later controlling of the overall process of management in police significantly contribute to the improvement of the process of governance in complex security tasks. Governance has the aim to provide an appropriate approach and respect in the police procedures, with a direct presence and support of the police supervisors in the performance of the police work. The task of the supervisors is to carry out in practice all directions and procedures anticipated according to the plan for acting) prepared on the base of the positive provisions). Their presence will provide a quality and timely issuing of the orders which should be carried out with the aim of achieving a certain task.

The paper which follows elaborates the process of governance in police, and a special emphasize will be put on the governance in the conduction of complex security tasks. The challenges which will be met by the police officers in the performance of complex security tasks are numerous and often unexpected, and this is why it is especially important to prepare a special plan for the distribution of material and technical means and sufficient number of police officers for carrying out of that plan. One of the most important segments of the management as a process is the aspect of governance. It has the aim to ensure the legal police procedures in the time

of performing of any police activity, and especially in times of conduction of complex security tasks. Through concrete examples, in this paper we will embrace the procedures and the minimum needed standards in the governance in police.

Key words: police, management, complex security tasks

1. INTRODUCTION

Governance in police is part of the management (in theory this term is also met as guidance), which together with the planning, organising, and controlling are the four basic functions of.[1]

Guiding[2] is a continuous activity (planning, organising, governing, controlling, estimating and re-directing of the police system). Through guidance, i.e. management, the aims of the organisation are fulfilled, in this case the police work. Planning as an initial phase of management implies an analysis of the security risks in a certain area. In dependence of the territorial competences, planning can be limited, for example: if in a certain area only some of the security risks appear, there is not a justified need to direct the resources in solving other security problems, because such problems do not exist. Organising is the second phase of management which directly follows the planning and implies directing of the material and technical and personnel resources in the problematic areas. Controlling is a systematic analysis of the planned activities and an eventual warning if aberration from these activities is observed. This phase is conducted in cases when the achieved results do not correspond to what was planned (it is necessary to approbate the reasons which led to failure of the planned activities, especially whether it comes to a wrong organisation of the system, a wrong direction of certain elements in the system or the organisation, the cadre distribution as a problem, etc.) or to estimate whether it came to a change in the phenomenology of the security risks in a certain area. For example, the initial analysis shows that in a certain area there is an increased number of conducted crimes of theft, in the further analysis shows that at the moment, more represented are the crimes related to drug abuse. Estimation is not a basic function of management, but an activity which derives from controlling. Only after controlling is performed, the results from the work of the organisation can be estimated. The estimation will be positive if the results from the work do not differ from the planning or show that the planned tasks are conducted.

[1] See more in: Malis – Sazdovska M, and Dujovski, N. 2009;
[2] We can also use the term managing;

The paper which follows has the aim to elaborate governance in police, to show its strengths and advantages, but also to warn about the possible weaknesses or threats towards the good and professional governance which will be successful and will guarantee a mechanism for performing of the complex security tasks. It is important to mention that governance implies a continuous overtaking of all named phases in the police management. In fact, police as a system and the governance in it implies a continuous performing of all the functions of the management, which means that it does not come to moving in a roundabout, but a matrix moving where all phases add and crisscross.[3]

GOVERNANCE IN POLICE

In theory, different approaches in relation to the term governance exist. According to some authors, governance is a process of transferring of the responsibility through a practical application of knowledge and experience on the part of the governing structures. According to other authors, governance is a lower level of directing and less complex than guidance, but a higher level and more complex than execution. This is actually the transmission relation between guidance as the highest level of directing of the biggest complexity and the execution as the lowest level of directing and the lowest complexity.[4]

Management in police is work of the manager and the managing organ, i.e. their supervising function through which it is provided:

- an appropriate functioning of the organisational units;
- protection, activation and directing of the police units because of fulfilling the aims because of which the security tasks are performed;

Through the functions of governance (planning, organising, ordering, coordinating and controlling) police approaches towards performing of the task, and its functioning is directed towards the set aims because of their achievement.

Bearers of the system of governance in police are the governing organs, which in dependence on their operative setting can be:

- commanding of certain units (brigade, squad, battalion, legion)
- Headquarters as temporary organs of governance (headquarters of governing in certain action, physical or traffic protection of events, sport competitions, manifestation, protest, violating of the public peace and order in a more serious degree);

[3] Sherman L. W. 1972, p. 238;

[4] See more at Bakreski, Milashinovic: The specificity of management with Police, p. 3;

- Collegium (of the Minister, the manager, the sector, etc.)

According to this, it is easy to recognise the supervisors in police. The supervisors are set in three levels, and this is the number of hierarchy levels of governance in police, a strategic level, tactical level and operative level:

- The Minister, the Director of the Bureau for public security, the Head of a sector, directions, centres, departments, etc.)
- The Commanders of brigades, battalions, etc.
- The Commanders of the police stations, the Heads of the shift, the leaders of sectors, teams, groups, etc.;

The supervisors at strategic level are mainly directed towards creating of the policy, the strategy of the Ministry, the general objectives, the connection to the surrounding, etc. the supervisors at the middle, i.e. tactical level take care about the stability of the system and the functioning of the service and coordinate the activities of the police services and units, etc. The supervisors at operational level overtake activities for optimisation of the process of performance of the police tasks, the material technical needs and problems, direct contacts and giving directions to the direct executors.

In theory, three types of systems of governance are met, and these are:

1. **Classical;**
2. **Contemporary; and**
3. **Combined;**

1.1 Classical type of the system of governance

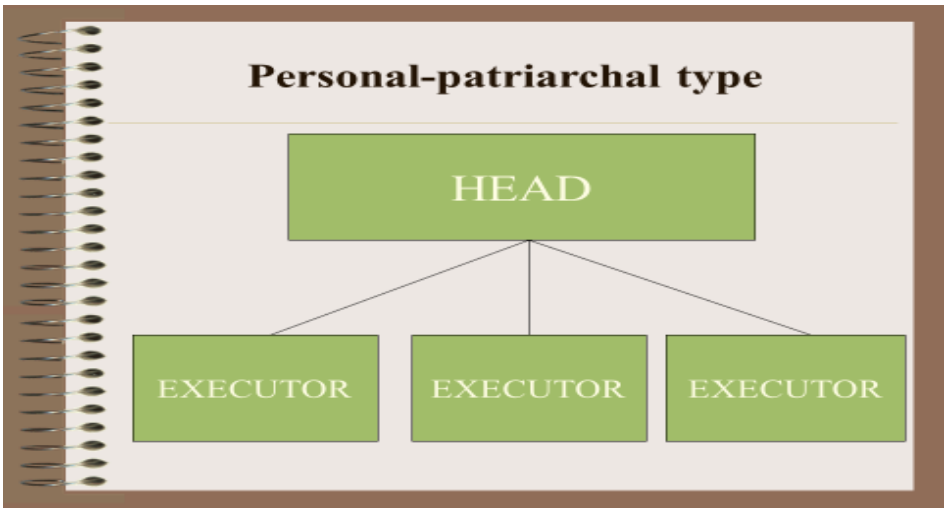
The classical types of the system of governance are based on the contemporary types of governance and most often we meet them as:

Linear, it is grounded on the Fayol[5] theory and it is characteristic about the organisational systems which are structured in a linear manner. We distinguish a *personally patriarchal* and a *pyramidal* type of linear type of governance. Within the personal patriarchal type we have a direct relation between the supervisor and the executor, whereas in the pyramidal type there are several levels of governance, i.e. the bond between the superiors and the subordinate happens at several levels, and these are: high superior – superior at a lower level – superior at a different level – executor;

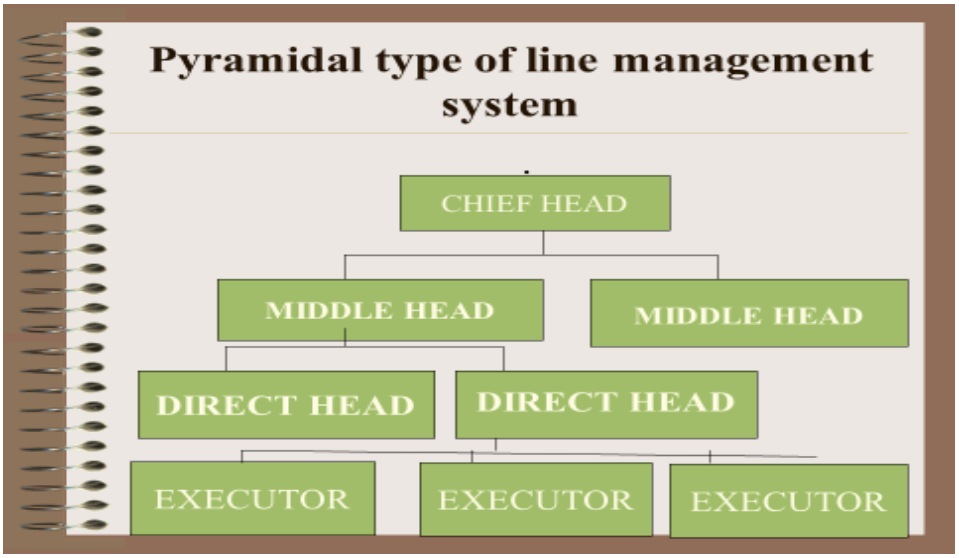
functional, it is based on the Taylor's [6] theory for organisation and in this type, the organisation is led by experts for a certain

[5] More about the Fayol theory in Stevanovic, 2003: p. 37;
[6] Stevanovic, 2003: p. 35;

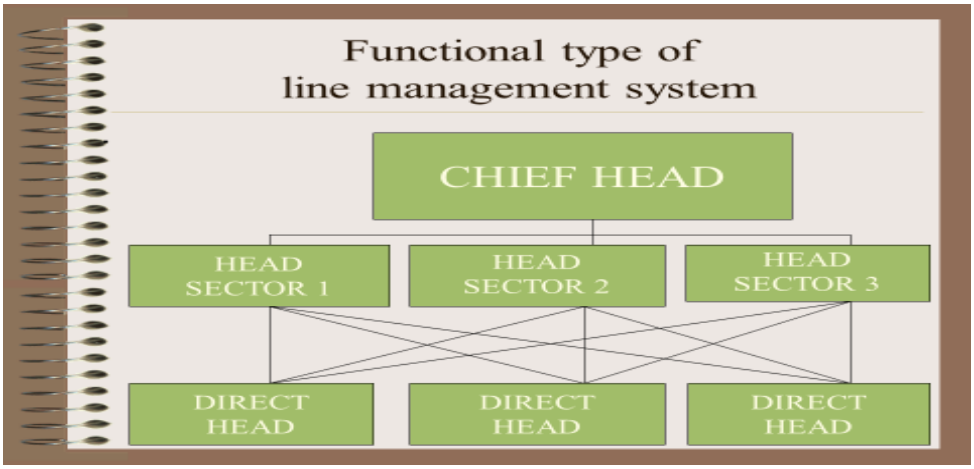
area and they have the competences to perform their supervising function, i.e. they are capable and trained to lead the unit they are leading. In this type of governance the schemes through which the supervisor disseminates his or her competences through the supervisors of sectors, and they do the same through their immediate superiors; and



Scheme 1. Personal-patriarchal type



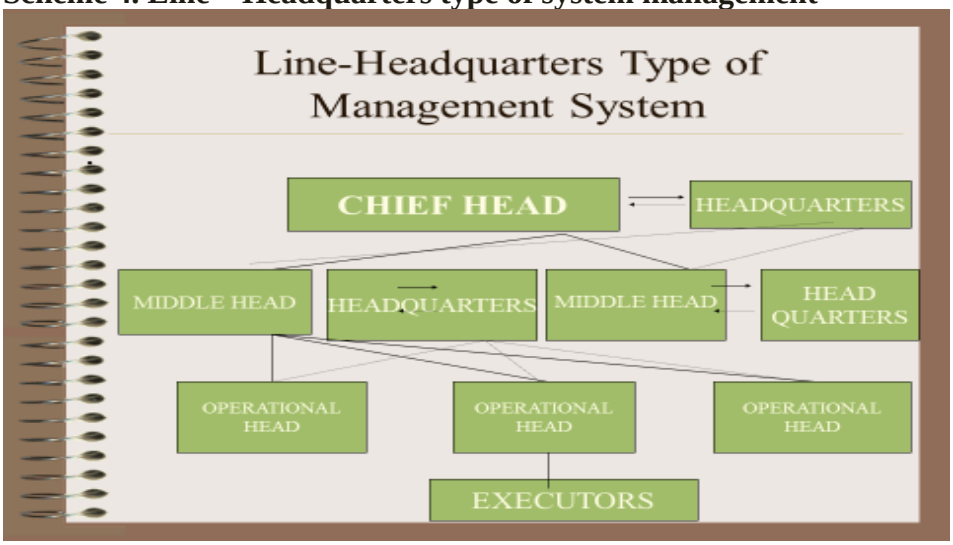
Scheme 2. Pyramidal type of line management system



Scheme 3. Functional type of line management system

line-headquarters type – it is based on the Emerson's[7] theory of organisation. This system is a combination of the linear and the functional system of governance in police with the aim to establish a functional system which will give the best results in the work. The line of ordering belongs to the supervisor and is taken from the Fayol`s theory, whereas specialisation belongs to the Headquarters and is taken from the Taylor`s theory.

Scheme 4. Line – Headquarters type of system management



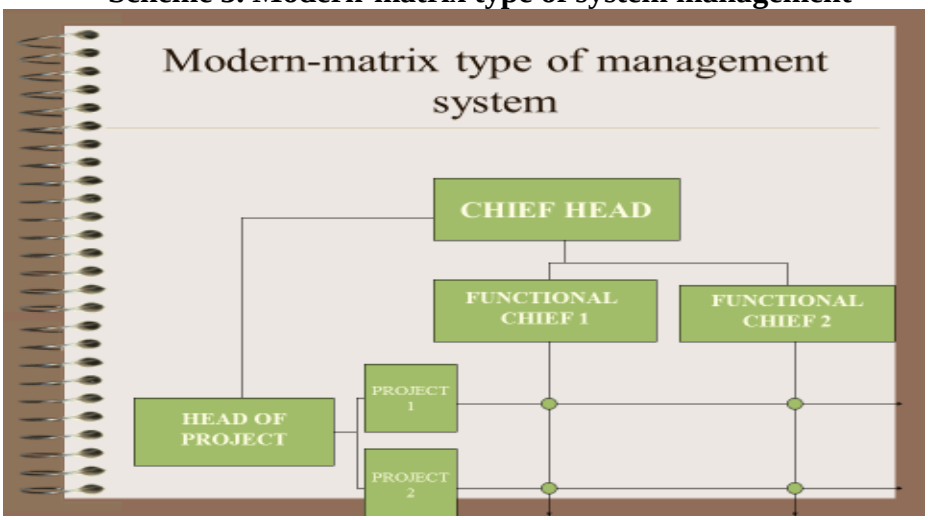
[7] Ibid, 39;

1.2 Contemporary type of the system of governance

This type of system of governance is manifested as a project i.e. matrix system of governing in police. This system of governance is existent in the highly complex organisations in which the research – developmental component of guidance is dominant. It is characterised by a two-linear system of governance. Namely:

Vertical line – the line of deciding and governance; and
Horizontal line – the line of projects and project guidance;

Scheme 5. Modern-matrix type of system management



The contemporary type of governance has numerous advantages in relation to the classical type. The modern times require for contemporary set organisations which respect the rules for decentralisation of the governance of all levels of guidance. This kind of establishment of the management in police contributes to including as many representatives of the police as possible in the system of bringing decisions and creating of the policy of the service. This is especially important in cases when it is necessary to overtake police authorisations in complex security situations. For example, the members of the special police units who should perform a complex security situation should know their responsibilities and what is expected from them, but it is even more important that they participate in the decisions on the manner and the tactics for conducting of the task. Without their including in the guiding of the complex task, the success will not be at the appropriate level. Their opinion, which comes from the previous experience, the skills and knowledge that they had acquired during the continuous training can have the key meaning in the successful carrying out of the task.

This type of a system of governance in police is characterised by a stable hierarchy and a flexible project structure. On one hand, the system of

ordering and commanding is preserved, and on the other hand space is left for a more active participation of all executors of the activities of the organisation. The contemporary type of a system of governance calms the conflict between the tendency for functional differentiation and the need for a complete integration in the organisation. The possible weaknesses of the system of governance of contemporary type are recognised in the double responsibility, i.e. the double superiority. Although this is characteristic for the lower level of governance i.e. deciding, yet there is a possibility for mingling of the responsibilities and the authorisations of the supervisors in the unit. If it comes to a big and a complex task, or a project which is conducted, it is possible that there will be appear conflict between or inside the lines of the project. The challenge for this type of governance is to maintain the project thems compact, i.e. to the greatest possible extent to prevent from their independence in the framework of the organisation.

1.3 Combined type of a system of governance

This type of a system of management in police is a characteristic of the big systems with territorial elements of an organised structure. In this type are combined more or all of the known types of systems of governance in police. For example, the linear-headquarters type of a system of governance is characteristic about the regular composition of the police where existent are the informal headquarters of governance. The functionally – team type is recognised in the criminalistics police, in the investigation teams, in the teams of the organisational units of the Section for Organised Crime, etc. The matrix type of a system of governance in police is present in the units for logistical support.

The linear-headquarter system exists i.e. it is applied in the conduction of special tasks or intervening of the police. The collective, in the theory also known as a comity type of a system, refers to the system of guidance (but not governance) in the private sector. The collective type is almost never applied in police, because of the nature of activities and the hierarchy setting of the service.

1.4 Governance in complex security situations

Governance in police in the contemporary democratic society is a process of a special importance for more reasons. Firstly, the respect of the laws and the bylaws is the basic precondition for sustaining and development of the democracy in the democratic societies. Secondly, the respect of the human rights and freedoms awakens the freedom in the people, the freedom of speech and expressing, the freedom of associating and gathering, and generally all other freedoms and rights which are characteristic for the new democratic society. Thirdly, the existence of police as a contemporary and

modern service ready to bear the challenges of the development of the society and the well-being of all citizens is not possible without a professional, expert, and qualitative governance of police. The high police functionaries must emphasise their professionality, expertness and the capability for application of the new modern techniques and methods of governance, in order to meet the bigger lawful responsibilities and authorisations, but also on the stronger and stronger bond between police and the community.[8] The governance in complex security situations has its characteristics in relation to the regular governance. It cannot be performed qualitatively if an appropriate system for overall governance in the everyday working.

Police performs numerous tasks which refer to the protection of the security of property and the citizens, the combat against crime, maintenance of the public law and order and others; in the proudest sense it comes to regular and special tasks. These tasks have common characteristics and purposes, but also certain specifics by which they differ. The new challenges of security, the contemporary forms of criminality and the bigger mobility of the criminals require dynamics in the establishment of the police, which implies change of the organised forms and the functional settings. This is equally applicable also for the system of governance in police in the condition of the security tasks.

Regular security tasks are tasks which are performed by police in their everyday activity, according to the daily plans and the schedules for work. They are repeated every day and are performed in regular conditions and in a regular manner. They are performed by the regular police units through regular police activity, such as the wary, patrol, or the operational activity. In the regular police tasks are: maintenance of the public peace and order, the control and the regulating of the traffic, the regular protection, the control of the state border combat of crime, and other similar tasks.

Special security tasks are police tasks through which the operative – technical measures and tasks are who do not belong to the everyday activities of the police. These tasks are planned and conducted after the need for this appears, or after a special order. They are characterised by unusually, occasional performance, harder anticipation, engaging of temporary units of the police and establishing of a special system of governance for every different situation. The special tasks are overtaken for preventing from performing crime deeds and finding and capturing of the doers of the crime deeds, establishment and maintenance of the public peace and order when it is more seriously threatened, and many other tasks. In special security tasks most frequently are counted: deprivation from freedom of dangerous

[8] Kennedy, M. David. 1993, p. 288;

criminals, maintenance of the public order and peace on public gatherings (extra protection), complex cases of assistance, combating of civil unrests, overtaking special operatively tactical measures (blockades, rations, ambush, search, domiciliary visits), offering help in rescuing actions and in the removing of consequences from elementary disasters and accidents. A special category of the particular security tasks are the *special* security tasks. They refer to solving of especially difficult security problems, such as kidnapping of an aircraft and other transport vehicles, hostage situations, terrorist actions, cases of giving resistance by firearms and others. For these needs, in the framework of police are formed special units of the police.

The supervisors and the command of the units of the police always have to be ready for performing of special security tasks. The performance of the special security tasks implies sudden and unexpected engagement of the unit, hence the supervisor has to be organised in a way to provide a thorough and efficient engagement of all police officers included in the performing of the task. The work of the supervisor has to be divided in the following four phases:

- to the moment of receiving of the order;
- **after the receiving of the order;**
- **during the conduction of the order;**
- **after the performance of the task;**

Until the receiving of the order for executing of special security tasks, the work of the superior is directed towards preparing of the unit of the police for performing this kind of tasks. This activity in essence implies:

- following of the security state and anticipations for the further development of the security situation, phenomena and events;
- maintenance of the preparedness of the unit;
- studying and exchanging of experiences of the representative of police;
- strengthening of the discipline, the moral and psychological preparedness of the unit;
- overtaking of measures for logistical support of the unit;

With the work of the superior in the police after the receiving of the order must be provided: timely making thorough decisions, elaboration of a plan for performing of the task, timely and qualitative readiness of the unit for performing of the task. For this purpose, it is also necessary that the order is timely, precise and clear. The activities of the superior after the receiving of the order, most frequently refer to:

- **studying and understanding of the task;**
- **overtaking of certain measures;**
- **counting of the time;**

- **estimation of the situation;**
- **decision making;**
- **preparing of documents;**
- **submitting the decision to the subordinates;**
- **organising coaction and collaboration;**
- **organising of a logical supplying of the organisation.**

For successful governance of the unit in times of performing of the task, the work of the superior, the command or the headquarters should be directed towards:

- continuous gathering of data for the opposing party, and their analysing;
- continuous supervising and controlling of the course of realisation of the task and the work of the police officers, from the issuing of the order to the complete performing of the task, with the aim to confirm that every police officer performs the received task timely and accurately, as well as by corrective activities to annulate the possible aberrations or at least bring them to the minimum;
- reacting to the aberrations from the plan and the harmonizing of the activities of the subordinates, since the issuance of the order to its complete conducting; by a quick estimation of the new situation, making additional decisions and timely issuance of the additional orders to the subordinate;
- quick re-establishment of the violated system of governance, relation, coaction, or collaboration when it is necessary;
- timely informing of the direct superior (command), the subordinate and the close units and organs for mutual actions and results;
- timely realisation of the measures for logistic protection, a special medical protection;

The work of the supervisor after the termination of the task refers to overtaking measures and actions which are to be conducted, such as crime spot investigations and criminalistics – technical elaboration. The superior gives orders to the subordinates or only performs an inspection of the unit and prepares the report on the realisation of the task. After the termination of all the activities and the returning of the unit from the mission, a detailed analysis is prepared. The detailed analysis is prepared by the supervisors who participated in the performance of the task, and their written report is submitted to the superiors. This report includes:

- **a base for engagement of the unit and the type of the performed takes;**
- **the time of the receiving of the task;**

- **the measures and procedures overtaken during the performing of the task;**
- **units and organs which participated in the performance of the task**
- **armament and the weapons which were used;**
- **the course of performing of the task, with the accent on the characteristic events;**
- **overtaken measures, tactics which is applied, and the circumstances in which the task was performed (day, night, characteristics of the terrain, weather conditions, etc.);**
- **estimation of the work of the subordinate units and managers, with an estimation of their expert-ness, trainings, equipment, mobility and the psycho-physic state.**
- **an estimation of the logistic support;**
- **an estimation of the coaction and the collaboration v of all other units and citizens;**
- **governance and sanctioning of the system of relations; and**
- **conclusions and suggested measures;**

Governance in the complex security situations implies a bigger devotedness of the superior, appropriate trainings, education and training on the given situation. It is impossible to expect success of the unit in the performance of the tasks, if the supervisor does no know or does not stick to the tactical principles of work in special security conditions. The difference between the governments in regular conditions and complex security situations is obvious and very supervisor must especially be aware of the different models anyways of governance in the two mentioned situations. Taking into consideration the fact that in the performance of the complex security tasks in a more serious degree is threatened the life of the police officers and the citizens, as well as the security of the property of the state and the individuals, it is necessary that the process of governance is exceptionally careful and all theoretical but also practical experiences in the planning, organising, governance, and controlling in the performance of these tasks.[9]

[9] Dax, E. Hubert. 1952, p. 144 - 156;

4. CONCLUSION

Governance in police includes much specificity. Firstly, it is hierarchically arranged (uniformed) service, which apart from the security also solves many other problems of society, and deserves the name of one of the most "civil" services in the state apparatus. Secondly, it is an enormous apparatus which because of the nature of activities should have the capacity to employ people of different occupations and profiles (criminalists, lawyers, economists, but also physicians, chemists, information technology experts, etc.). Thirdly, in newer times, police is a service which should reflect the multi-ethnic character of the Macedonian society, so because of employing on the grounds of ethnic basis, quality and professionality of the employed is neglected. Fourth, the training of the police officers always stays an open question which must be given serious attention. Fifth, managing in police derives from all police levels of deciding and should be a motivation for building and strengthening of the capacities for governance of every police supervisor. Governance in regular conditions or in the performance of regular, everyday police tasks is the most frequent way of police management. The fact that the biggest number of police activities are conducted in regular conditions cannot serve as an excuse for the weak and insufficient readiness of the police supervisors in their quick, successful and professional management with the police officers or the units. Yet, in order to achieve certain results, and to perform the task with a high level of professionalism, it is not sufficient only that the supervisor is well trained and prepared to act in complex security situations. It is exceptionally important that every police officer has continuous training for acting in different security situations.

The forming of police units which will be aimed mainly for performing complex security situations is a justified move, and with their forming many open questions are overcome, such as how to deal in serious security situations.[10] These units are free from conducting of regular police activities (such as control or regulation of the traffic, control of the passing of the state border, maintenance of the public peace and order, etc.), except when the security situation requires for their participation in such situations. In their regular circumstances of work, they are constantly in the process of training for performance of complex security tasks, and they practise contemporary models and procedures for complex security situations. In the last few years or decades, the work of the police is also directed towards performance of rescuing missions in natural disasters (earthquakes, floods,

[10] Beker, E. Thomas. 2010, p. 54;

fires, etc.); in their ranks there are departments which are specially trained for rescuing missions for different complex security situations. In these units team work is a strong precondition for professional and successful performance of the tasks. Every individual plays his or her own role, and the supervisor brings for the strengthening of the team spirit, his professional behaviour and approach towards the task and the individuals must serve as an example of how should be led a complex security situation. Managing in such situations is and it will be a challenge for every modern police service, because the police activities in complex security situations become an everyday thing in the police work and require devotedness and creativity in the management and acting as a whole.

2. REFERENCES

1. **Beker, E. Thomas. 2010. *Effective Police Leadership. Moving Beyond Management.* New York: Looseleaf Law Publishing;**
2. **Bakreski, O. and Milasinovic, S. *Specificity of Police Management.* International scientific conferential. 351.74: 005;**
3. **Dax, E. Hubert. 1952. *Book Review: Police Organization and Management.* Milwaukee: Marquette Law Review;**
4. **Gordner, W. G. 1978. Open and Closed Models of Police Organizations: Traditions, Dilemmas and Practical Considerations. Journal of Police Administration, Vol 6/1, 1978;**
5. **Epli, P., Ribo, O., Summerfield, E., 2012. *Process of bringing decisions in Police, operation and management.* Belgrade: Criminalistics and police academy;**
6. **Kennedy, M. David. 1993. *The Strategic Management of Police Resources.* Washington: US Department of Justice;**
7. **Milosavljević, B., 1985. *Science of Police.* Belgrade: Prosveta;**
8. **Sherman L. W. 1972. *The Quality of Police Education.* San Francisco, USA: Josey - Boss;**
9. **Stevanovic, Obrad. 2004. *Management in Police.* Belgrade: Police Academy;**
10. **Thibalult, E., Lynch, L., McBride, B., and Walsh, G. 2014. *Proactive Police Management 9/E.* New York: Prentice Hall;**

INTERNET RESOUCES

1. **https://books.google.mk/books?id=n1rwapD78C&pg=PA61&lpg=PA61&dq=Руковођење+у+полицији&source=bl&ots=gjpiFJDyML&sig=WWbl6_dzkr22kXSCoEvSIy_aylU&hl=mk&sa=X&ei=_RMqVaeAJ4S1UYCLg5gJ&redir_esc=y#v=onepage&q=%D0%A0%D1%83%D0%BA%D0%BE%D0%B2%D0%BE%D1%92%D0%B5%D1**

%9A%D0%B5%20%D1%83%20%D0%BF%D0%BE%D0%BB%D0%B8%D1%86%D0%B8%D1%98%D0%B8&f=false, accessed on 10 January 2015

2. **http://library.college.police.uk/docs/homeoffice/codeofpracticefinal12073.pdf, accessed on 12 January 2015, Code of Practice on the Management of Police Information;**
3. **http://ric-zai-inc.com/Publications/cops-p110-pub.pdf, accessed on 18 January 2015, Police Labor – Management Relationships;**
4. **http://www.policeforum.org/assets/docs/Critical_Issues_Series/police%20management%20of%20mass%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf, accessed on 28 January 2015, Police Management of Mass Demonstrations, Identifying Issues and Successful Approaches;**
5. **http://assets.lapdonline.org/assets/pdf/WJB%20SWM%20Article%20Oxford%20Journal.pdf, accessed on 2 February 2015, Police Performance Management in Practice: Taking COMPSTAT to the Next Level;**

UDK: 351.761.3(4-672ЕУ:497)

ON GENERAL POLICE ANTI DRUG ACTION: INVENTORY AND UNIFICATION OF POLICE ACTIONS AS A WAY TO GENERAL ANTI DRUG PREPAREDNESS

Pavle Hadzic, PhD

chemistry, Gosa Institute, Milana Rakica 35, 11000 Belgrade, Serbia; pavle.hadzic@institutgosa.rs

Vojkan M. Zoric, PhD

physics, Ministry of Interior of Serbia, Police Directorate, CPD - National Forensic Center (NCTC), Kneza Milosa 103, Belgrade, Serbia, vojkan.zoric@mup.gov.rs

Abstract: Drug trafficking and consumption of narcotics (both natural and synthetic) in Balkan countries are reaching high level, a level that cannot be resolved by any individual effort of a single state. Drug problem needs genuine policy on fighting drugs. This new anti drug policy should be integrated as much as possible with EU general policy and practice in anti-drug struggle. The objectives of this investigation are to make a comprehensive inventory of existing national resources, institutional mandates and actual practices across the sector of anti drug struggle in the Balkan countries and to compare its abilities with EU practice. This inventory affords newly added value to the general security of Balkan countries by identifying and proposing general and unified police practices in dealing with synthetic drugs. This investigation suggests and proposes directions and opinions for appropriate changes in security components and actual practice for their improvement in its efficacy. Divisions between mighty local authorities, established ethnic lines in almost every public affair, corruption of public officials, pure coordination and lack of attention of political leadership in the narcotics problem, is extensively used by domestic and foreign organized crime groups to even more enlarge their own capacity for corruption. The situation characterized by so-called transition economy is characterized by limited potentials of the legal system of Balkan countries. Besides this, as a consequence of the formation of new states, legal systems of newly formed countries are mainly engaged in build-up of

its own formal structures. The opening of all Balkan countries toward European Union was followed by significant inflow of foreign money in West Balkan countries economy. There is no doubt that this opening was followed by parallel influx of money which originates in organized crime activities and was intended as a support to local crime groups. Relatively low level of police forces specific training in anti drug actions, lack of practical experience in fighting well organized crime groups, lack in legal ability and shortage in technical capability for tracking of precursors, lack of information and experience on illegal methods of drug synthesis among police experts in charge, inadequate and incomplete use of already existing legal and institutional possibilities to fight problem of narcotics, are also among the reasons which support the necessity of making an extensive and unified inventory of existing national resources, institutional mandates and practices in antinarcotics struggle. In this investigation, the proposals for unification of police practice between Balkan countries and its parallelism with EU and USA police practice are illustrated by its comparing and making the general remarks on further fusion of police operative protocols among Balkan states.

Keywords: drug policing, police methodology, police method unification, police method inventory, general police practice

1. INTRODUCTION

Organized crime groups all over the world are acting according to economic principles and could be compared with legal multinational companies. Namely, highest motive in dealing with non-legal forms of business is profit: trafficking of narcotics, smuggling of people, money laundering or smuggling of fake goods: it makes no difference. Obviously, international criminal gangs have no trouble with national orientation of individual members and national borders.

National police forces, on the other hand, are separated by national boundaries and prerogatives strictly limited in these frames. It makes police forces inferior at start compared to international crime organizations.[1] Integrated European police forces seem as an adequate respond to international crime, but at present, this solution seems unrealistic. As each Balkan state has its own national policy which are very different among each other in many ways and on considerable number of issues, close cooperation between national police forces seems the best answer available at the moment.

2. BALKAN DRUG ROUTE

Struggle against drug trafficking is one of the fields where mutual cooperation and unification of police actions between national policy makers and national police forces should be attained at very high level, in spite of many other intrinsic policy differences. In this report we intend to evaluate, promote and propose some possibilities and modes of cooperation between police forces on the Balkans aimed for unification of police actions in the field of anti-drug struggle. This unification of the national action plans is feasible only with close cooperation with EU, and nowadays Balkan countries are not starting from zero-level. Namely, first Action plan on Drugs between Western Balkans and EU was adopted in 2003 in order to address the drug problems along Balkan route and was aimed to create coherent framework for cooperation. Plans that followed (2005-2008) reviewed activities and established new priorities. The main instruments of these plans were programs for Pre-accession Assistance IPA as a key tool. It turned out that Croatia was the Balkan country most fitted for cooperation and it built its own national drug information network.

2.1 Balkan Axis, a flourishing route

For many years, the so-called Balkan drug route is known among the audiences [2, 3], and is still growing. Namely, Balkan route is still flourishing, having greatest expansion in recent years. Interestingly, some investigators hold that on the Balkans the social conditions are not generally associated with high crime rates, and Balkans does not represent favorable environment for crime. This conclusion is based on population ageing, low fertility rates and strong outward migration of young people.

However, there are some other economic indicators pointing to an increasing level of drug smuggling activities. A number of rational explanations for the controversial subject exists: the most reasonable one states that the lowering in national income in both EU member states at the south of Balkans (Greece) and non member states (Albania, Montenegro, FYR of Macedonia, Kosovo, Serbia and Bosnia) as a consequence of general lowering of economic activities in these countries prevail to the crime index increasing.

Balkans seems to be a crossing of few drug routes:

1. **Route of cocaine and heroin** from producing countries (beginning in Asian and south American countries) to Western Europe (European Union),
2. **Route for domestic products**, marijuana (cannabis) from Balkans to EU

3. **Route for synthetic drugs** (Amphetamine, Methamphetamine and Ecstasy) from Western Europe to Middle East countries. This route in recent years could be reversed; taking into account that greatest European amphetamine factory ever was disclosed in Serbia, while Bulgarian illegal chemists are known for many years to be among leading cookers of amphetamine (meaning that Balkan countries generally become producers of synthetic drugs).

Political and military instability in the Mediterranean region enables smuggling drugs from the northern African and Middle East region to Greece, Albania, Macedonia, Serbia and Bulgaria on the one side, or directly to EU through Italy (possible from Balkans), on the other. All terrestrial Balkan routes are focused and converge to Hungary, or possibly Croatia, as front line EU member countries where Schengen visa regime holds (Fig 1).

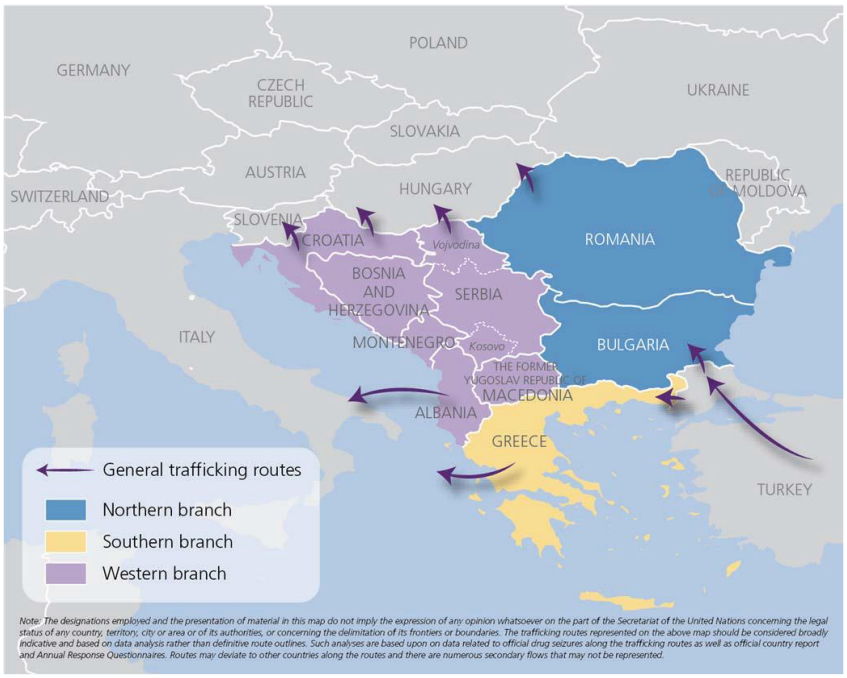


Fig. 1 General drug trafficking routes on Balkans[2]

As to cocaine and heroin in particular, the Balkan route is a transit route only. All of the cocaine that goes through Balkans has its origin mainly in South America (Colombia). Following current instability in Ukraine one can suppose that this smuggling route will be widening its capabilities in the future. Heroin holds its classical route from Turkey through Albania, and prominent heroin smuggling gangs are composed from Turkish and Albanian speaking criminal gangs (Fig. 2). Hierarchical and exclusive organization of

Albanian gangs makes them very hard to infiltrate. The only realistic measure for controlling this phenomenon seems wide cooperation between national police organizations in Balkan countries and EU police officials.

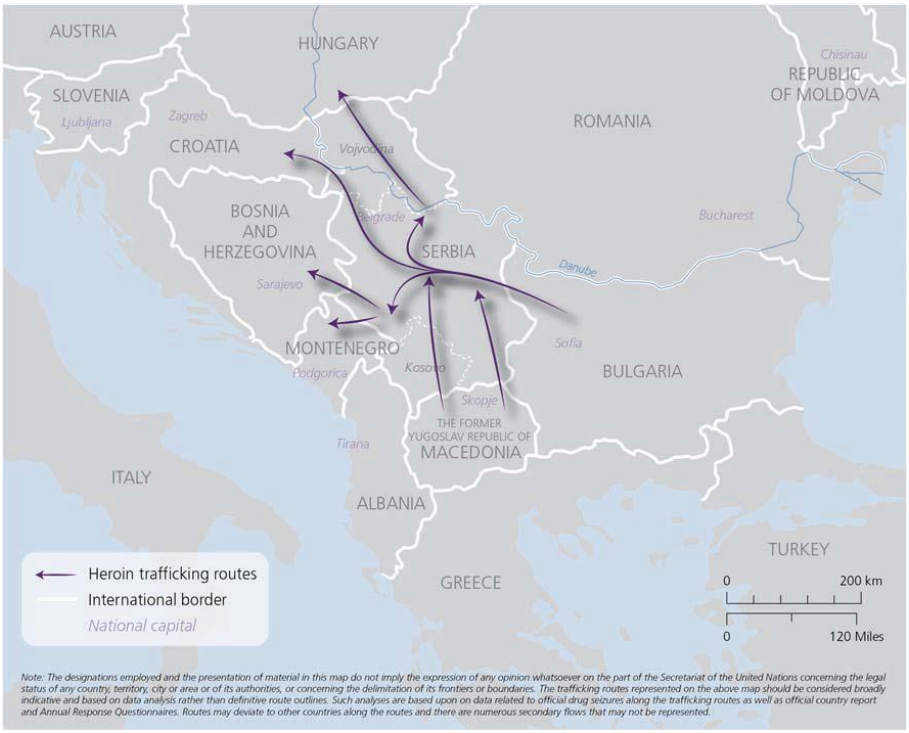


Fig 2 Heroin trafficking routes through Balkans [2]

This cooperation should be organized through maximal use of experience and guidelines of United Nations Narcotic Control Board in monitoring and implementations of UN anti drug conventions.

2.2 International police cooperation: reasonable answer to imminent threats

According to earlier investigations and suggestions on the mode of cooperation, it seems reasonable to develop international police cooperation of Balkan states police organizations with EU and non EU countries in many ways. All of them should include external funds, know-how and different kinds of operational support for Balkan states police. While speaking of international police cooperation between Balkan states and leading national police of other countries, we at first line have in mind the cooperation with high-income European and other countries, namely Germany, Austria, Great Britain, USA, Japan, Norway, Finland, and Sweden for example. The cooperation with European leading police organizations could give positive results only in parallel with good cooperation between

"'local'' national police from Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. Should there be a single broken link in this local cooperation, all cooperation will be meaningless. The cooperation should provide substantial donations in equipment for Balkan countries, police and forensic training, upgrading of police infrastructure in the field of anti-drug preparedness and an upgrade and unification of the legal system of Balkan states (their criminal judicial system) in anti drug area. Development of multilateral cooperation linking national police forces from Balkan states and EU and non EU states is a realistic perspective, taking into account already achieved level of cooperation and inclination of developed countries to enlarge this cooperation based on mutual interests. Nevertheless, the goals of future cooperation should be clearly defined in order to achieve an efficient outcome in fighting organized crime of drug abuse. As an illustration of previous useful cooperation let's note only two regional Western Balkans programs: "Support and Coordination of Integrated Border Management Strategies in Western Balkans*"* (started in 2005, ended 2008, budget 2 M€), and "Fight against organized crime, illicit drug trafficking and the prevention of terrorism" (2008, budget 2.5 M€) [4]. Again, in this report we intend to restrict ourselves on synthetic drugs.

Table 1: Seizures of synthetic drugs in Balkan countries

Country	**Type of drug**	**Quantity 2013**	**Quantity 2012**
Albania	Methadone	137,7 g	543,1 g
	Phentermine	1,2 g	-
	Hashish oil	359 ml	500 g
Bosnia and Herzegovina	Amphetamine	30,8 kg	-
	Ecstasy	154 pieces	-
Kosovo	Ecstasy	107 g	-
Montenegro	"synthetic drugs"	142g	30 g
Serbia	Amphetamine	22 kg	
	Ecstasy	20 kg	

Our core idea is that Balkan countries are still in good position to reduce misuse of synthetic drugs on their territories, at least by significantly aggravating the work of potential illegal synthetic drug laboratories.

As to the actual situation in synthetic drugs abuse among Balkan states [5], we can take general insight from the data in Table 1. According to the data, it seems that the question of synthetic drugs misuse is not an acute problem in most of Balkan states, excluding Serbia. However, data from

Table 1 are inconsistent to some extent. Namely, according to some other data, Commission for Drug destruction of Bosnia and Herzegovina destroyed 31 tons of acetic anhydride, which is generally used for illegal preparation of benzylmethyl ketone, a key precursor for synthesis of amphetamine type stimulants (ATS). Other ATS precursor chemicals, as ephedrine and pseudoephedrine, are seized in declining quantities on the Balkan route.

Starting from this temporarily positive situation in Balkan countries, police forces have enough time to prepare for use of different measures in their struggle against potential production of synthetic drugs. We believe that only production of amphetamine type stimulants could be the real threat. Synthesis of ATS is not demanding and one can find tutorials and lot of scientific and underground literature on the subject. In addition, on Internet one can find video tutorials describing ATS real time synthesis, too.

The measures to uphold potential development of ATS illegal synthetic laboratories should be of different types:

1. Education of police forces and custom officers on methods of production of ATS in order to enable them to take appropriate actions
2. Foundations of chemical analytical laboratories equipped with appropriate analytical instruments and interchange of analytical experience among employees at regular annual meetings. Use of standard analytical methods recommended by UNODC in each country, and, if possible, using the same analytical instruments in each country for everyday analyses.
3. Formation of centralized analytical tracking lists, both by police and custom officials, of precursor chemicals from the moment of their entrance (import) in each Balkan country to the moment of exit; regular interchange of information among Balkan countries on each import and export shipment of precursor chemicals.
4. Procuring information and security information on how precursor chemicals could be diverted and misused in synthetic drug synthesis to the companies which use them legally. Control of their use in legal technological processes.

It is quite understandable that illegal cookers of ATS are more into the field of illegal methods of amphetamine preparation compared with police forces. As it is known, USA police forces dealing with drugs misuse and smuggling (DEA) are regularly informed about new illegal methods of drug synthesis. However, education of police forces in illegal methods of synthesis, possible precursors and pre-precursors needed for synthesis [6] among Balkans states police officers are not continuous. Change in this orientation would be of great significance. We are deeply convinced that regular line of education of police organized at regional level for engaged

police officers from all Balkan countries will be a benefit in construction of unfriendly environment for possible creation of illegal laboratories producing ATS.

To obtain better results in struggle against illegal drug producers, the use of identical analytical methods and instruments in all of Balkan countries could be of great value not only in information interchange, but in tracking and profiling of specific specimens and methodologies of illegal production.

3. CONCLUSIONS

In this paper we intend to warn police policy makers that implementation of measures proposed in this report could give positive results only if implemented momentarily. We also believe that participation of different funds of EU members for the purpose of preparing Balkans countries against spread of synthetic drugs could preserve Balkan states to become significant producers of ATS and other synthetic drugs in near future. Our suggestion is organization of Balkans states police conference on methods of struggle against synthetic drugs production in order to prevent possible future deterioration of situation, in cooperation with proper EU police organizations and UN department for organized crime.

4. REFERENCES

1 Andreas-Renatus Hartman, New trends in the expansion of Western Balkan organized crime, European Parliament, Directorate general for internal policies, Brussels, 2012

2 United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs (US DoS). *International Narcotics Control Strategy Report.* Volume I Drug and Chemical Control. March 2012.

3 The illicit drug trade through south-east Europe, UNITED Nations Office of drug and crime (UNODC), Vienna, Austria, 2014.

4 Report Drug Policy Dialogue, Athens 2014, Informal_Drug_Policy_Dialogue_10_&_11_October_2014_Athens_En_pdf, assessed 15. Nov. 2014

5 Horizontal Working Group on drugs, regional Report on western Balkans, Brussels, 2013

6 P. Hadžić, Metamfetamin - forenzički aspekti, monografija, Institut Goša, 2014

UDK: 351.76.076:343.1]:340.13(4)

THE PLACE AND ROLE OF POLICE IN THE MODERN CRIMINAL PROCEEDINGS*

Boban Simić, LLD
The Academy of Criminalistic and Police Studies, Belgrade
e-mail: boban.simic@kpa.edu.rs

Željko Nikač, PhD
The Academy of Criminalistic and Police Studies, Belgrade
e-mail: zeljko.nikac@kpa.edu.rs

Nikola Aritonović
The Academy of Criminalistic and Police Studies, Belgrade
e-mail: aritonovic85 @ gmail.com

Abstract

The position (rights and obligations) of law enforcement agencies - the police, in modern criminal process systems are precisely regulated by norms of positive legislation. On the one hand, this provides the legal basis for the work of these organs, affects their efficiency and regularity in the work on prevention and suppression of all forms and manifestations of crime, and on the other hand, it should entirely secure and guarantee the position of the suspect or defendant in the procedure in front of the bodies of criminal law repression, and protection of his / her freedoms and rights. Therefore, all the procedural laws of modern democratic legal systems have very precisely determined the position and actions of the police and the relationship of these bodies both with other bodies of criminal justice and in respect of persons for whom there is suspicion or reasonable suspicion of having committed a criminal act.

***Keywords**: crime, criminal law, police.*

* This paper is the result of the research on project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015 - 2019.

1. INTRODUCTION

The position (rights and obligations) of law enforcement agencies - the police, in the modern criminal process systems are precisely regulated by norms of positive legislation. On the one hand, this provides the legal basis for the work of these organs, affects their efficiency and regularity in the work on prevention and suppression of all forms and manifestations of crime, and on the other hand, it should entirely secure and guarantee the position of the suspect or defendant in the procedure in front of bodies of criminal law repression, and protection of his / her freedoms and rights. Therefore, all the procedural laws of modern democratic legal systems have very precisely determined the position and actions of the police and the relationship of these bodies both with other bodies of criminal justice and in respect of persons for whom there is suspicion or reasonable suspicion of having committed a criminal act. In order to make a more complete and versatile consideration of the police position in procedures of criminal prosecution, it is necessary to pay attention to comparative (comparative legal) analysis of the characteristics of the position of police in other modern criminal process systems. Therefore, at this point, we will give an overview of several available legal solutions, in legislation of two distinct representatives of the Anglo-Saxon law (Great Britain) and Continental Law (German).

2. GREAT BRITAIN

According to the existing solutions in the UK, there are two types of criminal proceedings, as follows:

- regular procedure, which is used for more serious offenses,
- summary (abridged), which is used for smaller crimes.

Criminal proceedings may be initiated by all citizens. In practice, citizens can submit an application, and the prosecution was taken over by the police until 1985. The trial in criminal proceedings has the character of a dispute between two parties. The defendant is a party and he / she may have counsel at all stages.

The defendant is not interrogated at a trial if he / she does not want to, but may appear as a witness in his / her favour. The criminal procedure is characterized by very broad powers of the police, and they still have not been fully codified. This especially applies to the evidence collected by Police where it has virtually unlimited freedom. The only judicial review of the evidence was possibility of rejection of the evidence at trial by the Trial

Court, given that in criminal proceedings in the UK there is no public prosecutor or an investigating judge.

Regarding the position of the accused in the criminal proceedings, there is the solution according to which police are not obliged to collect evidence in his / her favour. Evidence in his / her favour only collects the accused. In practice, it often happens that the police, when there is evidence in favour of the suspect, hide that from him / her and do not present that evidence to the court. Therefore, the Royal Commission on criminal procedure in 1981 set issue of use of such a set of obtained facts by the police in criminal proceedings.

The Commission has proposed the legal regulation of police powers. According to these proposals, the most important powers of the police would be subject to judicial control, while the less significant powers would be undertaken in accordance with the precisely regulated specific provisions. Under the influence of these recommendations, the Police and Criminal Evidence Act,[1] was passed in 1984. In accordance with these recommendations, the Prosecution of Offences Act was passed 1985, according to which the majority of prosecutions was entrusted to the Crown Prosecution Service.

According to the Police and Criminal Evidence Act, police may, after the arrest of a person who is suspected of a serious criminal offense, to keep him / her for questioning, regardless of whether that person wants to answer questions or use his/her right to remain silent. Earlier, police had no authority to retain such persons, which now can take up to 24 hours, and if they get approval of a judge, a detention may take up to ninety six hours (four days). Confession of the suspect given to the police can be used as evidence in the trial. Since the British procedural law has no public or the state prosecutor or the investigating judge in the manner and with the role to be found in continental law (created under the influence of French and German law), prosecution under the Prosecution of Offences Act undertakes the Crown Prosecution Service. Of importance for the position and powers of the police in criminal proceedings is to consider the importance of testimony of the suspect before the authorities. So, the testimony of witness that was given to the police is considered inadmissible evidence, and the police do not deliver to the court those testimonies, although the witness is heard. However, the testimony of suspect before the police is permitted as evidence, which the court accepts as an important proof of the charges, considering that it generally consists of the confession of the accused. Inadmissible evidence,

[1] "Police and Criminal Evidence Act 1984 (PACE) codes of practice". *Home Office*. GOV.UK. 26 March 2013, retrieved on 14 December 2014.

which also relates to the powers of the police, is evidence obtained in an unjust and illegal manner.

As for the category of illegal evidence, it relates exclusive to the phase of the main hearing, and evidentiary rules in this stage of criminal procedure are valid. Such proven rule does not apply beyond that stage, so that the evidence which are inadmissible at the main hearing (when deciding on the punishment measurement, the release etc.) are subject to free judicial evaluation as all other certified evidence.

According to the provisions of Police and Criminal Evidence Act, when the police retain a suspect, he / she has the right to consult an attorney if he / she wants. This right of a suspect may be limited. But in such cases, the court can accept such obtained confession, but it is also authorized to rebuke the police for such behaviour.

In the British procedural legislation (sections 8 - 18 of Police and Criminal Evidence Act and the Code of Practice), in the criminal proceedings there are different investigative actions of *entering the premises and conduct of search of the premises*. Enter and search of premises can be done: *(1) based on the warrant, (2) without a warrant and (3) based on the consent of the owner of the premises*.

Warrants to enter premises and their search (search warrant) are issued by a justice of the peace, based on the reports submitted by the police. When submitting report, police have a duty to take reasonable steps to verify the accuracy of information based on which a warrant is required to enter premises and search.

The application for a warrant issue must contain information indicating the legal grounds for search, the premises to be searched and subject of search (object or several objects that should be found during the search), and the reasons justifying the issuance of the order (for example, whether the reason is the gathering of evidence for the committed offense and of what importance this object is for the investigation). The identity of the informant is not revealed in the report, but the police official person must be ready to provide satisfactory answers to the judge about the reliability of prior information provided by the anonymous source, as well as other relevant issues. The competent judge shall issue warrant to enter the premises and their search in the following cases prescribed by law:

- that the search will discover some of the serious violations, based on which it is possible to arrest (arrestable offense);
- that the material on the premises, specified in the application, such that, by itself or together with other materials may be of crucial significance to investigate violations;
- that the material may be relevant evidence in the proceedings of the trial for the offense; and

- that the material does not represent any of the things that are statutory privileged, excluded or a special procedure is required for them.

The warrant issued by Justice of the Peace determines the name of a police officer who will execute the warrant, the date of issuance, the regulation under which the order was issued and include information about premises that need to be searched. Entry and search in premises must be made within one calendar month from the date of issuance. The order authorizes only a single case of entering the premises, a police officer is required to write in form of report whether the requested item was found and confiscated, as well as whether some other item was found, besides those item to which the warrant was related. The action of entering the premises and their search without a warrant under the Section 17th of Police and Criminal Evidence Act can be done in the following cases:

- to enforce an arrest warrant or order issued under the Section 76 of the Law on Magistrates Court since 1980;
- to arrest persons for offenses for which the arrest is possible;
- to arrest persons for violations of the Section 1, 4 and 5 of the Law on Public Order since 1936 (possession of offensive weapons at public gatherings when moving in processions, violent behaviour that violate public order like etc.) for violations of the Section 68 and 10 of the Criminal Code of 1977 (offenses relating to the usurpation of property rights);
- to arrest a person who is unlawfully at freedom and who is wanted;
- to save life or prevent serious damage to property.

By a special procedure, established under the Section 18 of the Police and Criminal Evidence Act, the search can be done in the premises where the arrest has not been done. Such premises are those in which the arrested person resided or controlled them, and for their search, the condition is the existence of reasonable doubt that these premises are the evidence concerning the offense for which the arrest was taken or other similar violations of that person. Such search can be done before taking the person to the police station, on the basis of written authorization issued by a police officer in the rank of inspector or higher rank. The authorization is issued on a separate document, the so-called statement about powers and rights.

The search on the basis of consent of the owner of the premises or other person authorized to approve the entry (user of premises), must be confirmed, whenever possible, in *the statement on the powers and rights*, before undertaking search. Before that, the officer is required to determine whether a person is in a position to arrange the consent. Police officer cannot enter the premises and search them if consent is given under coercion or if it is given voluntarily and later (during search) was withdrawn.

3. GERMANY

Police powers in the criminal proceedings in the Federal Republic of Germany are regulated by the Law on Criminal Procedure of the Federal Republic of Germany.

According to the German Law on Criminal Procedure, bodies and police officers are obliged to immediately after the acquisition of information examine the existence of crime and all circumstances and to immediately take measures for the prevention of its negative influence on the determination of truth. They are then obliged to submit the records of actions taken without delay to the State Prosecutor's Office. If it is necessary to undertake urgent judicial investigative actions, such records shall be submitted to the competent criminal court.

The law has provided a series of special powers of police to ensure, on the one hand, efficient groundwork for court for clarification of criminal matters, and on the other hand, to provide effective protection of human freedoms and rights of the defendant. Thus, when the needs for implementing criminal proceedings or the needs of the police for identification of persons require, the accused may be photographed without his / her consent, his / her fingerprints could be taken, measurements taken and other similar measures.

Further, the person who is suspected of having committed a crime as the perpetrator or accomplice, as well as the person who is suspected of committing a crime of providing assistance after the commission of an offense, criminal offense of preventing execution of penalties over the convicts and a criminal offense of concealment, search of the apartment and other premises can be performed by the police, as well as personal searches of personal belongings, if it is assumed that trial evidence can be find or offender caught.

Conduct of competent authorities in taking action of search of premises or persons is regulated by a series of regulations, from which the following arises:

- search of premises of other persons, in order to apprehend accused, find traces of the crime and seizure of certain items, can be done only if there are facts from which it can be concluded that the wanted person, evidence or items are in the premises where the search is done.
- in order to apprehend the defendant, who was immediately suspected of having committed a criminal offense under Article. 129 of the Criminal Code or other offence of the said legal provision, search of apartment and other premises is permitted even if apartment or other

premises are located in a building in which it is assumed the defendant is.

- night search of an apartment, office space and fenced property is allowed only during the chase for the defendant who has just committed the crime or because of risk of delay, or in the case of re-capture the escaped prisoners. These restrictions do not apply to any premises which are accessible or that are known to police as a shelter or meeting of already convicted persons, store of items obtained through criminal offence or as a hiding place for gambling, illicit manufacture of drugs, weapons and prostitution. Night time from 1 April until 30 September includes the time from 21.00 hours to 04:00 hours and from 1 October to 31 March from 21.00 hours to 06.00 hours.
- the search may be ordered only by the judge, and when there is a risk of delay – also by the public prosecutor and his assistants. Search of apartment, business premises or fenced properties, which is done without the presence of a judge or state prosecutor, should be carried out with the presence of a municipal officer or two members of the municipality on the territory on which a search is being performed. Members of the municipality must not be police officers or deputy state prosecutors. If it is necessary to conduct search n official building, in areas which are not generally accessible or in premises of Bundeswehr, the authorised official instance of Bundeswehr will be asked to perform the search. Representatives of the institution or facility in which the search is conducted, are authorized to participate in the search. The request is not required when the search is conducted in the premises which are exclusively inhabited by other and not military persons.

The defendant, who has been on basis of the order arrested, shall be immediately brought to the competent judge. The judge, without a delay, must hear accused of a crime for which he / she is accused, not later than the next day after the detention. The defendant will be notified during interrogation on the circumstances against him/her and his/her rights that he / she is not required pleading guilty or making a statement on the matter of proceedings. Also, he/she must be allowed to dispute grounds of suspicion and basis for the determination of investigative prison, as well as to prove the importance of the facts in his favour. If deprivation of liberty should be supported, the defendant shall be informed of his/her right to appeal as well as other types of legal aid.

State prosecutors and judges may order the issuance of a warrant against the accused, who has fled or is hiding, and there is a command ordering the imprisonment or placement in a hospital or institution for care

and treatment. If command on the prison or placement in a hospital or institution for care and treatment is not taken, the issue of warrant shall be allowed only against a person who fled after the arrest or otherwise avoided the supervision. In that case, a warrant may be issued by the police. The warrant will provide personal information, and as far as possible a description of the person to whom the arrest warrant relates. A criminal offense of which he / she is suspect will also be listed, and the time and scene of crime.

State prosecutors and police officers may take necessary measures to determine the identity of persons suspected of committing a crime. The suspect can be detained if they cannot determine his/her identity or when identity can be established only with considerable difficulty. Determining the identity of a person not suspected of having committed a criminal offense is allowed only when and if necessary for clarification of criminal offense.

Detention of person shall not in any case last longer than it is necessary for authentication. In order to pass court decision on the permissibility and the extension of detention, the detained would be promptly brought to Magistrates in the territory where he / she is arrested. Apprehension shall not be made if the very apprehension and the decision making would take longer than the time required for authentication.

The detained person has the right to request notifying his / her relatives or people he / she trusts about his / her detention, without delaying. Detained should be given the possibility to inform a relative or someone he trust about detention himself / herself, unless he/she is suspected of a criminal offense and a notification would jeopardize the purpose of the investigation. Deprivation of liberty for the purpose of establishing identity must not last longer than a total of 12 hours. When identity is determined, the evidence related to authentication will be destroyed. For clarification of criminal offences, undercover agents (agents provocateurs) can be hired if there is sufficient factual basis that the committed crime is important, as follows:

- illicit trafficking in drugs or arms or related to the forgery of money and value stock,
- in the area of the state safety,
- from a trade or habits,
- by members of gangs or otherwise organized offender.

The undercover investigator can be hired for clarification of the crime, if true facts found point to the risk of repeating. Engagement is permitted only if clarification in any other way would not bring results and would be much more difficult. Use of undercover investigators to clarify the crime is permitted, except above-mentioned, when it recommends a special importance of criminal offence and other measures show hopeless.

The undercover investigators are police officers, who carry out research under the changed identity (legend), given to them for a longer time. They can participate in the legal traffic under that identity. If the creation and maintenance of the legend is necessary, it is permissible to make up, change and use appropriate documents. The use of undercover investigators is permitted only after the approval of the state prosecution. If there is a risk of delay and when the approval by the prosecutor cannot be requested in time, the approval will be obtained immediately. This measure is cancelled if the state prosecutor's office within three days does not give permission to use that measure. The authorization must be written with fixed-term duration of action. An extension is allowed until there are preconditions for the use of undercover investigators. The engagement of such persons which is directed toward a particular defendant, or if he / she should enter an apartment which is not generally accessible, requires the approval of a judge.

In case of risk of delay, a simple approval of state prosecution is enough. If the decision of state prosecution could not be obtained in time, it will be obtained without delay. Implementation of measures will be terminated if the judge does not issue the approval within three days. The identity of the undercover agent can be kept confidential and upon completion of the application of these measures. The state prosecutor and judges, who are competent to decide on approving the engagement of an undercover investigator, may demand his / her identity to be revealed to them. In other cases, it is permissible in the criminal proceedings to keep in secrecy the identity of an undercover investigator, especially when there is reason to fear that publication of the identity would endanger: body, life or liberty of undercover agent or other person or if further action of undercover agent would be threatened. Undercover agent can under his / her changed identity, and with permission of authorized person, enter others premises. Consent for the entry into the apartment cannot be obtained with deception, beyond the use of altered identity. The powers of an undercover investigator are based on the law and other regulations.

Persons in whose apartment, which is not generally accessible, undercover agent entered, shall be notified of his / her engagement as soon as possible without compromising the purpose of investigation, public safety, body and life of a person or the possibility of further using of undercover agent. Decisions and other evidence on the involvement of an undercover investigator will be held in the state prosecutor's office. The German Law on Criminal Procedure recognizes a special process measure called: wiretapping and surveillance of telephone and other conversations. Surveillance (wiretap) and recording of telephone and other conversations may be ordered if certain facts justify the suspicion that a person, as a perpetrator or accomplice made:

- crimes offences of treason of peace, high treason, endangering the democratic rule of law, treason of the state safety and the criminal offences of endangering external security,
- criminal offences against the state's defence,
- criminal offenses against the public order,
- crimes against the security forces of non German states members of NATO pact stationed in Germany,
- criminal offences of money or debentures forgery, the crimes of mediation in prostitution, crimes offences of murder, qualified homicide and the crime of genocide, crimes against personal freedom, the crimes of robbery and theft, criminal offence of coercion, and generally dangerous crimes.
- criminal offences under the Law on Arms and the Law on Control of military weapons or criminal offences in terms of occupation, that is, gang members, and criminal offences of the Law on narcotic drugs and other drugs.[2]

This particular criminal procedural measure will be applied against the perpetrator of these crimes, if the crimes were committed, or attempted and if: the attempt is punishable, or by a commission of another crime they were prepping to commit a crime, as well as investigation of the actual state of affairs or establishing the place of residence of the defendant in any other way would be hopeless, or much more difficult. The order may relate only to the defendant or the person, for which, on the basis of true certain facts, is assumed that have taken information on behalf of the defendant, or were transmitting information from the defendant further on, or the defendant had used their telephone. Surveillance (wiretapping) and recording of telephone and other conversations that are performed through similar means can be ordered only by the judge. When there is a risk for delaying, order may be issued and by state prosecution. The order of state prosecutor's office will be revoked if within three days the judge doesn't confirm it. The order will be issued in written form. It must include the name and address of the person to whom it relates. The order must state the manner, extent and duration of the measure applied. The duration of the ordered measure can be set up to three months. Extending measures may be extended for another three months. The German federal post office and other facilities for remote voice communication are obliged on the basis of such issued orders to provide that the judge and state prosecutor, as well as assistant officers of state prosecutor from the police carry out monitoring and recording of telephone and other

[2] See: Criminal Code of Federal Republic of Germany with an introductory law for the Criminal Code and Military Criminal Law. (Contrastive Serbian and German text) Translation: D. Pavlović, MA; Centar Marketing, Legal Publishing Center, Belgrade, 1998.

conversations that are performed by similar means. In the case that there are no preconditions stipulated by law, the use of measures shall be immediately terminated. The judge must be informed on termination of measures, as well as the German federal post office and other institutions dealing with matters related to remote voice communications. Evidence that are gathered with these measures, and that is no more needed for prosecute of a particular defendant, must be destroyed under supervision of the state prosecutor's office, and a special report about that should be prepared.

4. CONCLUSION

Internal affairs bodies were established to protect the security of the state and to ensure the realization of human rights and freedoms. They have especially significant role in the fight against crime and appear as bodies of preliminary proceedings and secondary processing subjects in criminal proceedings, with certain fund of powers and duties, based on which their position is determined. Authorized officers of the law enforcement agencies are extremely important and take an important place among the other secondary criminal procedure subjects, on account of their activities and contributions in the domain of clearing-up and solving of criminal matters. A special place among the essential features of the functions of the law enforcement agencies has its legal character - all important issues related to police functions to its performance have not only a social and political, but also a legal expression. Legal regulations establish in detail the contents of the police function, that is, the scope and jurisdiction of the police, then they prescribe their powers in carrying out the tasks and rules of conduct, establish principles of organization and its relations with other bodies and entities in society, regulate manner of control over its work, the responsibility for performing its tasks for which it has been established. This connection of police functions and rights is only a logical consequence of the intention to shape the modern state as a constitutional and legal state. In such state, organization and functions of its organs are based on the prescribed legal rules and their own bodies are established by an already determined legal procedure. By legal regulation of the organization and work of public authorities, their power is being limited, the rule of objective law is being established, and free and arbitrary actions of state bodies are being excluded.

Adoption of all or some of the proposed institute in terms of their incorporation into provisions of the Code of Criminal Procedure, would improve the efficiency of authorities of internal affairs, bearing in mind the changed phenomenal forms and massiveness of crime in the world. The fact that we live in a world of highly sophisticated crime, which on organized and international basis uses the weaknesses of all existing countries in which it

acts, requires from legislator, police, prosecutors and courts to find a more effective concept of combating crime, and on the basis, ensure high level of protection of individuals and the state. In that sense, the phase of preliminary proceedings could be conceptually changed, by entrusting it to non-judicial authorities - the state prosecutor and law enforcement authorities, provided that the limitation of basic freedoms and rights are determined by the court or that such actions and decisions are placed under the mandatory control f the court. This would provide evidentiary power of the factual material obtained from the actions of these bodies.

REFERENCES

1. Abadinsky, H. (1991) Probation and Parole, New Yersey.
2. Branham, L. (1998), The law sentence corrections and prisoners rights. Illinois: St. Paul University
3. Bennet, J., ur. (2007) Crime investigation, London: Parragon
4. Clack, G., ur. (2004) Outline of the U. S. legal system. Washington: Bureau of International Information Programs
5. Cornil, P. – La peine de prison, Revue internationale de criminologie et depolice tehnique, 1955/3
6. Doomen, J.,(2007) De hollende kleurling, Amsterdam
7. Jovašević, D. (1998) Lexicology of the Criminal Law, Belgrade: Official Gazette
8. Fijnant, C., Marx, G. (1995) Undercover: Police surveillance in corporative perspective. Dordrecht, itd: Kluwer
9. Kronenberg, M.J., en B. de Wilde (2007), Grondtrekken van het Nederlandse strafrecht, Deventer: Kluwer.
10. Pfeiffer, G., ur. (2003) Karlsruher Kommentar zur Strafprozessordnung. Munchen: Verlag C. H. Beck
11. Roxin, C. (1998) Strafverfahrensrecht. München: Verlag C. H. Beck
12. Volk, K. (2005) Grundkurs StPO. Munchen: Verlag C. H. Beck, 4. Auflage
13. Penal Code, with participation of Jonh Rason Spencer, QC, Professor of law, University of Cambrige, Fellow of Selwyn College, (accessed on 16. 04. 2008): wings.buffalo.edu/law/bclc
14. Code of Criminal Procedure, with participation of Jonh Rason Spencer, QC, Professor of law, University of Cambrige, Fellow of Selwyn College, (accessed on 26.04.07.2011): wings.buffalo.edu/law/bclc
15. Criminal Code of Federal Republic of Germany with an introductory law for the Criminal Code and Military Criminal Law.

(Contrastive Serbian and German text) Translation: D. Pavlović, MA; Centar Marketing, Legal Publishing Center, Belgrade, 1998.

UDK:351.74:005.332.3-027.235(497.6)

POLICE REFORMS - EXPERIENCES, ANALYSIS AND BEST PRACTICES: EFFECT OF THE ORGANIZATION OF THE POLICE OF REPUBLIC OF SRPSKA, APPLICATION OF THE CONCEPT OF COMMUNITY POLICING

Borislav Đukić, PhD

email: bobandjukic70@gmail.com

Gojko Šetka, MA

email: gojkosetka@yahoo.com
Police College, University of Banja Luka

Abstract

Police of the Republic of Srpska in its work for ten years now has been applying the concept of community policing. This concept of police procedures is implemented as heavily influenced by the international community. Community policing is considered as one of the necessary preconditions of successful policing in modern conditions. During this time several steps were made that were supposed to ensure the success of the application of this concept: the decision was appropriate strategy at the state level, there was a selection, and later a training of the police officers who specialize in implementing and enforcing the concept of community policing in the police of the Republic of Srpska, and a preliminary project was implemented in this field.

This document will present the results of the research aimed to investigate the influence of the organization of the police of the Republic of Srpska on the success of the practical application of the concept of community policing. In addition, research is needed to show whether the current organizational structure corresponds to the needs of the realization of this concept and it is necessary to make certain adjustments to the organization. To collect the data necessary for the investigation, it is necessary to use the questionnaire, a sample taken by police officers employed by the Public Security Center Banja Luka and Prijedor.

Keywords: police, police organization, community policing, police officer.

1. INTRODUCTION

Community policing does not have a unique definition which is acceptable for large number of theorists, but simply put, community policing is an approach based on partnership between police and citizens. However, it is a very complex matter, both from aspect of theoretical elaboration, and the aspect of practical realization. The complexity of community policing stems from the fact that this concept contains four basic dimensions: 1. philosophical dimension - provides the broadest instruction to policing and incorporates influence of the citizens to police work which is made for the needs of the local community; 2. strategic dimension - incorporates operational aspect and turns philosophy into action; 3. tactical dimension - turns philosophy and strategy into program; 4. organizational dimension - implies changes in the sphere of police organization. These elements build a system of new approach to community policing.[1]

Some theorists consider that the organizational dimension of community policing is not a basic dimension, but a technical part of concept realization, but taking into consideration its importance in concept application, it is often classified as basic dimension. Besides changes in the social system, the success of application of the concept in many ways depends on changes inside police organization. Strategy of community policing previously implies comprehensive process of changes in the police in narrower, and in the Ministry of Internal Affairs in broader sense. Goals of these changes are: depolarization of police, militarization of police, professionalization of police, and improving cost-effectiveness in the work.[2]

Some authors indicate on more general conditions that should exist so that the concept of community policing could be implemented. According to professor Simonovic, general conditions for implementation of the new concept of community policing are: 1. politicization of the police; 2. decentralization of the police; 3. democratization of the police; 4. support to the concept by all centres of political power; 5. changes in the police organization; 6. decriminalization of the police; 7. improving the relations

[1] Jayne Seaqrave, Defining Community Policing (New York: American Journal of Police, 1996), vol. 15., No. 2., pp. 1 – 22

[2] Uroš Pena, Community Policing and its implementation with a special focus on Bosnia and Herzegovina (Banja Luka: High School of Internal Affairs, 2006.), pp. 156

between the police and the public; 8. control of police work by the public; 9. institutionalization of prevention; 10. making of the legal framework.[3]

Some authors indicate on other conditions like: new police management; training of the police and the local community; democratic supervising over the police work, etc.

"Every large organization, and therefore the police organization, despite the different activities and goals in relation to other organizations, is faced with issues of choice of organizational units to establish, as well as organizational forms that connect them into a harmonious whole, which methods and means are used to secure unique planning, directing, coordinating, control, accountability, as well as other issues of internal organization and functioning."[4] When the innovative change happens in relation to community policing and application of the new methods in policing, and when it is necessary to implement the new concept of work in the current one, and from whom will depend the application of the new methods in work, it is necessary to make some organizational changes in the police organization. This was precisely the case when the strategic decision about the implementation of the new concept of community policing in the police of the Republic of Srpska was made.

To which extent will the new concept of policing in the Republic of Srpska be successfully implemented, nevertheless depends of the way of adapting the organizational structure of the police to the new conditions of work. Bearing in mind that the organizational structure implies "system of relations and permanent division of labor between people who belong to an organization"[5], logically leads to the conclusion that the way of organizing of police was very important for the total outcome of the application and implementation of the new concept of practical police work in the Republic of Srpska. There are many police systems in the world in which is the entire police organization in one country (entire police system) adjusted to the application of community policing. The best example for that is the police organization in Sweden[6], whose local level is organized in a way for which it is estimated that would give the best results when practically applying this concept.

---

[3] Branislav Simonović, Community Policing (Banja Luka: High School of Internal Affairs, 2006), pp. 143

[4] Slobodan Miletić, Law on Police (Belgrade: Police Academy, 1997), pp. 244

[5] Dragomir Jovičić, The organization and jurisdiction of the police (Banja Luka: Faculty for Security and Protection, 2011), pp. 59

[6] http://www.polisen.se/en/Languages/The-Swedish-Police/Direction-/National-Police-Board/, available on 12 June 2014

Our intention in this paper is to take a look to the influence of the police organization in the Republic of Srpska on practical application of the community policing after ten years of application of the concept of community policing in the police of the Republic of Srpska.

2. ANALYSIS OF THE RESEARCH RESULTS ABOUT THE INFLUENCE OF THE POLICE ORGANIZATION IN THE REPUBLIC OF SRPSKA ON THE PRACTICAL APPLICATION OF THE COMMUNITY POLICING

The research was conducted in the territory covered by the Public Security Center Banja Luka and the Public Security Center Prijedor, and the sample were a hundred randomly chosen police officers. The research was conducted in November 2014. The statistical method was used during the research, and the questionnaire that contains nine questions was used to collect the data. The scope of the questionnaire was adapted to the volume of work that can be published in the scientific conference. Basic hypotetical presumptions in this paper are:

- The current organizational structure of police of the Republic of Srpska requires certain organizational changes that would cause a more efficient application of the concept of community policing;
- The establishment of organizational units whose jurisdiction would be the application of community policing would enable more effective collaboration between the police and the citizens;
- Organizational changes are necessary to improve cooperation between the police and the local community, because it is currently one of the obstacles in better cooperation;

Altough the situation in the local communities is better than before, the introduction of the concept of community policing, because of the influence of the politics to policing, as well as the selective application of the concept of community policing by other police agencies in Bosnia and Herzegovina, cooperation between the police and citizens is not on the satisfactory level.

Distribution of answers to question No. 1: What is your opinion about the organizational structure of the Ministry of Internal Affairs of the Republic of Srpska?

Table 1 – distribution of the respondents' answers to the question number 1

	Frequency	Percentage
Completely corresponds to the place and the function of the police in the society	37	46,25%
Only partially corresponds to the conditions in society	9	11,25%
It is necessary to modify and adapt the system	23	28,75%
I do not know / I do not have an opinion	10	12,50%
Something else	1	1,25%

In relation to the question concerning the organizational structure of the Ministry of Internal Affairs of the Republic of Srpska, the largest number of respondents, 46.25%, thinks that it fully corresponds to the place and the function of the police in the society. However, there are many people who believe that the structure has to be changed and adapted to the system, it is about 28.75% of the respondents, while 11.25% of the respondents believe that the organizational structure only partially corresponds to the conditions of the society. Respondents who do not know or have no opinion about that question, constitute 12.50% of the total number of respondents. Despite the fact that the largest number of respondents are satisfied with the current organizational structure of the Ministry of internal Affairs, we can notice that a significant number of respondents are aware of the shortcomings of this structure and the need of its adjustment with the social system.

Distribution of answers to question No. 2: Are the organizational changes in the police necessary for achieving better collaboration with the local community?

Table 2 – distribution of the respondents' answers to the question number 2.

	Frequency	Percentage
Fundamental changes are needed	8	10 %
The required changes are substantially	19	23,75 %
Only minor changes are needed	40	50 %
Changes are not necessary	7	8,75 %
I do not know / I do not have an opinion	6	7,50 %
Something else	0	0 %

In relation to the question about police organization and collaboration with the local community, the largest number of respondents, 50%, think that only minor organizational changes are needed for achieving better collaboration with the local community, 23,75% of the respondents think that the required changes are substantial, 10% of the respondents think that fundamental changes are needed, while only 8,75% respondents have an

attitude that the changes are not necessary. It can be concluded that the largest number of respondents have an attitude that a certain volume of changes in the organizational structure of the police is necessary to achieve better collaboration between the police and the local community.

Distribution of answers to question No. 3: What kind of relationship the police should have with the public?

Table 3 – distribution of the respondents' answers to the question number 3

	Frequency	Percentage
Fully opened	22	27,50%
To keep a certain level of confidentiality	40	50 %
Reserved to the public	11	13,75 %
Completely closed	6	7,50 %
I do not know / I do not have the attitude	1	1,25 %

In relation to the question about the relation between the police and the public, the largest number of the respondents, 50%, think that police should maintain a certain level of confidentiality, 27,50% of the respondents have an attitude that complete openness is needed, 13,75% of the respondents think that police should be reserved to the public and only 7,50% of the respondents think that the system should be completely closed. We can conclude that among the police officers of the Ministry of Internal Affairs exists a sufficiently high level of consciousness that the police must be sufficiently opened to the public in order to gain the trust of the same public and prevent speculations regarding certain events which could adversely affect to the security situation.

Distribution of answers to question No. 4.: Do you think that the influence of politics on policing off?

Table 4 – distribution of the respondents' answers to the question number 4

	Frequency	Percentage
Yes, completely	6	7,50%
Yes, to a greater extent	12	15%
Yes, but just partially	25	31,25%
No, the influence is almost utter	37	46,25%
I do not know/ I do not have an opinion	0	0%
Something else	0	0%

In terms of the influence of the politics on policing, the largest number of the respondents, 46,25%, think that this influence is almost utter, 31,25% of the respondents think that this influence is only partially

excluded, 15% of the respondents think that the influence is excluded to a greater extent, and just 7,50% of the respondents think that the influence is completely off.

It can be concluded that the prevailing opinion among the respondents is that the influence of politics on policing exists, which from the point of application of the concept of community policing and coaxing the trust of the public is considered as one of the most limiting factors for the success of community policing.

Distribution of answers on question No. 5: Do you think that the police efficiency depends on cooperation with citizens?

Table 5 – distribution of the respondents' answers to the question number 5.

	Frequency	Percentage
Absolutely yes	41	51.25%
Depends in part	31	38.75%
It does not depend	8	10%
I do not know	0	0%
Other answers	0	0%

Regarding police efficiency and cooperation with citizens, 51.25% of the respondents believe that the efficient police work completely depends on cooperation with the citizens; 38.5% of the respondents believe that it depends in part, whereas only 10% of them think that the efficiency of the police work does not depend on cooperation with citizens at all.

One can conclude that, among the police officers of the Ministry of the Interior of the Republic of Srpska, there is a high level of awareness on the interdependence of the efficient police work and good cooperation with the citizens.

Distribution of answers to question No. 6: Is there trust between the police and your local community?

Table 6– distribution of the respondents' answers to the question number 6.

	Frequency	Percentage
Absolutely yes	19	23.75%
There is, but it could be bigger	33	41.25%
There is partial trust	19	23.75%
The trust exists, but it is very low	8	10%
There is no trust	0	0%
I do not know	1	1.25%

When it comes to the trust between the police and the local community, 41.25% of the respondents believe it exists, but also that it could be bigger, whereas 23.25% of the respondents believe that it exists and is

absolute and that it exists but only partially. 10% of the respondents think that the trust exists, but is very low.

We can conclude that most of the respondents believe that there is a higher or lower level of trust between the police and the local communities, but it is a fact that, in this field, there are significant reservations and that it is necessary to build a higher trust level, which is definitely the prerequisite for better cooperation between the police and the citizens and achieving a higher security level.

Distribution of answers to question No. 7: Is cooperation between the police and community better than 10 years ago?

Table 7– distribution of the respondents' answers to the question number 7.

	Frequency	Percentage
Obviously yes	30	37.50%
Only partially	19	23.75%
No, it is the same as before	5	6.25%
It is worse than 10 years ago	21	26.25%
Other answers	2	2.50%
I do not know/No opinion on the topic	3	3.75%

When it comes to cooperation between the police and the local community, the greatest number of respondents, 37.5% consider it is obviously better than 10 years ago, but on the other hand, 26.5% say that it is worse than 10 years ago. If one considers the fact that 23.75% of the respondents believe that cooperation is only partially better than 10 years ago, it is obvious that the opinions of the respondents go towards the idea that police actions in practice were not evaluated the way they should be regarding the development of that process.

One can conclude that there are certain limiting factors which negatively affect the better cooperation between the police and community and the application of the concept of community policing in the capacity which would be satisfactory when it comes to security.

Distribution of answers to question No. 8: Do you find it necessary to form a special organizational unit within the Ministry of the Interior of the Republic of Srpska, which would be dealing with community policing?

Table 8 – distribution of the respondents' answers to the question number 8.

	Frequency	Percentage
Not necessary	36	45%
Necessary at the level of a police administration	12	15%
Necessary at the level of a public security center	12	15%
Necessary at the level of public security station and police station	14	17.50%
Other answers	0	0%
I do not know/No opinion on the topic	6	7.50%

The opinions of the respondents are divided regarding the necessity for organizing a special organizational unit within the Ministry of the Interior of the Republic of Srpska that would deal exclusively with community policing, since 45% of the respondents believe that one such unit is not necessary, 17.5% of the respondents think that the unit is necessary at the level of public security station and police station, and 15% of the respondents believe that that type of unit is necessary at the level of police administration and Public security centers respectively.

One can conclude that the opinion of the respondents on the necessity for organizing a special organizational unit that would deal with community policing is divided, both on the issue of the very need for organizing and the issue of the organizational level within which those units should be organized.

Distribution of answers to question No. 9: In your opinion, do police agencies, established at the level of Bosnia and Herzegovina, apply the concept of community policing within their activities?

Table 9 – distribution of the respondents' answers to the question number 9.

	Frequency	Percentage
CP applied completely	3	3.75%
Some agencies apply the concept, some do not	45	56.25%
The agencies do not apply the concept at all	13	16.25%
I do not know/No opinion of the topic	18	22.50%
Other answers	1	1.25%

When it comes to implementation of the community policing concept within the police agencies at the level of Bosnia and Herzegovina, 56.25% of the respondents think that this concept is applied by some agencies, but not by others; 16.25% of the respondents believe that those agencies do not apply the community policing concept at all; only 3.75% of the respondents said that the concept is applied completely, whereas 22.5% of the respondents do not know or have no opinion on the issue.

One can conclude that police officers of the Ministry of the Interior of the Republic of Srpska do not have an insight in the implementation of the concept of community policing in police agencies at the level of Bosnia and Herzegovina and that there is obviously no cooperation among police agencies in this field.

3. CONCLUSION

After analyzing the results of the conducted research, we have reached certain conclusions which are submitted through the final review, that is, confirmation of the defined hypotheses.

As it was presented through the results of the research, a significant number of the respondents, 40% of them believe that the current organizational structure of the police of the Republic of Srpska should suffer certain changes in order to adjust more properly to the current social system. Other results enable us to conclude that certain changes in the organizational structure should happen because they are necessary for the police to cooperate better with the local community. This conclusion comes from the fact that 90% of the respondents think that organizational changes, to different extents, are necessary for creating conditions for better cooperation between the police and the local communities. Having in mind the aforementioned results, we can conclude that the first hypothesis is confirmed: 'The current organizational structure of the police of the Republic of Srpska requires certain organizational changes which would create conditions for more efficient application of the community policing concept.

Since the respondents believe that it is necessary to conduct organizational changes in order to improve the cooperation between the police and the local community, it is interesting to observe the fact that the opinion of the respondents on the necessity of organizing special organizational unit which would be dealing with community policing, is divided both on the necessity for organizing such unit and the issue of the organizational level within which such units should exist. The idea of forming new organizational units is supported by 45% of the respondents, but they did not agree on which level of territorial organization such organizational units should be established. According to these results, we can say that the following hypothesis is partially confirmed: 'By establishing the organizational units whose competence would be to apply the concept of community policing, a more efficient cooperation between the citizens and police would be established.

Therefore, since most of the respondents do not have a clear position on forming special organizational units that would only deal with the application of the community policing concept, one should analyze what

influences the cooperation between the police and the local community and what organizational changes have to happen within the organizational structure. According to the opinion of the respondents, better cooperation between the police and the local communities is first of all influenced by the openness of the police toward the citizens, since the police has to be open towards the public sufficiently to gain the trust of the public and prevent speculations related to certain events which could have a negative effect on the security state. This opinion is expressed by 65% of the respondents. One of the factors which have a negative effect on the cooperation between the police and the citizens is the influence of politics on police activities, which, from the point of application of the concept of community policing and gaining the trust of the public, is considered to be one of the most important limiting factors for the success of the community policing. A great number of respondents expressed this opinion, that is, 77.5% of them. Respondents expressed a high level of awareness on the interdependence of efficient police work and good cooperation with citizens, and this is supported by 90% of the respondents, which is positive from the aspect of police practice and the application of community policing concept. The idea that organizational changes are necessary in order to establish better cooperation between the police and the local community is supported by the information that most of the respondents believe that there is some level of mistrust between the police and the local community, and that it is necessary to build a higher level of trust, which is definitely something that presupposes better cooperation between the police and the citizens and achieving higher security level. Certain doubts in the view of citizens' trust expressed towards the police were shown by 75% of the respondents. From the results presented, it is clear that the organizational changes within the police structure are necessary in order to improve the cooperation between citizens and the police. Most of the police officers believe that the cooperation with citizens should be better, and this further affects the efficiency of the police work and security. As observed from the presented information, we can conclude that the third hypothesis is confirmed: 'Organizational changes are necessary in order to improve cooperation between the police and the local communities; this is one of the obstacles to a better cooperation.

It is interesting to point out that the results point to the fact that 73% of the respondents consider that police agencies at the level of Bosnia and Herzegovina do not apply the concept of community policing in their work, and that there is no cooperation between the police agencies in this field. This certainly represents a limiting factor in the concept application, and if one adds to it the fact that a significant influence of politics on police work, and that 65% of the respondents believe that the cooperation between the police and the local communities is not better than 10 years ago, despite the

fact that there is some progress, we can conclude that the fourth hypothesis is also confirmed: Despite the fact that the situation in the local communities is better than before, introducing the concept of community policing, due to the influence of the police on the police work, as well as selective application of the community policing concept of other police agencies in Bosnia and Herzegovina, the cooperation between police and the citizens is not on the satisfactory level due to these factors.

The general conclusion of this research is that the organizational changes are necessary within the Police of the Republic of Srpska, but these changes have to establish transparency of the police activities, openness towards the citizens, but also reduce or even eliminate the effect of the politics on police work. The organizational changes should be conducted so that there is a better cooperation with the citizens, since cooperation is one of the key factors for more efficient police work. These changes would help the police to adapt better to the changes in the society. Of course, one should also insist on better cooperation with other police agencies related to the application of community policing.

4. BIBLIOGRAPHY

Branislav, Simonović. Community Policing, High School of Internal Affairs, Banja Luka, 2006

Dragomir, Jovičić. The organization and jurisdiction of the police, Faculty of Security and Protection, Banja Luka, 2011

Dragomir, Jovičić. The organization and jurisdiction of the police, Faculty of Security and Protection, Banja Luka, 2008

Jayne, Seaqrave. *Defining Community Policing*, American Journal of Police, Volume 15, New York, 1996

Slobodan, Miletić. Law on Police. Police Academy, Belgrade, 1997

Uroš, Pena. Community policing and its implementation with special focus on Bosnia and Herzegovina, High School of Internal Affairs. Banja Luka, 2006

http://www.polisen.se/en/Languages/The-Swedish-Police/Direction-/National-Police-Board/, available: 12 June 2014

UDK: 005.575/.58:[32+33

LOBBYING ACTIVITY INSTITUTE AND THE POSSIBILITY OF CORRUPTIVE ACTIVITY

Aleksandar Čudan, PhD

Academy of Criminalistic and Police Studies, Belgrade
E-mail: *aleksandar.cudan@kpa.edu.rs*

Dr Gyöngyi Major, PhD

Institute for Strategic Research, Budapest
E-mail: *major.gyongyi@gmail.com*

Abstract

The main challenge in this research work is the simplification of two complex fields and their transfer from the professional and academic, to a comprehensive platform of our experiential perspective.
In a situation where political and economic monopolies are closely related; in a society where the social status and wealth have been acquired through privileges and monopolies for decades, competition is not and will neither be desired nor cherished. Consequently, the negative perception of lobbying has a rather long tradition. At the beginning of the third millennium, the domicile practice confirms the abovementioned hypothesis, instantly confirming the connection between lobbying and different types of economic offences, most importantly the ones considered to be corruptive by nature. As a category, the lobbying activity institute is quite young, especially in Europe; therefore it is no wonder that a lot of confusion, misinterpretation and misunderstanding are created about it. The lobbying activity institute and economic offence with the characteristic of corruption is the subject of several theoretical discussions. However, few people try to explore the line of demarcation between these two terms. This research work aims to make the first step and start filling this big gap.

Key words: lobbying activity Institute, economic offence, corruption, lobbying

INTRODUCTION

The emphasis of the connection between the two divergent concepts like lobbying and corruption in the very title of this dissertation might seem rather absurd. But, if we scratch below the surface, especially from the experiential perspective, we might discover that the difference between the two concepts is vague. On the other hand, lobbying is a relatively new category, especially in Europe, which explains the amount of confusion, misunderstandings and wrong definitions. The fact is that lobbying, as one of the most controversial concepts nowadays, has both advantages and disadvantages.

One of the main hypotheses is to answer the questions: "What is lobbying?" "How and in what situations can it be identified with corruption?" and "What is it that needs to be done in a system so as to perform lobbying in a transparent manner?" Equally important is to address the issue of institutes and lobbying activities, i.e. who are the carriers of lobbying activity, and which basic strategies are used in lobbying.

The main challenge in this study is to simplify two complex areas and transfer them from professional and academic to a comprehensible platform. Taking into account the presented thesis, it is frequently forgotten that there is a fierce rule regarding lobbying. Namely, in order to position yourself and your interest in a waiting list, it is necessary to disrupt someone or weaken their position. This means that the ability of those with less money to obtain wanted options is very limited.

DEFINING THE CONCEPT AND ITS GENERAL CHARACTERISTICS

It is an undeniable fact that there is a large amount of misunderstanding, irrationality and misconceptions about the concept of lobbying, but in order to eliminate any ambiguous notions, the paper will present the basic elements and characteristics of lobbying, based primarily on the institutes i.e. primary lobbying actors. Lobbying as a profession of the new millennium, is increasingly attracting the attention of both professional and lay public; as a way of making an impact it has always existed in various forms, depending on the level of civilizational development and historical circumstances.

Historically, the mechanism of lobbying is a long-existing one, but the term itself was not always used. Many associate this term with Ancient Greece, where decisions were made in public forums in the presence of a large number of people. Linguistically, the term lobby is of Latin origin, and its original form, "lobia" means the lobby of the Roman Senate. Even then it

referred to the people who were waiting for the senators before their entering the main hall, and as the representatives of the powerful Roman families, or interest groups, expressed the wishes, opinions and suggestions of those in whose name they spoke, they hoped that they would be met. The concept of lobbying is mentioned in England in the mid seventeenth century in reference with the word "lobby" because the representatives of the English Parliament used to meet with the representatives of various interest groups in the lobby of the House of Commons.[1]

The term reached its peak in the second half of the twentieth century when the rules of lobbying in the US Congress were established. In his first term in office, Ulysses Simpson Grant, President of the United States, used to take a break during the office hours and go from the White House to the salon of the Willard hotel, which was opened in downtown Washington in 1818. Soon the word spread among the citizens of Washington and further that the president occasionally came to this hotel. Those who wanted to meet with him would then wait for him in the hall in order to submit a petition or inform him about different matters, trying to persuade the president to act upon one or another of their personal interest. In the lounge, Grant would use the word "lobbyist" referring to the people who were waiting for him in the hallway of the hotel.[2]

The term comes to life in its full terminological meaning as a way to influence the economy and politics, in mid-nineteenth century, and eventually enters the dictionaries of almost all world languages. In the evolutionary process of its meaning, it has always borne a negative connotation, so much so that the lobbying has always been regarded as something sinful and dishonorable.[3]
It is only natural that we should strive to create a unique content of an idea, and the definition of lobbying can be quite confusing, regarding the fact that they arise from different experience and different levels of development. Prior to making an attempt to explain the meaning of 'lobbying' and 'lobbyist' it is very important to note that universally accepted definitions of these two terms do not exist. In those countries where lobbying is already highly developed and where it has its tradition as it is the case in the US and Canada, the term lobbyist means an individual or organization that is hired by a client to make an impact to the representatives of the legislative or executive power on behalf of a client within the limits prescribed by law and

[1] Vujović J. i Stefanović M., „Strategije lobiranja", Udruženje tužilaca i zamenika javnih tužilaca Republike Srbije, Beograd, 2011, p. 3.
[2] [2] Vasić N., Stančetić V., „Društva lobista na prostoru bivše Jugoslavije i integracije u Evropsku uniju", Institut za međunarodnu politiku i privredu, Beograd, 2014, p. 386.
[3] Čudan A., „Lobiranje u savremenom okruženju, šansa ili put u korupciju", Kriminalističko-policijska akademija, Beograd, p. 2.

for a fee. It is important to stress that a person performs this professional activity for a fee.[4]

In view of the definition of lobbying and lobbyists, the situation is slightly different on European soil with the European Commission and the European Parliament addressing this issue in a different way. Thus, the European Parliament considers a lobbyist anyone who can influence the formulation of public policy and regulation in the European Union, irrespective of whether they are lobbying to reimburse or not.[5]

The draft law on lobbying in Serbia presents a concept of lobbying activities, which states that "lobbying activity is a specialized service of achieving a legally permissible influence on policy making and contents of regulations prepared and brought by those in power: competent authorities and other holders of public powers; the service is provided by the persons authorized to do it in accordance with this Law, for a fee, in order to achieve a legally allowable interest of the client."

In social terms lobbying is an integral part of any democratic legislative and political process. In the real world it seems that interest groups have a strong influence on the activity. Interest groups or groups of economic actors in a particular sector or with common economic goals have a strong influence to lobby governments in order to implement specific inefficient policies that would benefit them at the expense of the general public.[6]

In addition to the interpretation of lobbying as a profession of later date, it could be interpreted as a new scientific discipline that becomes an inevitable part of contemporary society. As such, it is the inevitable part of political and economic system functioning. During the process of lobbying, there is a specific category: interest, because when an analysis of economic, political and social processes is done, it cannot be made without an adequate analysis of interest in the very process of lobbying. This is just one of the definitions of lobbying, but in relation with the interest to which it is compared, lobbying comprises economic, philosophical and psychological dimensions along with political significance.

---

[4] Todorović L. , Lobiranje-usmena komunikacija sa uticajnijm javnostim, Srpska politička misao, p. 360.

[5] Encyclopaedia Britannica defines lobbying as any attempt by a group or individual to influence government decisions. The term originates in an attempt to influence legislators in the nineteenth century. It may be a direct appeal to those who make decisions or indirectly influenced public opinion. In his study "Working with Congress", Professor Larry Smith of Harvard University considers that the issue of lobbying is mystified over time because of the multitude of interests. Promoting lobbying practice seeks regulatory framework and legitimization, by which the fight against corruption is intensified.

[6] Ibid, p. 3.

LOBBYING AND CORRUPTION

Expert circles often have a dilemma as to why lobbying is experiencing a real development in the first decade of the twenty-first century.[7] Lobbying is one of the most controversial professions and is often confused with corruption but for all intents and purposes this phenomenon could actually be seen as the most effective way to combat corruption.

The fact that lobbying and corruption are linked cannot be neglected, they do have some common ground, but they should not be looked upon as one and the same. Like in any other profession, there are those among the lobbyists who cross the border line between ethics, and indecent, or even criminal activity. In cases of corruption, lobbying techniques may be used, but when lobbying, corruption techniques cannot and must not be used.

It is necessary to perceive a very important problem and determine the boundary between lobbying and corruption. Critics argue that if once money is offered, it is no longer the case of lobbying. Lobbying is an activity subject to abuse even when it is clearly regulated, as is the practice in developed countries. The situation is even worse in the countries of Eastern Europe, where important decision making professional influencing is being developed, but a legal framework does not yet exist. Jeremy Pope, one of the world's leading experts on the struggle against corruption, defines lobbying as a type of advocacy the aim of which is to pass, abolish or change certain laws which affect the lives of individuals and communities. The aforementioned author argues that lobbying is not all to the public good. The negative aspect of this activity is manifested in the modern age, when lobbying is done by professionals, and the relationship between the lobbyists[8] and those lobbied can become unhealthy and contaminated by criminal activities based on corruption. Money and privileges that are offered by lobbyists facilitate such situations. Often you can hear the thesis that lobbying has gone too far. When we are in question, very little is known about lobbying. In some circles the term lobbying has a negative

[7] In the late 70s of the last century, lobbying in the EU was still in its initial stage, and included a small group of people linked by bonds of friendship. Today, when the financial impact on the adoption of laws and decisions of the EU is estimated at more than a billion dollars, the number of professional lobbyists in the EU increased to ten thousand. This number includes independent consultants, a large number of civic organizations, representatives of various commercial associations, unions, law firms ... Dissemination of lobbying in Europe is explained not only with greater recognition of lobbying, but also with the fact that lobbying deepens integration within the EU. During the transition process, the European Parliament in Strasbourg was the focus for lobbyists.

[8] Lobbying is, in fact, any organization of individual comprehensive communicating with influential environment.

connotation, as it is considered bribery offered to decision makers or those who can influence the decision makers. Bad reputation that follows this profession is the product of previous circumstances, when lobbying was viewed as a secret bonding between government and lobbyists, away from the public eye.

Economic torts that have the characteristics of corruption are actually negative incidents that essentially are not lobbying, but a distortion or misuse of this concept. Lobbying and corruption must always be considered separately and cannot be considered synonyms. First of all corruption refers to activities that are qualified as criminal offense.[9] In most countries with developed democratic institutions, the activity in question is recognized as part of the legislative process. In these systems there is a prescribed manner and normative framework in which lobbying activities take place. This means that lobbying is a process that is quite open and transparent.

TABLE 1: The structure of criminal offenses classified as corruption according to the nomenclature of the Serbian MUP

Year	Total number of corporate crime criminal offenses	Total number of criminal offenses involving corruption	Improper loan taking and usage Art. 209	Falsifying official documents Art. 357	Abuse of office Art. 359	Violation of the law by judges, prosecutors and deputy prosecutors Art. 360	Embezzlement Art. 364	Accepting bribes Art. 368	Giving bribes Art. 368	Other offenses
2006.	10327	2809	24	563	971	1	135	54	27	1034
2007.	10679	3102	178	658	1225	1	144	111	111	674
2008.	10393	3318	163	886	1593	2	144	46	31	453
2009.	10879	3970	252	975	1678	7	201	148	120	589
2010.	10019	3858	169	1020	1841	1	218	79	70	460
2011.	9279	3792	214	1136	1699	1	217	86	64	344
2012.	8683	2626	27	410	1282	0	238	126	104	426
2013.	7276	2071	19	157	703	0	197	104	47	623
2014.	7836	1983	32	241	321	2	187	78	46	1076

Source: Ministry of Internal Affairs of the Republic of Serbia

Corruption is any form of abuse of authority for personal or group benefit, whether in the public or private sector. Often there are theories that

[9] Duško Krsmanović „Vodič kroz lobiranje“ Konrad Adenauer Stiftung, Beograd 2013, p. 21.

find the cause of corruption in the correlation between this and some other social, economic, or cultural phenomenon. Consequently the high level of corruption in a society is seen as being in direct proportional relationship with the level of public spending, or is explained with the monopolization of the market, or insufficient development of democratic institutions and principles in a specific country. Therefore, corruption is a consequence of the lack of social values and norms that enable normal functioning of a free market economy. So, corruption is the abuse of public power for private benefit.

If we make an analysis of how lobbying looks like in practice, it is necessary to know that the activities and applied strategy of lobbying are rather caused by a concrete policy. For these reasons it is very difficult to talk about the standard tools of lobbying as they are completely different everywhere. In the contemporary theory there is a frequent argument that lobbying is certainly inevitable in healthy economies or economies that are on the road to recovery. Lobbying and corruption are in some way substitutes. Where there is widespread corruption in the area of influence on the public authorities, there are no parties interested in lobbying. On the other hand, if the system of lobbying is on a firm basis it can significantly curb corruption as a method of influencing decision-making.[10]

These two terms essentially diverge in several directions:
- Lobbying is a legitimate and legal activity regulated in many countries, while corruption due to its purposes cannot be a part of the legal system anywhere
- Change as a result of the lobbying process in principle affects everybody while the result of corruption brings change only to a particular person,
- Lobbyists usually represent the general interests and corruption primarily aims at realization of personal interests,
- Once you give a bureaucrat a bribe, there is a big chance that this process will repeat in the future,

- Corruption is not a good investment because it is very uncertain and a punishable crime.
- Economy and corruption grow simultaneously,
- Corruption and lobbying are substitutes, and thus either lobbying or corruption will be favored in an economy and both of them hardly ever.

It can be argued that companies in developed economies follow the economic logic when they opt for a legal way to influence through lobbying,

[10] B. Kašćelan, D. Krsmanović, „Ekonomsko i političko lobiranje“, Zavod za udžbenike, Beograd, 2012, p. 143.

which is a more economical option, taking into account the risks and threats that corruption entails.

REGULATIONS

The way in which the institute of lobbying is realized is as complex as the institutional system is, as well as the normative framework in which it occurs; therefore it is a very sophisticated activity. Second only to the legislative, executive and judicial authorities, and the media, lobbying has long grown into a mighty power for many. What can be seen in the Region can be assessed as sporadic access to the application of law in this area.

One of the main problems associated with lobbying and corruption is its legal foundation or normative provisions that would in some way work as a protection mechanism for interested parties, but also as a perfect weapon in the fight against corruption. In order to draw a line of demarcation between lobbying and corruption many countries have adopted the Law on Lobbying which clearly defines what lobbying is, who can get involved with it professionally and the procedures and principles that must be respected. Thus, this institutionalized lobbying becomes an instrument in the battle against corruption, and the mentioned profession is lifted to a higher and more professional level.

At the level of a highly developed legal state in a modern environment, professional lobbying is a legitimate and normal activity that primarily entails interest representation in the modern environment. The process of regulating this profession gains its momentum, relating primarily to what presumes the registration of participants, rules and codes of conduct to which professional lobbyists must adhere. Thus, this activity moves from the dark zone into a transparent environment that the state controls and monitors owing to the quality of the legal framework. The analysis of the circumstances in which laws and decisions are made serves as a warning, which is important to the beginning of lobbying. Even more important is to make available policy options that provide effective solutions.[11] Lobbying Act will introduce transparency and control of lobbying by state authorities and that will be deterrent to potential corruption cases.

The said activity is recognized as a part of the legislative process in most countries with developed democratic institutions. In these systems there is a prescribed manner and normative framework in which lobbying activities take place. This means that the lobbying process is quite transparent. This activity assumes a legally allowed influence of the lobbyist on legislative and executive authority with respect to the adoption and

[11] Milovan Milutinović „Politički konsalting i lobiranje“ Nezavisni univerzitet Banja Luka, 2012, p.103.

content of a certain decision. The lobbying procedure begins with the conclusion of the lobbying contracts. The contract is concluded between the lobbyist and the client.

To lobby means to perform a professional activity aimed at the immediate impact on decision making state bodies, legal entities and executive authorities. Many countries are trying to prevent corruption by planned regulation and codification of the aforementioned activities. The professionalization of lobbying in Europe has progressed in recent years. Unlike the European Union and a number of European countries where lobbying is regulated by rules, regulations, or laws, in most Eastern European countries there are still no regulations on lobbying, the role of which is not completely clear in the general public, by which an environment favorable for corruption is created. Analyzing the issue of regulation of lobbying it should be emphasized that it is not aimed at eliminating the phenomenon of lobbying, but on fighting corruption and the application of rules of lobbying.

If a question is posed whether the normative adjustment is the basis of transparent lobbying, the answer could be obtained in a study of the legal framework in this area, as well as in establishing the basic elements of corruptive activity and its destructive impact on a society. In some countries, the impossibility of creating a positive environment for the adoption of normative framework is caused by the inability to formulate a clear definition of subjects and objects of lobbying and methods that are used. Analyzing this problem it is possible to point out that the economic and political processes in the proceeding of accession to the European Union demand that lobbying comply with European standards.

LOBBYING IN SERBIA, ACTUAL STATE AND PERSPECTIVES

It is very difficult to talk about the institute of lobbying from the general point of view, precisely because it is very closely related to the specific institutional system in which it occurs. This activity is not the same in the developed European economies and in the countries of South Eastern Europe due to the fact that the decision-making process, the political culture and the mode of financing are entirely different. In our country, lobbying has no legitimacy. This term and the respective activity do not exist as a part of legal science and professional activity, primarily because there is no regulation of a statutory area, which includes the registration of rules and codes of conduct. With the adoption of the Law on lobbying the government will set up a framework for lobbying, rules for lobbyists and sanctions for non-compliance. The Lobbying Act will introduce transparency and control

of lobbying by state authorities, and this in turn will act as a disincentive to potential corruption cases.

The status and problems of lobbying and its prospects in Serbia, raise a series of questions, as it is the case with the states in the surroundings, but these questions differ with respect to the specifics of the state of society in each particular country. When we look at the constitutional framework of such a country, the case in Serbia is that there are opportunities for legal regulation in this area. The Constitution itself allows the administration and implementation of the rights that are of particular importance for lobbying, freedom of speech and expression, freedom of assembly and association, and the possibility of citizen petitions submitted to the authorities.[12] It is an indisputable fact that lobbying is present in Serbia, but as a non-regulated activity. It is often unplanned and unsystematic, rarely a part of a broader strategy. However, the larger the organizations and the more important jobs they deal with the more they are aware of the power of lobbies. In our country there is practically no legal space for lobbying. A petition can be started, a parliamentary question asked, some influence exerted during the public discussion of a law, but often it does not bring any results. As long as lobbying is not regulated by law, there is room for unethical work and corruption, which always results in a crisis of institutions and morale.[13]

There is almost no professional literature on this issue in Serbian language. On the other hand the first organized lobbying activities appear, there exists a gradually growing awareness of the importance of this phenomenon, and the association of Serbian lobbyists is formed.[14] The Association of lobbyists of Serbia was formed in January 2009 by a group of enthusiasts who are members of a very wide range of professions: lawyers, attorneys at law, people from the field of public relations, those in public administration who are very influential but do not hold any political offices.[15] At the very beginning, one of the most important activities of the Association is the work on the law on lobbying. The draft version of the law

[12] This can be seen under Art. 56 of the Constitution, where everyone has the right to separately or together with others, submits petitions or suggestions to the government and other bodies vested with public authority and to receive an adequate response from them when prompted.

[13] Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije „Zaštita konkurencije i suzbijanje monopola“ Beograd, 2014, p. 21.

[14] After the constitutional session of the Association of Lobbyists of Serbia held in the Serbian Chamber of Commerce, Slobodan Milosavljevic, the then Minister of Commerce, presented the draft version of the lobbying Act that was supposed to be adopted in the long gone 2011. Zoran Domazet from Nis was elected the first vice president of the Association.

[15] In the words of the members of the Association, a critical document, even more important than the very Statute and general acts is the Ethical Code that tells about what values a person who wants to be in lobbyng business ought to have.

is in accordance with the corporate analysis and standards of most countries that have such general laws. The Association has two important missions within the framework of its activity: the affirmation of the profession of lobbying and activities of all those who wish to engage in lobbying, as well as assisting in the realization of the intention to pass a law on lobbying, which would define the area of influence in the public process of decision-making.

The findings of the research project "Perception of Lobbying in Serbia", carried out for the purposes of the Society of lobbyists of Serbia, in October 2009, indicate that the association of bribery and corruption with the term "lobbying" done by the citizens is in the high third place. The previously presented attitude stems from the fact that the concept of lobbying in our society belongs to a group of abstract concepts about which relatively little, better still almost nothing is known; therefore it is not very surprising that most people consider lobbying and corruption one and the same.

From the standpoint of our economic and business systems, case studies of the symbiosis of these two concepts are a true stockpile of various paradoxes. Such negative examples have proliferated particularly in the past two decades. Criminalization and abuse of the concept of lobbying is present among educators in elementary school when awarding the title of valedictorian at the level of municipal government, through the purchase of parliamentary mandates, to 'you scratch my back, I scratch yours' form of capitalism and privatization, the allocation of export quotas and export operation stakeholders. The term is most often labeled negatively in the media, causing suspicion by public authorities, and the citizens themselves largely think of corruption and fraudulent actions by which someone is put in a privileged position at the very mention of this word. Such thinking is further reinforced by scandals that periodically erupt to the surface.[16]

[16] A business deal that the Austrian company "Strabag" made with a consulting firm from Uzice is a typical example of questionable lobbying in public procurement. The aforementioned foreign company, which normally operates in Serbia, engages the agency "Max profit" to lobby for them with the Serbian officials in order to get five tenders released by the public company "Serbian Railways". All this might not be suspicious if the owner of the agency, whose business premises in Uzice have been closed for months, were not Milojko Cicvarić, assistant director of the Institute for Health Protection of Railway Workers in Belgrade, the state company whose founder is the same "Railways". The company "Strabag" has signed a contract with a company owned by a public official in the company. What is it that persuades the experienced builders from Vienna to sign a consultancy contract on lobbying with an almost unknown agency is completely unknown. Small and obscure company is offered a contract worth 60 thousand Euros payable upon conclusion, as well as three per cent commission for every job "Strabag" gets in Serbia. After a media scandal the contract was not renewed because the "Max profit" did not significantly contribute to the Austrian company becomes recognizable on the Serbian market.

Finally, or perhaps better to say at the outset, we should not neglect the fact that the issue of lobbying and placing it in a legal framework is going to be one of the most difficult and complex subjects of negotiations that Republic Serbia is leading with the European Union within the process of integration and would significantly impact its content, speed and course. What is currently more important for the citizens than the eventual entry into the European legal space is to establish a system which will provide an effective protection for lobbying mechanism from the impact of corruptive practices, and thus to eliminate one of the main channels of political and economic corruption.

If we understand lobbying as a legal and legitimate process, the fact that corruption is not one of the stages of lobbying, as some would like to present, may be acknowledged.

CONCLUSION

Modern society and democratic order include the participation of every citizen in organizing and implementing the policy of his country. Activity that allows hearing the voice of the citizen and in this way to contribute to decision-making is lobbying. The paper presents specifically the bases of lobbying, Institutes as holders of lobbying activities, as well as the impact i.e. how and when lobbying can be considered corruption. Through lobbying, it is provided a certain impact on the holders of political power, in order to implement credible actions in economy with additional knowledge and information. In order for this activity to be considered transparent, it is necessary to be properly regulated in order to avoid to be equalled with the corrupt and immoral activity. Legal regulation, lobbying from the dark zone puts in transparent framework which competent authorities can control, and in this way prevent the occurrence of corruption. Because of this, it is considered that legally regulated lobbying is core element in struggle against corruption and certainly not a way that leads to corruption.

REFERENCES

1. Čudan Aleksandar (2015), „Lobiranje u savremenom okruženju, šansa ili put u korupciju“, Kriminalističko-policijska akademija, Beograd, p. 2.
2. **Smith Hedrick (1990), The power Game: How Washington Works, Ballantine Books New York.**
3. **From Johan (2002), Decision-making in a complex environment: a sociological institutionalist analysis of competition policy**

decision- making in the European Commission, Journal of European Public Policy.

4. **Baumgartner Frank, (2007), EU lobbying: A view from the US, Journal of European Public Policy.**
5. **Kašćelan Balša, Krsmanović Duško (2012), „Ekonomsko i političko lobiranje“ Zavod za udžbenike Beograd.**
6. **Krsmanović Duško, (2013), „Vodič kroz lobiranje“, Fondacija Konrad Adenauer Stiftung, Beograd.**
7. **Milutinović Milovan (2012), „Politički konsalting i lobiranje“, Nezavisni univerzitet Banja Luka.**
8. **Đukanović Dragan, Trapara Vladimir (2014). „*Evropska unija i Zapadni Balkan izazovi i perspektive*“, Institut za međunarodnu politiku i privredu, Beograd.**

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

355.02(062)
355.45(062)

МЕЃУНАРОДНА научна конференција Безбедноста како предмет на истражување : пристапи, концепти и политики (2015 ; Охрид)
Безбедноста како предмет на истражување : пристапи, концепти и политики / Меѓународна научна конференција, 2-3 јуни, Охрид, Република Македонија ; [уредник Цане Т. Мојаноски ; преведувачи Анче Белада... и др.] = Researching security : approaches, concepts and polices / International Scientific Conference, 2-3 June, Ohrid, Republic of Macedonia ; [editor in chief Cane T. Mojanoski ; proofreading Anče Belada... и др.]. - Скопје : Факултет за безбедност = Skopje : Faculty of Security, 2016. - 5 св. (323, 304, 305, 297, 351 стр.) : граф. прикази ; 23 см

Фусноти кон текстот. - Библиографија кон трудовите

ISBN 978-608-4532-71-2 (т.1)

I. International Scientifi Researching security : approaches, concepts and polices (2015 ; Ohrid) види Меѓународна научна конференција Безбедноста како предмет на истражување : пристапи, концепти и политики (2015 ; Охрид)
а) Безбедност - Национална одбрана - Собири
COBISS.MK-ID 100973834

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

355.02(062)
355.45(062)

МЕЃУНАРОДНА научна конференција Безбедноста како предмет на истражување : пристапи, концепти и политики (2015 ; Охрид)
Безбедноста како предмет на истражување [Електронски извор] : пристапи, концепти и политики / Меѓународна научна конференција, 2-3 јуни, Охрид, Република Македонија ; [уредник Цане Т. Мојаноски ; преведувачи Анче Белада... и др.] = Researching security : approaches, concepts and polices / International Scientific Conference, 2-3 June, Ohrid, Republic of Macedonia ; [editor in chief Cane T. Mojanoski ; proofreading Anče Belada... и др.]. - Текст во PDF формат. - Скопје : Факултет за безбедност = Skopje : Faculty of Security, 2016

Начин на пристап (URL): www.fb.uklo.edu.mk. - Фусноти кон текстот. - Библиографија кон трудовите

ISBN 978-608-4532-79-8 (т.1)

I. International Scientifi Researching security : approaches, concepts and polices (2015 ; Ohrid) види Меѓународна научна конференција Безбедноста како предмет на истражување : пристапи, концепти и политики (2015 ; Охрид)
а) Безбедност - Национална одбрана - Собири
COBISS.MK-ID 101164810