# SERBIAN POLITICAL THOUGHT


Institute for Political Studies

# Serbian Political Thought

Издавач: Институт за политичке студије
Адреса: Светозара Марковића 36, Београд
Телефон: 3039-380, 3349-204
E-mail:ipsbgd@eunet.rs
E-mail:spm@ips.ac.rs
**www.ipsbgd.ac.rs**
www.ips.ac.rs/rs/magazines/srpska-politicka-misao

ISSN 0354-5989 UDK 32 Број 4/2021. XXVIII vol. 74
DOI: 10.22182/spm.7442021



ЧАСОПИС ИЗЛАЗИ ТРОМЕСЕЧНО

Радови СПМ/SPT налазе се и доступни су у електронским базама научних часописа C.E.E.O.L. (Central and Eastern European Online Library) и ERIH PLUS (European Reference Index for the Humanities and Social Sciences).

**Прелом и штампа**
Ситопринт, Житиште

Тираж: 50 примерака

# Contents

UDC 616.98:578.834]:321.6(438)(82)
DOI: https://doi.org/10.22182/spm.7442021.1
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 05-32

***Joanna Rak****

*Faculty of Political Science and Journalism,*
*Adam Mickiewicz University*

***Przemysław Osiewicz*****

*Faculty of Political Science and Journalism,*
*Adam Mickiewicz University*

# THE POPULIST RESPONSE TO THE COVID-19 PANDEMIC: A COMPARATIVE ANALYSIS OF THE POSITIONS OF DUDA AND FERNÁNDEZ***

## Abstract

Drawing on the theory of political myths and qualitative source analysis, this article compares political mythologies created by the presidents of Poland and Argentina. The main argument is that they struck populist notes by using conspiracy, saviour, unity, and golden age myths to legitimize government policies during the pandemic. The crisis gave rise to a search for legitimacy for anti-democratic measures limiting pluralism. These leaders persuaded their supporters to respect political changes which facilitate a gradual weakening of democratic institutions in the service of weathering the crisis. The study contributes to our understanding of the presidents' engagement in institutional change.

**Keywords:** populism, political myths, political thought during the crisis, democracy, de-democratization, legitimization.

* joanna.rak@amu.edu.pl

** przemyslaw.osiewicz@amu.edu.pl

*** This research paper is a result of the research project Contentious Politics and Neo-Militant Democracy. It was financially supported by the National Science Centre, Poland [grant number 2018/31/B/HS5/01410].

## 1. INTRODUCTION

In Argentina, since the founding of the populist Worker's Party (*Partido Laborista*) by Juan Perón in 1946, its representatives have served as presidents for more than half of the post-war period and achieved results in the range of 30-60% of the vote in the presidential elections. The party, which was officially renamed the Justicialist Party in 1950 (*Partido Justicialista*), plays a prominent role in the Argentine political scene. It was successful in parliamentary and local elections (Muno 2018, 12). The emergence of a significant populist force contributed to a polarization on the Argentine political scene. After 1945, the division into Peronists and anti-Peronists is visible. During the Cold War, internal political divisions intensified, contributing to social unrest and political crises. Perón and Peronism strengthened this cleavage by distributing a down-to-earth leader image, using ordinary language, and drawing a sharp line of separation between the people and what they referred to as the elite (Muno 2018, 12). The method of conducting politics and creating messages for voters introduced by Perón was largely continued by his successors, including his wife Eva Perón, Héctor José Cámpora, Carlos Menem, Néstor Carlos Kirchner Jr., and Cristina Fernández de Kirchner(Seman 2020). The incumbent president of Argentina also identifies himself as a Peronist. In October 2019, Alberto Fernández defeated President Mauricio Macri in the election, thereby restoring the Peronist camp's influence in Argentina. Additionally, the incumbent vice-president is Kirchner, which only strengthens the belief that the Peronists' influence in the state, in its variant, already referred to as Kirchnerism, has been preserved, even if Kirchnerism is not endorsed by many politicians self-identifying as Peronists, mainly because of its strongly leftist and populist profile (Baud 2013, 121–123).

Fernández refers to populism elements that have in recent years regained importance in Argentina. This was due to several factors. The criticism of his predecessor largely determined Fernández's electoral result. Macri was the first president to try to change the balance of power, dominated by Peronists, since the removal of the military dictatorship in 1983. He advocated closer relations with the United States, promoted gradualist neoliberalism, and pressed for free-market solutions. Macri also supported

budgetary discipline and monetary policy stabilization (Harper 2019). However, what improved Argentina's credibility among foreign investors did not win Macri great support among common citizens. The difficult economic situation translated into a renewed rise in populist attitudes. A similar situation took place in Poland on the eve of the presidential election in 2015.

In Poland, populism does not have such a long tradition and is not as rooted in the political system as in Argentina (cf. Jasiewicz 2008). Nevertheless, the consequences of the 2008 global financial crisis and no clear pro-social policy of the liberal government dominated by the Civic Platform (*Platforma Obywatelska*) created a favourable situation for populist rhetoric that developed from populist sentiments shaped in 1990s (Jasiewicz 2008, 11; Pytlas 2021). Andrzej Duda, a candidate nominated for the presidential election by Law and Justice (*Prawo i Sprawiedliwość*) in 2015, referred to the populist arguments, especially promising to introduce new social programs and social justice (Fomina and Kucharczyk 2016). Moreover, unlike the then ruling liberal coalition of the Christian-democratic Civic Platform and the agrarian Polish People's Party (*Polskie Stronnictwo Ludowe*), Duda opposed the consent to the quota system to redistribution of refugees during the migration crisis. He often referred to national symbols and traditions by publicly emphasizing his commitment to the Catholic Church (Moskwa and Jefferson 2020). Duda's victory in the presidential elections and the subsequent success of Law and Justice in the 2015 parliamentary elections resulted in political and legal changes within the Polish political regime. The changes included dismantling institutional government safeguards by hamstringing the Constitutional Tribunal, and then its transformation into an active supporter of the government, subordination of the courts' judges to the government, and restriction of political rights (the right to assembly, privacy, and the freedom of the press) (Sadurski 2019, 53). The newly elected president and members of the government skilfully read public moods, adjusting official rhetoric and actions to the expectations of at least part of Polish society (Rezmer-Płotka 2021). An example of such action was the almost immediate introduction of the 500+ program based on the monthly payment of an allowance of PLN 500 (EUR 108) for the second and each subsequent child (Bill and Stanley 2020).

In Argentina and Poland, populist presidents have engaged in institutional change to an unprecedented extent (Axford 2021). Although the political systems of Argentina and Poland are different, and the list of differences includes substantially different political roles, positions, and competencies of presidents in the presidential system (Argentina) and parliamentary system with a directly elected head of state (Poland), the presidents of these states are important and influential state opinion-forming bodies. The Polish president's impact on policies is considerably limited due to his constitutional position, but his discursive power to shape political views and the interpretation of governmental policies is as strong as the Argentinian.

Fernández and Duda emphasize the need to defend national interests and social solidarity, understood as state support for poorer social groups at the expense of the elite, especially those associated with opposition groups. Losing the quality of democracy is treated as a cost of these activities. A preliminary comparison of populisms in the varieties represented by Fernández and Duda can draw upon the analysis of Robert R. Barr. He defined populism as "a mass movement led by an outsider or maverick seeking to gain or maintain power by using anti-establishment appeals and plebiscitarian linkages" (Barr 2009, 38). As was the case with Fernández, it was a big surprise to the public that Duda received a party nomination in the presidential election. Just as Kirchner overshadowed Fernández, Duda was a politician of moderate stature and political influence. Up until 2015, he had worked mainly for the election success of Law and Justice's undisputed leader, Jarosław Kaczyński. Despite their electoral victories, Duda and Fernández are not perceived as independent leaders but rather as executors of their political patrons' tasks and orders. The presidents deliver emotional speeches that refer to symbolism, national values, and traditions. They expect to be seen as those who oppose the domination of the political and business elites and care for all citizens' well-being, including the weak and the down-trodden. In 2015, Duda's election victory and the defeat of the then-president Bronislaw Komorowski, who enjoyed clear support from the intelligentsia, specialists, representatives of liberal professions, and entrepreneurs, were indicative of breaking the dominance of the

so-called elite domination (Chmielewska-Szlajfer 2018). Fernández's victory against Macri was seen in a similar vein.

Like other states, in Poland and Argentina, the pandemic has created conditions for expanding populists' rule. Governments imposed anti-democratic restrictions to extend their own power competencies, exclude political competitors from the democratic game, introduce laws serving particular interests, and thus undermined democracies. Lockdown measures, restrictions on political rights were to weaken civil society, the social structure of liberal democracy (de Aragão et al. 2020, 51; Skrzypek 2021). Despite their overtly anti-democratic nature, these measures were widely followed in Poland and Argentina. Protests were relatively rare and with low attendance. It begs the question how populists have managed to convince their followers to support solutions restricting their civil rights and liberties.

This article aims to discover the characteristics of Duda's and Fernández's engagement in the legitimization of anti-democratic government policies during the Covid-19 pandemic. By delving analytically into political mythologies that supported anti-democratic measures limiting pluralism, the article shows how the presidents persuaded their supporters to accept and respect political changes. The mythology structure reveals how Duda and Fernández exploited fears to justify and explain the Covid-19-induced anti-democratic institutional change. The study contributes empirically to democratization studies by accounting for the presidents' direct engagement in anti-democratic changes during the coronavirus pandemic. The study of legitimization practices exposes the mechanisms of building public support for de-democratization. It also contributes to comparative studies on contemporary populism by enriching our understanding of populist discursive strategies among the factors behind achieving social approval of the changes leading to the progressive weakening of democratic institutions.

The remainder of the article is organized into four sections. The second section introduces a review of the literature on political myths as a discursive tool. Concentrating on the study's research objectives and questions, the review provides theoretical grounds for empirical research. The following section discusses methodological assumptions, including methods, techniques, materials,

data gathering, and analysis procedures. The fourth section compares political mythologies produced by Duda and Fernández in terms of using conspiracy, saviour, unity, and golden age myths to legitimize government policies. The conclusion gives an insight into the populist attempts to gain acceptance and respect for political changes which facilitate a gradual weakening of democratic institutions in the service of weathering the Corona crisis.

## 2. THEORETICAL GROUNDS: POLITICAL MYTHS AS A VEHICLE FOR POPULISM

In the last years, political scientists have gradually been interested in the role of political myths in de-democratization and populist discourse (Olzi 2020; Wainberg 2020; Susanto 2019). The particular importance attached to myths results from using them in political communication as a vehicle for ideology (Flood 2013, 17). Myths serve individuals as a framework to produce meaning, interpret events, and make sense of the specific way they function within a given political structure (Schmitt 2018, 490). Moreover, myths are constantly updated to overcome the emerging obstacles to the legitimacy of a desired political structure. This article falls into the body of research on political myths as a tool for legitimizing anti-democratic practices and activities (Bauer and Becker 2020). These works emerged as a response to a need for understanding how populists managed to gain legitimacy for democratic backsliding towards authoritarianism or nondemocratic regime establishment after the 2008 financial crisis (Huber and Schimpf 2016; Ruth 2018).

Political myths are a linguistic strategy efficient in times of uncertainty, social cohesion weakening, and crises (Zglobiu 2017, 117; Sviličić and Maldini 2014, 726). Especially then, the great social groups express a need for immediate solutions to complex issues and their simple articulation. The latter aims at the cognitive patterns firmly rooted in people's social consciousness. Resorting to myths, populists access the mythical thinking and draw upon their structures to facilitate the decoding of a political message (Zglobiu 2017, 117). They take advantage of people's susceptibility to the ideas of change and the creation of a new political structure. There-

by, anti-democratic tendencies draw energy from political myths, which serve as a cohesive factor for those who accept submission to the rulers (Sviličić and Maldini 2014, 726).

During the Corona crisis, socioeconomic deprivation and value anomie, characteristic of great social and economic crises, have resulted in socio-psychological insecurity, disorientation, and fear (Sviličić and Maldini 2014, 725; de Aragão et al. 2020, 52). These processes have triggered the transformation of social trauma into individuals' psychological problems. It has generated fertile ground for producing and adopting political myths (Sviličić and Maldini 2014, 726). Populists immediately have managed the public's expectations of fighting the coronavirus and easing the crisis effects. Myth-rooted promises of a new, better society, social, economic security, protection, and the integrative power of a new political structure aimed to determine the re-realization of collective identity and meaning (Sviličić and Maldini 2014, 726).

Raoul Girardet determined functions of political mythologies in populist discourse and formulated a classification framework of myths that represent modes of discursive legitimization (Girardet, 1987, 11; 54). The functions include the fictionalization of politics, explanation, and mobilization. First, by creating new forms of truth, embedded in a power structure and located within specific narrative contexts, mythologies produce a continuous fictionalization of politics. Politicians contest the facticity of the *status quo* with appropriate discourse creations of the past, present, future, heroes, and villains (Stoica2014, 106). Second, mythologies generate a coherent framework of these creations' interpretation. Politicians establish a normative vision of the individual and society to organize chaos into a stable order (Stoica2014, 107). Third, mythologies allow politicians to gain, manage, and take advantage of socially shared emotions, anger, frustrations, hopes, and desires. Value-laden semantic structures build a new reality of alterity in political discourse to unite society with common goals and enemies (Stoica2014, 107; Girardet 1987, 55).

Girardet's classification framework covers linguistic strategies peculiar to gaining support for political projects during the crisis (Ungureanu and Popartan 2020, 42). It includes conspiracy, golden age, saviour, and unity myths (Girardet 1987, 11).

Mihnea-Simion Stoica argues that these political myths organize populist mythologies and provide populists with tools to shape the understanding of events. Populists describe the world as a space of uncertainty and insecurity, where others ("they") endanger nations, ordinary people, good men, society ("we"). "The others" disrespect a community founded on well-known rules and roles for its members (Stoica 2017, 71). According to the conspiracy myth, a group of people aims to surreptitiously disrupt the *status quo* for purely selfish reasons (Girardet 1987, 11). However, the conspiracy myth is efficient only when coupled with the remaining three myths. The saviour emerges along with a crisis because a state of emergency conduces a need for being saved among those who feel endangered. The power of the saviour results from his or her will to act, skills, and knowledge. Establishing an asymmetric power relationship and submission are the conditions for salvation, gaining protection, and restoring the socially desirable order. Populist subjects are in a position to save the world, reinstate solidarity in a community at risk, recognize and solve their followers' problems. The golden age promises a utopian state of political stability, prosperity, peace, harmony, lack of threats. The condition for fulfilling the promise is the resignation from at least some rights and freedoms. In a fantasy populist world, the golden age myth determines an ultimate objective a particular community must strive to achieve. This goal is associated with *status quo* adversaries. The present is a period between the golden age and what can be considered revenge of times. Unity stands for the organization into a utopian community untouched by internal conflicts. The unity myth is an identity-forming factor used by populists to provide the majority with an awareness framework to become the people (Girardet 1987, 11, 187; Stoica 2017, 71–72). The Girardet-Stoica classification framework constitutes a theoretical basis for codes and coding that underlie a thematic analysis of populist mythologies.

## 3. METHODS AND MATERIALS

The study responds to two matters in order to uncover the nature of populist legitimization of anti-democratic measures. Whereas the first delves into the structure of political mythology produced by the presidents and reveals its essential features, the

second concentrates on the practical use of political myths and discursive legitimization processes. They are as follows: What types of political myths did Duda and Fernández use to justify and explain government policies? How did they use these myths to persuade their supporters to accept and respect political changes leading to the weakening of democratic institutions as a way to weather the Corona crisis?

To address these questions, the research draws upon the comparative qualitative source analysis of the presidents' verified Twitter accounts. During the pandemic, those official profiles served them to maintain direct communication with citizens and provided records of exchanges concerning current political affairs. The analysis covers tweets published during the first wave of the pandemic. It spanned from the first confirmed cases up until the loosening of lockdown measures, from March 4 to May 31, 2020, in Poland and from March 3 to July 17, 2020, in Argentina. The document analysis combines content analysis and thematic analysis in the iterative process of text skimming, examination, and interpretation. The content analysis commences with the identification of text passages that hold direct references to the state measures taken to prevent the spread of the coronavirus and minimize the effects of the crisis, including the limitations of freedom of movement, assembly, speech, trade, and religious worship even if they are not defined as measures by the presidents. The following stage rests on a theoretical framework that assigns information into categories of conspiracy, golden age, savior, and unity myths.

The remaining stages focus on thematic analysis. Rereading and reviewing information are crucial procedures to determine themes relevant to the categories. They lead to the data characteristics-based coding and category definition (Bowen 2009, 31–32). The concept-driven coding of the tweet content draws on four groups of search terms: for conspiracy: social, political division, exclusion, outcast, others, opponents, enemies, violators of social norms and law, they, threat, risk, negative influence; for the saviour: restoration, unsymmetrical relation of power, the helping and the helped, help, protection, rescue, safety, security; for unity: the people, our society, we, majority, solidarity, unity, social cooperation, responsibility; for the golden age: future, aspirations, development

directions, attempts, endeavours, objectives, promises, recovery, and change. By applying an inductive approach, a continuous comparative method enhances thematic analysis within the scope of searching the data for the myth-related theoretical qualities. In turn, a back-and-forth interplay with the data serves to investigate the codes and concepts. Notably, while data pieces (sentences) are mutually listed and compared, codes are necessary to group ideas and pinpoint clustering concepts (Bowen 2009, 37). The final stage involves reporting the analysing process and the research results through the conceptual systems of myths and the model of political mythologies produced by the presidents.

## 4. POLITICAL MYTHOLOGY IN TIMES OF THE CORONA CRISIS

Gaining the incumbent presidents' support for the institutional change was oriented towards channelling the social support that they received in general elections. By distributing populist mythologies, they produced a comprehensive and coherent picture of the socially desired change. Thereby, they discursively legitimated the weakening of democratic institutions and curbing pluralism. The Covid-19 crisis prompted a tough economic situation for both Poles and Argentinians. Public support for anti-democratic solutions was viewed as a condition under which the governments could build a new social and political structure and economic prosperity.

While both presidents used political mythology to promote desirable interpretations of government policies, Fernández was much more active in tweeting and producing the discourse on restrictions. In 254 out of 323 tweets, the president of Argentina distributed political myths. This means that as much as 79% of the politician's message during the first wave of the pandemic was subordinated to the overarching goal of legitimizing anti-democratic solutions. These were almost all of the president's political announcements. The remaining 21% were private and contained wishes for health and prosperity on various occasions, words of gratefulness for support, lauds from children, and calls to observe restrictions. In Poland, the first wave of the pandemic coincided with the presidential campaign. During that time, Duda published

only 76 tweets, 58 of which aimed to legitimize the government's policy. The remainder was to thank for signs of support and express "admiration and respect" for various social groups. The proportion between the number of tweets aimed at generating support for the government (76%) and the pursuit of other campaign goals (24%) uncovered that the former was a priority. Despite the ongoing campaign in Poland, Duda, as much as Fernández, mythicized the government's actions.

## Conspiracy myth

The conspiracy myth dominated Fernández's (36%) and Duda's (34%) political mythology. It was of particular importance since it allowed the populists to justify the "we" and "they" division. At the same time, it organized the perception of the past, present, and future as a consistent struggle with the enemy acting to the detriment of the people. As a result, the presidents could logically explain all undesirable events and phenomena by the powerful enemy's subversive activities (Stoica2014, 107). A common enemy unites the community in a common struggle. It justifies the need to implement unconventional solutions under exceptional leadership to achieve a common goal of defeating the enemy and overcoming the crisis.

In the discourse on the internal enemy, Poland's president accusingly pointed to hostile actions which allegedly accelerated the pandemic. Duda stated that some people used their energy to destroy the Polish community. All those who criticized state measures implemented to mitigate the pandemic's social and economic consequences contributed to the mass misinformation and coronavirus spread. Lying and manipulation were to weaken the position of the government, the president, and their cooperation. Duda also opposed the hostile but undefined political forces that strove to take money from ordinary people, given under the government's flagship social programs (e.g., the 500+ program), and deprive them of means of income (Duda 2020, March 11; April 20; May 12). The level of hostility towards political parties other than Law and Justice was very high because it was built on the assumption that those parties wanted to deprive Poles of their livelihoods.

Apart from the internal enemy, Duda referred to the immemorial external enemy of Poland, Russia. During the pandemic, the government continued the Vistula Spit dyke construction. The canal would connect the Vistula Lagoon with the Bay of Gdańsk by sea within Poland's territory to shorten the sea route to the Baltic Sea. The investment worth EUR 222.61 million was expensive considering Polish conditions and social needs during the Corona crisis. Furthermore, environmentalists criticized it as harmful to the natural environment (Mmj/lw 2020). The discussion on the government's initiative created opportunities to discredit opponents, including the incumbent president's counter-candidates in the upcoming elections. The lynchpin of the dispute was hence founded on the conspiracy myth. All those who opposed the government investment pursued Russian interests (Duda 2020, May 30). The Russians and their agents of influence present in Polish politics sought to limit Poles' freedom and weaken the domestic economy. The mere questioning of the government's arguments was tantamount to acting to Poles' detriment.

Like Duda, Fernández established internal enemies by pointing to undefined individuals or groups standing in the way of Argentina's prosperity, exploiting the poorer, or simply failing to comply with applicable restrictions, as happened many times during the Covid-19 pandemic. Fernández directly threatened the audience with severe consequences for all those who did not adhere to the government restrictions imposed for the public good (Fernández 2020, March 22). The president also condemned speculators who tried to take advantage of the crisis in the country and earn more on the goods offered. Nevertheless, no industry or professional group was called by name (Fernández 2020, March 5; Fernández 2020, March 17). This approach to the unidentified internal enemy was consistent with Duda's policy. Both presidents stressed the need to take decisive action to end the practices that destroyed the social structure from within.

Not unlike Duda, Fernández warned against disinformation and fake news disseminated by unspecified people via social media and external interreference in the state politics. Simultaneously, he referred to this phenomenon as "infodemic" (Fernández 2020, March 28). The hidden message was relatively simple and intended

to undermine citizens' trust in the information disseminated through social media while making them responsible for their own actions and vigilance. The only reliable source of information was the state media. The call to limit the sources of information, i.e., to ignore hostile, non-state outlets, took place as part of the promotion of conscious news selection. Like in Poland, the rejection of false messages aimed to prevent Argentines from being influenced by those who wanted to harm them.

Finally, Fernández often rose to his critics and decisions made by executive bodies during the pandemic. The president accused the critics of displaying an antisocial approach. Moreover, he blamed unnamed entities for not understanding the executive bodies' correct and just decisions (Fernández 2020, April 29). Like in Poland, the lack of subordination to executive bodies' decisions posed a real threat to state security and public health.

Duda and Fernández pointed to hostile attempts to attain political power and control the people by describing both the internal and external enemy. The Polish and Argentinian social and political structures became areas of uncertainty. Functioning in them, especially entering into relationships with "the others," was risky and required great vigilance. Duda and Fernández did not indicate what social groups or entities they meant. Instead, they made the category of public enemy highly inclusive. It covered political opponents, critics, and people who did not comply with the restrictions. Moreover, the context of their posts was self-evident, and the recipients could identify enemies on their own. Both presidents were eager to use the conspiracy myth because it strengthened their position and created the impression that they were the only ones who could recognize the sources of threats. At the same time, despite clear goals and ubiquitous activities, the enemies remained elusive due to deeply secretive organization (Stoica 2017, 67). In the context of constant insecurity, Duda and Fernández stood for limiting the pluralism that permitted the distribution of misleading ideas. The anti-pluralist approach built strong antagonisms between "the people to be saved" and those considered putting the people in jeopardy (Stoica 2017, 71; Galston et al. 2018, 33). Fear of the latter aimed to fuel scares about social and economic security during the pandemic. It meant trying to undermine civil society's structures

by discouraging active participation in the public debate, the free exchange of views, and reducing mutual trust.

## Saviour myth

Creating the enemies allowed the presidents to generate a need for defenders. This second most frequent myth served Fernández (27%) and Duda (28%) to deliver a quick and straightforward solution to the problems arising from the crisis. The governments were considered the saviours whose unique characteristics made them indispensable to the people. Despite living under constant threat, the governments persistently strove to identify and solve emerging social problems and restore order by averting immediate danger (Stoica 2017, 67).

According to Duda, state authorities were the people's praiseworthy saviour because they took up the fight against the threat and responded to the needs resulting from the pandemic. However, the assistance to the people was effective due to the professional cooperation between the president, the prime minister, and the government. Joint efforts allowed them to identify potential problems accurately even before citizens realized they were happening. Only thanks to prompt financial support from the state, Polish enterprises and borrowers survived the lockdown. The primary relief instruments were the government's anti-crisis shields, i.e., remuneration subsides granted to entrepreneurs, Polish companies, and families. The government was also involved in removing any and all obstacles standing in the way of personal safety and medical assistance. The end of the first phase of the pandemic was celebrated with by presidential visits to select companies. Smiling employees talking to their special guest illustrated the success of the government's initiatives (Duda 2020, March 9; March 15; March 17; March 26; March 28; April 6; May 29). Due to the developed procedures, only the state-derived assistance could protect citizens from threats accompanying the pandemic. The myth of the sole saviour gave a feeling of no alternative and complete dependence on the state.

Apart from Poles, the beneficiaries of the government and the president's actions were all European states (Duda 2020, May 27). In May 2020, the European Commission, the European Par-

liament, and European Union (EU) leaders agreed on a recovery plan that would help repair the economic and social damage caused by the pandemic. The program aimed to lead the way out of the crisis and provide the foundations for a modern and sustainable Europe. Duda noted that although all countries would receive aid, Poland would be one of the biggest beneficiaries. The state offered its citizens financial security but in return for their commitment and obedience. The president's contribution to the plan was a letter to EU leaders to draw their attention to the need to support the common economy (Duda 2020, May 27). Despite no evidence of Poland's role in establishing the program, Duda appropriated it as a state success. It was an argument to convince the readers of the profile about Duda's and Poland's overwhelming influence on world politics.

Duda sanctified the state investment in Vistula Spit dyke construction by defining it as a turning point in the fight for liberty that the Polish nation wages against external threats. Duda supported the government's narrative that the investment was an attempt to gain independence from Russia and provide Poles with free trade and shipping (Duda 2020, May 30). On the one hand, the investment distracted Poles from the actual problems resulting from the ineffectiveness of the government's actions in the fight against the coronavirus. On the other hand, the image of the investment fed into the mythology of a strong state that defended its citizens from any threat. Due to the historical background, the vision of defence against Russian influence was deeply rooted in the public consciousness. Skilfullyfuelled during the pandemic, the myth of protection against a total enemy awoke emotions and won over opposing Russia's supporters.

Fernández discussed actions taken by himself or via his initiative that would significantly improve the well-being and general living conditions. He directly pointed to his adamant attitude in the fight for social justice and honesty. In this way, the president criticized raising the prices of various goods and services for no apparent reason(Fernández 2020, March 5; March 17). Fernández promised to take action, although in this case, he avoided specifying precisely what exactly would be done (Fernández 2020, March 17). The declaration of a fight against speculators who tried to generate

income during the pandemic exposed an image of a president who cared for social justice and stood up for the interests of the weak.

Fernández invoked his position as Commander-in-Chief of the armed forces and the orders he issued to support civilians and other services in the fight against the pandemic (Fernández 2020, March 21). Like Duda, he projected his image as a politically active and worthy representative of Argentina in the international arena. It was the case just after the G20 summit when Fernández announced a Global Humanitarian Emergency Fund (Fernández 2020, March 26). He self-introduced as a strong leader able to care for the interests of his own state and the international community. Thereby, like Duda, Fernández claimed that he was respectedby other world leaders.

Under the saviour myth, Duda and Fernández aimed to convince citizens that restrictions were suitable. In times of crisis, citizens sought care and support from the leaders who knew when and what decisions to make. Moreover, they expected help from the leaders whose decisions were correct. The need for a saviour arose along with the appearance of an enemy acting to the detriment of society. Thereby, the government policies became indispensable to the people that expected to survive the crisis.For Duda, the main point of reference was the epidemic crisis. At the same time, Fernández used the epidemic crisis and the long-lasting economic crisis in Argentina to justify a need for state-driven restrictions.

## Unity myth

Social unity was a necessary condition for political salvation and the golden age to come true. In times of crises that shook civilization, only exceptional communities could unite to overcome adversity. The unity myth mattered in the presidents' plans for fighting the crisis since it enabled the majority to become "the people." They shared the collective identity and constituted the union around the government restrictions that allowed the communities to survive. Potential internal conflicts caused by enemies were destructive since they broke down unity and prevented common goals. Therefore, any split or breach could render political, social, or economic efforts utterly useless (Stoica 2017, 68; 72).

Poland's president repeatedly appealed to Poles to stop engaging in political disputes and comply with governmental recommendations. According to Duda, the crisis would end if citizens started to build a future by drawing on Poles' shared experiences and patriotism. However, the shared experience was a common participation in the successful struggle against the coronavirus. This meant closely following all restrictions, and in turn, the submission became an expression of patriotism (Duda 2020, May 25; May 14). Therefore, in order to end the pandemic, people were directly prompted to provide unanimous support for the government. Unity meant unconditional support for the political decisions of state authorities.

Furthermore, Duda praised all initiatives bringing citizens and Polish enterprises together in times of crisis. Citizens' mutual social and economic support was crucial for the social structure to survive. The president recognized that the government united Polish companies to build the Vistula Spit dyke (Duda 2020, May 30). Accordingly, the president and the government supported the cooperation of Poles around state-approved initiatives. It was an image of union for the common good that opposed internal and external enemies.

Fernández, on the other hand, referred to the need for national unity and defined its internal and external dimensions. In the former, Argentina's president stressed the need for universal mobilization and unification to improve the economic situation and ensure social justice. He pointed out not so much to his own responsibility for the consequences of future and present decisions but instead presented them as shared responsibility. Emphasis was on the need to undertake joint efforts and unite around a common goal. The implication was also to urge society to unite around him as he was the leader who engineered a new post-pandemic reality and took efforts to implement this plan (Fernández 2020, April 1). According to the president, during the pandemic, collective sacrifices and the need to cooperate to eliminate the threat were of tremendous importance. It was not the decisions of executive bodies that determined the success in the fight to stop the spread of the virus, but the resignation of citizens from particular interests and habits in the name of the common good (Fernández 2020,

May 25). Such an approach and shared responsibility for fighting the pandemic strengthened the myth of unity. Moreover, the president mentioned neither the opponents of the restrictions nor their arguments. Thus, one could get the impression that all, except for some unspecified groups of insubordinate citizens, supported the executive bodies' position.

Regarding the external dimension, Fernández was particularly active on anniversaries of events important to Argentina's recent history. Those certainly included the anniversaries of the seizure of the Falkland Islands and the 1982 war with Great Britain to maintain control over these islands (Fernández 2020, June 10). The president underlined the Argentinean position's persistence on the territorial control of the Falkland Islands and other islands whose territorial affiliation is the subject of dispute with the United Kingdom even during the pandemic. His posts referred to national identity and collective memory (Fernández 2020, April 2), which made it possible to gather around the president also his opponents. In Fernández's opinion, it should be the same with respecting the restrictions.Such references to a painful history during another crisis, allowed the comparison of those two situations and justified the need to comply with restrictions. Any other attitude could be classified as hostile to society. At the same time, the president could divert public attention from current pandemic-derived problems.

Duda and Fernández shared the definition of unity as the uncompromising submission to governmental policies motivated by common goals and enemies. Compliance with the restrictions, and thus the relinquishment of some civil rights and freedoms, was a condition for gaining government support and participation in the community to be rebuilt after the pandemic ended. Both presidents promoted the myth of national unity in the face of the epidemic threat. Fernandez reinforced this myth also through historical references to the Argentine territorial claims related to the Falkland Islands. Finally, both presidents desired to achieve a high level of national unity through the limitation of political pluralism and readiness for individual sacrifices by citizens.

## Golden age myth

Duda (12%) and Fernández (10%) paid relatively little attention to visions of the future. Diagnosing the causes of harm to the people and defining the ways of overcoming the crisis were of higher importance than designing a post-pandemic reality. The golden age myth served the presidents to establish the ultimate goals that helped attract present or potential followers unhappy with the current political situation. By drawing upon the images of future happiness and the patriarchal authority's safety, the golden age became a promise of a desired political and social structure. The reward for submitting to the saviours' will was a utopia, which strengthened social divisions. Only a closed social group of the submitted could be protected, immune to dangers, and experience a predictable rhythm of life (Stoica 2017, 68; 72).

In keeping with the "return to normal" discourse, Duda promised to restore a pre-pandemic *status quo*(At/mf 2020). According to the Polish president, the coronavirus crisis would end soon, and Poles would no longer suffer from its social and economic consequences. In post-pandemic Poland, citizens would still benefit from the government's usual support and social programs (Duda 2020, April 20; May 19). Therefore, the primary goal of the anti-democratic restrictions was to restore the state of the social structure before the pandemic. Making this state an object of aspiration was mythization through the sacralization of the state authorities' actions to date as universally desired and beneficial.

The state authorities were considered powerful enough to protect the weak effectively, and its citizens did not have to be afraid of strong enemies. Duda presented the widely criticized concentration of the executive, legislature, and judiciary in the hands of one political party (Law and Justice) as an advantage in trying times. Unanimity and good cooperation provided the most effective way to end the ongoing as well as future crises. The anti-democratic solutions were a deliberate action by the state authorities focused on the protection of Poles in the long term.

Nevertheless, the near future would also bring new benefits thanks to the state authorities' efforts. Obedient to the restrictions, Poles were to benefit from the EU recovery plan (Duda 2020, May

27), which meant an increase in living standards. Furthermore, after the completion of the investment, Poles were to have guaranteed the freedom to enter the Vistula Lagoon without Russian consent (Duda 2020, May 30). These predictions were an assurance that external and internal enemies would be defeated, and public space would become free from uncertainty.

Similarly, the Argentinian head of state conjured up a vision of a prosperous future. However, neither did he indicate any data or state of affairs that would be achieved. All one could learn was that the situation would improve. Nevertheless, achieving this state depended on meeting several conditions, such as cooperation, willingness to sacrifice, and perseverance. Regarding Argentina's financial problems, Fernández assured citizens that Argentina had all the assets to handle the crisis and recover efficiently. Referring to the economic situation and the necessity to make joint efforts, the president addressed the recipients by using the pronoun "we" (Fernández 2020, March 5; Fernández 2020, April 27). The Argentine leader also addressed the positions of the most deprived by promising to eliminate social disparities and improve living conditions in the indefinite future (Fernández 2020, May 26). According to Fernández, the nation, so far divided, came together in the name of rebuilding the market and repairing the damage. The unprecedented change heralded the creation of higher standards of living than ever before.

The vision of a safer future was conveyed to minority groups, including the LGBTI+ community. In this context, Fernández spread an idea of Argentina where everyone could "be themselves" and "love whomever they wanted" (Fernández 2020, June 28). Moreover, he promised a better future for the whole nation, provided more investment in public education and knowledge development (Fernández 2020, July 16). All those arguments and declarations were to create the image of a leader who fought for a better future for everyone. Argentina was to become a prosperous country and home to everyone.

The presidents used the golden age myth but to a limited extent. Although its major components were the future, recovery, and promises, they consistently avoided presenting specific recovery plans. Their visions of a better future served only to empha-

size the need for change and justify that the current situation was undesired. The only way to improve it was to act together and to be willing to make sacrifices. The presidents' images of the future were a response to and depended on the current societal expectations. Duda and Fernández promised the people to return to a pre-pandemic state, which began to be presented as desirable and safe in new circumstances.

## 5. CONCLUSION

Duda and Fernández took advantage of the whole range of political myths to justify and explain government policies. The scope and strength of enemies heightened the sense of threat. While the Polish president pointed to potential threats from Russia, the Argentinian focused on external enemies from the UK. Moreover, the presidents warned against the people that opposed the governments and hampered social change. Any individual or group of people who did not comply with the presidents' and government decisions or the Covid-19-induced restrictions acted to the people's detriment. Duda and Fernández had in common that they did not directly indicate who exactly was a threat or behaved contrary to the public interest and order. An enemy present, but elusive, not fully exposed, increased social vigilance, thus generating a general reduction in social trust in other people and democratic institutions. At the same time, the conspiracy myth fed the crisis-determined socio-psychological insecurity, disorientation, and fear that were to be exploited by the presidents.

The inevitable consequences of hostile actions gave rise to the need to recognize and eliminate damages and rectify the situation. Both heads of state used the saviour myth to present themselves as just and strong leaders who cared for public interest and social justice. Together with the governments, they stood up for their nations. Only they, the state actors, had the necessary knowledge, power competencies, and institutional background to fight the coronavirus pandemic. This statement's tone was reinforced by messages about international recognition of the presidents' actions during the fight against the coronavirus crisis. The self-creation of authority served to build national pride in the ruling camp. A vital element of the savior creation strategy was to convince the audience

of the non-alternative nature of socially unpopular solutions such as anti-democratic restriction of civil rights and freedoms.

The myth of unity served the presidents to show that the exceptional national communities could unite to overcome difficulties. The common enemy, community objectives, national identity, collective memory, patriotism, and successes in limiting the pandemic's effects made the nations strong. Although the pandemic destroyed the existing standards of living, national cohesion remained intact. They constituted a union around a specific goal to follow the state-determined restrictions, which allowed the communities to survive. A potential internal conflict could be destructive because it would break down unity and prevent common goals.

Both Duda and Fernández referred to the golden age myth. While the critical thing for Duda was to complete the so-called good change based on the social and political reform program, Fernández highlighted the need for unity to achieve financial stability and economic growth. What they both had in common was a vision of a just and prosperous future, which, however, required forfeiting particular interests or views in the name of joint actions.

Duda and Fernández referred to formulations and arguments characteristic of populism. They sought to legitimate government policies by using anti-establishment appeals and plebiscitarian linkages. However, while Fernández is a part of the long tradition of Argentine populism, especially Peronism and Kirchnerism, Duda's populist attitude is a relatively new phenomenon on the Polish political scene. Despite this difference, they used almost the same, albeit slightly varied, political mythology during the pandemic. Duda and Fernández created a narrative according to which anyone who did not comply with the imposed restrictions (conspiracy myth) prevented the return to the pre-epidemic state (golden age myth) and stood in the way of national unity (unity myth). The undefined internal and external enemies (conspiracy myth), which threatened the people were to be defeated by governments acting for Poles' and Argentinians' public good in times of crisis (saviour myth).

## REFERENCES

At/mf. 2020, December 27. "After 300 Days of Pandemic We Can Think about Return to Normality – PM." Available at https://www.thefirstnews.com/article/after-300-days-of-pandemic-we-can-think-about-return-to-normality---pm-18670.

Axford, Barrie. 2021. *Populism Versus the New Globalization*. London: SAGE.

Barr, Robert R. 2009. "Populists, Outsiders and Anti-establishment Politics." *Party Politics* 15(1): 29–48.

Baud, Michiel. 2013. "State and Society in Argentina: Change and Continuity under the Kirchners."*European Review of Latin American and Caribbean Studies* 95: 114–123.

Bauer, Michael W. and Stefan Becker. 2020. "Democratic Backsliding, Populism, and Public Administration." *Perspectives on Public Management and Governance* 3(1): 19–31.

Bill, Stanley,andBen Stanley. 2020. "Whose Poland Is It to Be? PiS and the Struggle between Monism and Pluralism."*East European Politics* 36(3): 378–394.

Bowen, Glenn A. 2009. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal* 9(2): 27–40.

Chmielewska-Szlajfer, Helena. 2018. "Opinion Dailies versus Facebook Fan Pages: The Case of Poland's Surprising 2015 Presidential Elections."*Media, Culture & Society* 40(6): 938–950.

de Aragão, Suéllyn Mattos, Ewerson Willi de Lima Pack and Marcelo Paulo Maggio. 2020. "Covid-19 Como Impulsionadora Do Constitucionalismo Abusivo." *Direito Público* 17(94): 50–74.

Duda, Andrzej. 2020. March 9. Szanowny Panie Ministrze. Available athttps://twitter.com/AndrzejDuda/status/1237066492748992512.

Duda, Andrzej. 2020. March 11. Mając na uwadze. Available athttps://twitter.com/AndrzejDuda/status/1237686214255394817.

Duda, Andrzej. 2020. March 15. Wszystkich, którzy. Available athttps://twitter.com/AndrzejDuda/status/1239227299226058752.

Duda, Andrzej. 2020, March 17. Ostatnie dni pokazały. Available athttps://twitter.com/AndrzejDuda/status/1239895366314741761.

Duda, Andrzej. 2020, March 26. Bariery usunięte. Na. Available athttps://twitter.com/AndrzejDuda/status/1243149138042200067.

Duda, Andrzej. 2020, March 28. Odbyłem dobrą rozmowę. Available athttps://twitter.com/AndrzejDuda/status/1243885708038803456.

Duda, Andrzej. 2020, April 6. Każdy z nas. Available athttps://twitter.com/AndrzejDuda/status/1247116882768994305.

Duda, Andrzej. 2020, April 20. Precz z manipulacją. Available at https://twitter.com/AndrzejDuda/status/1252346158208311301.

Duda, Andrzej. 2020, May 12. Jak widać dobre. Available athttps://twitter.com/AndrzejDuda/status/1260154309871906816.

Duda, Andrzej. 2020, May 14. W tych dniach. Available athttps://twitter.com/AndrzejDuda/status/1260913596378353665.

Duda, Andrzej. 2020, May 19. Dziękuję Przedsiębiorcom. Available at https://twitter.com/AndrzejDuda/status/1262767001316937728.

Duda, Andrzej. 2020, May 25. Przed chwilą rozmawiałem. Available at https://twitter.com/AndrzejDuda/status/1264863195187097601.

Duda, Andrzej. 2020, May 27. W liście do. Available at https://twitter.com/AndrzejDuda/status/1265652284308033536.

Duda, Andrzej. 2020, May 29. Salon fryzjerski w. Available athttps://twitter.com/AndrzejDuda/status/1266394378446274566.

Duda, Andrzej. 2020, May 30. Przekop Mierzei Wiślanej. Available at https://twitter.com/AndrzejDuda/status/1266709501312487426.

Fernández, Alberto. 2020, March 5. Desde el Estado. Available athttps://twitter.com/alferdez/status/1235363912666820610.

Fernández, Alberto. 2020, March 5. Agradezco al Consejo. Available athttps://twitter.com/alferdez/status/1235363715672936448.

Fernández, Alberto. 2020, March 17. Hay personas especulando. Available athttps://twitter.com/alferdez/status/1240038475312791559.

Fernández, Alberto. 2020, March 21. Como Comandante en. Available at https://twitter.com/alferdez/status/1241160933344530434.

Fernández, Alberto. 2020, March 22. Y a los. Available athttps://twitter.com/alferdez/status/1241519436554797056.

Fernández, Alberto. 2020, March 26. Durante una videoconferencia. Available athttps://twitter.com/alferdez/status/1243206833948504064.

Fernández, Alberto. 2020, March 28. En Whatsapp. Available athttps://twitter.com/alferdez/status/1243976597889331200.

Fernández, Alberto. 2020, April 1. El 1° de. Available at https://twitter.com/alferdez/status/1245331593809596419.

Fernández, Alberto. 2020, April 27. Un día como. Available athttps://twitter.com/alferdez/status/1254827825175187461.

Fernández, Alberto. 2020, April 29. Lamento la conducta. Available athttps://twitter.com/alferdez/status/1255581495055581187.

Fernández, Alberto. 2020, May 25. Este 25 de. Available athttps://twitter.com/alferdez/status/1264943876273471488.

Fernández, Alberto. 2020, May 26. La pandemia nos. Available at https://twitter.com/alferdez/status/1265339361127735299.

Fernández, Alberto. 2020, June 10. En el Día. Available at https://twitter.com/alferdez/status/1270702516024545282.

Fernández, Alberto. 2020, June 28. En el Día. Available athttps://twitter.com/alferdez/status/1277307750276620288.

Fernández, Alberto. 2020, July 16. Como siempre dijimos. Available at https://twitter.com/alferdez/status/1283522721675182087.

Flood, Christopher. 2013. *Political Myth*. London and New York: Routledge.

Fomina, Joanna, and Jacek Kucharczyk. 2016. "The Specter Haunting Europe: Populism and Protest in Poland."*Journal of Democracy* 27(4): 58–68.

Galston, William A., James Davison Hunter, and John M. Owen. 2018. *Anti-Pluralism: The Populist Threat to Liberal Democracy*. New Haven and London: Yale University Press.

Girardet, Raoul. 1987. *Mitos e Mitologias Politicas*. Sao Paulo: Companhia das Letras.

Harper, Jo. 2019. "Argentina Clings to Wreckage of Macri Economics." Available athttps://www.dw.com/en/argentina-clings-to-wreckage-of-macri-economics/a-51803018.

Huber, Robert A. and Christian H. Schimpf. 2016. "Friend or Foe? Testing the Influence of Populism on Democratic Quality in Latin America." *Political Studies* 64(4): 872–889.

Jasiewicz, Krzysztof. 2008. "The New populism in Poland: The Usual Suspects?"*Problems of Post-communism* 55(3):7–25.

Mmj/lw. 2020. May 26. "Minister warns against Russian attempts to stop Vistula Spit canal." Available at https://polandin.com/48226920/minister-warns-against-russian-attempts-to-stop-vistula-spit-canal.

Moskwa, Wojciech and Rodney Jefferson. 2020. "Poland's Populist Turn." Available at https://www.bloomberg.com/quicktake/poland.

Muno, Wolfgang. 2018. "Populism in Argentina." In *Populism around the world: A Comparative Perspective*, edited by Daniel Stockemer, 9–26. Cham: Springer Nature Switzerland.

Olzi, Michele. 2020. "Homo Europaeus. Il Mito Simbolico-politico Dell'eroe Risorgimentale: Homo Europaeus." *Rivista Europea* 1: 137–155.

Pytlas, Bartek. 2021. "Party Organisation of PiS in Poland: Between Electoral Rhetoric and Absolutist Practice."*Politics and Governance* 9(4): 340–353.

Rezmer-Płotka, Kamila. 2021. "Contentious Politics in Defense of Neo-Militant Democracy in Poland: The Rationale Behind Fighting a Quasi-Militant Democracy." *HAPSc Policy Briefs Series* 2(1): 24–29.

Ruth, Saskia Pauline. 2018. "Populism and the Erosion of Horizontal Accountability in Latin America." *Political Studies* 66(2): 356–375.

Sadurski, Wojciech. 2019. *Poland's Constitutional Breakdown*. New York: Oxford University Press.

Schmitt, Olivier. 2018. "When are Strategic Narratives Effective? The Shaping of Political Discourse through the Interaction between Political Myths and Strategic Narratives." *Contemporary Security Policy* 39(4): 487–511.

Seman, Ernesto. 2020. "Argentina: A Tentative Case for Democratic Populism." Available athttps://nacla.org/news/2020/01/29/argentina-democratic-populism-peronism.

Skrzypek, Maciej. 2021. "Democratic Backsliding in Poland on Example Draft Amendments in Electoral Code During the COVID-19 Pandemic." *Polish Political Science Yearbook* 50(2): 37-50.

Stoica, Dragos. 2014. "Do Modern Radicals Believe in Their Mythologies? A Comparison between the Muslim Brotherhood and the Legion of the Archangel Michael in the Light of Four Political Mythologies." *Politics, Religion & Ideology* 15(1): 103–135.

Stoica, Mihnea-Simion. 2017. "Political Myths of the Populist Discourse." *Journal for the Study of Religions and Ideologies* 16(46): 63–76.

Susanto, Nanang Hasan. 2019. "Politicization of Religion and the Future of Democracy in Indonesia in Populism Theory." *Journal for the Study of Religions and Ideologies* 18(54): 139–158.

Sviličić, Nikša and Pero Maldini. 2014. "Political Myths and Totalitarianism: An Anthropological Analysis of Their Causal Interrelationship." *Collegium Antropologicum* 38(2): 725–738.

Ungureanu, Camil and Alexandra Popartan. 2020. "Populism as Narrative, Myth Making, and the 'Logic' of Political Emotions." *Journal of the British Academy* 8(1): 37–43.

Wainberg, Jacques Alkalai. 2020. "Populismo, Emoção e a Corrupção da Linguagem." *Intexto* 49: 72–87.

Zglobiu, Raluca Octavia. 2017. "Key Aspects of Myths and Metaphors in Romanian Political Discourse from a Cognitive Linguistic Perspective." *Journal of Media Research – Revista de Studii Media* 10(29): 114–121.*

* Manuscript was received on June 19, 2021 and the paper was accepted for publishing on October 30, 2021.

UDC: 321.7:141.7
DOI: https://doi.org/10.22182/spm.7442021.2
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 33-58

***Marko Novaković****

*Institute of International Politics and Economics, Belgrade*

***Bojan Perović*****

*University of Hamburg, Germany*

# UNDERSTANDING DELIBERATIVE DEMOCRACY AND ITS CONSTRUCTIVE CRITICISM***

## Abstract

With all its flaws, a deliberative democracy presents a very important democratic concept – a concept that needs to be improved, but also a concept that needs to be understood. This article aims to present basic concepts of both deliberative democracy and its critiques, providing an updated basic for further discussion, development, and evolution of the concept. Reviewing all relevant concepts, streams, and critics is a demanding and time-consuming task, but hopefully, this article will be able to help researchers as a starting point for the research of this impressive concept – a concept that certainly is not flawless but its importance is beyond doubt.

**Keywords**: Deliberative democracy, equality, inclusion, mutual respect, criticism, Habermas, Rawls.

* marko@diplomacy.bg.ac.rs

** perovicbojan1@gmail.com

*** The paper presents findings of a study developed as a part of the research project "Serbia and Challenges in International Relations in 2021", financed by the Ministry of Education, Science, and Technological Development of the Republic of Serbia, and conducted by the Institute of International Politics and Economics, Belgrade.

## INTRODUCTION AND BACKGROUND

Deliberative democracy has often been described as a promising alternative solution to representative democratic models. If implemented successfully, deliberative democracy is believed to have the potential to create a new platform. What kind of platform? That platform implies a forum in which citizens discuss ideas in a respectful manner based on shared information. The deliberative process as a channel of open and unbiased deliberation could produce decisions, which are based only on arguments, while at the same time excluding manipulative forces such as the media or populist movements. Moreover, the advantages of deliberative democracy should contain the inclusion of civilian knowledge, better communication between citizens and decision-makers, and effective mediation of disputes.

Although deliberative democracy is a relatively recent development in democratic theory, core ideas and philosophic origins can be traced much earlier. Naturally, the principles of deliberation and categorization are rooted in ancient Athenian democracy. It is often depicted as a picture where Athenians are debating both inside and outside of the Assembly, for example in a famous Raphael's "The School of Athens". The philosophic origins of deliberative democracy emerged in particular through the idea of *general will* promoted by Jean-Jacques Rousseau as an ideal of citizens rising above their differences when addressing public issues. The general will as an idea served as an inspiration for some of the leading theorists of deliberative democracy such as Joshua Cohen and John Rawls. Although Kant's work certainly cannot be characterized as trusting in ordinary citizens' competencies, his work encompasses some of the central ideas surrounding deliberative democracy such as the public use of reason, and dilemmas on freedom and coercion. Some of the most influential deliberative democrats are unequivocal about the influence of John Stuart Mill as a source of deliberative democracy pointing to his commitment to the maximum amount of freedom to talk, criticize, and argue in the public sphere, while for example Elster, points that deliberative democracy has its actual revival (Elster 1998, 1-5).

## DELIBERATIVE DEMOCRATIC THEORY

Deliberative democratic theory is a normative theory that over the last few decades became the most dominant concept in current democratic theory. Other than the literature on distributive justice, there may be no recent literature in political philosophy larger than the one on deliberative democracy (Hardin 1999, 112).

The deliberative democratic theory emerged from two main traditions, often associated with the Rawlsian liberal tradition and the Habermasian critical theory tradition. Although there is a general consensus that Rawls's and Habermas's legacies in the field of deliberative democracy are decisive, many argue that it would be a mistake to think that the entire theoretical field was derived solely from the work of these two thinkers. The distinction between "Rawlsian" or "Habermasian" approach is indeed important due to the differences between the two, shown in particular by the direct confrontation between them in the Journal of Philosophy (Habermas 1995; Rawls 1995). However, it would be misleading to consider their influence over other thinkers in the narrow terms of "schools" that passively reproduce the teachers' lessons. Many authors worked within the theoretical framework offered by Rawls (Gutmann and Thompson) and Habermas (e.g. Benhabib, Chambers, Steiner), but emerged with original ideas (Floridia 2018, 15). According to Rostbøll, the main difference between Habermasian critical theory and Rawlsian political liberalism is their different understandings of freedom (Rostbøll 2008, 8-9). Yet, Elster highlights that although distinctive, arguments by both sides have a common core: political choice, to be legitimate, must be the outcome of *deliberation about ends among free, equal, and rational agents* (Elster 1998, 5). In any case, both Jürgen Habermas and John Rawls, liberal theorists and critical theorists of the late twentieth century published their major works (though from very different perspectives) identifying themselves as deliberative democrats and granting prestige to the theory of deliberative democracy. Furthermore, their works (Faktizität und Geltung and Political Liberalism), directly contributed to establishing the theoretical foundation of this idea of democracy.

The theory of deliberative democracy proposes actions in which democracy can be strengthened and criticize institutions that do not live up to the normative standard. The departure from its predecessors like aggregative or realist models of democracy may be best observed in the replacement of voting-centric to talk-centric theory (Chambers 2003, 308).

The famous term "deliberative turn" in democratic theory used by Dryzek marked that "democratic legitimacy came to be seen in terms of the ability or opportunity to participate in effective deliberation on the part of those subject to collective decisions (Dryzek 2000, 5) and the focus of democracy shifted to "a way of thinking about politics which emphasizes the give and take of public reasoning between citizens, rather than counting the votes or authority of representatives" (Parkinson 2006, 1). The theory of deliberative democracy suggests that the essence of democratic politics does not lie in voting and representation but in deliberation that should be a cause of collective decision-making. This theory turns focus to the debate among citizens in order to make reasoned decisions, regardless if debates are between groups of ordinary citizens, in the legislature, or the wider public sphere.

Moreover, the deliberative democratic theory has a reflective aspect as well and stresses the importance of the process itself, whereby "individuals are amenable to changing their judgments, preferences, and views during the course of their interactions, which involve persuasion rather than coercion, manipulation or deception" (Dryzek 2000, 1). That means that deliberative democracy also aims at making citizens more aware of the preferences, perspectives, and interests of others when they form their opinions.

Deliberative democracy started as a theory of democratic legitimacy and legitimacy is one of those eternal issues in thinking about democracy that never satisfies those who worry about it. The theory of deliberative democracy gains its legitimacy through equal and non-coercive deliberation between affected individuals, law, and public policy. Dryzek portrayed it perfectly "deliberative democracy is, after all, the best example of what Gallie (1956) calls an 'essentially contested concept'" (Dryzek 2012, 21). And our analysis concurs and will demonstrate this.

In a myriad of theories of deliberative democracy, we single out one example taking the nexus of democracy and freedom as a determining factor. According to Rostbøll, "as a theory, deliberative democracy is a regulative ideal that in terms of dimensions of freedom suggests what we should aspire to and in light of which we can see the deficiencies of present conditions and institutions. But it is only in the actual practice of public deliberation, which attempts to mirror the ideal, that we fully develop and understand the different dimensions of freedom. Deliberative democratic practices do not merely aim at protecting existing freedoms but also at interpreting and justifying the freedom that should be protected. In addition, they aim at doing so in a way that itself is not coercive but that respects the freedom of each and everyone not merely in a negative manner but also positively as participants in a common enterprise*"*(Rostbøll 2008, 4). In an attempt of classifying deliberative models within the theory of deliberative democracy, one encounters rich theoretical history. Thus, only provisional distinctions may be drawn and those categories are oversimplified and they exclude a large number of important theorists of deliberative democracy. The first-generation of deliberative democrats include Habermas, Rawls, and Cohen. Those authors had different focuses but referred to ideal conditions often resulting in a consensus (Elstub 2010, 293).

The second generation of deliberative democrats attempted to differ from the first generation theories by recognizing features of complexity. They took into account private preferences, deep disagreement, other forms of communication which resulted in the relaxation of the strict consensus requirement. Elstub points out "by offering new and distinct interpretations of reason-giving, preference change, consensus and compromise, and applicable forms of communication, they, therefore, made the theory of deliberative democracy more plausible and practically attainable, enabling a more pronounced focus on institutionalization" (Elstub 2010, 298). Dryzek, Bohman, Young, Goodin, Gutmann, and Thompson among others (such as Baber, Bartlett, O'Flynn, and Parkinson) belong to the second generation although it needs to be stressed that their common share is a departure from the ideals of the first generation while they had developed different models (Bächtiger et al. 2010, 44).

Finally, third-generation deliberative democrats are motivated by their desire to find how these second-generation models might be institutionalized in modern and complex societies. Ackerman, Fishkin, Hendriks, Mansbridge, Goodin, Parkinson with their differences may be categorized in this group. Disagreements in the theory of deliberative democracy are obvious even in the formulations used to describe the deliberative model – depending on which one is favored. Hence, the following phrasing is used communicative democracy (Iris Marion Young); politics of presence (Anne Philips); dialogical democracy (Robert B. Talisse); discursive democracy (John Dryzek); an epistemic conception of deliberative democracy (Jose Luis Marti); proceduralist-deliberative democracy (Jürgen Habermas and Seyla Benhabib); substantial deliberative democracy (Joshua Cohen) and so on.

However, at this point of our analysis, our focus is to continue tackling the essence of deliberative democracy theories, their common denominator, rather than focusing and elaborating on distinctive differences among theorists and theoretical approaches. Chamber emphasizes that theorists of deliberative democracy seek to provide answers to the question such as how does or might deliberation shape preferences, moderate self-interest, empower the marginalized, mediate difference, further integration, and solidarity, enhance recognition, produce reasonable opinion and policy, and possibly lead to consensus? (Chambers 2003, 308).

Furthermore, deliberative democratic theory critically explores standards, quality, the core essence, and the rationality of the arguments and reasons brought to defend policy and law. The deliberative democratic theory incorporates a profound reading of fundamental matters regarding rights, popular sovereignty, and constitutionalism. This last is most visible when deliberative democratic theory meets law and constitutionalism (Chambers 2003, 309). Finally, although the theory of deliberative democracy is now the most vital field of political theory, it gained distinguished function in other areas like law, international relations, comparative politics, public administration, psychology, ethics, clinical medicine, planning, policy analysis, ecological economics, sociology (especially social movement studies), environmental governance, communication studies, etc (Kuyper 2018, 2).

In the following chapter, we will focus on the above-mentioned common denominator – the elements of deliberative democracy that have common ground, although this is a hard task given the number of different approaches. A group of the most prominent deliberative democrats, including Andre Bächtiger, John S. Dryzek, Jane Mansbridge, Mark Warren, and others, have recently published *The Oxford Handbook of Deliberative Democracy*, the most comprehensive treatment of deliberative democracy to date with the hope that this piece will provide a landmark statement. The authors agreed to define deliberative democracy *as any practice of democracy that gives deliberation a central place*. In the same fashion, they define deliberation itself minimally to mean *mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern*. (Bächtiger et al. 2018, 2).

## FOUNDATIONAL ELEMENTS OF DELIBERATIVE DEMOCRATIC THEORY

### Mutual respect

All theories of deliberative democracy endorse mutual respect as a central component. Although the search for its meaning has caused differences, there exists a general consensus that mutual respect is a core element of deliberative democracy. Addressing the exchange between Habermas and Rawls, Larmore lamentates that in order to respect another person it is necessary that coercive or political principles are as justifiable to that person as they they are to us (Larmore 1999, 608). The justifiability of the component is tested in deliberation.

For Gutmann and Thompson, mutual respect can achieve its goal only if it can be incorporated into practices that guide actual political life. They stress the need for strategies that would promote mutual respect in the long term. For them, "mutual respect is a political virtue that supports reciprocity, and as such, it is shaped by the political institutions in which it is practiced (Gutmann and Thompson 1998). Building upon the work of Gutmann and Thompson, Dryzek holds that understanding mutual respect

may have an impact in deliberating deep moral conflicts on issues such as abortion (Dryzek 2000, 17). Smith considers that mutual understanding grounds democratic legitimacy and requires citizens to be open to others' perspectives and for the transformation of their own preferences (Smith 2003, 59-60).

For Christiano, mutual respect is essential. Public deliberation, according to him, may have inherent value to the extent that the presence of public deliberation is an expression of a kind of mutual respect among citizens in the society (Christiano 1997, 251). In discussing European diversity, post-national identity, and deliberative justification, Eriksen thinks that citizens should be seen as bound to each other by subscription to democratic procedures and human rights. This type of identity is founded on mutual respect which is a constitution that holds people together (Eriksen 2009, 40).

Fishkin stresses the importance of an atmosphere of mutual understanding for fruitful dialogue, especially for divided societies, in assessing the quality of deliberations (Fishkin 2011, 161). O'Flynn came to the same conclusion in exploring deliberative democracy potential in divided societies (for example, the experience of the South African Truth and Reconciliation Commission) (O'Flynn 2006, 136). Valadez also opined that deliberative democracy is particularly appropriate for multicultural societies as public deliberations based on this principle will enhance civic health by building social trust and even more so if there is a history of oppression and discrimination in that particular society (Valadez 2001, 36). In practice, mutual respect in deliberation shall be seen as active listening and the best effort to understand the meaning of a speaker's statements. This is more important than viewing statements as objects to dismiss, destroy, or which are manipulative. Practical application may not be easy especially in interactions between members of dominant groups with members of historically subordinated groups. However, mutual respect aims in understanding the expressions, narratives, problems, and positions of subordinate groups. André Bächtiger et al. highlights that "respect in interaction is, in short, an unchallenged standard of good deliberation" (Bächtiger et al. 2018, 5).

## Absence of coercive power

Another ideal in deliberative democracy that achieved the core element status is the ideal of the absence of coercive power in deliberation. It gained importance in the early work of Habermas but later became even more central. The coercive power understood as the threat of sanction or the use of force, shall not play a role in deliberation (Habermas 1962, 202).

At the heart of theories of deliberative democracy is the idea that "deliberation promotes a kind of collective communicative power which neutralizes coercive forms of power such as domination and strategic manipulation" (Hendriks 2009, 174). A deliberative discussion is uncoerced if none of the deliberators face either implicit or explicit threats from others. In deliberative theory, non-coercion plays an important normative role. Presenting the arguments, preferences, judgments, and political opinions freely is the only way for the deliberative process to be truly deliberative. As deliberation is grounded on reason-giving, listening, and learning about each other's arguments and beliefs this process will be hampered if deliberators are not able to present their judgments free in public. The same applies to minorities in deliberative forums.

Chappell stresses that lack of coercion is such a fundamental ideal of democratic politics that it is often taken for granted and thus it is important to ensure that institutional arrangements minimize coercion as much as possible. Secret ballots were introduced exactly for this reason. In deliberative democracy, such secrecy is impossible as the nature of discussion in politics ensures that individuals' publicly offered judgments will be known to all participants. Publicity plays a crucial role in deliberative democracy, as it is the basis on which deliberators are required to justify their judgments. But in the case of deliberation, publicity plays a meaningful role only if it is set against a background of non-coercion (Chappell 2008, 98-100). Curato et al. notes that the rejection of coercive power is so fundamental for the theory of deliberative democracy as deliberative democracy was built on this rejection (Curato et al. 2019, 28).

Naturally, deliberative democrats are aware of the fact that there is the impossibility of removing coercive power from any

deliberative situation but that aspiration remains central to the deliberative enterprise. Mansbridge et al. conclude that the "regulative ideal of absent power in deliberative interactions prescribes reducing to a practical minimum the threat of sanction and the use of force against another's interests"(Mansbridge et al. 2010, 82).

Therefore, Bächtiger et al. consider that particular deliberative institutions may be judged by how closely they approach this ideal (Bächtiger et al. 2018, 6). We have already noted that this consensus of the absence of coercive power is a consensus claimed by prominent deliberative democrats although they have their own differences. The amount of criticism towards this element is massive, coming not only from opponents but also from two intellectual traditions: the tradition of realpolitik and another from feminist and cultural critique.

## Equality

The principle of equality has been modified over time although it still skirts the principle of mutual understanding, inclusion, and equality of communicative freedom. Earlier formulations such as "equal voice" or "equal influence" were critically examined and revisioned. There is no consensus within deliberative democrats on how equality in deliberation should be formulated.

Because earlier formulations suggested the equality of outcomes means that each participant has an equal effect on the deliberative outcome, Knight and Johnson opinionated that deliberative democracy requires a particular, relatively complex sort of equality- an *equal opportunity of access to political influence* (equal opportunity of political influence). An ideal of equal influence would give the same weight to both good and bad arguments, but in good deliberation, one should change one's mind under the influence of a good argument. The authors point out that in practice, a fully achieved ideal of equal opportunity to influence would require "equality of resources," including "material wealth and educational treatment in order to "ensure that an individual's assent to arguments advanced by others is indeed uncoerced"(Knight and Johnson 1997, 281).

For Bohman, the ideal in deliberative democracy is the so-called *equality of effective social freedom*, understood as an equal capability for public functioning (Bohman and Rehg 1997).

## Inclusion

Inclusion is one of the most fundamental values analyzed in deliberative literature. As deliberative democracy expects citizens to interact with each other in public deliberations, this interaction creates tension between inclusion and influence in a sense that inclusion would want citizens to be included on an equal footing while on the other hand, it is impossible to expect them to have the same influence in public deliberations. Not only that the theory of deliberative democracy requires citizens to be included (to participate and have an opportunity to present their arguments), one of the primary goals of the theory of deliberative democracy is to include minorities (Barber 2003).

In deliberative democracy, inclusion is crucial when the deliberative group is created and another aspect is inclusion during deliberation itself. In her book *Inclusion and Democracy*, Iris Marion Young distinguishes external ("the most obvious forms of exclusion are those that keep some individuals or groups out of the fora of debate or processes of decision-making, or which allow some individuals or groups dominative control over what happens in them") and internal ("less noticed are those forms of exclusion that sometimes occur even when individuals and groups are nominally included in the discussion and decision-making process") inclusion (Young 2002, 52-53).

For deliberative democracy to be truly inclusive, there are two components to be fulfilled: firstly, the process of selecting deliberators must be inclusive, and secondly, all citizens have to have the practical ability to take part in the deliberative process. Achieving inclusion is certainly one of the most attractive features of the theory of deliberative democracy.

## Reason-giving

The ideal of reason-giving has also come under scrutiny especially in the work of early theorists such as Jürgen Habermas (although Habermas himself later argued that feelings have a strong function) and Joshua Cohen, for being too focused on the kind of rational argumentation one might find in an academic seminar. Joshua Cohen defined the relevant ideal as requiring that deliberative outcomes should be settled only by reference to the "reasons" participants offer. Modern interpretations of his work claim that "he meant to include in that concept a set of fuller considerations" (Bächtiger et al. 2018, 5).

The emotions are hard to be excluded in deliberation and legal philosopher Nussbaum positively regards the role of emotions in deliberation and particularly points out compassion (Nussbaum 2003, 412). At the same time, empathy was also regarded as playing an important role within deliberation.

Others such as Young proposed that deliberative democrats need to include many important kinds of human communication other than reason-giving, including "testimony" (stating one's own perspective and experience in one's own words) "greetings" (explicit mutual recognition and conciliatory caring) "rhetoric" (persuasive speaking that can involve humor or arresting figures of speech), and "storytelling" (which can back prescriptions or communicate understandings based on personal experience rather than the abstract argument). However, caution needs to be present. Young recognizes notable examples of manipulative uses of each of these modes of communication which are certainly not hard to find. For example, it is possible to exchange formal greetings with someone at the beginning of a meeting and then ignore that person afterward (Young 2002). These additions may be of particular significance to members of relatively marginalized groups and contemporary deliberative theorists have accepted these criticisms "by expanding the deliberative ideal of eliciting and presenting "reasons" to an ideal of eliciting and presenting "relevant considerations," which may have a more emotional than the purely rational base"(Bächtiger et al. 2018, 6).

## Consensus and common good

The consensus ideal went through great revision. Among deliberative democrats, an emphasis on consensus is in connection mainly with Habermas and Cohen. Jürgen Habermas was the most important theorist to stress consensus as to the goal of deliberation. Joshua Cohen early on wrote that "ideal deliberation aims to arrive at a rationally motivated consensus"(Cohen 1989, 19).

Later, theorists argued for workable agreement (Sunstein) or as Dryzek puts it, a regulative ideal, an aspiring one that could actually never be achieved. Dryzek moreover stresses that consensus is not essential nor it is central to the theory of deliberative democracy. As long as different participants accept a course of action for different reasons (these reasons have sustained deliberative scrutiny) they could easily be transcribed to the theory of deliberative democracy (Dryzek 2000, 48). In his later work, Dryzek discusses free and reasoned meta-consensus which a deliberative system can generate. In short, meta-consensus is an "agreement on the acceptable range of contested discourses" (Dryzek 2010, 108).

It could be argued that contemporary theorists rarely endorsed consensus as a requirement and in different forms accepted that relaxing consensus is the way to go. They have seen deliberation as plural and that voting, negotiations, working agreements are all part of the decision-making process in deliberative democracy.

Similarly, earlier works (Habermas but also Sunstein, Cohen, Elster) favored common good in public deliberations as central in their discussions. This idea somehow contradicts modern complex societies. Young finds that the idea of the common good or common interests will often serve as a means of exclusion as the ideal of the common good will likely express the interests of the dominant groups while ignoring the interest of minorities. Common good, in the traditional view, also has the potential to limit deliberation and thus silence different perspectives (Young 2002, 43).

Other contemporary deliberative democrats, including Mansbridge, Bohman, Chambers, Lafont, Manin, and others recognize the place of self-interest in deliberative democracy giving an example that judges must refrain from self-interest when they decide for

others while in deliberation it needs to be noted that deliberators participate not only for others but for themselves. Although deliberative democracy, according to those authors, shall genuinely seek for common good, including self-interest in the theory of deliberative democracy not only embraces diversity but decreases the chances of exploitation (Mansbridge et al. 2010, 72-73).

## Other elements

Elements of publicity, accountability, sincerity is also part of the traditional ideal of deliberative democracy. These elements as well were challenged and suggestions for revision are made. For example, many theorists (Warren, Mansbridge, Bächtiger, Thompson, and others) challenged the views of Kant and Habermas concerning publicity as a deliberative ideal, claiming that publicity is not appropriate for all deliberations, particularly those that occur within highly strategic contexts like legislatures (Warren et al. 2016).

Similarly, traditional views of good deliberation have emphasized the importance of sincerity among deliberators, but more recent theorists have pointed out that some insincerity is tolerable and even preferable if aims at generating mutual respect necessary for deliberation (greeting, compliments) (Warren 2006, 176). Deliberative democrats, like Markovits, argue that deliberative democracy would do itself a favor to relax the "sincerity norm" (the current trend "oversimplifies human psychology, ignoring the possibility of multiple and complexly related intentions and denigrates "rhetorical" forms of speech") (Markovits 2006, 250). Thompson also holds that "the appeal beyond self-interest does not have to be sincere if it is plausible on the merits- actual arguments are what counts, not motives"(Thompson 2008, 504). Bächtiger, Niemeyer, Steenbergen, Steiner, and Neblo share the view that the full sincerity of all participants is an unachievable and untraceable ideal, and also that in the end it what counts are outcomes of deliberation. Certainly, a high degree of trust is needed, thus the stress on full sincerity is only relaxed, not abandoned (Bächtiger et al. 2010, 33-34).

## CRITICISM

Deliberative democrats like to defend their positions by pulling out an argument that if a measure of the success of a political theory is the number of critics it attracts, then the theory of deliberative democracy is quite successful. Indeed, we need to acknowledge that the number of critics towards deliberative democracy from literature and practice is massive and we will situate critics along the following lines: that deliberative democracy is idealistic in a sense that ignores power and politics; erroneously aims at consensus; misunderstands human motivations and the limits to the cognitive capacities of ordinary citizens; too rational, excluding the informal social and speaking styles typical of many marginalized groups.

*-Deliberative democracy ignores reality, power, and interests (too idealistic)*

Influential scholars, Christopher Achen and Larry Bartels, in their *Democracy for Realists*, have recently rejected deliberative democracy (stating that this model has received a great deal of attention) as irrelevant when it comes to "understanding democratic politics on a national scale"(Achen and Bartels 2017, 2).

Professor Ian Shapiro published his famous piece "Enough of deliberation: Politics is about interests and power"(Shapiro 1999), and in discussing how effective Amy Gutmann and Dennis Thompson's deliberative model would be, he emphasized that deliberative democracy ignores conflicting interests and powerful players in politics which makes deliberative democracy too idealistic and not sensitive enough to the reality. Powerful players are not willing to participate in a deliberative process, they will rather find a strategy in order to achieve their interests (Shapiro 1999, 34). Shapiro thinks that hopes in deliberative democracy in bridging the differences "proved naive" (Shapiro 1999, 31-32).

Pincione and Teson dissent deliberative democracy and their book offer a comprehensive critique of theories of deliberative democracy. Authors claim that deliberative democracy is attractive because it appears as "the only alternative to various undesirable things" as it excludes elitist conceptions of politics and rejects political irrationalism by placing faith in rational argument and

thus gives the illusion that everyone's opinion counts and that deliberative democracy have potential to enhance our beliefs, decisions based on them and in that sense furthers our understanding of society. They argue that no argument in deliberative practices of liberal democracy (let alone illiberal or non-democratic states), "can overcome citizen's propensity to believe and say things at odds with the most reliable propositions of social science". They diagnose what they call a "discourse failure" theory which consequently leads them to the conclusion that contemporary deliberative democracy can be seen as an "unsuccessful attempt to vindicate on symbolic or moral grounds, the forms that discourse failure takes on in public political deliberations" while on the other hand, they hold that deliberative practices "cannot be saved even on non-epistemic grounds, such as social peace, impartiality, participation, and equality"(Pincione and Tesón 2006).

Prominent American political theorist Michael Walzer thinks that deliberation should have an important place in politics but not an independent one as there are no settings in the political arena like the jury room, "in which we don't want people to do anything except deliberate". The author further claims that most political debates generally do not produce anything like a deliberative exchange and in the case of deliberation the goal is not to reach an agreement as "debate is a contest between verbal athletes and the aim is a victory. Walzer concludes "Deliberation is not an activity for the demos. I don't mean that ordinary men and women don't have the capacity to reason, only that 100 million of them, or even 1 million or 100,000 can't plausibly "reason together." And it would be a great mistake to turn them away from the things they can do together. For then there would be no effective, organized opposition to the powers-that-be. The political outcome of such a move is readily predictable: The citizens who turned away would lose the fights they probably wanted, and may well have needed, to win. "(Walzer 1999).

## Consensus criticism

Another line of criticism is focused on consensus. Chantal Mouffe builds on the Wittgensteinian critique of deliberative democracy regarding the creation of consensus and is of an opin-

ion that dismantling the very ground of the deliberative model is possible not only by following Wittgenstein but also by exposing the inadequacy of the Habermasian approach, by problematizing the very possibility of the notion of the "ideal speech situation" - where the participants arrive at consensus using rational argumentation. Mouffe highlights that this critique is not only empirical, or epistemological but ontological. In fact, "the impediments to the free and unconstrained public deliberation of all matters of common concern is a conceptual impossibility because, without those so-called impediments, no communication, no deliberation could ever take place. We, therefore, have to conclude that the very conditions of possibility of deliberation constitute at the same time the conditions impossibility of the ideal speech situation. justification for attributing a special privilege so-called "moral point of view" governed where an impartial assessment of what could be reached". She continues that deliberative democracy rejects the central role in politics of the conflictual dimension and its crucial role in the formation of collective identities (Mouffe 1999).

Shapiro also criticizes consensus in deliberation and being rather ironic he notes "People have theorized about democracy for millennia, yet it is only in the past few decades that the idea has gained currency that democracy depends on, or at any rate, can be substantially enhanced by deliberation. It is hard, if not impossible, to create institutions that will foster deliberation in politics, and institutions designed to do so are all-too-easily hijacked for other purposes. But deliberation is, in any case, the wrong goal."(Shapiro 2017, 82).

Deliberative democracy proponents claim that consensus critics are misleading even among first-generation deliberative democrats and that Habermas was often the target of such criticism. They stress that in recent years we witnessed a proliferation of the consensus concept reformulations that seek to acknowledge political struggle and conflict. For example, Eriksen modified the criterion of consensus with a less demanding one, that of a *working agreement*. He still relies on Habermas but such a conclusion "rests on different, but reasonable and mutually acceptable grounds"(Eriksen 2009, 51).

## A critic of misinterpretation of human motivations

Another common critic emphasizes that the demand for deliberative democracy is outvalued. Hibbing and Theiss-Morse argue that US citizens do not want to be forced into deliberating "the ever more detailed and technocratic policy matters that frequent the political arena today". Citizens want their elites to govern and deliberate provided that those elites are trustworthy while on the other hand, they like to know that they can be influential if they want to. The authors developed the concept of stealth democracy (Hibbing and Theiss-Morse 2002, 238) which highlight that on most issues citizens do not want an active role in shaping public policy (as long as they are aware of the fact that their participation would be welcomed) and those deliberative democrats often miss to make a distinction and in fact they equated the desire "to be heard when they want to be heard" with the desire "to be heard." (Hibbing and Theiss-Morse 2002) Following this line of argument, they claim that while theorists believe people to be highly capable of fulfilling they refuse to listen to what the people say. The people would rather not be more involved in politics, but the advocates think people should be more involved, and that is all that matters to them.

The elitist bias is shared by others. Lynn Sanders suggests that opposing deliberation seems irrational but also raises the question of the near consensus on deliberation among democratic theorists. Sanders criticizes democratic theorists that they have articulated, in formal terms, the prerequisites of deliberation such as mutual respect (which she sees as assumed and not researched) but they tend to overlook what ordinary citizens would themselves recommend, "since some citizens are better than others at articulating their arguments in rational, reasonable terms"(Sanders 1997, 348). These authors share the view of John Mueller that democratic theorists dismiss those concerns and act in an elitist manner themselves: "democratic theorists and idealists may be intensely interested in government . . . but it verges on the arrogant, even the self-righteous, to suggest that other people are somehow inadequate or derelict unless they share the same curious passion."(Mueller 2001, 184-185).

In his critique, strongly endorsed by Hibbing and Theiss-Morse, Russell Hardin concludes on the matter: "It is hard to avoid the suspicion that deliberative democracy is the democracy of elite intellectuals… It is virtually impossible to avoid the suspicion that deliberation will work, if at all, only in parlor room discourse or in the small salons of academic conferences. Far too much of real politics is about winning and losing…Deliberative democracy clearly has the problem that Oscar Wilde saw in socialism. It would require too many evenings"(Hardin 1999, 112).

## Misinterpretation of ordinary citizens' capacities

A number of scholars have raised concerns about individuals' capacity to deliberate properly. Rosenberg stresses that democratic deliberation requires citizens who have the capacity to deliberate appropriately. However, this simple but crucial point is regarded as an assumption and minimal specification in theories of deliberative democracy. But in Rosenberg's view, the situation is far from simple as individuals are assumed to have the capacities to be logical, rational, and communicative in the ways that deliberation requires. For this reason, he holds that it is crucial to understand what deliberation requires of its participants as deliberations often consider problems with social, economic, and political elements (Rosenberg 2014). Rosenberg's position (based on research in social, developmental, and political psychology) is that people do not have the capacities that deliberative democratic theory requires of them. This is a very important notion that has to be explored and addressed in more detail and in more researches. He also points out that some deliberative theorists acknowledge that citizen deliberators may not have the competence that deliberation requires. However, contrary to psychological research, they suggest the problem is not one of capacity, but of skill that can be developed during deliberations. Rosenberg states that research shows that citizens might become more knowledgeable but the issue is not whether citizens have information, but rather how they are able to work with. The critical concern here is not the amount of knowledge, but the quality of their reasoning. Another problem is that the empirical research indicates that most participants who attend a deliberation do not in fact engage in the give and take of

the discussion. (Rosenberg notes this on, among others, examples of the annual outdoor assemblies of all citizens in the small Swiss cantons of Glarus and Appenzell Inner-Rhodes and the town hall meetings in New England) (Rosenberg 2014).

Other scholars hold similar views that citizens lack the cognitive capabilities for deliberative democracy such as Achen and Bartles who find "partisan loyalties strongly color citizens' views about candidates, issues, and even "objective" facts. Citizens' political preferences and beliefs are constructed from emotional or cognitive commitments whose real bases lie elsewhere" (Achen and Bartels 2017, 269). Some political scientists mastered the cognitive psychology literature and employed it in studies of public opinion and voting, arriving at a skeptical view of human cognitive capacities in politics. Studies of Taber and Lodge show the average citizen would appear to be both cognitively and motivationally incapable of fulfilling the requirements of rational behavior in a democracy and that the individual capability for weighing arguments in an unbiased way would seem quite limited (Taber and Lodge 2006, 767).

To sum up, as Diana Mutz has put it:" As an empirical theory, a deliberative theory has been widely criticized for making assumptions that seem to fly in the face of what scholars already know about human behavior" (Mutz 2008, 533).

In an extensive survey on empirical research on democratic deliberation, Tali Mendelberg notes that the "empirical evidence for the benefits that deliberative theorists expect" is "thin or non-existent" although there is a tendency among deliberative democrats to even forcefully argue for more deliberation even in situation of entrenched conflict (Mendelberg 2002). Mendelberg concludes her review: "When groups engage in discussion, we cannot count on them to generate empathy and diminish narrow self-interest, to afford equal opportunities for participation and influence even to the powerless, to approach the discussion with a mind open to change, and to be influenced not by social pressures, unthinking commitments to social identities, or power, but by the exchange of relevant and sound reasons."(Mendelberg 2002). Mendelberg's view on the empirical literature is not alone as other reviews including in favor of deliberative democracy, legal theorist Cass Sunstein,

finds similar results through his "Law of Group Polarization" and he notes "Deliberation tends to move people toward more extreme versions of their ideologies rather than toward more moderate versions"(Sunstein 2002, 176).

In his book *The Problem of Political Authority*, Michael Huemer examines the ideal democratic deliberation model developed by one of the most prominent deliberative democrats, Joshua Cohen (Huemer 2013). Huemer stresses that so-described deliberative democracy is an illusion and asks the question: "If there is one thing that stands out when one reads philosophical descriptions of deliberative democracy, it is how far these descriptions fall from reality. Of the four features of deliberative democracy that Cohen identifies, how many are satisfied by any actual society?". In Huemer's opinion, the answer is none (Huemer 2013, 61).

## CONCLUSION

We can conclude this paper with the insightful criticism of Jason Brennan in his *Against Democracy*. It seems appropriate since constructive critic is an important tool for improvement and deliberative democracy as a concept definitely needs improvement. Large amounts of claims of deliberative democrats that democratic deliberation would educate and ennoble citizens lead Brennan to perform a lengthy analysis on empirical works that, according to him, show discouraging results that undermined deliberative democracy and education arguments. Brennan concludes that available evidence shows that democratic deliberation tends to stultify and corrupt us and "On its face, the empirical evidence seems to show us both that people are *too hooliganish* to deliberate properly and that deliberation makes them *more hooliganish*"(Brennan 2016, 187).

Deliberative democrats claim that skepticism is based on the fact that many experiments and empirical studies were not designed with deliberation in mind and there is a need for empirical psychology that takes into account the context-specific realizations of deliberative ideals, including institutional designs that compensate for well-known cognitive and emotional biases.

## BIBLIOGRAPHY

Achen, Christopher H. and Larry Bartels M. 2017. *Democracy for realists: Why elections do not produce responsive government*. Vol. 4. Princeton: Princeton University Press.

Bächtiger, A., John S. Dryzek, Jane Mansbridge and Mark Warren, eds. 2018. *The Oxford handbook of deliberative democracy*. Oxford: Oxford University Press.

Bächtiger, André, Simon Niemeyer, Michael Neblo, Marco Steenbergen R., Jürg Steiner. 2010. "Disentangling diversity in deliberative democracy: Competing theories, their blind spots and complementarities." *The Journal of Political Philosophy* 18 (1): 32–63.

Barber, Benjamin R. 2003. *Strong Democracy: Participatory Politics for a New Age*. Berkeley, CA: University of California Press.

Bohman, James, and William Rehg, eds. 1997. *Deliberative democracy: Essays on reason and politics*. Cambridge, MA: MIT Press.

Brennan, Jason. 2016. *Against democracy*, Princeton University Press.

Chambers, Simone. 2003. "Deliberative democratic theory." *Annual Review of Political Science* 6.1: 307-326.

Chambers, Simone. 2004. "Behind closed doors: Publicity, secrecy, and the quality of deliberation." *Journal of Political Philosophy* 12.4: 389-410.

Chappell, Zsuzsanna. 2008. *Deliberation disputed: A critique of deliberative democracy*. United Kingdom: Diss. London School of Economics and Political Science.

Christiano, Thomas. 1997. "The significance of public deliberation." In *Deliberative democracy: Essays on reason and politics*, eds. James Bohman and William Rehg, 243-279. Cambridge, MA: MIT Press.

Joshua Cohen. 1989. "Deliberation and Democratic Legitimacy." In *The Good Polity: Normative Analysis of the State*, eds. Alan Hamlin and Philip Pettit, 17–34. Oxford: Blackwell.

Curato, Nicole, Martin Hammond, and John B. Min. 2019. *Power in Deliberative Democracy: Norms, Forums, Systems*. London: Palgrave Macmillan.

Dryzek, John S. 2000. *Deliberative democracy and beyond: Liberals, critics, contestations*. Oxford: Oxford University Press.

Dryzek, John S. 2010. *Foundations and frontiers of deliberative governance*. Oxford: Oxford University Press.

Elster, John. 1998. *Deliberative Democracy*, Cambridge: Cambridge University Press.

Elstub, Stephen. 2010. "The third generation of deliberative democracy." *Political Studies Review* 8.3: 291-307.

Eriksen, Erik O. 2009. *The unfinished democratization of Europe*. Oxford University Press.

Fish, Stanley. 1999. "Mutual Respect as a Device of Exclusion." In *Deliberative Politics: Essays on Democracy and Disagreement,* ed. Stephen Macedo, 88-102. Oxford: Oxford University Press.

Fishkin, James S. 2011. *When the people speak: Deliberative democracy and public consultation*. Oxford: Oxford University Press.

Floridia, Antonio. 2018. *The Origins of the Deliberative Turn in Bächtiger*, André, et al., eds. *The Oxford handbook of deliberative democracy*. Oxford: Oxford University Press.

Gutmann, Amy, and Dennis F. Thompson. 1998. *Democracy and disagreement*. Harvard University Press,

Habermas, J. [orig. German edn 1962]. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Burger, T. and Lawrence, F. 1989. Cambridge, MA: MIT Press.

Habermas, J. [orig. German edn 1981]. *The Theory of Communicative Action, vol. I: Reason and the Rationalization of Society,* trans. McCarthy, T. 1984. Boston, MA: Beacon Press.

Habermas, J. [orig. German edn 1981]. *The Theory of Communicative Action, vol. II: Lifeworld and System: A Critique of Functionalist Reason*, trans. McCarthy, T. Boston, MA: Beacon Press.

Hardin, Russell. 1999. "Deliberation: method, not theory." In *Deliberative Politics: Essays on Democracy and Disagreement,* ed. Stephen Macedo, 103-19. Oxford: Oxford University Press.

Hendriks, Carolyn M. 2009. "Deliberative governance in the context of power." *Policy and Society* 28.3: 173-184.

Hibbing, John R., and Elizabeth Theiss-Morse. 2002. *Stealth democracy: Americans' beliefs about how government should work*. Cambridge: Cambridge University Press.

Huemer, Michael. 2013. *The problem of political authority: An Examination of the Right to Coerce and the Duty to Obey*. London: Palgrave MacMillan.

Knight, Jack, and James Johnson. 1997. "What Sort of Political Equality does Democratic Deliberation Require?" *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg, 279–319. Cambridge, MA: MIT Press.

Kuyper, Jonathan William. 2018. "The instrumental value of deliberative democracy-or, do we have good reasons to be deliberative democrats?" *Journal of Public Deliberation* 14.1: 1-35.

Larmore, Charles. 1999. "The moral basis of political liberalism." *The Journal of Philosophy* 96.12: 599-625.

Mansbridge, Jane *et al*. 2010. "The Place of Self-Interest and the Role of Power in Deliberative Democracy." *Journal of Political Philosophy* 18.1: 64-100.

Markovits, Elizabeth. 2006. "The trouble with being earnest: deliberative democracy and the sincerity norm." *The Journal of Political Philosophy* 14 (3): 249–269.

Mendelberg, Tali. 2002. "The Deliberative Citizen: Theory and Evidence." In *Research in Micropolitics 6: Political Decision Making, Deliberation, and Participation*, ed. Delli Carpini, Michael X., Huddy, Leonie, and Shapiro, Robert Y, 151– 193. Amsterdam: Elsevier.

Mouffe, Chantal. 1999. "Deliberative democracy or agonistic pluralism?" *Social research*: 745-758.

Mueller, John. *Capitalism, Democracy and Ralph's Pretty Good Grocery*. Princeton: Princeton University Press.

Mutz, Diana. 2008. "Is Deliberative Democracy a Falsifiable Theory?" *Annual Review of Political Science* 11: 521–538.

Nussbaum, Martha C. 2003. *Upheavals of thought: The intelligence of emotions*. Cambridge University Press.

O'Flynn, Ian. 2006. *Deliberative democracy and divided societies*. Edinburgh: Edinburgh University Press.

Parkinson, John. 2006. *Deliberating in the real world: Problems of legitimacy in deliberative democracy.* Oxford: Oxford University Press.

Pincione, Guido and Fernando Tesón R. 2006. *Rational choice and democratic deliberation: A theory of discourse failure*. Cambridge: Cambridge University Press.

Rosenberg, Shawn W. 2014. "Citizen competence and the psychology of deliberation." In *Deliberative democracy: Issues and cases,* eds. Stephen Estlub and Peter McLaverty. Edinburgh: Edinburgh University Press.

Rostbøll, Christian. 2008. *Deliberative freedom: Deliberative democracy as critical theory*. Albany: SUNY Press.

Sanders, Lynn M. 1997. "Against deliberation." *Political theory* 25.3: 347-376.

Shapiro, Ian. 1999. "Enough of deliberation: Politics is about interests and power." *Deliberative Politics: Essays on Democracy and Disagreement*. in ed. Stephen Macedo, Oxford: Oxford University Press.

Shapiro, Ian. 2017. "Collusion in restraint of democracy: Against political deliberation." *Daedalus* 146.3: 77-84.

Smith, Graham. 2003. *Deliberative democracy and the environment*. London: Routledge.

Sunstein, Cass R. 2002. "The Law of Group Polarization." *Journal of Political Philosophy* 10:175– 95.

Taber, Charles S., and Milton Lodge. 2006. "Motivated skepticism in the evaluation of political beliefs." *American Journal of Political Science* 50.3: 755-769.

Thompson, Dennis F. 2008. "Deliberative democratic theory and empirical political science." *Annual Review of Political Science* 11, 497–520.

Valadez, Jorge. 2001. *Deliberative democracy, political legitimacy, and self-determination in multi-cultural societies*. Colorado: Westview Press.

Walzer, Michael. 1999. "Deliberation, and What Else." in Stephen Macedo, eds. *Deliberative Politics*. Oxford: Oxford University Press. 58-70.

Warren, Mark E. 2006. "What should and should not be said: Deliberating sensitive issues." *Journal of Social Philosophy* 37.2: 163-181.

Warren, Mark, Jane Mansbridge, André Bächtiger, Maxwell A. Cameron, Simone Chambers, John Ferejohn, Alan Jacobs, Jack Knight, Daniel Naurin, Melissa Schwartzberg, Yael Tamir, Dennis Thompson, Melissa Williams 2016. **"**Deliberative negotiation." *Political Negotiation: A Handbook*. Washington D.C.: Brookings Institution Press.

Young, Iris Marion. 2002. *Inclusion and democracy*. Oxford: Oxford University Press.*

* Manuscript was received on October 14, 2021 and the paper was accepted for publishing on Novermber 4, 2021.

UDC 616.98:578.834]:614.4(4-672EU)
DOI: https://doi.org/10.22182/spm.7442021.3
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 59-81

***Marta Sjeničić****

*Institute of Social Sciences, Belgrade*

***Marko Milenković***

*Institute of Social Sciences, Belgrade*

# EUROPEAN UNION COMPETENCES IN THE AREA OF COMMUNICABLE DISEASES – EXPERIENCES AND LESSONS LEARNED FROM THE COVID-19 CRISIS**

## Abstract

In the European Union, healthcare and public health are mostly within the competence of Member States. Still, in a number of sub-domains, coordination between Member States led to the adoption of legislation that formed the healthcare *acquis*, together with a whole set of programs and initiatives aimed at improving public health within the Union. The European Centre for Disease Prevention and Control (ECDC) was formed in 2004 to help EU institutions and Member States identify and assess the risk of current and emerging threats to human health from communicable diseases. At the end of July 2020, Member States reached a general agreement on the recovery plan, but the final agreement had not been adopted by the end of the year. On the other hand, in the spring of 2020, EU launched a global action for universal access to tests, treatments and vaccines against coronavirus and for global recovery, while in October 2020, it presented the strate-

* msjenicic@idn.org.rs

** This paper was written as part of the 2020 Research Program of the Institute of Social Sciences with the support of the Ministry of Education, Science and Technological Development of the Republic of Serbia.

gies on vaccine allocation and additional Covid-19 response measures. In November 2020, a new framework was proposed for the improvement of the response to cross-border health threats, as well as for the expansion of the role of EU agencies – ECDC and the European Medicines Agency, related to coordination of preparedness measures and response to public health threats. This initiative came within a wider proposal entitled "European Health Union". Hence, soon after the crisis broke out, different initiatives were launched to improve the institutional system for communicable disease control in Europe and assistance provided to the Member States. Still, these changes remain within the framework prescribed in the contracts and keep the responsibility, for the most part, at the level of Member States with the possibility of EU assisting, coordinating and helping the Member States in the situations that exceed their capacities; they also emphasize that the main role of the Union can and should be in the field of economic assistance, which is what the unique proposed assistance package has shown.

**Keywords:** Covid-19 crisis, European Union, public health, competencies, ECDC

## INTRODUCTION

The Covid-19 outbreak in March 2020 put the public health policy of the EU in the spotlight. Usually outside of the main focus in the studies of European law and policy, in the context of the greatest international crisis since World War II (Guterres, 2020), the field of public health showed many weaknesses of the EU governance, becoming a top priority issue. Union competencies in this field are relatively limited and classified as coordinative, bearing in mind the tendency of the Member States to keep the issues of healthcare and, particularly, of its funding, in the national domain. Still, considering the level of integration in the EU and the importance of free movement of people and goods, a significant number of issues is encompassed in the acts and initiatives at the community level. This is particularly the case in the domain of cross-border communicable disease control. As pointed out by Greer and Jarman, the Covid 19 crisis "not only led to a strengthening of EU public health but also showed that the EU is one of the

many political systems in which the legal and bureaucratic domain of public health is far smaller than the actual issues affecting the public's health" " (Greer & Jarman, 2021). At the very beginning, in the period from January to March 2020, we saw the consequences of poor coordination at the Union level, within a domain where policies are dominantly kept at the national level, combined with inadequate global action. In addition, the crisis demonstrated that Member States were not prepared to handle a public health threat (Herszenhorn&Wheaton, 2020). This can also be analysed in the context of long-term austerity policy promoted among EU Member States, which left its mark on their healthcare systems (Greer, 2014). With the scope of the crisis in mind, numerous challenges can be observed, such as the (lack of a) proclaimed and assumed solidarity among Member States in the context of a health crisis, fragmentation of the health crisis management system and the consequences it had in the context of the pandemic, as well as numerous important health law issues that came to the forefront during the pandemic, such as the protection of health data and resource distribution.[1] This article examines the EU legal framework in the field of infectious disease, as well as the institutional setup and its limits. The EU experience in the joint Covid-19 response from the perspective of health law and the possibilities for further action at the community level are also analysed.

## EUROPEAN UNION COMPETENCE AND CONTROL OF COMMUNICABLE DISEASES

The field of healthcare, i.e., public health, for the most part, lies within the competencies of the individual EU Member States, which sets it apart from many other domains of EU policy and law. Still, bearing in mind the high level of integration, as well as the movement of people and goods between EU Member States, legislation was adopted through coordinated efforts of the Member States in a number of sub-domains, to make up the health *acquis*, with a whole set of programs and initiatives aimed at improving public health within the EU (Sjeničić&Milenković, 2019; Sjeničić et al., 2016).

1 See: Powell, A, 2020; Holmes, E, 2020; Politico, 2020; World Health Organisation, Joint Statement on Data Protection and Privacy in the COVID-19 Response.

## The EU competencies in the public health domain

Division of competencies between the European Union and its Member States, in line with the founding treaties, is made of exclusive (those where the EU has the sole competence, of which there are five), shared (in most areas) and coordinative, where the Union, in line with Art. 6 of the Treaty on the Functioning of the European Union, supports, coordinates and substitutes the actions of Member States (see further: Rossi, 2012). This last group of competencies also includes the protection and improvement of human health, i.e., public health – the field which, for the most part, remained in the national domain of the Member States, for the Union Member States to manage in line with their constitutional and cultural traditions (De Ruijter, 2016; Neergaard, 2011; Harvey, 2010). In addition, due to the intense movement of people, a number of issues related to healthcare, and especially healthcare workers and their status, in the context of the principle of free movement within the EU, have been regulated by the relevant EU legislation (Guy&Sauter, 2016; Greer et al., 2013). In line with Article 168 of the Treaty on the functioning of European Union, it is prescribed that "a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities. Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health." The Treaty envisages *...the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health.* It is also envisaged that the Union shall complement the actions taken by Member States in reducing drugs-related health damage, including information and prevention. In line with the nature of its competencies, *the Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.* Article 168 also envisages that the Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators,

the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. In line with the nature of competencies in this field, it is envisaged that the European Parliament would be kept thoroughly informed. In line with the Treaty, the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health. In exceptional cases, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in Article 168 through adopting in order to meet common safety concerns: a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives (these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures); b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health; c) measures setting high standards of quality and safety for medicinal products and devices for medical use.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and ***in particular to combat the major cross-border health scourges***, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States. The Council, on a proposal from the Commission, may also adopt recommendations for the above purposes. Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them.

EU may adopt healthcare legislation on the basis of the Treaty on the Functioning of the European Union, i.e., Art. 168 (public health), Article 114 (approximation of laws) and Article 153 (social policy). The fields in which the EU adopts legislation include: rights of patients in cross-border healthcare, medicines and medical devices (pharmacovigilance, counterfeit medicines, clinical trials), tobacco, organs, blood, tissues and cells, as well as serious cross-border threats, which shall be discussed in greater detail in the next section. In the field of infectious disease, in 2004, the European Centre for Disease Prevention and Control (ECDC) was established, as shall be discussed in the third section of this paper. Finally, in addition to the European Commission, the European Medicines Agency (EMA) also plays an important role with regards to authorisation of medicines.

As can be concluded, although limited, the coordination competencies of the European Union in this field are entwined in numerous domains of human health and health-related activities, taking place at different administrative levels and in the interaction of many sub-sectors – healthcare, social protection, education, police, defence, civil protection etc.[2], with cross-border control of infectious disease being particularly relevant.

## European Union and the communicable disease challenge

Bearing in mind the level of integration of the member states economies and the intensity of (free) movement of people and goods in the European Union, the question of controlling the spread of infectious disease has been a major and significant part of EU action in the public health domain for decades. As pointed out by Greer and Mätzke, the control of infectious disease is one of the oldest and most important functions of a modern state, but is given surprisingly little attention (Greer, Mätzke, 2012: 887). Individual sources of European health law in the field of cross-border health threats, i.e., communicable diseases, are: Decision 2119/98/EC

2 Despite significant limitations to its competencies, the European Union has developed numerous programmes in the field of public health. the implementation of which is entrusted to the Consumer, Health and Food Executive Agency. For further detail on the Agency, see: European Commission, Consumers, Health, Agriculture and Food Executive Agency.

(later updated in other Decisions) of the European Parliament and of the Council, setting up a network for the epidemiological surveillance and control of communicable diseases in the Community; Decision 2000/96/EC and its Annex I on the communicable diseases to be covered by the EU network; Decision 2002/253/EC and its Annex on reporting on communicable diseases to the European network and Decision 2012/506/EU supplementing Decision 2002/253/EC; Decision 1082/2013/EU on serious cross-border health threats and the repeal of the Decision 2119/98/EC; Regulation 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data; Council Recommendation 2009/1019/EU on seasonal influenza vaccination; Council Conclusion on the immunization of children 2011/S202/02.

Decision no. 1082/2013/EU of the European Parliament and of the Council from 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC is particularly relevant, as it *sets up the rules of epidemiological surveillance, monitoring, early warning and combating serious cross-border threats to health*, including preparedness and response planning related to these activities, with the aim of coordinating and supplementing the national policies. After adoption of the Treaty of Lisbon, as well as this decision, analyses aimed at the link between public health and security begin to appear in literature (Dijkstra, De Ruijter, 2017).

Commission Decision no. 2000/96/EC of 22 December 1999 on the communicable diseases to be progressively covered by the Community network comprises Annex 1 with the *List of communicable diseases and special health issues* to be covered by the Community network. Annex 2 of the Decision contains *Criteria for selection of communicable diseases of special areas to be covered by epidemiological surveillance within the network.*

Commission Decision from 19 March 2002 setting up the definition of cases for reporting communicable diseases to the Community network, under Decision no. 2119/98/EC of the European Parliament and of the Council – 2002/253/EC, prescribes the definition of a case for the purposes of epidemiological surveil-

lance and communicable disease control, to be implemented by the Member States. These definitions are aimed at facilitating the reporting of diseases and special health issues and are founded on a combination of clinical, laboratory and epidemiological criteria (Sjeničić et al., 2016).

In Serbia, the Law on the protection of the population from communicable diseases was adopted in 2016, and it has been harmonised, to a large extent, with EU legislation.[3] After adoption of the Law, for the purposes of concrete implementation of the Law and detailed harmonisation with EU legislation, work began on the elaboration and adoption of a series of by-laws/regulations for its implementation. In the Serbian Progress Report in the process of EU integrations for 2020, it is stated that the "capacities for surveillance and response are still limited and need to be modernised. No centralised healthcare information and communication system has been established as of yet" (European Commission 2020: 121), so more efforts are needed in that respect.

## POSITION AND ROLE OF THE EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL (ECDC)

As it is the case in many other EU policy areas, a specialised agency has been formed in the domain of communicable disease control. Ideas on the development of such an agency appeared at the end of 1990-ies (Greer&Mätzke 2012: 1009). The European Centre for Disease Prevention and Control (hereinafter: the Centre) was founded in 2004 by Regulation 851/2004, to assist in identifying and assessing risks from current and emerging threats to human health, posed by communicable diseases. It began operations in 2005, in Stockholm. The Centre has a classical organisational structure and role, like many other decentralised European Union agencies, created for the purpose of gathering experts at the EU level, processing information, networking and providing opinions to the Commission and other Union institutions.[4] The Centre's organisational structure is comprised of a Management Board, Advisory Forum and Director, who represents the Agency and manages the work of expert services. The Managing Board is com-

3 For more, see: Sjeničić, M., Miljuš, D., Milenković, M., 2016.

4 For more, see: Decentralised agencies, European Union.

prised of one member appointed by each of the Member States, two members appointed by the European Parliament and three members representing the Commission, appointed by the Commission; the members are appointed in such a way that ensures "the highest standards of competence and a broad range of relevant expertise" (Article 14). The Advisory Forum is comprised of members from technical competent bodies in Member States, which perform tasks similar to those of the Centre, but again respecting the principle of representation of EU Member States. Each Member State appoints one member based on their recognised scientific expertise. Three members with no voting rights are appointed by the Commission, and they represent the stakeholders at the European level.

Article 3 of the Regulation prescribes that the Centre's mission is to identify, assess and communicate current and emerging threats to human health from communicable diseases. In the case of other outbreaks of illness of unknown origin which may spread within or to the Community, the Centre shall act on its own initiative until the source of the outbreak is known.[5] Like the majority of decentralised EU agencies, the Centre also plays a role in *coordinating the network of relevant national bodies*. In line with the Regulation (Article 5), the Centre, through the operation of the dedicated surveillance networks and the provision of technical and

5 Within the field of its mission, the Centre shall: (a) search for, collect, collate, evaluate and disseminate relevant scientific and technical data; (b) provide scientific opinions and scientific and technical assistance including training; (c) provide timely information to the Commission, the Member States, Community agencies and international organisations active within the field of public health; (d) coordinate the European networking of bodies operating in the fields within the Centre's mission, including networks arising from public health activities supported by the Commission and operating the dedicated surveillance networks; and (e) exchange information, expertise and best practices, and facilitate the development and implementation of joint actions. On the other hand, the Member States are obliged to: (a) provide to the Centre in a timely manner available scientific and technical data relevant to its mission; (b) communicate to the Centre any messages forwarded to the Community network via the early warning and response system; (c) identify, within the field of operation of the mission of the Centre, recognised competent bodies and public health experts who could be made available to assist in Community responses to health threats, such as field investigations in the event of disease clusters or outbreaks (Article 4 of the Regulation). From this perspective, it is impossible to have a complete view of how this cooperation functioned during the Covid crisis, but the fact that amendments to the Regulation are being proposed indicates that there are potential shortcomings.

scientific expertise to the Commission and Member States, supports the networking activities of the competent bodies recognised by the Member States. In addition, it plays a role in capacity building and supporting the cooperation between expert and reference laboratories for the purpose of the development of sufficient capacity within the Community for the diagnosis, detection, identification and characterisation of infectious agents which may threaten public health. In addition, the Centre also *provides independent scientific opinions, expert advice, data and information* (Article 6), upon a request from the Commission, European Parliament, Member States but also of its own initiative (Article 7), which, to a large extent, ensures the Centre's independence from the Commission.[6]

The Regulation also envisages the existence of a *System for early warning and response* for which the Centre assists to the Commission. In addition, in line with the Regulation, the Centre provides to the Member States, the Commission and other EU agencies the scientific and technical expertise in the elaboration, regular review and updating of the preparedness plans, as well as in the elaboration of intervention strategies in the areas relevant to its mission. In addition, the Commission, Member States, *third countries and international organisations (particularly WHO)* may request from the Centre to provide scientific or technical assistance in any field within its mission. Furthermore, the Centre identifies, in any field within its mission and in cooperation with Member States, *procedures for systematically searching for, collecting, collating and analysing information and data with a view to the identification of emerging health threats* which may have mental as well as physical health consequences and which could affect the Community, and *informs the Commission and Member States as soon as possible about findings which require their immediate attention.* Finally, the Centre coordinates data collection, validation, analysis and dissemination at the EU level, including on vaccination strategies. The Centre elaborates rapid risk assessments at the request of the European Commission, EU Member State or based on an internal decision (ECDC, Health Security and Infectious Diseases). In that sense, during the Covid-19 pandemic, a Rapid Risk

6 For more information on the relationship between the Commission and the decentralised agencies, as well as on its impact on their work, in terms of their provision of information, opinions or preparation of individual acts, see: Milenković, 2019.

Assessment on increased Covid-19 transmission was undertaken and regularly updated (ECDC, Rapid Risk Assessment, 2020). The Centre played an important role since the beginning of the Covid-19 crisis. The Centre collects data on the number of people infected with Covid-19 virus from around the world, on a daily basis. It also publishes regular reports on threats from communicable diseases (ECDC, Communicable Disease Threat Report).

The Regulation also contains a clause on external evaluation of the results (Article 31). The first such evaluation was performed in 2007 and included, *inter alia*, geographic extension of the Centre's activities in cooperation with agencies outside of the EU, but the proposals for amendments to the legislation came about only with the Covid crisis. Within the wider proposal designed under the title "European Health Union", the Commission proposed to the Council and the Parliament the amendments to the founding regulation of the Centre based on the experiences from the first months of the Covid-19 crisis (EC, Proposal for a Regulation of the European Parliament and of the Council amending Regulation no. 851/2004). This proposal focuses on strengthening the capacities and the mandate of the Centre, specifically including: epidemiological surveillance via integrated systems enabling real-time surveillance; preparedness and response planning, reporting and auditing; provision of non-binding recommendations and options for risk management capacity to mobilise and deploy EU Health Task Force to assist local response in Member States; building a network of EU reference laboratories and a network for substances of human origin. (EC, Building a European Health Union: Stronger crisis preparedness and response for Europe).

It can be concluded that the proposed amendments represent useful steps to improve the system of communicable disease control and cooperation at EU level, but do not bring about crucial changes to the system. This is also expected, bearing in mind that management of such a crisis primarily remains at the national and lower levels of government, while the EU maintains its coordination and support role, in line with the founding treaties.

# EU EXPERIENCES IN COVID-19 CRISIS – TOWARDS THE ESTABLISHMENT OF THE EUROPEAN HEALTH UNION

The Covid-19 pandemic undoubtedly represents the greatest crisis faced by the European Union in its history. Already in February 2020, the governments introduced different types of restrictions and measures in response to the outbreak (EAHL newsletter, 2020). With regards to the Covid-19 response, in the first wave of the outbreak in Europe, the countries that were hit the hardest were Italy and Spain, according to the data (WHO, Coronavirus disease (COVID-19) Weekly Epidemiological Update and Weekly Operational Update). At the beginning of March 2020, the Italian Prime Minister turned to European Union, asking it "not to make tragic mistakes" in its management of the coronavirus crisis, and warning that if it does, and if it fails to help during COVID-19 crisis "the whole EU project will lose its raison d'être" (Euronews a), 2020). At that time, Italy proposed the establishment and implementation of a recovery plan , that would support the entire European economy. In its address to the EU in March, the Italian Prime Minister stated that Italy had suffered over 9000 victims and was being forced to make many hard decisions. The Italian PM warned the EU leaders that such decisions must be avoided in the future and that, if Europe didn't show that it was up to the task, the Italian citizens would see no further reason for the existence of the European project (Euronews a), 2020). After the appeal from Spain ensued, the EU state aid rules were relaxed, and Brussels announced the formation of stocks of medical supplies, such as ventilators, masks and laboratory equipment (Euronews b), 2020).

Following the Spanish and Italian call for greater solidarity, in the first weeks, the EU leaders failed to achieve an agreement on a joint financial response, i.e., on financial instruments that would help Member States facing crises. Member States only achieved a general agreement at the end of July 2020, on a recovery plan and European long-term budget 2021-2027, with a generous assistance plan for the Member States exceeding 750 billion euros and, for the first time in history, the EU took out a direct loan to finance this endeavour. This was a new recovery instrument – the Next-

GEneration EU, which was to support the EU budget with new funding sources from the financial markets, in the period 2021-2024 (EC, Recovery Plan for Europe). The mechanisms envisaged to provide for the recovery of Member States can be classified into three pillars: Supporting Member States to recover, Kick-starting the economy and helping private investment as well as Learning the lessons from the crisis. Each of these groups contains different instruments of support (EC, The EU budget powering the recovery plan for Europe). Still, until the very end of 2020, during the new wave of the pandemic and more than eight months from the beginning of the crisis, final agreement had not been reached.

On the other hand, in the spring of 2020, EU launched a global action for a universal access to tests, treatments and vaccines against the coronavirus, and for the global recovery (Coronavirus Global Response), as well as for the collection of about 16 billion Euros for this initiative. It invested 400 million Euros to accelerate the development, production and administration of vaccines against Covid-19 (EC, Health-EU newsletter 259 – Focus). In addition, on 15 October 2020, the European Commission presented a document – Communication from the Commission to the European Parliament and the Council Preparedness for COVID-19 vaccination strategies and vaccine deployment. This document defined the basic elements of vaccination strategies of Member States and activities that would ensure that the vaccines are effectively distributed across the EU (EC, Health-EU newsletter 259 – Focus). This document also proposed the method of accelerating the development and production of vaccines by providing advance financing, and for assisting Member States to procure them under the best possible conditions. Until October 2020, three contracts were signed with vaccine manufacturers for almost one billion doses (EC, Health-EU newsletter 259 – Focus).

In addition, in October 2020 the European Commission concluded that "relaxation of applied measures during the summer months was not always accompanied by steps to build up sufficient response capacity. This means that urgent steps are needed now at both national and EU level". (EC, Communication from the Commission to the European Parliament, European Council and the Council on additional COVID-19 response measures). This

Communication defines several objectives and steps for the next phase of EU crisis response measures. Firstly, ensuring *the flow of information to allow for informed decision-making*. The steps in achieving this goal would cover two aspects: Member States would submit all relevant data to the Centre and the Commission using common criteria, and an improved internet portal of the Centre would be launched to host all key data in one place, at the latest by April 2021. Secondly, *efficient and rapid testing*, with mobilisation of EU funds for the procurement of tests, as well as joint public procurements. The *use of contact-tracing apps* represents the third measure. Steps to ensure this goal would include the Commission supporting Member States in developing national contact tracing apps and their linking via the *European Federation Gateway Service*, while all Member States should set up efficient and compatible applications to ensure the functioning of the system at the EU level. As pointed out in the document, currently available apps may and will be used for providing information, checking symptoms and for telemedicine, as well as for contact tracing and warning. To ensure a coherent, joint European approach, the European Commission issued Guidelines for support to Member State governments and app programmers in implementing apps to combat the Covid-19 pandemic (European Data Protection Board) on 16 April 2020. On the 21 April 2020, the European Data Protection Board issued Guidelines on using location data and contact tracing tools in the context of Covid-19 outbreak, to develop the joint European approach to win the trust of the citizens. The Board outlined that "contact tracing apps should be used to empower, and not to control, stigmatize or repress individuals, and to clarify the conditions and principles for proportional use of the location data and contact tracing mechanisms" (European Data Protection Board, 2020). The Board also took the position that the use of contact tracing apps should be voluntary and that "one should not have to choose between an efficient response to the current crisis and the protection of our fundamental rights." The Board also underlined that it must be kept in mind that data and technology can be useful tools to fight Covid-19, but their use requires a case-by-case approach and they need to be managed under the control of the competent public health authorities. It should be noted that the large scope and sensitivity of data to be processed require

stringent privacy protection and cyber security measures, in order to decrease the risk of data security breaches, as such breaches can have a negative effect on the public's trust in the use of such solutions (Olivi et al., 2020).

Communication on additional Covid-19 response measures emphasizes, as the fourth aspect, *efficient vaccination,* with the establishment of a platform to monitor the efficiency of vaccination strategy during its implementation as well as *efficient communication with the population,* and *ensuring their access to basic provisions.* Finally, the Communication lists, as the fifth priority, *facilitating safe travels*, which is of special importance, considering the traveling restrictions to/outside the Union, as well as within the Union itself, since the beginning of the Covid crisis. This relates to, for example, extension of the so-called "green lanes" to "*to ensure that more than 90% of border crossing points continue to be permanently fluid with under 15 min crossing time*" (EC, Communication from the Commission to the European Parliament, European Council and the Council on additional COVID-19 response measures). The conclusion of this Communication is that Member States must acknowledge and respond to their own call to a more coordinated, more consistent approach. A package of measures is also planned, *establishing the first building blocks of a European Health Union* (EC, Communication from the Commission to the European Parliament, European Council and the Council on additional COVID-19 response measures).

Based on the lessons learned from the fight with the Coronavirus, the European Commission proposed, on 11 November 2020, a new framework to improve the response in case of cross-border threats to health, as well as to expand the role of EU agencies - European Centre for Disease Prevention and Control (EC, Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 851/2004) and European Medicines Agency (EC, Proposal for a Regulation of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices) in the field of coordinating preparedness measures and response to public health threats (EC, Health Security and Infectious Diseases). In that regard, the idea of the

aforementioned European Health Union was also promoted (European Commission, Building a European Health Union). To create and receive a stronger mandate for the coordination between the Commission and the EU agencies, the Commission *proposed a new Regulation on serious cross-border threats to health* (EC, Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision No 1082/2013/EU). As the European Commission announced, the proposed new legislative and organisational framework should: strengthen preparedness, intensify surveillance, improve reporting and the possibilities of proclaiming the state of alert in the EU. With regards to reinforcing preparedness, plans and recommendations for the adoption of plans at the national level are to be developed, as are reporting mechanisms. According to the proposal, preparation of the national plans would be supported by the European Centre for Disease Prevention and Control and other EU agencies. The Commission and EU agencies would also supervise these plans. Member States will be asked to increase reporting on quality indicators of their healthcare systems (i.e., availability of beds, specialised treatments and ICU capacities, number of medically trained staff etc.). Finally, it is emphasized that the "declaration of an EU emergency situation" would activate increased coordination and enable the development, stocking, procurement of products relevant for the crisis at hand (EC, Building a European Health Union). It can be concluded that, despite its attractive name, the formation of a European Health Union, at a level similar to other integration fields is not what is actually being planned, but that concrete steps are being made to ensure that EU functions better in similar epidemiological situations in the future.

## CONCLUDING REMARKS

The competence in the field of public health, and especially sustainability and adequacy of the healthcare system to withstand non-standard pressures, primarily is in the domain of EU Member States. The coordinative role of the Union in the area of communicable diseases and the developed institutional arrangements and procedures primarily facilitate the functioning of the single market in standard conditions, when public health challenges remain within

the limits of the usual problems that all societies face from time to time. Although the institutional system for the control of the spread of communicable diseases in Europe and the assistance it provides to the Member States can be assessed as generally adequate, it has shown numerous shortcomings; in that regard, initiatives have been launched to improve this system, a few months after the outbreak of the pandemic. It can be concluded that these changes remain within the limits defined in the treaties and keep the responsibility primarily at the level of Member States, with the possibility for the EU to coordinate actions and assist Member States when their capacities are insufficient. The COVID crises has demonstrated that more profound issues, such as the lack of solidarity between Member States, represent a far more fundamental challenge for the integration project. However, it can also be concluded that the area of economic assistance can and should be the main role of the Union, as the proposed assistance package has shown. Finally, it can be concluded that the level of inter-dependence between Member States does point to need to further discuss aspects of the Union actions in fields that were considered to be (almost) exclusively in the national domain.

## REFERENCES

Commission Decision 2000/96/EC of 22 December 1999 on the communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC of the European Parliament and of the Council (notified under document number C(1999) 4015), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000D0096 [15.11.2020]

Commission decision of 19 March 2002 laying down case definitions for reporting communicable diseases to the Community network under Decision No 2119/98/EC of the European Parliament and of the Council, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:086:0044:0062:EN:PDF, [12.11.2020]

Consumer, Health and Food Executive Agency, available at: http://ec.europa.eu/chafea/ [11.11.2020]

De Ruijter, A. (2016) „European integration in the field of human health“, *Journal of European Integration,* 38(7): 837– 43.

Dijkstra, H. , & de Ruijter, A. D. (2017). The health-security nexus and the European Union: Toward a research agenda. *European Journal of Risk Regulation*, 8 (4), 613–625.

Decentralised agencies, European Union, available at: https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en [12.11.2020]

Decision No. 1082/2013/EU or the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 20119/98/EC, available at: http://ec.europa.eu/health/preparedness_response/docs/decision_serious_crossborder_threats_22102013_en.pdf [12.11.2020]

EU Health programme, http://ec.europa.eu/chafea/health/index.html [12.11.2020]

Euronews a). (2020) EU will lose its ‘raison d’etre’ if it fails to help during COVID-19 crisis, Italy’s PM warns, available at: https://www.euronews.com/2020/03/27/covid-19-eu-leaders-fail-to-agree-on-common-financial-response-during-virtual-summit [24.10.2020]

Euronews b). (2020) COVID-19: EU leaders fail to agree on common financial response during virtual summit, available at: https://www.euronews.com/2020/03/28/eu-will-lose-its-raison-d-etre-if-it-fails-to-help-during-covid-19-crisis-italy-s-pm-warns [24.10.2020]

European Association for Health Law newsletter. (2020), available at: https://eahl.eu/newsletters [12.10.2020]

European Centre for Disease Prevention and Control. (2008) Conclusion and Recommendation of the MB based on the External Evaluation of ECDC, available at: https://www.ecdc.europa.eu/sites/portal/files/media/en/aboutus/Key%20Documents/0809_External_evaluation_MB_conclusion_recommendation_.pdf [1.12.2020]

European Centre for Disease Prevention and Control. (2020) Communicable Disease Threats Report, available at: https://www.ecdc.europa.eu/sites/default/files/documents/Communicable-disease-threats-report-3-oct-2020.pdf [2.10.2020]

European Centre for Disease Prevention and Control. (2020). Rapid Risk Assessment, Increased transmission of COVID-19 in the EU/EEA and the UK – twelfth update, available at: https://www.ecdc.europa.eu/sites/default/files/documents/covid-19-risk-assessment-increased-transmission-12th-update-september-2020.pdf [2.10.2020]

European Centre for Disease Prevention and Control, An agency of the European Union, available at: https://www.ecdc.europa.eu/ [1.12.2020]

European Commission, Building a European Health Union: Stronger crisis preparedness and response for Europe, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2041 [8.11.2020]

European Commission, Consumers, Health, Agriculture and Food Executive Agency, available at: http://ec.europa.eu/chafea/ [8.11.2020]

European Commission, EU Health Programme, available at: https://ec.europa.eu/chafea/health/index_en.htm [8.11.2020]

European Commission, Health security and infectious diseases, available at: https://ec.europa.eu/health/communicable_diseases/overview_en [3.11.2020]

European Commission, Recovery plan for Europe, Mobilising investment. Available at: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_en. [2.10.2020]

European Commission, The EU budget powering the recovery plan for Europe, available at: https://ec.europa.eu/info/sites/info/files/factsheet_1_en.pdf [2.10.2020]

European Commission. (2020) Building a European Health Union: Stronger crisis preparedness and response for Europe, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2041 [22.11.2020]

European Commission. (2020) Communication from the Commission to the European Parliament, European Council and the Council on additional COVID-19 response measures, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX-:52020DC0687&from=EN [9.11.2020]

European Commission. (2020) Communication from the Commission to the European Parliament and the Council Preparedness for COVID-19 vaccination strategies and vaccine deployment, Brussels, 15.10.2020 COM(2020) 680 final, available at: https://ec.europa.eu/health/sites/health/files/vaccination/docs/2020_strategies_deployment_en.pdf [2.10.2020]

European Commission. (2020) Health-EU newsletter 259 – Focus, Our best shot against COVID-19: effective vaccination strategies and targeted vaccine deployment, available at: https://ec.europa.eu/health/eunewsletter/259/newsletter_en [2.10.2020]

European Commission. (2020) Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision No 1082/2013/EU, https://ec.europa.eu/info/sites/info/files/proposal-regulation-cross-border-threats-health_en.pdf [18.11.2020]

European Commission. (2020) Proposal for a Regulation of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices (Text with https://ec.europa.eu/info/sites/info/files/proposal-mandate-european-medicines-agency_en.pdf [15.11.2020]

European Commission. (2020) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 851/2004 establishing a European Centre for disease prevention and control, available at: https://ec.europa.eu/info/sites/info/files/proposal-mandate-european-centre-disease-prevention-control_en.pdf, [1.12.2020]

European Data Protection Board. (2020) Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak, available at: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_20200420_contact_tracing_covid_with_annex_en.pdf [5.11.2020]

European Federation Gateway Service. (2020), available at: https://github.com/eu-federation-gateway-service?language=java [3.11.2020]

European Medicines Agency, available at: https://www.ema.europa.eu/ [10.11.2020]

Greer, L.S.; Jarman, H. (2021), „What Is EU Public Health and Why? Explaining the Scope and Organization of Public Health in the European Union"*, Journal of Health Politics, Policy and Law*, 46(1).

Greer, L.S. (2014) „The three faces of European Union health policy: Policy, markets, and austerity", *Policy and Society*, 33: 13– 24.

Greer, L.S.; Hervey, K.T.; Mackenbach, P.J.; McKee, M. (2013) „Health in Europe 2 – Health law and policy in the European Union", *Lancet*, 381: 1135– 1144.

Greer, L.S.; Mätzke, M. (2012) Bacteria without Borders: Communicable Disease Politics in Europe, *Journal of Health Politics, Policy and Law*, 37 (6): 887-914.

Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection (2020/C 124 I/01), https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587141168991&uri=CELEX-:52020XC0417(08)&_sm_byp=iVVVT7Nf6tNn7qSs [15.11.2020]

Guterres, A. (2020) "This is a time for science and solidarity", United Nations, available at: https://www.un.org/en/un-coronavirus-communications-team/time-science-and-solidarity [15.11.2020]

Guy, M.; Sauter, W. (2016) The history and scope of the EU Health Law and Policy. CCP Working Paper 16-2. University of East Anglia.

Harvey, T. (2010). „The impacts of European Union law on the health care sector: Institutional overview“, *Eurohealth*, 16(4): 5– 7.

Health law and policy in the European Union“, Lancet, 381: 1135-1144.

Health security and infectious diseases, available at: https://ec.europa.eu/health/security/overview_en, [2.10.2020]

Herszenhorn, D. M; Wheaton, S. (2020) „How Europe failed the coronavirus test - Contagion's spread is a story of complacency, overconfidence and lack of preparation", POLITICO. Available at: https://www.politico.eu/article/coronavirus-europe-failed-the-test/ [20.11.2020]

Holmes, E. (2020). "Reexamining data privacy and protection amid COVID-19", *Security*, September 23, available at: https://www.securitymagazine.com/articles/93428-reexamining-data-privacy-and-protection-amid-covid-19, [15.11.2020]

Hylke, D.; De Ruijter, A. (2017) "The Health-Security Nexus and the European Union: Toward a Research Agenda", *European Journal of Risk Regulation*, 8: 613–625

Olivi, G.; Messina, F.; Orlando, Miele, C. (2020) Data-driven solutions to fight COVID-19: the EDPB's guidelines (04/2020) on the use of location data and contact-tracing tools, available at: https://www.dentons.com/en/insights/articles/2020/april/29/the-edpbs-guidelines-on-the-use-of-location-data-and-contact-tracing-tools [3.12.2020]

POLITICO. (2020) "How Europe is responding to the coronavirus pandemic", March 13, available at: https://www.politico.eu/article/how-europe-is-responding-to-the-coronavirus-pandemic/?fbclid=IwAR1Pbh3va2nwEYMiwRnfc-yKkHvUiP-gQoHT8VpSq9-T2XTQm67mDXM6lmLE, [17.11.2020]

Powell, A. (2020) "On-again, off-again looks to be best social-distancing option", *The Harvard Gazette*, March 27, available at: https://news.harvard.edu/gazette/story/2020/03/how-to-prevent-overwhelming-hospitals-and-build-immunity/?fbclid=IwAR1mGVD7_TqhndoSo9BfjABoINp1Q7-yiT7Fem-r20EwSPkTAIzqDpopWX6s, [15.11.2020]

Regulation (EC) 851/2004 for a Regulation of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0851&from=EN [12.11.2020]

Rossi LS. (2012) Does the Lisbon Treaty provide a clearer separation of competences between EU and Member States? In: Andrea Biondi, Piet Eeckhout, Stefanie Ripley, editors. *The EU Law after Lisbon*. Oxford: Oxford University Press; 85–106.

World Health Organisation. (2020) Coronavirus disease (COVID-19) Weekly Epidemiological Update and Weekly Operational Update, available at: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports, [12.10.2020]

World Health Organisation. (2020) Joint Statement on Data Protection and Privacy in the COVID-19 Response, available at: https://www.who.int/news/item/19-11-2020-joint-statement-on-data-protection-and-privacy-in-the-covid-19-response, [1.12.2020]

Evropska Komisija, Republika Srbija, Izveštaj za 2020. godinu, koji prati Saopštenje Komisije upućeno Evropskom parlamentu, Savetu, Evropskom ekonomskom i socijalnom komitetu i Komitetu regiona – Saopštenje o politici proširenja EU za 2020. godinu: 1-142. Available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2020_SR.pdf [1.12.2020]

Milenković, M. (2019) *Agencije Evropske unije i zaštita životne sredine,* Pravni fakultet Univerziteta u Beogradu.

Sjeničić, M; Miljuš, D; Milenković, M. (2016) „Nacionalni pravni okvir kojim se uređuje oblast zaštite stanovništva od zaraznih bolesti – usaglašenost sa propisima Evropske unije“, *Pravni život*, 9: 321-337.

Sjeničić, M; Milenković, M. (2019) *Pregovori sa Evropskom unijom u domenu javnog zdravlja (Poglavlje 28) i analiza uticaja na lokalne samouprave u Srbiji,* Stalna konferencija gradova i opština, ISBN 978-86-88459-98-3, 1-84: 1-90.*

* Manuscript was received on May 12, 2021 and the paper was accepted for publishing on October 30, 2021.

UDC: 339.13(4-672EU)"1999/2021"
DOI: https://doi.org/10.22182/spm.7442021.4
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 83-104

***Aleksandar Milošević****

*University of Belgrade – Faculty of Political Science*

# FALLING BEHIND: THE EUROPEAN UNION TRADE STRATEGIES FROM 1999 TO 2021**

## Abstract

As one of the most important global trade actors, in the period that lasted from 1999 to 2021the European Union promoted five different trade strategies. Some of them, such as the strategy of "managed globalisation" (of 1999) and "Global Europe" (of 2006) represented a deviation from the previous trade practice, while others ("Trade, Growth and World Affairs" from 2010, "Trade, Growth and Development" of 2012, and "Trade for All" of 2015), for the most part, included significant improvements compared to previous strategic documents. The latest communication document of the European Commission, "Open, Sustainable and Assertive Trade Policy" (of 2021), points to the Union's adaptation to new circumstances, emphasising the concept of open strategic autonomy and proclaiming a return to multilateralism based on fair and sustainable rules. Although the EU seeks to present itself as a leading initiator of change in the existing static trading system, this paper will attemptto prove that,in its strategic positioning and undertaken activities,the European Union is falling behind its key global competitors, the US and China. The systemic, state-centric and societal reasons for the relatively frequent changes of key trade documents and the essentially defensive action of the European Union in the global trade system will also be analysed.

**Key words:** European Union, trade strategies, trade multilateralism, open strategic autonomy

* aleksandar.milosevic@fpn.bg.ac.rs

** Parts of the text represent the result of research for the author's doctoral dissertation

Since the signing of the Treaty of Rome,which established the European Economic Communityin 1957, the goal of the countries that opted for this form of economic integration has been to remove barriers to free trade amongthem and act jointly towards third countries through the Common Trade (Commercial) Policy (Articles 110-116 of this Agreement refer to external trade policy) (EEC Treaty 1957). The establishment of the customs union (1968) and the introduction of uniform customs rates for trade with third countries created the basis for a joint foreign trade performance of the member states of the European Economic Community. The entry into force of the Single European Act (1992), the liberalisation of non-tariff barriers, and the difficult path to single regulation have further contributed to strengthening the Union's international competitiveness and the coherence of its external trade policy. From the establishment of the Common Trade Policy until today, the European Union has tried to use various types of actionin its foreign trade engagement, most often applying a multilateral and/or bilateral approach;however, in some cases, it has also implemented unilateral trade liberalisation(Gstohl and De Bièvre 2018, 139-175).[1]

Although the European Union acts as a single bloc in its external trade activities, there are still differences in the trade preferences of its member states, as could be seen in the difficulties during the negotiations on establishing a single EU position in multiple rounds of multilateral trade negotiations.[2] The change of external and internal circumstances has strongly influenced the evolution of the Common Trade Policy of the European Union. In most multilateral trade negotiations conducted under the auspices of the GATT, the European Union acted as a defensive force, reacting to proposals from other key actors (primarily the United States) and seeking to preserve its trade positions, mostlyin the field of agriculture. The EU has not been overly interested in taking proactive action to introduce new rules and standards at the multilateral level (Woolcock 2013, 77-79). However, the enlargement of the Union on several occasions, the strengthening of economic

1 Unilateral trade liberalisation has, to a large extent, been used as an instrument of the European Union's development aid.

2 Internal tensions among EU countries were particularly expressed during the Uruguay Round of multilateral trade negotiations.

and political integration in the EU (which has produced a desire for stronger performance in markets of third countries and greater global competitiveness), on the one hand, and the economic growth of the main trading partners, on the other, have created a need for EU's more active multilateral engagement. During the Uruguay Round of multilateral trade negotiations, the Union showed an intense interest in increasing its global importance, sacrificing even certain positions within its once unquestionable Common Agricultural Policy (Van den Hoven 2006, 186). The European Union then became the leader of multilateralism and the main advocate of the Doha round of multilateral trade negotiations. The development of the EU's external trade policy after the end of the Uruguay Round of multilateral trade negotiations will be presented in the brief analysis of trade strategies the Union applied from 1999 to 2021. A review of these strategies will show how far the EU has gone from advocating for multilaterally oriented expansion of its trade norms and rules from the strategy of "managed globalisation" to focused bilateralism which has become a key feature of contemporary EU foreign trade orientation.The last trade strategy of the European Union (of 2021) again puts multilateralism in the focus of its external trade activities, symbolically closing the circle of the Union's search for its global role.

## Evolution of the European Union's trade strategies since 1999

The beginning of the functioning of the World Trade Organisation (WTO)in 1995 symbolically marked the change of orientation of the European Union. From a relatively defensive actor, it became the driving force of new trade multilateralism. It changed its traditional trade strategy of dealing with border barriers and, consequently, focusing on the problems of customs rates and subsidies, and turned towards resolving "behind the borders"problems by focusing on non-tariff barriers and regulatory issues. Since then, the EU has promoted five strategic orientations related to its foreign trade engagement.

## Strategy of "managed globalisation"

The first trade strategy of the EU, created in the period after the establishment of the WTO, is known as the strategy of "managed globalisation". It is opposed to the so-called *ad hoc* (laissez-fair) globalisation, which means building interdependence through bilateral or unilateral action of independent actors who are not limited by multilateral norms and do not need to legitimise their actions(Abdelal and Meunier 2010, 351). In that period, the leader of this type of globalisation was the United States. As an opposite to it, "managed globalisation" wasconceivedand implemented thanks to the efforts of Pascal Lamy, a member of the European Commission in charge of external trade policy. This type of globalisation implies 'an emphasis on multilateral rules and organisations that "manage", "harness"and otherwise quite literally "rule" global capitalism'(Ibidem, 350-351).In addition to the standard topics that belong to the so-called corpus of border issues, the European Union's trade policy also included new themes. In line with the successfully concluded Uruguay Round of negotiations, the Union's focus becamea trade in services, the trade aspects of intellectual property rights, the trade aspects of foreign direct investment, etc. New topics,those that show a strong normative inclination and relate to the links between trade and workers' rights, environmental protection, as well as democracy and human rights, have been added to those listed above (Van den Hoven 2004).

The strategy of "managed globalisation" implied the global promotion of the standards and norms of the European Union through commitment to the liberalisation of international trade, with the intention of achieving (as much as possible) a fair distribution of profits from international trade (Dee 2015, Van den Hoven 2006, 190). The established high level of the Union's internal integration, accompanied by its external expansion andthe strengthening of its exclusive competencies, was a good starting point for promoting its own principles and rules as an example of successful economic (and political) integration. To increase its global role, the EU sought to emphasise the importance of the World Trade Organisation as a focal point of the global trading

system, identifying it as one of the 'key institutions of the international system'(European Council 2003, 9).

Multilateralism has become the main principle of the European Union's external trade engagement, to the extent that in 1999 an informal moratorium was declared on the negotiation of new preferential trade agreements. The position of the EU was not in line with the trade policy of the USA, which promoted the strategy of competitive liberalisation, according to which a multilateral engagement was accompanied by the conclusion of a significant number of preferential trade agreements (Sbragia 2010, 368-382). With this orientation, the European Union tried to emphasise its full commitment to multilateralism, but also to promote itself as a possible ally of developing economies that were entering the international scene and striving to make global trade rules. The aim of the European Union's multilateral engagement was also to gain the support of developing countries (whichaccounted for close to 80% of WTO membership) to hold a new round of multilateral trade negotiations (Van den Hoven 2004, 260).Kerremans, therefore, claimed that the idea of a new negotiating round was 'largely European' (2004, 371). In addition to the undoubted desire for the success of the existing global trade system, the EU sought to create favourable conditions for domestic companies to access the markets of developing countries which have achieved rapid economic growth in this period. So, next to the dominant normative dimension, it is obvious that this trade strategy of the European Union also had a certain commercial foothold. However, unfavourable developments during the Doha Round of the Multilateral Trade Negotiations, accompanied by internal tensions, led to its change in the mid-2000s.

## "Global Europe" trade strategy(2006)

The stalemate in the multilateral trade negotiations within the Doha Round, caused by the differences between developed and developing countries, had serious implications for the trade orientation of the European Union. The expectations of EU representatives regardingthe establishment of strong alliances with developing countries have basicallyfailed. The economic growth of developing countries has also contributed to the strengthening

of their bargaining power in multilateral trade negotiations under the auspices of the World Trade Organisation. Thus, in the Doha round of negotiations, Brazil and India came to the fore, positioning themselves as informal leaders of a group of developing countries. It became obvious that key decisions could no longer be made within the Quad, which consisted of the European Union, Japan, Canada and the United States, as was common practice in the previous period. On the other hand, the strategy of managed globalisation promoted by the European Union and the unilateral establishment of a moratorium on concluding new preferential trade agreements left the US open spacefor bilateral negotiations with new trading partners and the positioningof American companies in their markets. The United States, guided by its strategy of competitive liberalisation, did not fail to seize the opportunity(Evenett and Meier2007).

In October 2006, the Directorate-General for Trade within the European Commission published a document entitled "Global Europe", which marked a fundamental change in the European Union's external trade policy (European Commission 2006). Although this paper emphasised the Union's commitment to the multilateral approach and the actions of the World Trade Organisation, the advocacy forpreferential trade agreementswasformally introduced as a complement to the European Union'smultilateral engagement (Ibidem, 10).Future preferential trade agreementswere to be oriented towards the liberalisation of almost all trade between negotiating actors, butwere alsoto covertopics that have not become part of the Doha Round negotiating agenda: competition policy, investments and public procurement. Other issues of particular importance to the Union were:trade in services, trade aspects of intellectual property rights, and the problem of non-tariff barriers.

A significant innovation in the strategywas the emphasis on the economic criteria as crucial for the selection of future trade partners. By these standards, the European Commission implied'market potential (economic size and growth) and the level of protection directed against the export interests of the European Union (customs and non-tariff barriers)'(Ibidem, 11). The intention of the EU to monitor the status of future partners' negotiations with key competitors of the Union at the international level was especially

emphasised. The key goal of this trade strategy was to establish the competitiveness of the European Union in the global market,particularlyin the markets of developing countries that have achieved rapid economic growth. The European Union tried to connect the pursuit of global competitiveness with its domestic policies, i.e. with the need to complete a single market which, in addition, should create companies with real competitive potential in the global market. According to this plan, the development of the single market was to be accompanied by liberalisation in the sectors that had been subjected to protection measures inthe previous decades (textile industry and agriculture, for example). Special attention was to be paid to the harmonisation of the regulatory framework, i.e.alignmentof the rules and practices of the European Union with those applicable in partner countries.

Faced with the suspension of negotiations within the Doha Round, but also with the aggressive performance of the main competitors (the USA, above all) on the markets of third countries, the European Union did not have many choices. Fear of losing a market share in developing economies (especially in Asia) additionally encouraged Union's decision-makers to change the existing trade concept. The adoption of this trade strategy also marked the end of the moratorium on negotiations on concluding new preferential trade agreements. In addition, a significant change took place in the European Commission. Pascal Lamy, the creator of the doctrine of 'managed globalisation', was replaced by Peter Mandelson, who had significantly different views of the European Union's external trade engagement (Mandelson 2008). Bilateral negotiations were understood as a key instrument for gaining access to third country markets, with ASEAN and MERCOSUR countries, India, the Republic of Korea and countries belonging to the Gulf Cooperation Council identified as potential negotiating partners. This shows that the development dimension of the 'managed globalisation' strategy was essentially abandoned, despite the emphasis on the concept of sustainable development and the need for increased sensitivity regarding the development issues of partner countries as some of the main goals of the EU's new external trade orientation.

Although the Global Europe strategy was intended to legitimise bilateral and regional trade agreements as a form of comple-

ment to the EU's multilateral orientation, it seems to have paved the way for pushing the multilateral approach into the background. With this strategic document, the European Commission tried to open upthe possibility for additional negotiations on issues that were already being unsuccessfully discussed at the multilateral level, but also on topics that could not become part of the Doha's agenda (the so-called WTO plus issues). Advocating for the continuation of the Doha Round of Multilateral Trade Negotiations is more and more like advocating for formal multilateralism in which no breakthroughs occur at the global level, while bilateral negotiations expand the Union's trade engagement and satisfy the interests of its most powerfulgroups, especially representatives of the business community.

**"Trade, Growth and World Affairs" trade strategy (2010)**

After several years of implementing the "Global Europe" trade strategy, the new composition of the European Commission decided to evaluate its results. Under the leadership of the new Commissioner for Trade, Karel de Gucht, a new strategic document entitled "Trade, Growth and World Affairs" was adopted in 2010 (European Commission 2010a). This document on the future role of the EU trade policy is a part of the European Union's broader Europe 2020 strategy, which links improving the EU's competitiveness and productivity to smart, sustainable and inclusive growth(European Commission 2010b). The path to such growth required the fulfilment of several goals by 2020: that 75% of the population aged 25 to 64 be employed, that 3% of GDP be invested in research and development, and that at least 20 million people be less at risk of poverty or social exclusion. In addition to these indicators, the Europe 2020 strategy included goals related to education, climate change and energy issues. In this context, the Union's trade policy was to become the key instrument for achieving economic growth.

Projections that, by 2015, 90% of the economic growth will occur in non-European countries (a third of that in China) have raised awareness of the importance of trade (and above all exports) for the European Union's global engagement. For these reasons, this trade strategy set as its main objectives the conclusion of

multilateral trade negotiations within the Doha Round, but also the completion of ongoing negotiations on the conclusion of preferential trade agreements. For this reason, while emphasising the role of the bilateral approach in foreign trade engagement, the EU insists on its commitment to multilateral regulation of trade relations. Bilateralism is once again seen as a complement to the multilateral approach and by no means an obstacle to the multilateral engagement of the European Union. After all, as the European Commission pointed out in this document, 'liberalisation encourages liberalisation'(European Commission 2010a, 3).

This, as well as the previous trade strategy, emphasises the importance of the fast-growing region of East Asia and declares the conclusion of free trade agreementswith the countries from this part of the world, based on purely economic criteria, as a priority of the EU's external trade relations. Also, the importance of successful conclusion of the negotiations that took place in that period (Free Trade Agreements with South Korea, Peru, Colombia and Central American countries, Canada, India, etc.) was especially highlighted. Provided that all ongoing negotiations were successfully concluded, based on Commission's estimates'about half of the European Union's foreign trade would be covered by free trade agreements, the average EU export tariff would be almost halved (to about 1.7%), and the average import duty rate in the EU would be reduced by almost one fifth (to about 1.3%)' (Ibidem, 10). An element that represents a significant novelty when compared to the "Global Europe" strategy is the special emphasis on the importance of trade relations with the United States, China, Japan, Canada and Russia, which can serve as the basis for new, also economically based,preferential trade agreements. Also, less mention is madeof the World Trade Organisation than in the previous strategic documents.

The topics that EU considered particularly important for achieving the main objectives of this trade strategy, and which should be included in future negotiations with partners,are: trade in services; trade aspects of foreign direct investment; public procurement; regulatory barriers to the free movement of goods, services and investments; setting of common standardsor their mutual recognition, as well as some other less important topics. This trade

strategy was soon partially amended through the adoption of the communication document "Trade, Growth and Jobs"(European Commission 2013).

This document particularly emphasises the importance of external trade for the economic growth of the European Union. As a significant number of the EU Member States are unable to benefit from international trade on their own, the Union is expected to expand its capacity to act globally. To achieve this goal, it is necessary to implement an ambitious trade agenda, mostly aimed at concluding preferential trade agreements with powerful partners. The expected coverage of these agreements has been increased, compared to the previous trade strategy, from about half to two-thirds of the total external trade of the European Union. The expected growth of the EU's GDP would be around 2%, i.e. about EUR 250 billion (Ibidem, 4).Based on this document, developed countries - above all Japan and the USA - became the priority trade partners in the Union's bilateral engagement. This fact represents a certain deviation from the previous strategy and provides a basis for concluding the so-called mega-regional trade agreements. Also, there has been an important change in relation to the earlier trade documents, somewhat formal in nature but with possible strategic consequences. Namely, the multilateral engagement of the EU was described only after stating the goals and mechanisms necessary for the realisation of its bilateral agenda, while in all previous documents there had been a reverse order of citation. As putting the multilateral approach in the background basically reduced the development component of the EU's external trade engagement, this trade strategy was partially supplemented bythe adoption of the document "Trade, Growth and Development".

## "Trade, Growth and Development" trade strategy (2012)

The adoption of the strategic trade document entitled "Trade, Growth and Development" is, in a way, a complement to the previous strategy, with special reference to its development component (European Commission 2012).This strategy addresses the European Union's relationship with developing countries, emphasising its role in their development, which is particularly important due to the fact that at the time it was the most powerful global trading

player and major trading partner of many least developed countries (Ibidem, 1).The main idea of this strategy was to emphasise the link between trade and development policies, with the initial view that an effective trade policy could be a strong driver of development in least developed countries.

According to this document, effective development strategiesshould be based on trade (which is a necessary, but not sufficient,requirement for development) and accelerated integration of developing countries into the global economy. Openness to international trade becomes a factor without which successful and sustainable economic growth cannot be achieved. However, the European Union itself has been focused on the need for a differentiated approach and implementation of different policies towards individual countries, depending on the economic and political context. Some of the important issues that contemporary trade policies should includeare: regulation of the services market; competition protection policy; trade aspects of foreign investments; trade aspects of intellectual property rights; transparency of public procurement, etc (Ibidem, 5).These issues, as a rule, became part of the EU's new trade policy, primarily oriented towards regulating its trade relations with developing countries by concluding free trade agreements predominantly based on commercial grounds (Gstohl and De Bièvre 2018).

In its relationship with developing countries, the European Union has developed several specific policies. Some of them are autonomous trade measures in the form of the Generalised System of Preferences in two forms: the "Everything but Arms"programme and the GSP+ scheme. The "Everything but Arms" policy implied the opening of the European Union market for products from least developed countries without tariffs and quotas, while the GSP+ initiative included measures to support the sustainable development of particularly vulnerable countries, which were rewarded for their commitment to international rules on environmental protection, workers' rights, human rights, democratic principles, etc.

Of particular importance in this document is the renewal of bilateral and regional efforts in the negotiations of free trade agreements. Due to the slow pace of negotiations in the region-region format (long-term negotiations with Mercosur or ASEAN, for

example), the European Union is beginning to differentiateamong agreements between countries and interregional agreements, with an obvious tendency to conclude agreements with countries. For these reasons, the importance of negotiations with Malaysia or Singapore, but also with Peru, Colombia and Central American countries, has been especially pointed out. Basically, the negotiations on concluding a free trade agreement with the countries of Central America influenced the evolution of the European Union's positionson the promotion of regional integration.Namely, the EU is becoming aware of the impossibility of exporting its own norms and forms of integration and is increasingly becoming ready to adapt to the current context and harmonise its own approach with it.

## "Trade for All" trade strategy (2015)

This strategy, in essence, is the result of the re-evaluation of previous trade strategies and an attempt to synthesise their most important elements. The new member of the European Commission in charge of external trade policy, Cecilia Malmström, pointed out that the Union needed a trade strategy that would produce benefits for 'consumers, workers and small businesses' (European Commission 2015, 5). According to this strategy, the new trade policy of the European Union should be effective, transparent and based on values (and not only on interests). Its effectiveness would be reflected in meeting the interests of all target groups (consumers, workers and small businesses), while transparency implies the Union's intention to make its negotiating positions publicly available (as was the case with the Transatlantic Trade and Investment negotiations). A value-based trade policy through trade agreements negotiated by the EUwith a number of partners seeks to promote European values such as human rights, sustainable development, fair trade, anti-corruption policy and good governance (Ibidem, 20-26).

Like previous strategic trade documents created in 2006, this strategy promotes the conclusion of bilateral trade and investment agreements that are primarily based on economic criteria, i.e. on their potential contribution to economic growth and job creation in the European Union. In that context, the agreements with Canada and the United States are especially mentioned as the most ambi-

tious agreements that the Union has ever negotiated. The strategic engagement of the European Union in Asia and the Pacific region has also been emphasised, citing the conclusion of a free trade agreement with Japan as its strategic priority. The importance of Africa as a region comes into the focus of the European Union, which in this documenthighlights the need to redefine its relations with countries of the region through the effective implementation of the European Partnership Agreements and continued support for regional integration processes and capacity building through the Aid for Trade programme (Ibidem, 33).There is also the EU's intention to conclude investment agreements with certain African countries, provided that they are based exclusively on economic criteria. However, advocating for reciprocal market opening (as one of the basic economic criteria for concluding trade and investment agreements with potential partners) can create serious obstacles in negotiations with developing countries that (due to the specific context in which they operate) advocate the principle of non-reciprocity (Ibidem, 30). In addition, this trade strategy does not provide answers to questions about models of possible bilateral cooperation with China and Russia, which may pose an economic and/or political challenge in the future.

This strategy reiterates the European Union's commitment to multilateralism, and to a positive conclusion of the Doha Round of multilateral trade negotiations. The path offered by the EU as a solution to the long stalemate in the negotiations is to create opportunities for the adoption of plurilateral agreements (under the auspices of the WTO) that would be open to all economies with a more ambitious agenda. This proposal is not new, and it does not seem possible to provide support for it, especially among developing countries that do not accept the principle of differentiated negotiations. Also, the current concept of negotiations, theso-called single undertaking, which requires parties to accept all agreements reached in the negotiation process, can hardly produce a successful endingin the contemporary trade community. Obviously, it is necessary to "untie the package" and try to focus negotiations on individual topics with the intention of establishing the least common denominator among the negotiating parties, which has been happening in recent years.

Although the goals of the Trade for All strategy seem to be entirely justified, in practice there may be a dilemma as to whether economic criteria are decisivefor concluding trade agreements (which the European Union insists on), or agreements can be used as instruments for achieving various foreign policy goals, if it is insisted on fulfilling value-based conditions for their conclusion. A third possibility that may create additional doubts among trading partners is to highlight the requirements related to the respect for human rights, democratic values and the fight against corruption, behind which the Union's efforts to achieve a more favourable position for domestic companies may be hidden. In any case, a more responsible trade policy of the European Union (which is the main goal of this strategy) should try to achievea fine balance between normative goals and meeting its commercial interests.

## Open, Sustainable and Assertive Trade Policy (2021)

On 18 February 2021, the European Union published anew trade strategy entitled "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy" (European Commission 2021). Like many trade documents adopted earlier, this strategy does not offermuch innovation, but it does shed light on somedifferent aspects of EU trade policy compared to the previous period. Traditionally, the trade policy of the European Union was aimed at reducing trade barriers and creating export opportunities for domestic companies. In the background were other possible goals, such as human rights, workers' rights, environmental protection or sustainable development. In this strategy, the gap between the objectives of the first and second levels becomes blurred, and the overall focus is directed towards the concept of "open strategic autonomy of the European Union". The idea of "open strategic autonomy" is the basis of this document, but much attention is also paid to the Union's digital and green agenda. To promote its "green agenda", the European Union will seek to create a multilateral trade framework to support the expectation that EU industries will be sufficiently competitive in such circumstances. The Union is also committed to promoting the importance of climate change in future bilateral trade and investment agreements by including a chapter on sustainable development based on compliance with

the provisions of the Paris Agreement on Climate Change (United Nations 2015). The digital economy has a significant place in this trade strategy due to the Union's intention to lead the initiative to establish common standards and regulatory framework in this area, but also because of the EU's objective to conclude a very ambitious agreement on digital trade under the auspices of the World Trade Organisation (WTO 2020) . Assertiveness as the third element of the new concept implies the development of autonomous activities of the Union in the fight against unfair trade practices and the defence of its own trade interests, in case it becomes impossible to reach a broad agreement with other actors in the global trading system (Blockman 2021).

However, the main reason why this document is particularly interesting is because it seeks to systematically define the position of the European Union in contemporary international economic relations, at least from the perspective of current decision-makers in the EU. The previous orientation of the Union towards the "two-track" approach, i.e. simultaneousadvocacyfor multilateralism and active promotion of bilateralism in its own trade relations was continued in this strategy, but with an emphasis on multilateral orientation. Of course, bilateral relations have remained an important part of the Union's strategic vision. The document even contains a list of partners with whom trade relations should be developed. In that sense, special mention is made of the completion of negotiations with Australia, New Zealand and Mercosur, but the need to improve economic and trade relations with the Western Balkans regionand the countries with which DCFTA agreementswere concluded (Georgia, Moldova and Ukraine)is also emphasised.

However, what is new in this strategy in comparison to the previous communication documents of the Union is the shift towards the reform of the World Trade Organisation and advocacy for new multilateral initiatives. The idea of WTO reform is an attempt to revive the old idea of a rules-based global trading system that would be a strong tool for stabilising the shaken economic order. In addition, the European Union's renewed commitment to multilateral regulation of international trade relations aims to expand the EU's still-present (albeit declining) influence on the global trade scene;however, it is also aimed at attracting developing

countries as new, increasingly important trade actors. Improving the relations with these countries, which have been disrupted during the Doha Round of Multilateral Negotiations, has certainly become an important goal of the European Union in view of their growing economic strength and enormous development potential.

In line with the new strategy, the Union's trade policy should take into account'global trends and challenges to reflect the political ambition of a stronger Europe in the world' (European Commission 2021, 3). Given the projections of reduction of the EU's share in the world's GDP, the idea of linking it with countries from the dynamic regions of Asia and Africa is especially gaining momentum (Ibidem, 4). Emphasis is also placed on the future of transatlantic relations, which are assessed as 'the most economically important partnership in the world', based on 'common interests and values', as something thatis especially important in the circumstances of a multipolar trade order in which there are 'growing tensions between major actors'(Ibidem, 8). According to this document, trade and investment relations with China should be regulated by a multilateral framework based on rules, with the Union's expectation that China will take on a greater role in international trade relations, in accordance with its growing importance. EU-ChinaComprehensive Agreement on Investment (CIA) should address bilateral investment relations between the two actors, establishing a level playing field, in light of the European Union's objections to China's activitiescaused by the negative consequences produced by its economic system of state capitalism (Ibidem, 9). In addition to the informally expressed intention of China to negotiate a trade agreement with the European Union, it seems that at this moment international circumstances are not going in that direction. In light of the changed international context, the existing "geopolitical Commission" should direct the Union towards creating a network of trade agreements with various trade actors (primarily from the Asia-Pacific region, Africa and the Caribbean), with the basic goal of establishing a significant economic partnership, expanding its own values and satisfying different interests (Blockmans 2020).

According to this strategy, in the medium term,the new EU trade policy shouldmeet three key interests: 'supporting the recovery and fundamental transformation of the EU economy in line

with its green and digital objectives, shaping global rules for a more sustainable and fairer globalization, and increasing the EU's capacity to pursue its interests and enforce its rights, including autonomously where needed' (European Commission 2021, 9-10). Therefore, it is obvious that despite the strong commitment to the multilateral regulation of mutual trade relations highlighted in this strategic document, the European Union is ready to use bilateral and unilateral measures, i.e. autonomous trading instruments whenever it deems appropriate.

## Conclusion

Faced with changed external circumstances, the European Union sought to improve its own trade orientation, as manifested in frequent adoption of new strategic documents which often included new approaches to regulating its own trade relations. In 22 years (from 1999 to 2021), the European Union adopted five communication documents, some of which entailedtruly important trade policy changes. The document "Global Europe", adopted in 2006, marked a substantial change in relation to the previous orientation of "managed globalisation", which meant the suspension of Union's new bilateral initiatives. Although the EU tried to promote the preservation of a rules-based global trading system by advocating for the expansion of the multilateral agenda within the Doha Round of trade negotiations, its fundamental failure also changed the Union's position. Key competitors of the EU - the United States and China - conducted bilateral negotiations with potential partners while the Union sought to find allies in developing countries by playing the leading role in multilateralism. However, the dissatisfaction of these countries with the EU's refusal to further liberalise trade in agricultural products and the insufficient progress in expanding market access for non-agricultural products have made the desired alliance impossible. The Union's inability to bring about the items it is particularly interested in to the Development Round agenda has undoubtedly contributed to its further departure from multilateralism.

After 2006, bilateralism became the Union's dominant approach, despite the formal declaration of commitment to the multilateral trading system and the World Trade Organisation as its

headquarters. This trade orientation continued in later trade documents of the Union ("Trade, Growth and World Affairs", "Trade, Growth and Development", "Trade for All"), with the selection of trading partners based primarily on economic criteria. The dynamic development of some world regions (Asia, for example) or the great development potential of others (Africa), along with advanced trade negotiations of key competitors of the Union (USA and China) with countries from these areas, further accelerated the change of EU trade orientation. The changes were influenced also by internal circumstances, i.e. ongoing tensions and open conflicts between promoters of free trade and advocates of protectionist measures (for example, opponents of CAP reforms) within the Union. Satisfying such diverse interests imposed a bilateral approach as a more efficient way of negotiating due to the undoubted existence of an asymmetry of power in favour of the European Union during negotiations with the majorityofother actors in international trade relations (Lindeberg 2021).

The societal aspect of EU foreign trade policy has become particularly important since the early 2000s, when this topic, previously reserved for experts in the field, began to be addressed by various stakeholders (consumer associations, for example), NGOs and the media (old and new). The depth of the new trade agreements has made their provisions applied not exclusively to the so-called border issues but to produce implicationsfor the people's daily lives as well.In essence, economic globalisation and the attempt to create new patterns of trade have led to the politicisation of EU foreign trade policy(De Bièvre et al. 2020). This phenomenon was particularly evident during the negotiations on the conclusion of the Trade and Investment Partnership Agreement with the United States (TTIP), but also during the ratification of the Comprehensive Economic and Trade Agreement with Canada (CETA) (Merler 2016). The Lisbon Treaty and the expansionof the European Parliament's competences in the external trade policy domain have opened upnew possibilities for the influence of various interest groups on its members, which contributes to further politicisation of the overall decision-making process in this area.

The COVID-19 pandemic shed additional light on problems caused by delays in global production chains, pointed out the need

for rapid growth of production in certain sectors in crisis situations (in a health crisis, for example), and stressed the importance of increasing the role of government in such circumstances.The European Union and its member states have justifiably found themselves under a barrage of public criticism because of poor preparation, late reactions and insufficient coordination in responding to the crisis. To point out the potential impact of COVID-19 on various megatrends, the European Commission published a strategy paper seeking to incorporate elements of strategic forecasting into EU policymaking (European Commission 2020). One of the envisaged instruments for achieving a future, more resilient European Union is its external trade policy.

Having in mind the evolution and timing of the adoption of the European Union's strategic documents, it can be concluded that they were the product of internal and external pressures to which the Union was exposed. Unfortunately, it seems that, despite significant successes, defensiveness and falling behind key competitors are still the most significant features of the EU foreign trade policy. The reasons for that can be numerous and largely justified, but it is always necessary to keep in mind the fact that trade policy is one of the few areas in which the European Union is a truly global actor and that preserving that position requires more focused, efficient and active action.

## BIBLIOGRAPHY

Abdelal, Rawiand Sophie Meunier.2010."Managed Globalization: Doctrine, Practice and Promise", *Journal of European Public Policy*, Vol. 17 (3): 350-367, DOI: 10.1080/13501761003662040.

Blockmans, Steven. 2020.*Why the EU needs a geopolitical Commission*.Last accessed 10October 2021.https://www.ceps.eu/why-the-eu-needs-a-geopolitical-commission/.

Blockman, Steven. 2021."The EU's New Trade Policy: An Autonomous Assertion of Strategic Objectives?", *Friedrich Ebert Stieftung Analysis* [online]. Last accessed 10 October 2021. http://library.fes.de/pdf-files/bueros/singapur/18296.pdf.

De Bièvre, Dirk, Patricia Garcia-Duran, Leif Johan Eliasson, and Oriol Costa. 2020."Editorial: Politicization of EU Trade Policy across Time and Space", in *Politics and Governance* 8(1): 239-242. DOI: 10.17645/pag.v8i1.3055.

Dee, Megan. 2015.*The European Union in a Multipolar World: World Trade, Global Governance and the Case of the WTO*. Basingstoke and New York: Palgrave Macmillan.

European Commission. 2006.*Global Europe: Competing in the World*. Last accessed 10 October 2021.https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF.

European Commission. 2010a.*Trade, Growth and World Affairs*. Last accessed 10 October 2021.https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0612&-from=en.

European Commission. 2010b. *Europe 2020*. Last accessed 10 October 2021. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020&from=en.

European Commission. 2012. Trade, Growth and Development. Last accessed 10 October 2021. http://aei.pitt.edu/37952/1/COM_(2012)_22.pdf.

European Commission. 2013. *Trade, Growth and Jobs*. Last accessed 10 October 2021. http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151052.pdf.

European Commission. 2015. *Trade for All*. Last accessed 10 October 2021. https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52015DC0497.

European Commission. 2021. *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy*. Last accessed 10 October 2021. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0066&qid=1614007663855.

European Council. 2003. *A Secure Europe in a Better World: European Security Strategy*.Last accessed 10 October2021.https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf.

Evenett, Simon J. and Michael Meier. 2007. "An Interim Assessment of the U.S. Trade Policy of 'Competitive Liberalization'"*inUniversity of St. Gallen Economics Discussion Paper No. 2007-18)*. http://dx.doi.org/10.2139/ssrn.985521.

Gstohl, Sieglinde and Dirk De Bièvre. 2018.*The Trade Policy of the European Union*. London: Palgrave Macmillan.

Kerremans, Bart.2004. "What Went Wrong in Cancun? A Principal-Agent view on the EU's Rationale towards the Doha Development Round", *European Foreign Affairs Review* 9 (3): 363-393.

Lindeberg, Rafaela.2020. *EU's Free Trade Champions Challenge Protectionist Forces*.Last accessed 10 October 2021. https://www.bloomberg.com/news/articles/2021-02-09/eu-s-free-trade-champions-challenge-protectionist-forces.

Mandelson, Peter. 2008. *Europe's Openness and the Politics of Globalisation*. Last accessed 10 October 2021. http://europa.eu/rapid/press-release_SPEEC-08-64_en.htm.

Merler, Silvia. 2016. *The Wallonian Resistance*.Last accessed 10 October 2021. https://www.bruegel.org/2016/10/the-wallonian-resistance/.

Sbragia, Alberta. 2010. "The EU, the US, and trade policy: Competitive interdependence in the management of globalization", *Journal of European Public Policy* 17(2): 368-382. DOI:10.1080/13501761003662016

Schott, JeffreyJ. 2004. *Reviving the Doha Round*.Last accessed 10 October 2021. https://www.piie.com/commentary/speeches-papers/reviving-doha-round/.

United Nations. 2015. *The Paris Agreement*. Last accessed 10 October 2021. https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement.

Van den Hoven, Adrian. 2004. "Assuming Leadership in Multilateral Economic Institutions: The EU's 'Development Round' Discourse and Strategy", *West European Politics*27 (2): 256-283. DOI: 10.1080/0140238042000214900.

Van den Hoven, Adrian. 2006. "European Union Regulatory Capitalism and Multilateral Trade Negotiations", in Sonia Lucarelli & Ian Manners (Eds.), *Values and Principles in European Union Foreign Policy.* London and New York: Routledge.

Woolcock, Stephen. 2013. *European Union Economic Diplomacy*. Farnham: Ashgate.

WTO. 2020. *Joint initiative on e-commerce news archives*. Last accessed 10 October 2021. https://www.wto.org/english/news_e/archive_e/jsec_arc_e.htm.*

* Manuscript was received on May 17, 2021 and the paper was accepted for publishing on October 30, 2021.

UDC: 304+331.5.024.5-056.24(497.16)
DOI: https://doi.org/10.22182/spm.7442021.5
Original scientific paper

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 105-133

***Uglješa Janković****

*University of Montenegro – Faculty of Political Science, Podgorica*

***Đorđe Stojanović*****

*Institute for Political Studies, Belgrade*

# INTERNAL AND EXTERNAL BARRIERS TO EMPLOYMENT OF PWD: A CASE STUDY OF BOKA KOTORSKA (MONTENEGRO)

## Abstract

This paper presents an overview of a research study on the position of persons with disabilities (PWD) in the labour market of the Boka Kotorska region, in the municipalities of Tivat, Kotor and Herceg Novi. This original research study is based on an analysis of the perception and attitudes of PWD regarding their position in the labour market. The study looks into the attitudes of PWD towards: education, employment, motivation to engage in employment, and the challenges they face in seeking employment in the region of Boka Kotorska. Simultaneously, it tested the impact of the different forms and types of disability, as well as age on potential employment. Data on unemployment of PWD in Boka Kotorska, combined with the activities and capacities of employers in the area of employment of PWD were analysed. The research findings indicate certain internal and external barriers in the labour market. PWD mostly face the following problems: difficulties with obtaining employment, lack of recognition of their potential, prejudice on behalf of employers regarding their skills and capacities, early abandonment of education, and physical barriers. A certain number

* jankovicugljesa@yahoo.com

** djordje.stojanovic@ips.ac.rs

of PWD faces limitations primarily related to low levels of motivation to: engage in employment, actively seek employment, engage in professional rehabilitation programmes, advance in education, self-employ. However, a majority of PWD wish to engage in some form of employment, in areas that are adapted to their capacities, and with modified working hours.

**Keywords**: PWD, disability, employment, labour market, unemployment

## INTRODUCTION

The social position of persons with disabilities (PWD) has changed dramatically in the past couple of decades in terms of their de-institutionalisation, inclusion into regular education, and approximation to the labour market (Pearson, Watson, 2007:95). However, societies are still far from enabling complete social integration and equal participation of PWD. Employment among PWD is still significantly lower than among persons without disabilities. Employment rates in Europe are, on average, 20% to 30% lower among PWD. In the UK, for example, employment rates for persons without disabilities is at 80.1%, compared to 47% for PWD (Van Dallen, 2017:7). In Central and Eastern European countries (Hungary, Bulgaria, Romania, Slovakia), the gap in employment rates for PWD and persons without disabilities is far more pronounced than in Western European and Scandinavian countries (Luxemburg, France, Finland, Sweden).[1] According to the Croatian Employment Agency, a total of 5.948 PWD are registered as unemployed, making for 4.5% of the total unemployed population (CEA, 2019). In Serbia, 2.7% of the total number of people registered as unemployed at the National Employment Service are PWD (Cvejić, Stefanović, 2016:11). Due to evident gaps in the rates of employment and the fact that PWD do not have equal access to the labour market, unemployment among PWD is sometimes referred to as the "disability penalty" (McInnes, 2014:36).

1 See: Tursa, A., et al. 2018. Study on employment models within the social economy and their role in including PWD into the labour market and society, Policy Impact LabEuropean Union Programme for Employment and Social Innovation "EaSI" (2014-2020).

A significant number of PWD do not consider themselves "disabled", and indeed, changes in circumstances and the unpredictability that frequently characterises the type disability they are faced with can lead to a positive change in perception among those who consider themselves "disabled" (UKDWP, 2013). A common trait among PWD, regardless of the type of disability they suffer, their lifestyle, work ability and motivation, is the fact that they deal limitations or restrictions in their everyday life. The World Health Organisation differentiates between the following three elements or problems that *constitute* a disability: problems with body functions, activity limitation problems, and social participation restriction problems, stereotyped as a "handicap" (WHO, 2000). The term "handicap" has been replaced by a concept of a social model of disability. The social model places a disability in the context of social norms and expectations that shape experiences of PWD (Spiker, 2013:97). The emergence of the so-called social model of disability resulted in treatment of PWD as active and equal members of the population, for whom the society is obliged to remove barriers and ensure provision of support in social inclusion efforts (Leutar, 2016:2). The model is based on a premise that the position of PWD and the discrimination they are exposed to are socially conditioned (Rieser, 1994, cited in Teodorović and Bratković, 2001:282). Edwards observes that both models (medical and social) were formulated in a context of a disadvantaged position induced by social factors (Edwards, 2005:20). A variety of activities can be undertaken as a proactive reaction or response to the problems faced by PWD. Medical treatment can facilitate overcoming functional limitations. Social services can contribute to overcoming barriers resulting from any existing limitation. Intensive efforts invested in changing social relations and processes can contribute to creating an ambience that enables social inclusion of PWD into everyday social life (the labour market, civic activism, volunteering, humanitarian activities, etc.). The specificities of the position of PWD determine their potential to face their problems. In order to meet their needs in an adequate manner, recognition or acknowledgement of a problem must be combined with appropriate responses to the said problem. Modern societies take their fair share of responsibility in enabling PWD to live active lives.

Consequently, PWD are no longer perceived as passive recipients of assistance, but as equal active citizens (Ostojić-Baus, 2018:50).

The position of PWD in Montenegro's labour market has long been a subject of interest of policy makers and civil society activists. Montenegro has recently created the required legislative and normative framework that recognises and treats the position of PWD.[2] The Law on Professional Rehabilitation and Employment of PWD is particularly relevant for matters related to employment of PWD. The law defines standards for professional rehabilitation and recognises the following two types of employment of PWD: jobs that require adaptation, and jobs that do not require adaptation. The first strategic document that deals with the social position of PWD in Montenegro was adopted 12 years ago (Strategy for Inclusion of PWD in Montenegro, 2008-2016). Recently, awareness raising has been carried out on the need to transform the medical model into a more modern and proactive social model that relies on maximising participation in all spheres of social life. The *Strategy for Integration of PWD in Montenegro, 2016-2020* defines measures and instruments that aim to improve the position of PWD in the sphere of employment, among other areas.[3] A broad spectrum of models for integrated employment of PWD (quota, volunteering and mixed employment systems, supported and adapted employment, self-employment, social entrepreneurship) enables practicing the right to employment (Milovanović-Dobrota, 2018:91). Consequently, policy makers in Montenegro spotted and identified a number of challenges and risks that PWD deal with as problems that affect the public as a whole, and as issues to be dealt with through state-level interventions. Intensive work in the area of defining adequate strategic approaches and implementing associated action plans for employment of PWD remans ineffective in terms of final outcomes. There is substantial room for improvement with regards to the position of PWD in the labour market, particularly in terms

2 Law on Prohibition of Discrimination of PWD; Law on Professional Rehabilitation and Employment of PWD; Law on the Movement of PWD with a Guide Dog; Law on Travel Privileges of. PWD; Law on Education of Children with Special Needs.

3 One of the four objectives of the strategy aims at "providing conditions for full and active participation of PWD in all fields of social life on an equal basis through the development and implementation of the policy of equal opportunities, particularly in the fields of employment, labour, education, culture and housing" (Strategy for Integration of PWD in Montenegro, 2016-2020)

of gaining and developing their competencies, and in the area of actual employment. The research study presented in this paper explores the impact of internal and external barriers on access to the labour market and employment in Boka Kotorska, through an analysis of attitudes of PWD.

The first part of the paper provides for a theoretical overview of matters related to employment of PWD. The second part is dedicated to the objectives of the research, the research questions, and the methodology applied to the sample. Research findings are presented in the third part of the paper. We present a general conclusion on the current position of PWD in Boka Kotorska at the end of the paper.

## 1. EMPLOYMENT OF PWD – BARRIERS, CHALLENGES AND RISKS

The act of engaging in employment for people who seek employment in the labour market requires meeting certain conditions that render a particular applicant competent to deliver job-related activities in a given area. In addition to willingness to engage in employment as a basic prerequisite, some of the most common requirements are as follows: adequate education, flexible skills and competences, a well-developed professional profile in areas that sought on the market, readiness to adapt to market conditions, the general ambience in the labour market, etc. In addition to layers of complexity associated with employing PWD in the aforementioned conditions, there are issues related to internal and external barriers and inadequate work experience (Winn & Hay, 2009). External barriers include a lack of employment opportunities (Grant, 2008), a lack of adequate support (Shier et al., 2009), discrimination and stigmatisation in the workplace (Butcher & Wilton, 2008; Winn & Hay, 2009, cited in Shier et al., 2009). In addition to the barriers listed above, circumstances that further complicate the situation include: stereotypical perceptions and interpretations of disabilities, physical inaccessibility, cultural prejudice. Crawford and Martin (2000) suggest that PWD are provided with a certain form of secured social comfort, but they are still marginalised throughout the process of employment (Shier et al., 2009:63).

Exercising the right to employment is a powerful protective factor that serves as a prevention mechanism for social isolation. Contrarily, lack of employment results in social isolation, particularly for people who were previously socially "included" (Burchardt, 2003). Existing outside of the labour market increases the risk of poverty and social exclusion for PWD, to a greater degree than it does for persons who do not suffer from any form of disability. The said risks are not individual in character, given that they are more pronounced in families with PWD than they are in other households (MacInnes, et al. 2014:32). Poverty represents not only material, but immaterial deprivation as well, and a lack of opportunities (Šućur, 2006:249). Therefore, the social position of PWD is complicated by a number of factors.

The position of PWD in the labour market is a significant determinant of their opportunities in life, as much as it is for all people. This is particularly relevant because activities in the labour market do not only contribute to social security, but they also facilitate overcoming social isolation and the feeling of unequal treatment caused by the shadow of disability (Heera, Devi, 2015:55, cited in Schur et al., 2009). Échevin (2013) argues that, in addition to challenges related to employment, PWD face a number of other challenges in relation to accessing the labour market and positioning themselves in a workplace in line with market requirements. A significant number of authors argues that the spectrum of challenges that PWD face is rather broad, ranging from a lack of education, skills and training, over a lack of financial resources, issues with adaptation of workplaces, to attitudes and perceptions of employers regarding employment of PWD (Schur et al., 2009; Vandekinderen et al., 2012, cited in Heera, Devi, 2015:55). Employers are frequently the weak link in the architecture of social integration of PWD. Marumoagae (2012) argues that an important factor in the process of integration of PWD into the labour market is changing the approach of employers, who play a crucial role in implementing activities of significance to the general public. Kang (2013) posits that suboptimal results in employment of PWD are a consequence of the fact that most activities target development of PWD, while very few activities target employers, their human resources and real needs. Similarly, Vornholt et al. (2013) observe that the majority of studies address direct experiences of PWD with a marginal focus

on the requirements of employers (Vornholt et al., 2013, cited in Heera i Devi, 2015:57). Ball and Samant (Ball et al., 2005, Samant et al., 2009) argue that employing PWD can significantly contribute to promoting a culture of cooperation and increase chances of success for the organisation. Heera and Devi (2015) emphasise that understanding the factors that are vital for the perspectives of employers can significantly improve chances of employment and gaining work experience for PWD. The overall approach to solving problems of unemployment of PWD is shaped by activities in the following three groups of mutually linked determinants: capabilities and motivation of PWD, readiness and capacities of employers, and support to interested social subjects through adequate policy making (the state, local self-administrations, civil societies, civic initiatives, etc.). It is important to bear in mind that work engagement of PWD through utilisation of their potentials is a process that takes time (which applies to persons without disabilities as well), and a process that depends on a series of factors: job descriptions and work assignments, existing competencies, which are at times dependent on their academic background, previous training and professional development, individual capacities and the status of the person in terms of levels of empowerment and independence, insistence on equality of cultural identities, and the level of support provided to employers, and their dedication and requirements. By employing PWD, employers gain economic and social benefits, and provide a humane contribution in the interest of the general public and the society. Such activities not only ensure preservation of economic sufficiency for PWD, but provide possibilities for creating social networks and contacts, and establishment of control in managing their own lives (Beynon and Taker, 2006:80).

## 2. RESEARCH OBJECTIVES AND RESEARCH QUESTIONS

This paper aims to exhamine the position of PWD in the socio-economic context of Boka Kotorska. The foundational premise is that improvement of the legislative framework, and intensive work in the area of defining strategic principles for employment of PWD are considered ineffective until internal and external barriers

are removed or at least alleviated. Interpretation of data from the research will aim at providing answers to the following questions:

1) What are the attitudes of presons with disabilities towards education?

2) How did their disability and the age at which they acquired the disability affect their education?

3) What are the general attitudes of PWD towards employment?

4) How do the type of disability and the age at which a person acqured the disability affect their interest in employment?

5) How did the challenges in active search for employment affect PWD?

6) What type of work engagement are PWD who want to work interested in?

Answers to these questions may provide insight into potential internal and external barriers that affect the position of PWD in the labour market. Additionally, they will facilitate the process of understanding any potential differences (education, type and form of disability, age) that affect the access to the labour market for PWD.

### 2.1 Research methodology and sample

The research study conducted as part of the project entitled "New Knowledge for New Beginnings for PWD" was implemented by the NGO "Nova šansa u Novom", in partnership with the NGO "Novi razvoj". With the aim of collecting data for the aforementioned research questions, a survey was conducted in the area of Boka Kotorska, in the municipalities of Tivat, Kotor and Herceg Novi. The survey was delivered to 31 PWD (23 unemployed, and 8 employed) in the area of Boka Kotorska, aged 18-65, in both categories - employed and unemployed. The process of pondering enabled the transfer of findings to a sample of 244 persons, officially registered as unemployed in local employment bureaus in Tivat Kotor, Herceg Novi, as well as 83 PWD registered as employed.

The research considers the following basic sociodemographic characteristics of participants: gender, age, type of education, level of education, type and form of disability. A total of 45% of research participants are male, while 55% are female. The majority of those surveyed belong in the age group of 30 and older (84%). Almost a third of participants are in the age group 40-50, while youth in the age group 18-25 and 25-30 make for 10% and 6% of the sample, respectively. The survey shows that almost two thirds of research participants with congenital or acquired disability completed high school education, whether it is three-year or four-year high school programmes. A total of 79% of research participants acquired a disability upon completing high school education. A total of 14% of those surveyed completed some form of high professional educaition and suffer from a congenital disability, while 20% of those surveyed acquired a disability during education. The results also indicate that only 6% of those surveyed, all of whom suffer from a congenital disability, attended school for children with special needs, while the others attended standard schooling programmes. The majority of research participants acquired a disability upon finishing education (61%), while almost a quarter of the research participants suffered from a congenital disability. Among those suffering from a congenital invalidity, the majority is younger than 25, while the majority of people who suffer from a disability acquired during education are in the 25-30 age group. A significant percentage of people who suffer from a disability acquired upon completing education is in the 40 and older age group.

Among those surveyed, 55% suffer from a moderate form of disability (between 50% and 79% disabled), and this form of disability occurs most frequently in the 40-50 age group (over 80%). Mild disability (between 20% and 49% disabled) is evidenced in less than half of research participants. The majority (89%) of people suffering from a mild disability are in the 50 and older age group. The most frequent form of disability is spine injury (26%). This type of disability occurs frequently is the 30 and older age group, and is most frequent in the 50 and older age group. There are specificities in the types of disabilities typical for certain age groups. The most frequent type of disability among research participants in the 18-25 age group is caused by physical injury of upper or lower extremities. The 25-20 age group frequently reports hearing loss,

while the 30-40 age group reports issues such as multiple sclerosis, combined problems and epilepsy, and the 40-50 age group reports autoimmune and malignant diseases. Persons in the 50 and older age group frequently report cardiovascular issues.

An integral part of this research was a desk-analysis of reports on businesses in Boka Kotorska and their balance of payments, using Tax Administration data, focus groups with PWD, their family members and employers, as well as semi-structured interviews with employers (both those who employ and those who do not employ PWD), and representatives of institutions at the local level (local employment bureaus,centres for social work, municipality administrations).

## 3. RESEARCH FINDINGS

### 3.1 PWD and the labour market in Boka Kotorska – general data

According to data from the Employment Agency of Montenegro, unemployment in Montenegro towards the end of 2019 was at 16.29%, with 32.802 people registered as unemployed (MONSTAT, 2019).

Direct cooperation between municipalities and employment bureaus is characterised as adequate, as confirmed by previous research.[4] Analysis of unemployment in the municipalities of Tivat, Herceg Novi and Kotor confirms that there are 244 unemployed PWD in the area.[5] Therefore, a total of 0.063% of all unemployed PWD in Montenegro (11.173) are registered as unemployed in the three municipalities in Boka Kotorska. Basic profile analysis points to a correlation between employment status and level of

4 Cooperation between local employment bureaus and municipalities is mainly good, and the most frequent forms of cooperation are as follows: public works, funding salaries for interns through employment actions, and participation in definition of local plans for social inclusion and development of social services (Bežovan et al. 2013:47).

5 There are 66 PwD registered at the employment bureau in Tivat, 120 at the employment bureau in Herceg Novi, and 58 PwD registered as unemployed in Kotor (EAM, 2019).

education. In all the aforementioned three municipalities in Boka Kotorska, the majority of unemployed PWD have obtained a level I qualification in education. In Kotor and Herceg Novi, with the exception of Tivat, the majority of PWD who are undeployed have a level III qualification.

In the municipalities of Tivat, Herceg Novi and Kotor, 83 PWD are registered as employed. Classified according to type of contract, 23 persons have a temporary contract, while 60 have a permanent contract.

### 3.2 PWD and employers in Boka Kotorska

An overview of the structure of employers in Boka Kotorska indicates that out of the 57 businesses that employ 83 PWD in the territory of Herceg Novi, Kotor and Tivat, 49 function as *limited liability companies* (LLC), while one employer is registered as a *public limited company*. Only two NGOs in the three municipalities employ PWD, and four employers fall into the category of *local self-administrations* or *their directorates* (TAM, 2019). Employment in the public and civil sector is reduced to a minimum.

A total of 5.408 businesses are registered in the region of Boka Kotorska (MONSTAT, 2019). There are 2.467 businesses registered in Herceg Novi, 1.573 in Tivat, and 1.368 in Kotor. A comparison of the number of registered employers in Boka Kotorska with the number of employers who employ PWD reveales that less than 1% of businesses in Boka Kotorska participate in employing this category of the population. Herceg Novi has the largest number of businesses that employ PWD (35). There are fewer businesses that employ PWD in Tivat (10) and Kotor (12) combined, than there are in Herceg Novi alone (TAM, 2019). Most businesses that employ PWD employ only one person (the total number of employees). Small and medium-sized enterprises (with up to 30 employees) employ the majority of persons with disabilities in this region, while there are only five large enterprises and institutions (with more than 50 employees) that employ persons with disabilities.. Therefore the size of the company, i.e. the total number of employees, and the number of employees with a disability are inversely correlated.

Employers show modest level of sensibility and awareness for hiring PWD, despite the associated benefits and legal obligations. A total of 73% of businesses in Boka Kotorska employ up to 10 persons (Tax Administration of Montenegro, 2019). For such businesses, there are no legal obligations to employ PWD, according to the Law on Professional Rehabilitation and Employment of PWD in Montenegro (articles 22 and 23).

Semi-structured interviews, conducted during the research, indicate that employers aspire to being perceived as socially responsible actors, but those aspirations come with expectations. Primarily, they express a need for precise information on educational profiles and skillsets of PWD, particularly those relevant for the company's business profile; advice on the expected impact that PWD may have on other employees; guidance on workplace adaptation; and shorter procedures for workplace adaptations. However, the focus of the final outcome of any efforts to employ PWD revolves around their own business interests.

Analysis of balance of payments of businesses in all three municipalities indicate that the majority of businesses that employ PWD have an annual turnover of up to €50.000 (22 such businesses). Larger turnovers, €50.000 - €200.000 have been registered by 16 businesses (Tax Administration of Montenegro, 2019). There are seven businesses that employ PWD with turnovers over €1 million. Large turnovers indicate that businesses have great potential for growth, but such businesses also seem to employ fewer PWD. In practice, the majority of large businesses opt for paying a fee to the Fund for Professional Rehabilitation and Employment of PWD. The current situation in terms of employment of PWD in Boka Kotorska does not correspond with the intention of the legislator to have a normative framework in place that would stimulate employment of PWD. Article 21 of the Law on Professional Rehabilitation and Employment of PWD prescribes the following: a) employers with 20 to 50 employees must employ at least one person with a disability; b) for employers with more than 50 employees, 5% of the total workforce must be PWD (Law on Professional Rehabilitation and Employment of PWD, article 21).[6]

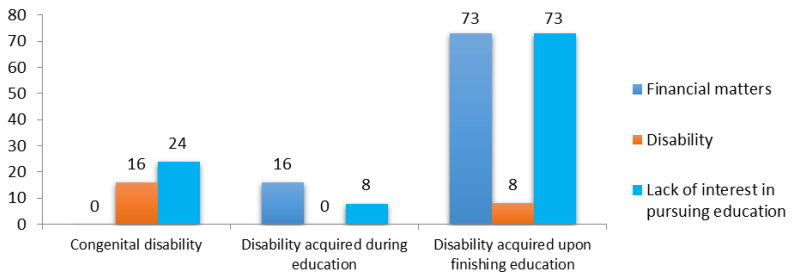
6 Article 22 of the Law on Professional Rehabilitation and Employment of PWD defines obligations on behalf of employers if they do not employ PwD. An "employer who fails to employ the PWD pursuant to the Article 22 of this law shall, for every

The lack of engagement among employers in Boka Kotorska can be interpreted from several perspectives. Firstly, it may be attributed to not being informed on the options, rights and obligations defined in the legislation. Secondly, there may be a social barrier imposing a view that employment of PWD does not bring a commercial or a social benefit. Thirdly, there are infrastructural inadequacies that render access to business premises difficult. Subsequently, due to poor conditions for development of entrepreneurship and a high volume of business barriers there is a general lack of interest in employment. Additionally, a form of cohesive tissue between employers and PWD, that could take the form of various types of initiatives, is lacking. Finally, the public and civil sector have proven to be ineffective in improving employment prospects for PWD. In reality, a combination of all of the aforementioned factors drive decision-making processes among employers, rather than any circumstance in particular.

### 3.3 Attitudes towards education

The research study focused on compiling data on the perception of PWD on education, and the different types of education that would be adequate. Education is the foundation for integration of PWD into the community, and affect employment prospects and prospects for finding adequate employment.

Chart 1. Reasons for discontinuing education, depending on the period in which a disability occurred

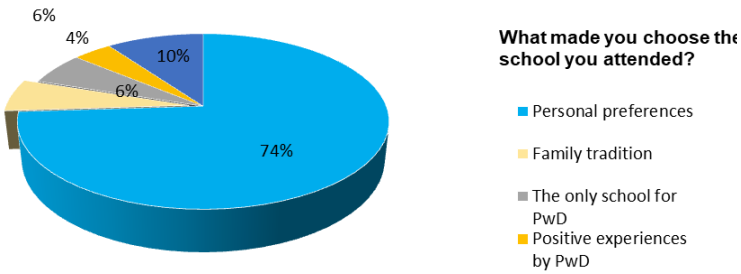



Source: PWD in Boka Kotorska, 2019.

person that the employer has failed to employ, pay a special fee for professional rehabilitation and employment of PWD on payment of income and contributions" (Law on Professional Rehabilitation and Employment of PWD, Article 22).

Disability has been quoted as a reason for discontinuing education by 11% of PWD. Financial issues were an obstacle for 41% of research participants. Lack of interest in pursuing education has been quoted by the majority of those surveyed (48%) (Chart 1). For people with a congenital disability, lack of motivation was the overarching cause for not pursuing education. For people who acquired a disability upon completing an education programme, financial matters and lack of interest in pursuing education further were the main reasons for not continuing with education programmes. For 74% of people, personal preferences were key in selecting education programmes. For 6% of those surveyed, family tradition played a role in discontinuing education programmes, as well as insufficient options for schooling for PWD (6%) (Chart 2). Data show that research participants were generally not interested in pursuing education, regardless of the type of disability they suffered (congenital vs. acquired).

Chart 2. PWD and education choices

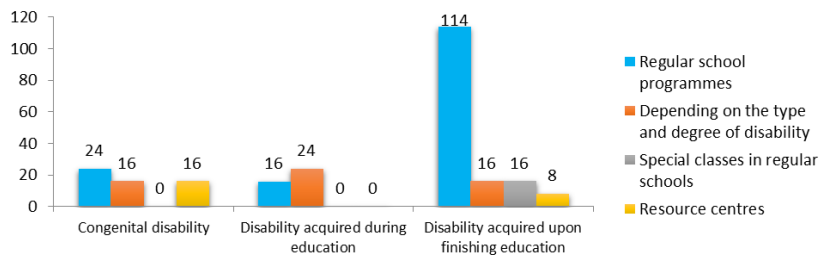



Source: PWD in Boka Kotorska, 2019.

Almost a third of research participants hold the view that education is not adapted for the needs of PWD (Chart 3). Simultaneously, 71% agree that municipalities offer various options for informal education. For 61% of research participants, the most adequate form of education for PWD are regular school programmes, adapted to PWD. However, 39% of those surveyed argue that regular school programmes are not adequate for PWD. A total of 23% of research participants believe that education for PWD

should be organised in specialised schools, depending on the type and degree of disability, while 10% support implementation of school programmes in resource centres. Only 6% of those surveyed advocate schooling in special classes inside regular schools.

Chart 3. Adequate education depending on the period in which a disability occurred




Source: PWD in Boka Kotorska, 2019.

Less than half of the group of people with congenital disabilities, and almost two thirds of those who acquired a disability upon finishing education believe that the most adequate form of education is regular schooling adapted to the needs of PWD. Less than two thirds of those who acquired disabilities during education believe that organisation of education programmes should depend on the type and degree of disability. Education in resource centres and special groups or classes in regular schools were judged as the least adequate options. For 29% of research participants, the main obstacle in education is the lack of adaptation in educational institutions to meet the needs of PWD, and insufficiently trained educational staff. Almost one fourth of research participants feel that their poor financial status is their biggest problem.

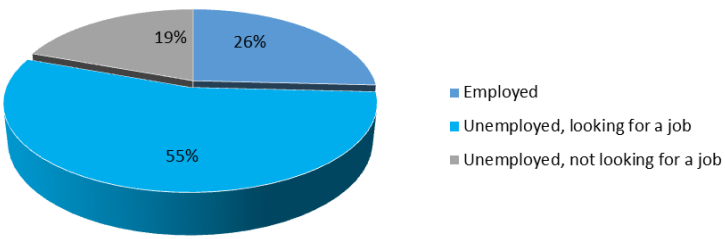
Findings from the semi-structured interviews and focus groups allude to certain fallacies in the education system, including the following: architectural barriers, inaccessible teaching processes and testing, inaccessible literature, lack of support services. Generally speaking, it is believed that the majority of PWD frequently do not possess or do not have the possibility to acquire

knowledge and skills in the area of foreign languages, IT literacy, entrepreneurship, marketing, business communication, management and organisational skills.

### 3.5 Attitudes towards employment

The research study illustrated that one fourth of PWD are employed (Chart 4). A little more than half of those surveyed are registered as unemployed, but are actively seeking employment (55%). One fifth of research participants are unemployed and are not seeking employment, and most of them are older than 50, with lower levels of motivation to seek employment.

Chart 4. Employment of PWD in Boka Kotorska



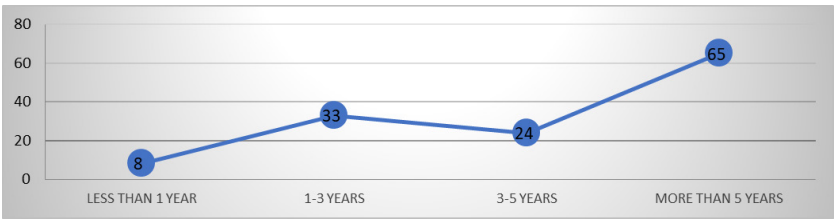

Source: PWD in Boka Kotorska, 2019.

The category of employed PWD is dominated by those older than 50 (38%). Two thirds of those who are unemployed and seeking employment belong in age groups of 30-40 and 40-50. The majority of unemployed that are seeking employment are approaching the age of retirement. Half of those who are registered as unemployed and are not seeking employment are 50 years old or older. The research identified a link between the level of education and employment status. Two thirds of employed PWD in the sample graduated from a four-year high school programme or a "higher professional school". Simultaneously, 83% of those who are unemployed and seeking employment graduated from three-year or four-year high school programmes. The research sample

also includes PWD who are unemployed and hold only elementary education. Among those who are registered as employed, there are no cases of people with a level VII qualification (university degree), but they make for 10% of the population of unemployed PWD seeking employment. People who acquired a disability upon completing education make for the majority of employed and unemployed PWD, regardless of whether or not they are active job seekers. Persons with congenital disabilities mostly comprise the category of unemployed and not seeking employment.

Research findings suggest that the majority of PWD spend a considerable amount of time on the waiting list while seeking employment (Chart 5). Half of research participants have been looking for a job for more than five years, while 6% have been seeking employment for less than one year. Almost two thirds of those who are unemployed have had job interviews in the past five years.

Chart 5. How long do PWD seek employment?




Source: PWD in Boka Kotorska, 2019.

The research confirms that 42% of those surveyed had a job prior to acquiring a disability. PWD mainly receive information on job availability via employment bureaus (58%). The majority of PWD in Boka Kotorska would be willing to take a job that is adapted to their needs and capacities, and they are least willing to take just any job. One fourth of research participants expect employment bureaus to be sources of support in employment, while 16% rely primarily on family and friends, and 13% expect support from organisations that deal with rights of PWD. Data show that

PWD almost equally rely on associations, personal contacts and other services in seeking employment.

The research looked into the views of PWD on a number of questions and problems related to employment (Table 1). Almost half of research participants have been exposed to prejudice and lack of understanding in the workplace. Only one fourth of those surveyed never experienced problems while seeking employment. The next most frequent barrier they face while seeking employment are objective (physical) obstacles such as architectural barriers and inadequately adapted workplaces, which affected 24% of PWD (employed and unemployed). Every other person with a disability that is not looking for a job stated that they felt demotivated to seek employment due to prejudice and lack of understanding among employers.

Table 1. Problems that PwD experienced while seeking employment

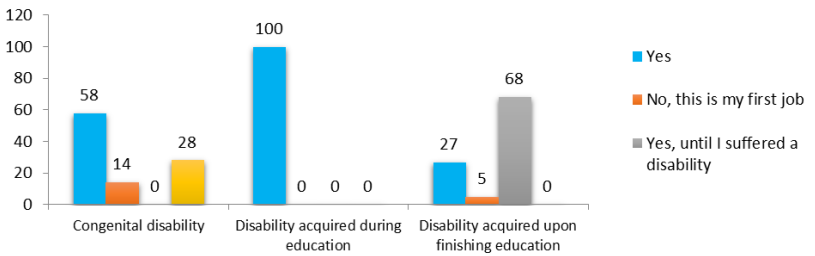
| | Did not experience problems | Prejudice and/or lack of understanding on behalf of employers | Architectural barriers and workplaces that are not adapted for PwD | Inability to adapt work hours | Other |
|---|---|---|---|---|---|
| Employed | 75.4% | 12.3% | 12.3% | 0% | 0% |
| Unemployed and looking for a job | 5.8% | 59.1% | 11.7% | 5.8% | 17.5% |
| Unemployed and not looking for a job | 0% | 50.0% | 0.0% | 0% | 50.0% |

Source: PWD in Boka Kotorska, 2019.

Full work hours are acceptable for almost a third of research participants. Work hours in the range of 4-8 hours a day was acceptable for 41% of research participants. Almost a half of research participants find that workplaces are adapted to the needs and

capacities of PWD. All research participants with work experience reported that they were subject to equal treatment as other employees. However, 16% of PWD reported that workplaces were partially adapted or not adapted at all to their needs and capabilities. Research participants that acquired a disability during education reported that they had previously been employed. Among those who acquired a disability upon completing education, almost two thirds had worked prior to suffering from a disability.

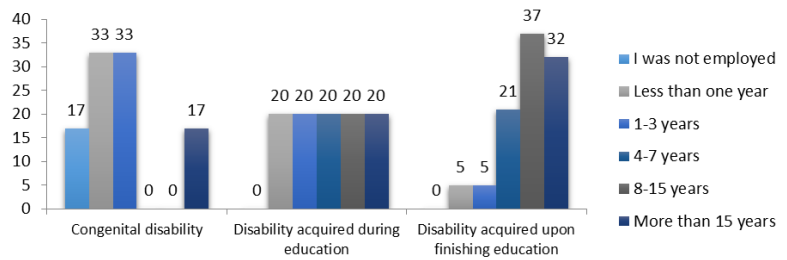
Chart 6. Previous employment in relation to the period in which a disability occurred (%)




Source: PWD in Boka Kotorska, 2019.

Among research participants who were employed prior to acquiring a disability, the majority report having 8-15 years of work experience or more than 15 years of work experience (Chart 6). Almost one third of research participants who acquired a disability upon completing education fall in the aforementioned category in terms of work experience.

Chart 7. Years of work experience in relation to the period in which a disability occurred (%)




Source: PWD in Boka Kotorska, 2019.

The majority of research participants with a congenital disability report having less than one year of work experience (Chart 7). Among those with a long work experience (15 years or more) the majority suffers from vision loss. Among research participants with little work experience (less than one year), the majority suffers from multiple sclerosis or epilepsy. Apart from vision loss, research participants report disabilities such as hearing loss, spinal injury, mental illness, heart and autoimmune diseases. Data show that half of research participants have more than eight years of work experience, and more than a quarter have 15 or more years of work experience. In other words, there is both capacity and willingness among PWD to keep their jobs, and to satisfy the criteria of their employers for long periods of time.

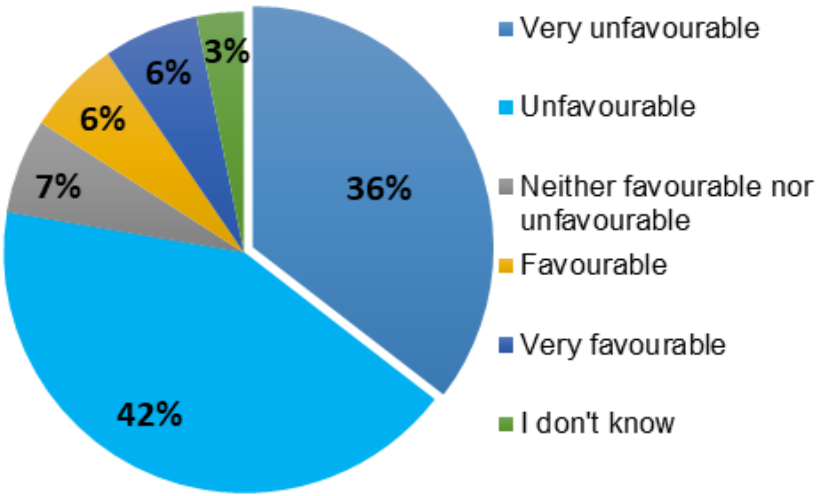
Table 2. Attitudes regarding employment prospects in relation to the age of research participants

| | Highly insecure | Insecure | Neither secure not insecure | Employed | Other |
|---|---|---|---|---|---|
| 18 - 25 | 33.3% | 33.3% | 0% | 33.3% | 0% |
| 25 – 30 | 0% | 0% | 50.0% | 50.0% | 0% |
| 30 - 40 | 28.6% | 28.6% | 14.3% | 14.3% | 14.3% |
| 40 - 50 | 20.0% | 30.0% | 10.0% | 20.0% | 20.0% |
| 50+ | 0% | 33.3% | 0% | 33.3% | 33.3% |

Insecurity in terms of employment prospects is reported by almost one half of research participants (Table 2). Two thirds of research participants that are unemployed and looking for a job feel very insecure or insecure about future employment prospects. Insecurity is reported most frequently by those who are unemployed and are active job seekers. Two thirds of research participants younger than 25, and half of the participants in the 30-50 age group do not report feeling positive about future employment prospects. More than half of the research participants characterise

work opportunities in Boka Kotorska as unfavourable or highly unfavourable (Chart 8). Contrarily, 12% of research participants find that employment opportunities are favourable.

Chart 8. Employment opportunities in Boka Kotorska




Source: PWD in Boka Kotorska, 2019.

Data from the survey confirm the views gathered in semi-structured interviews on problems regarding employment. In addition to problems related to inaccessibility of certain public institutions and businesses premises in the area of Boka Kotorska, research participants emphasise the fact that PWD frequently do not possess the informal knowledge and skills required by employers (acquired through courses, trainings and workshops).

Table 3. In your opinion, what would improve the quality of life of employed and unemployed PWD?

| | Jobs adapted to capacities | Better jobs | Better quality and accessibility of health services | Greater social benefits | Socialisation and availability of cultural content and entertainment | Work-occupational therapy | Shorter work hours | Modern medical or mobility aids | Grants for launching businesses | Resolved housing issues |
|---|---|---|---|---|---|---|---|---|---|---|
| Employed | 0% | 12.5% | 37.5% | 0% | 0% | 0% | 0% | 37.5% | 12.5% | 0% |
| Unemployed and looking for a job | 47.1% | 0% | 23.9% | 0% | 11.6% | 5.8% | 5.8% | 0% | 5.8% | 0% |
| Unemployed and not looking for a job | 0% | 0% | 16.7% | 50.0% | 0% | 16.7% | 0% | 0% | 0% | 16.7% |

Source: PWD in Boka Kotorska, 2019.

Jobs that are better adapted to the capacities of PWD and better health services were assessed as positive contributions to the quality of life by half of the research participants, while 20% believe that the same objective would be accomplished with modern medical aids and increased social benefits (Table 3). For 3% of research participants, an important factor in terms of quality of life is shorter work hours. For employed PWD, greater availability of health services and medical aids play an important role in improving their overall quality of life. Almost a half of unemployed PWD seeking employment believe that their quality of life would improve if they were able to find a job that would accommodate their capacities. A half of unemployed research participants who are not seeking employment believe that increased social benefits

would lead to a better quality of life (Table 3). Analysis of the age structure and the needs that research participants emphasised in the research indicate the following: a) research participants in the age group of people younger than 25 believe that increased socialisation and better jobs would improve their quality of life; b) research participants in the age group of people younger than 30 believe that their quality of life would improve with greater accessibility of modern medical aids and grants for starting their own business; c) research participants in the age group of people younger than 40 believe that finding a job that is adapted to their capacities, and short work hours would contribute to their quality of life; d) the somewhat older group of people younger than 50 emphasise the importance of greater accessibility of health services and jobs adapted to their capacities as factors that drive the quality of life; e) for people in the 50 and older age group, greater accessibility of health services and greater social benefits are important contributors to the quality of life (PWD in Boka, 2019).

## CONCLUSION

Processes related to employment of PWD with existing knowledge and skills in the region of Boka Kotorska are further complicated by the fact that their position is determined by apparent internal and external barriers. The majority of the unemployed in this region have been registered at employment bureaus for a considerable period of time. Reduced motivation to engage in actively seeking employment is notable, alongside an almost complete lack of active orientation to the idea of self-employment, due to objective and subjective unfavourable circumstances. Reduced motivation is experientially conditioned by concrete shortages in the labour market, education, infrastructural issues at certain locations, and age. The vast majority of research participants discontinued education due to financial reasons, and a lack of interest, which indicates strong material and non-material sources of deprivation, as well as a general lack of services at the local level. Data show that the number of unemployed PWD is twice as high as the number of employed PWD in the region of Boka Kotorska. University-level education does not provide immunity from unemployment, as evidenced by the fact that none of the currently employed PWD

hold a level VII qualification (university-level degree), although there are instances of persons with that status officially registered as unemployed. Evidently, in many instances, education as a factor in employment is not considered sufficiently proactive to overcome challenges brought about by a "disability". Simultaneously, very few PWD partake in professional rehabilitation programmes implemented by local employment bureaus. The labour market imposes additional barriers that are further complicated by the registered deficit of education among PWD, and insufficient flexibility in the education system. Research findings indicate that, in addition to minimal engagement on behalf of employers (less than 1%), activities of public services and NGOs are not perceived as proactive. The majority of PWD work in small businesses, that frequently employ only one person. Such conditions do not provide for opportunities to progress and advance professional skills. Prejudice and a lack of understanding among employers are a disincentive for one half of the research participants, and a factor that resulted in them no longer seeking employment. Workplace adaptation is still an issue, and a quarter of research participants report being affected by it. Two thirds of research participants who are unemployed and are not seeking employment feel very insecure or insecure about their future in the labour market, and describe employment opportunities in Boka Kotorska as unfavourable or very unfavourable. Differences in the form and type of disability affect access to the labour market. Persons with congenital disabilities have the least work experience or years of service (less than one year), while persons that acquired a disability upon completing education and have previous work experience hold the longest years of service records. Significant differences are notable in how age affects expectations with regards to employment. The majority of PWD that took part in this research wants to work, and their motivation to engage in employment is not an issue. They hope to find employment, and aspire to better job positions, assistance grants, adapted workplaces, and adapted work hours. Motivation to seek employment is at its lowest among PWD in the 50 and older age group.

The social ambience in Boka Kotorska has still not reached a level of affirmation that would result in equality in the sphere of employment of PWD. A lack of a solid feedback loop between expressing a need for employment and providing a proactive reac-

tion to the need creates a gap between PWD and the majority population in Boka Kotorska. There is significant room for improvement of the position of PWD in the labour market in the area of gaining and developing competencies in their area of expertise. The various forms of a lack of sensibility in the labour market that this paper identifies indicate that distancing of minority identities is still a social reality. In the context of PWD, such distancing is fertile grounds for stigmatisation. Accordingly, Teodorović and Bratković argue that "by creating systems that aim at meeting the needs of the so-called average population, societies create systems that are, in their foundation, intolerant, thereby generating marginalised groups that deviate from the average population according to different criteria" (Teodorović and Bratković, 2001:282).

The current position of PWD in Boka Kotorska obliges the system to think about policies that will result in affirmation of the principle of equality of identities. Improvement of the overall ambience and the position of PWD in the labour market is only possible through application of synchronised policies at the local level, directed at creating a positive organisational culture. Meacham et al. (2017) emphasise the significance of embracing the values, talents and capabilities of PWD in organisational functioning, and increased engagement of PWD inside organisations in implementing innovative employment models (Meacham, H., Cavanagh, J., Shaw, A., & Bartram, 2017:1393). One of the prerequisites for this process is building strong relationships between local institutions, employers, PWD and the civil society with the help of state-level policy makers. Such an ambience enables proactive engagement through four levels of policy-making: prevention, protection, promotion, and propulsion (Hill, 2001, cited in Buchardt, 2003:2). Finally, a significant segment of the process of inclusion into the labour market is monitoring of PWD (work methods and work ambience). The results of such monitoring efforts can contribute to promoting existing work conditions, and can be used to promote employment of PWD and the benefits of such employment.

## REFERENCES

Bežovan, G., Dimić-Vugrinec, M., Radović, D., (2013). Izgledi razvoja kombinirane socijalne politike u Crnoj Gori, Revija za socijalnu politiku (str. 33-57), Zagreb: Faculty of Law, University of Zagreb.

Burchardt, T. (2003). *Being and becoming: Social exclusion and the onset of disability*, *ESRC Centre for Analysis of Social Exclusion*, Report prepared for the Joseph Rowntree Foundation, London School of Economics London.

Croatian Employment Agency (HZZ), (2019). Zapošljavanje osoba sa invaliditetom za 2019.godinu, Zagreb. https://www.hzz.hr/content/stats/statistike-invalidiitet/HZZ_izvjece-zaposljavanje-invaliditet-2019.pdf.

Échevin, D. (2013). Employment and education discrimination against disabled people in Cape Verde. *Applied Economics*, 45(7), 857-875. https://doi.org/10.1080/00036846.2011.613775

Edvards, S., (2015). *Disability: definitions, values, identity*, Radcliffe, Abingdon.

Employment Agency of Montenegro, 2018: Vodič kroz prava lica sa invaliditetom i poslodavaca u oblasti profesionalne rehabilitacije i zapošljavanja, Podgorica. http://www.zzzcg.me/wp-content/uploads/2016/11/Vodic-lica-sa-invaditetom.pdf

Employment Agency of Montenegro, 2016: *Persons with Disabilities*, Podgorica Montenegro. http://www.zzzcg.me/wp-content/uploads/2015/05/Lica-sa-invaliditetom.pdf

Government of Montenegro, 2017: *Law on Professional Rehabilitation and Employment of PWD,* Podgorica, Montenegro. http://www.zzzcg.me/wp-content/uploads/2018/01/Zakon-o-profesionalnoj-rehabilitaciji-i.pdf.

Government of Montenegro, *Strategy for Integration of PWD in Montenegro(2016/2020)*, Podgorica, Montenegro.

Heera, S, Devi, A., (2016). Employers Perspective Towards People with Disabilities a Review of The Literature, *The South East Asian Journal of Management*, Vol. 10, No. 1, pg. 54-74. http://journal.ui.ac.id/index.php/tseajm/article/view/5960.

Hogan, A., et al. (2012). Workforce Participation Barriers for People with Disability. *International Journal of Disability Management* 7, 1-9. https://pdfs.semanticscholar.org/fadb/74ccd646d8364f438f321581c725d2d3a85b.pdf.

Hole, R., Tomlinson J. (2011). *Social and Economic Outcomes: Are Supported Employment Services for Individuals With Developmental Disabilities a Good Investment?* Center for Inclusion and Citizenship 2080 West Mall, The University of British Columbia Vancouver. https://www.communitylivingbc.ca//wp-content/uploads/Employment-Is-it-a-Good-Investment-lit-review.pdf

Jahoda, A., Banks, P., Dagnan, D., Kemp, J., Ken, W., & Williams, V. (2009). Starting a new job: The social and emotional experience of people with intellectual disabilities. *Journal of Applied Research in Intellectual Disabilities,* 421-425. https://doi.org/10.1111/j.1468-3148.2009.00497.x

Kang, K. (2013). Why would companies not employ people with disabilities in Korea? *Asia Pacific Journal of Social Work and Development*, 23(3), 222-229. https://doi.org/10.1080/02185385.2013.818202.

Leutar, Z., (2006). Osobe sa invaliditetom i siromaštvo, Revija za socijalnu politiku (str.293-308), Zagreb: Faculty of Law, University of Zagreb.

MacInnes et al, 2014. *Disability, Long Term Conditions and Poverty*, A report for the Joseph Rowntree Foundation, New Policy Institute, London. https://www.npi.org.uk/files/7814/0490/1005/Disability_long_term_conditions_and_poverty.pdf.

Marumoagae, M.C. (2012). *Disability discrimination and the rights of disabled persons to access the labour market.* PER/PELJ, volume 15no1.https://doi.org/10.4314/pelj.v15i1.10

Meacham, H., Cavanagh, J., Shaw, A., & Bartram, T. (2017). Innovation programs at the workplace for workers with an intellectual disability: Two case studies in large Australian organisations. *Personnel Review*, 46(7), 1381-1396. doi:10.1108/ PR-08-

Milanović-Dobrota, B., (2018). Barijere u zapošljavanju osoba sa intelektualnom ometenošću. *Specijalna edukacija i rehabilitacija*, Belgrade, Vol. 17, No. 2, pg. 189-212. https://scindeks-clanci.ceon.rs/data/pdf/1452-7367/2018/1452-73671802189M.pdf.

MONSTAT, 2019. Number and structure of business entities in Montenegro. Podgorica, Montenegro. https://www.monstat.org/cg/publikacije_page.php?id=1080.

NGO Nova šansa u Novom, (2019). *Persons with Disabilities in Boka Kotorska*, New Knowledge for New Beginnings, Podgorica.

Ostojić-Baus, J., (2016). "Kombinirana socijalna politika prema osobama s invaliditetom − podrška socijalnom modelu invaliditeta", Revija za socijalnu politiku (str.49-65), Zagreb: Faculty of Law, University of Zagreb.

Pearson, C., Watson, N. (2007). Tackling Disability Discrimination in the United Kingdom: The Tackling Disability Discrimination in the United Kingdom: The British Disability Discrimination Act. *Washington University Journal of Law and Policy*, Vol. 23:95, 95-120.https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1333&context=law_journal_law_policy

Samant, D., Soffer, M., Hernandez, B., Adya, M., Akinpelu, O., Levy, J.M., Repoli, E., Kramer, M., and Blanck, P. (2009). Corporate culture and employment of people with disabilities: Role of social workers and service provider organizations. *Journal of Social Work in Disability & Rehabilitation*, 8(3-4), 171-188. https://doi.org/10.1080/15367100903202706.

Schur, L. (2002). The job makes a difference: The effects of employment among people with disabilities. *Journal of Economic Issues*, 36 (2), pg. 339-348.

Schur, L., Kruse, D., Blasi, J., and Blanck, P. (2009). Is disability disabling in all workplaces? Workplace disparities and corporate culture. *Industrial Relations*, 48, pg. 381-410. https://doi.org/10.1111/**j**.1468-232X.2009.00565.x.

Shier, M., Graham, J. R., & Jones, M. E. (2009). Barriers to employment as experienced by disabled people: a qualitative analysis in Calgary and Regina, *Disability & Society*, 24(1), pg. 63-75.

Spiker, P., (2014). *Socijalna politika – teorija i praksa*, Beograd: Faculty of Political Sciences, University of Belgrade.

Tax Administration of Montenegro (TAM), 2019. *Finansijski iskazi*, Podgorica, Montenegro. Available at: https://eprijava.tax.gov.me/TaxisPortal

Teodorović, B., Bratković, D., (2001). Osobe s teškoćama u razvoju u sustavu socijalne skrbi. *Revija za socijalnu politiku*, 279-290, Zagreb: Faculty of Law, University of Zagreb.

Tursa, A., et al. (2018). *Study on employment models within the social economy and their role in including PWD into the labour market and society*, Policy Impact LabEuropean Union Programme for Employment and Social Innovation "EaSI"(2014-2020). https://www.epr.eu/wp-content/uploads/Employment-models-within-the-social-economy-EPR-EASPD-Study-1.pdf.

UKDWP, (2013). *Ad hoc statistic of disability from ONS Opinions and Lifestyle Surevey*.UK Department for Work and Pensions, London. https://www.gov.uk/goverment/publications/disability

Van Dallen, D., 2017. *Acknowledging Ability overcoming The Barriers to Employment for People Living with Disabilities*, Maxim Institute Discussion Paper, New Zeeland. https://diversityworksnz.org.nz/media/1396/acknowledging-ability-overcoming-the-barriers-to-employment-for-people-living-with-disabilities-maxim-institute.pdf.

World Helth Organisation, (2001). International classification of functioning, disability and health, Report by the Secretariat WHO, ICDH-2. http://whqlibdoc.who.int/publications/.

Šućur, Z. (2006). Objektivno i subjektivno siromaštvo u Hrvatskoj, Revija za socijalnu politiku, (237-255) Zagreb: Faculty of Law, University Zagreb.*

* Manuscript was received on October 12, 2021 and the paper was accepted for publishing on November 30, 2021.

UDC: 304+364.4-053.2/.5
DOI: https://doi.org/10.22182/spm.7442021.6
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 135-153

***Sanja Stojković Zlatanović****

*Institute of Social Sciences Belgrade*

# ALTERNATIVE CARE FOR CHILDREN IN SOCIAL WELFARE SYSTEM – POLICY AND LEGAL CHALLENGES**

## Abstract

The paper deals with the theoretical and legal practical foundation of the concept of alternative care for children in the social welfare system. Applying the human rights principle and child best interest doctrine along with the contemporary holistic and integrated approach to the research subject, we aim to identify the proper interpretation of the notion of alternative care for children in international, European and national domains. The recent case law of the European Court of Human Rights has beenconsidered as well. The role of civil society organizations in providing special care services for vulnerable populations such as children in terms of sustainable development agenda has been seen as a precondition for building a stable democratic and inclusive society when the world is facing significant challenges of natural hazards, climate changes and consequently,social inequities. Accordingly, an adequate policy and legal framework need to be developed including engagement of all relevant actors - public, private and civil organizations as well as the beneficiaries of services.

**Keywords:** alternative care for children, case law of the European Court of Human Rights, policy and legal framework, civil society organizations,public-private partnership

* sanjazlatanovic1@gmail.com

** This paper was written as part of the 2021 Research Program of the Institute of Social Sciences with the support of the Ministry of Education, Science and Technological Devel-opment of the Republic of Serbia.

## INTRODUCTION AND CONCEPTUAL FRAMEWORK

The social and legal position of children deprived ofparental care or who are at risk of being so has become challengeable over time considering the vulnerability of their status, particularly, in terms ofregulations that are lacking or deficient in regard tothe functioning of centers and institutions that care for children who require special protection. There is a significant concern to provide dignified living conditions for childrendue to the fact that a very large number of children comeinto alternative care in many countries, both formal and informal, where the universally accepted,legally binding standards are notproperly defined. However, there is a positive step forward in the development of child welfare services and facilities taking into account the fact thatfamily-basedalternative care strivesto replace the institutional one as a part of the process of deinstitutionalization. The worldwide phenomena of deinstitutionalization have been applicable in Serbia, the country in which, in 2016 in the public sector, approximately 21,000 persons used the housing service, one-third in family and two-thirds in residential accommodation (Nacrt Strategije socijalne zaštite u Republici Srbiji za period 2019. do 2025 2019).Besides,a large number of users are still protected through residential institutions. In Serbia, 90% of users are children and young people,protected through family accommodation as a part of family-based alternative care.According to the Republic Social Welfare Institute Report regarding the Institutions for the Accommodation of Children and Youth for 2016, over 5300 children and 1000 young people without parental care, most of which with disabilities, are protected through relatives and foster care in approximately 4,500 families. The protection and well-being of children without parental care has been a focus of the international organization, particularly the United Nations Organization (UN) and its specialized agencies, in the context of the implementation of the *Convention on the Rights of the Child*(1989).For that purpose, the UN adopted a legally nonbinding document regarding the standards of adequate alternative care,setting the conditions under which care was to be provided –'*Guidelines for the Alternative Care of Children*' (2009). The policy and legal framework of alternative care for children arebased on the best interest of children's doctrine, as well as child

rights-based principles. The best interest of the child involves the assessment of full and personal development of children's rights in the family, social and cultural environment, and their status as subjects of rights, both at the time of the determination and in the longer term. Furthermore, the UN General Assembly adopted in December 2019 the'*Resolution on the Promotion and Protection of the Rights of Children*', advocating the family environment for vulnerable children and calling all member states to take actions to replace the institutional care with alternative forms of care, developing the family and community-based services (Goldman et al 2020, 606). In 2020, the UN General Assembly adopted six resolutions under the *Agenda of Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to development*(2009),where oneResolution wasdevoted to the Rights of the child covering the child's right to a healthy environment. The Resolution, particularly, deals with the state mitigation measures to address the negative impact of climate change on children in vulnerable situations. In addition, the Resolution encompasses the impact of climate change and climate migrations on children development and well-being in terms of the promotion of families' and caregivers' capacities to provide the child with care and a safe environmentconsidering 'that millions of children worldwide continue to grow up deprived of parental care, separated from their families for many reasons, including due to natural disasters' (Resolution Rights of the child: realizing the rights of the child through a healthy environment 2020).

The paper aims to address the general issues of children'salternative family-basedcare, from a policy andlegal standpoint, as a response to a knowledge gap on formal alternative care, considering different models presented in policy/legal documents and practice. In the beginning, we gave a brief sketch regarding a theoretical concept of alternative care, in order to determine the notion from a global perspective and in a national domain, taking into account the contemporary legal doctrine, policy documents,and recent case law of the European Court of Human Rights. The specificity of themodel of alternative care for children provided by the civil society sector will be particularly discussed. The legal gap in Serbian regulation regarding different models of alternative family-based care implemented by public and civil sectors is noticed as anissue

that needs to be addressed. Also, there is a lack of quality standards for all services introduced by the Social Protection Law (2011).

Serbia started the reform of the social welfare system, where, in terms of child protection, the support measures to the biological family at risk are in the focus of national policymakers as well as the measures regarding transformation from institutional to family and community-based care. The holistic approach to children at risk, multisectoral cooperation and a right-based principle along with pluralization of services providers are defined as central points of national policy at timeswhen Serbia, as the most European countries, is facing fundamental economic and demographic challenges. Expenditures for residential and family care are the largest part of a total consolidated budget for social care services in Serbia, on the one side, but the phenomena of demographic aging affected by all factors of population dynamics (fertility, life expectancy and net migration) are expected to change the national welfare schemes, on the other (Perišić 2016, 648). The demographic change - population aging is expected to increase the dependence of older people calling for the adaptation of social security institutions accompanied with the changes in family structures (declining fertility rates, increases in the number of separations and new families formed) will require the revision of family-supported social protection schemes to a new social reality (International Social Security Association 2010, 8). Therefore, the services and facilities regarding children'swell-being and family supportwill be in the focus of social welfare and, consequently, demographic policy, as its integral part. The increasing state flexibility in financing and providing social services, including child welfare services and other related programs,have been seen as a possible answer to current challenges of sustainable socio-economic development, followed by the appropriate policy and legislation changes. The low birth rate along with increasing migration of young people of reproductive age causes countries as Serbia to conduct a reform of the social welfare system introducing family-related programs and services. The development of innovative and flexible support programs for children and familiesat risk based on the public-private partnership has been seen as a sustainable policy response.

## THEORETICAL BACKGROUND, NOTION, AND MODELS OF ALTERNATIVE CARE FOR CHILDREN

According to the international standards, the biological family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child (UN Convention on the Rights of the Child 1989).The child's right to provision, participation, and protection followed by the principle of the child's best interest representsthe basis of parents, society, and government's responsibility. As parents have the primary responsibility, the government should ensure that there is a supportive environment for children's development by setting the appropriate level and diversity of services and resources in order to empower parental skills.Only when the child has no parents to look after him or her or when staying in his or her biological family is not in his or her best interest, the public authorities take special protection measures, established by the law, involving the separation of the child from his or her family.It means that the globally recognized -right to respect for family life protects every child from unlawful or arbitrary interference (European Union Agency for Fundamental Rights & Council of Europe 2017, 76).Along with the social and working environment of an individual, the concept of the family environment represents an important factor in defining a national social security framework as a precondition of a democratic and stable legal order. According to Jašarevićso-called *macro factor* of social security system – democratic and stable legal order that along with the abovementioned micro factors (i.e. social, professional and family environment), constitute the grounds of a social security system (Jašarević 2009, 156).On the other side, in terms of the legal decision–making processes, there is a necessity to harmonize children's right to family life with their right to protection under social security legislation.

In the universal and European human rights system, the separation of a child from his or her family must be conducted according to the principles of necessity, exceptionality, and temporal determination (Inter-American Commission on Human Rights, Organization of American States 2013, 26). Even when the special

protection state measures have been applied, family life does not end in a case of placing the child into public care and according to the case-law of the European Court of Human Rights, it constitutes interference to a private and family life that requires justification under the paragraph 2 of Article 8 of the European Convention of Human Rights and Fundamental Freedoms (1952) (Council of Europe/European Court of Human Rights 2019, 62).Furthermore, the EU Charter of Fundamental Rights provides for the protection of family life, wherein Article 24 regarding the rights of a child decrees that every child 'shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents unless it is contrary to his or her interests' (Charter of Fundamental Rights of the European Union 2012).

In universal human rights discourse, special protection measures are presented in a form of so-called alternative care standards, and according to the UN Convention on the Rights of the Child, they include, *inter alea*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children (Article 20, no. 3).In 1990 Serbia ratified the Convention that became part of the national legislation. However, the term alternative care remained undefined in boththe Social Protection Law (2011) and the Family Law (2005). In contemporary practice, the term is mostly used to address the care that is provided in a family-like environment taking into account the ongoing process of deinstitutionalization. For the interpretation of the term alternative care,it should be noticed that, according to the Convention, the care will be provided in the case when a child is "temporarily or permanently deprived of his or her family environment" (CRC, Article 20). The term "family environment" is not defined by the Convention, and it leaves states to determine taking into account social and cultural norms.The same thing is applied regarding the term "parent", particularly in terms of biotechnological development and assisted reproductive technology linked with the legal institute of surrogate parents, where the definition varies from state to state. A lack of precise definition of the notions of family and family environment in international lawand the differences in defining the term"parent"among states, madethe application of child-social protection norms ineffective, often producing legal disputes that overcome the national judicial system,

particularly in terms of alternative care. The important role in the interpretation of the contemporary concept of "family" and "family environment"has the international human rights tribunals, particularly the European Court of Human rights, and United Nations treaty bodies. The concepts have been analyzed in the context of the application of the non-discrimination principle as well as the best interest of the childdoctrine (Sepúlveda Carmona2017, 8). According to the Universal Declaration of Human Rights (1948), Article 16, the notion of family is declined in general terms from a sociological perspective, where the family represents "the natural and fundamental group unit of society and is entitled to protection by society and the State."The legal understanding of the concept of "family" follows the changes in society and culture, so when the international courts and bodies interpret it, a number of factors have been considered. In terms of children-adult relationships, the most common are presented as follows -formally constituted relationship (formal institutional act like marriage), blood relationships, and personal relationships (Banda,Eekelaar 2017).

On the other hand, in European Human Rights discourse the notion of "family" and "family life" under the Article 8 (Right to respect private and family life) of the Convention on Human Rights and Fundamental Freedoms (1952) is not confined solely to marriage-based relationships and may encompass other *de facto* "family ties". Furthermore,according to the case-law of the European Court of Human Rights, even in the absence of cohabitation, there may still be sufficient ties for family life (see Kroon and Others v. the Netherlands). The Court interprets the notion broadly considering all forms of relationships, both horizontal and vertical, biological and non-biological (Mol 2016).Also, it is noticed that the concept of private and family life, as interpreted by the Strasbourg Court,covers a variety of situations - from the protection of one's image or reputation, awareness of family origins, physical and moral integrity, sexual and social identity, to a healthy environment, self-determination and personal autonomy (Roagna 2012, 12).Accordingly, the concept covers so-called quasi-familial relationships such as the relationship between foster parents and children they have been taking care of as well as relationships between unmarried couples (Roagna 2012, 12).The facts that are considered when the Court determines "family ties" are the nature,

degree,and quality of the relationship as well as the commitment to the child. Consequently, according to the Court, thefamily life-also includes,at least, the ties between near relatives, for instance, those between grandparents and grandchildren, uncles and aunts and their nephews since such relatives may play a considerable part in family life (see Marckx v. Belgium; Bronda v. Italy; T.S. and J.J. v. Norway) but limited it on a degree of protection on the grounds of its nature i.e. it has a lesser degree of protection than the relationship between parents and child (European Court of Human Rights 2019, 64).In this regard, The European Court of Human Rights recognizes the existence of *de facto* family life between foster parents and a child placed with them, considering the time spent together, the quality of the relationship and the role played by the adult vis-à-vis the child (see Moretti and Benedetti v. Italy) (European Court of Human Rights 2019, 61-62). Having in mind the Court decisions in this matter, the models of alternative care presented in the Convention on the Rights of Child, in particular, foster care and other types of *de facto* family placementcould be recognized as "family environment" under proper conditions (i.e. time of placement, degree and quality of the relationship, commitment to a child) and be excluded from the notion of alternative care in a strictly formal sense, taking into account that the Council of Europe based *inter alea* the protection of the children on the UN Convention on the Rights of the Child.

In regard withthe degree of the relationship between the foster family and the child after his or her return to his or her parents, the recent decision in the case *V.D. and others v. Russia*(App. No. 72931/10, Judgement of the European Court of Human Rights, 9 April 2019.)of the European Court of Human Rights is of crucial importance. The case was about the rights of the so-called *de facto* family,i.e. foster family, to maintain the relationship and to communicate with a disabled child who was, according to the decision of the national court, returned to his biological family. The Court concluded that the national court got a „relevant and sufficient"decision when ruled to return the child to his biological parents who had maintained a presence in his life by providing financial assistance during the whole nine years of foster care. Such a decision has been justified having in mind the fact that the care was meant to be temporary and that it could be ended when circumstances

permitted so.Contrary, regarding the national court ruling to refuse contact between the foster family and a child based on no blood or legal ties to the child, the Court holds that there is a violation of Article 8. of the Convention, expressing concern about the lack of flexibility in Russian legislation on granting access to children, which did not take into account the variety of family situations or the best interests of children.

The comparative law follows the practice of the European Court of Human Rights in this matter. For instance, in Finnish law in a reform that took place in 2018 amending the Child Custody Act, 361/1983, a mainly traditional view of the concept of family has been replaced by recognizing the 'family ties' between a child and a step-parent or grandparent (Koulu 2019, 348). In Finland, according to the Ombudsman's decisions and the Supreme Administrative Court decision from 2017, the concept of family life covers a variety of relationships, emphasizing that the family life could cover the new relationship established during the placement of a child in another non-biological family (Koulu 2019, 351). The Court concluded that the child's right to a close relationship was not limited to relationships that had been established before the child was placed in care, but that the provision also meantthat the child had the right to develop new relationships during care (Koulu 2019, 351).

In Serbia, the Family law (2005) stipulates the child's right to, primarily, live with (biological) parents who have the responsibility to lookafter him or her and this right could be limited only by the court's decision in the child's best interest (article 60). The following provision guarantees a child in alternative care the right to establish and maintain personal relationships with biological parents, as well as with his or her relatives and other close persons (article 61). The special chapters of the Family law deal with adoption, foster care, and custody issues, but there are no additional provisions that more pragmatically protect the new relationships developed during the care, in terms of possible 'family ties' recognizing and issues of maintaining the relationships. On the other hand, the Social Protection Law (2011) contains no provisions whatsoever that recognize the variability of family life, the nature,

and models of relationships formed in alternative care,which makes it lagging far behind the European legislation practice.

The notion of alternative care is generally used to describe the care for orphans and other vulnerable children who are not under the custody of their biological parents, having in mind thedominant interpretation of the UN Convention on the Rights of the Child, which includes adoption but is limited to the models of care that are,in their nature, temporary lasting. Alternative care includes all forms of separation of the children from their biological familyaccording to *the UN Guidelines for the Alternative Care of Children'* (2009).The UN Guidelines introduce two forms of alternative care: 1. Informal care, defined as any private arrangement provided in a family environment by relatives or friends at the initiative of a child, his/her parents or a third person, and 2. Formal care, provided in a family environment but ordered by a competent administrative body or judicial authority, also including the care provided in a residential environment, in public or private facilities, whether or not as a result of administrative or judicial measures (Roby 2011, 10).In this regard, the problem ariseswhen a family becomes the one that is alternative in its nature where the time of placement, degree and the quality of relationships with a child surpasses the expected terms or become the permanent condition. In that case, an alternative environment becomes a natural family environment representing, simultaneously,an inappropriate 'discriminatory'notion to describe the real state of placement from both socio-psychological and legal perspectives. Accordingly, the term alternative care needs to be bounded to the temporary placement, short-time protection measures for children at risk provided by the public or private/civil sectors in an environment with conditions that are similar to those of a habitual place of a child residence.Under the same conditions, the informal forms of child care provided by relatives or friends could also be recognized as an alternative butthey need to be provided under the monitoring of a competent authority and with the support of a system.The current shortcomings of this form of careare a lack of legally recognized status of relative/friend caregivers along with the increasing possibility of child abuses, neglection and exploitation, concerns of poverty, health,nutrition and treatment disparities, where the caregivers

may lack the parenting skills needed to deal with the psychosocial issues of children (Roby 2011, 20-21).

## POLICY AND LEGAL CHALLENGES IN TERMS OF ALTERNATIVE CARE FOR CHILDREN – THE PERSPECTIVE OF DEVELOPMENT

The core legal discrepancies in applying the special protection measures regarding the vulnerable children in the social welfare system are presented as the lack of a universally accepted definition of family life and, consequently, alternative care, the lack of minimum quality standards of care, different legal provisionsdealing with national models of alternative care provided by public and private/civil sectors, where there is a significant concern to provide appropriate cooperation between all actors in terms of preventive and sustainable care within the concept of public-private partnership.The existed models of alternative care presented in the UN Guidelines on Alternative Care for Children represents only a suggestion to the national states for policy orientation when implementing the UN Convention on the Rights of the Child (Cantwell 2012, 11). The Guidelines create neither newrights nor binding obligations directed at governments but also at all services, organizations, and professionals involved with alternative care issues (Cantwell 2012, 11). It means that it is left to the national authorities to determine the notion of alternative care, models, subjects, and standards of care provided within the national child social welfare framework. Moreover, the conduction of a comparative analysis of alternative care systems in Europe is significantly challenged considering the great disparities in the definition of alternative care (residential, family and community-based care) as well as in data collection methodologies (Costa 2012, 19).So, developing an adequate legal model of alternative care based on evidence and data sciences principles in absence of universally binding standards means the engagement of all key actors i.e. policymakers, relevant institutions in the field of social security, the private and civil sectors and the beneficiaries as well in national domain. In that sense, it requires the overall assessment of financial, normative and institutional capacities of the system, particularly in terms of child welfare support measures including

those provided by the private or civil organizations. On that ground, the data reliable strategy needs to be developed considering a holis tic and integrated approach as a precondition for the introduction of the relevant legal framework.

The existing child social protection system in the Republic of Serbia is extremely complex,as the process of deinstitutionalization presupposes the shift from dominant institutional accommodation for children to family-like and community-based models. The current state in the field, goals, and means to achieve the targeted objectives are presented in the Draft of National Strategy of Social Protection for the period from 2019 to 2024. The Draft of National Strategy focuses on the development of foster care replacing the institutional facilities for children in need and on the so-called 'other form of family-centered care or family-like setting',highlighting the importance of a public-private partnership.Also, it emphasizes the service providers'pluralism with greater involvement of the non-state sector, bringing together various actors at a local and national level.Bearing in mind the fact that the Family Law (2005)and the Social Protection Law (2011) contain no provisions regarding the nature of relationships in so-called alternative care, particularly, foster and other family-like placements in the context of the implementation of children's right to family life, there is an urgent need to revise the national legislation following the European and comparative practice. Revising the national legislation in this manner means the inclusion of the provisions that recognize the variability of family life as well as the possibility to form a new one during the child's alternative care.

In Serbia, besides foster care, there is a concept of alternative children care provided by the civil sector i.e. international non-government organization 'SOS Children's Villages', unique in the domestic system.The SOS Children's Villages' concept of care is based on the idea of foster family care and, according to the current regulation, it can be classified as a hybrid form, between family and residential accommodation corresponding to the so-called "Other type of accommodation" setting in the Social Protection Law (2011). This 'Other type of accommodation' is not specifically regulated by the current Social Protection Law or special regulation. It is also not specified in the Draft of the

Social Protection Law. The SOS concept of care presupposes the accommodation for 4-6 children in one SOS family in a so-called Village, where the SOS parent has a license for providing the classic foster care. On an all-day basis, the service of professionals - psychologists, educators and social workers are available to the children in Village. Accordingly, the services are being provided in a family-like environment, where the beneficiaries/children have not been*de facto* integrated into the living space and foster family,which distinguishes the SOS concept from the classic foster care. This model could represent the example of the cooperation between the public and private/civil sectors, asthe children have been placed in SOS Children's Village after the assessment conducted by the public social service center. The legal ground for the 'cooperation' is defined in the Social Protection Law (2011), where some social protection services may be provided by *an association*, entrepreneur, company, and other forms of an organization determined by the law.Due to the fact that social protection services, whose introduction/implementation is highly needed, could not be provided by the public social protection institutions, there is a possibility of their provision by the private or civil organizations, whose license for doing so is provided through the procedure of public procurement, under the law governing public procurement issues (The Social Protection Law 2011).

The SOS concept of care represents the model of a public-private partnership in providing the social services for vulnerable children. According to comparative legislation and practice, the role of a non-governmental organization in the social protection system has been seen as a democratic issue in an ongoing process of decentralization when there is a growing demand for special services linked with the need for flexible supply (Archambault 2007, 158). In France, for instance, there is a growing number of the establishment of non-governmental facilities that cooperate with the government in providing services for people with disabilities as well as those established for children experiencing social difficulty including foster care(Archambault 2007, 158). The state financial support has been based on a contractual basis replacing the classic system of general year-to-year funding where the status of the non-profit organization is one of the most regulated areas in France, considering their recognized 'public social mission'

(Archambault 2007, 169). There are three models of establishing social non-governmental organizations in the field of social security: 1)model of government authorization becoming a part of a general social security scheme involving an *a priori* control of their project and its feasibility; 2)model of recognizing a special status for thenon-governmental organization, so-called the status of public utility and, 3) model of accredited organization for the specified social protection services, where the services shall be provided after signing an agreement, that represents an official recognition of the quality of activities performed in a special field (Archambault 2007, 170). A non-bureaucratic answer to the new social issues, flexibility, innovation in services,and advocacy are all factors that favorise the formal inclusion of civil society organizations in providing social services within the national social welfare system. In contemporary practice, the non-governmental organizations developed special labels for guaranteeing the quality of their services, setting the quantitative and qualitative indicators for monitoring the efficiency of services (Archambault 2007, 172). Moreover, the conducted quantitative analysis regarding the role of online and offline civil activities i.e. participation of targeted vulnerable populations represented by civil society organizations shows the potential for building social inclusion of different vulnerable groups in the modern worldfostering different types of civic activism (Milošević-Đorđević &Đurić 2018). The France model for regulation of civil society status in the social welfare system could be applied in Serbia as well, considering the similarity of the social security models, i.e. prevailed government responsibility in public welfare, combined Bizmarckian and Beveridge social insurance system with universal family allowances accompanied with birth-raising policy and institutional residential care that is still dominant in the system where the process of the deinstitutionalization is still ongoing slowly.

## CONCLUSION

Under the international, European, comparative, and consequently,the national policy and law, the alternative care services for children need to be applied only if considered necessary in a democratic society, bearing in mindthe best interest of children's

doctrine. In a decision-making process, it is of crucial importance to balance between the children's right to family life and their right to protection under the social security law. It could be significantly challengeable, considering that the notion of family life, according to the case-law of the European Court of Human Rights, has often been used to cover a variety of situations and relationships. The Strasbourg Court has never offered a clear and precise definition of what is meant by private and family life. Such is the case with-the definition of the notion of alternative care in the international domain, knownas 'substitute care'in some policy documents as well.The concept of alternative/substitute care presupposes temporary protective measures covering, primarily theso-called family-like and community-based care, placing the children in an environment similar to those of the natural one, i.e. biological family. Foster care if lastsover time because it is expected to form a strong relationship between the foster family and a child where some children stay in a foster family until adulthood, that is, also, the standpoint of the European Court of Human Rights forming the special 'family ties' goes beyond the formal notion of alternative care considering the time of placement, nature, and degree of the relationship.In this regard, the term 'alternative' could be considered *de facto* inappropriate for this kind of care and labeled as discriminatory. The term 'family-like care' for the long-lasting and permanent placement could be considered adequate under those circumstances. Furthermore, the placement in alternative care needs to be determined on a case-by-case basis. The private/civil models of alternative care that coexistwithin the national social security system must be incorporated into the policy and legal framework according to the contemporaryprinciple of strengthening the public-private partnership and theprevailing holistic approachregardingthe issues of children and family protection.The France model could be used as an adequate in developing a national policy framework in this regard. Also, building a democratic society in terms of sustainable economic, social and ecological development concepts followed by significant demographic challenges require the engagement of all resources including civil society organizations. Their widely recognized public social mission, particularly, regarding the social inclusion of vulnerable populations must not be neglected. Furtherdevelopment of family-like care by setting the

universal quality standards accompanied by the community-based services ought toinclude all relevant actors such as policymakers, public and private institutions, andcivil organizations.

## REFERENCES

Archambault, Edith. 2007. "Social services in France: A Public/ Private Partnership." In*Changing Administration-Changing Society. Challenges for Current Social Policy*,edsHerrmann P& Herrenbrueck S.157-174,Nova Science Publishers, [online]. Available at:https://halshs.archives-ouvertes.fr/halshs-01613063/document[accessed on 23 December 2020].

Banda,Fareda. & Eekelaar, John. 2017. "International Conceptions of the Family." *International and Comparative Law Quarterly* 66(4):833-862.doi.org/10.1017/S0020589317000288

Cantwell, Nigel. 2012. "UN Guidelines on Alternative care for Children. The challenges of out-of-home care: is it the only solution?" In *Alternative forms of care for children without adequate family support: sharing good practices and positive experiences*. Florence:Istituto degli Innocenti.

Council of Europe[CoE], Committee of Ministers,Rec(2005)5,Recommendation on the rights of children living in residential institutions,adopted on 6 March 2005, [online]. Available at: https://www.refworld.org/docid/43f5c53d4.html [accessed 31 January 2021].

Council of Europe/European Court of Human Rights[CoE/ECHR]. 2018. *Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life, home and correspondence*, [online]. Available at:https://rm.coe.int/guide-on-article-8-of-the-european-convention-on-human-rights/16808e67cb [accessed 25 November 2020].

Costa, Michela. 2012. "A Comparative European Analysis of National Experiences of Children in Alternative care." In *Alternative forms of care for children without adequate family support: sharing good practices and positive experien*ces, Florence: Istituto degli Innocenti.

Charter of Fundamental Rights of the European Union, Official Journal of the European Union, 2012/C 326/02, 26.10.2012, p. 391–407.

*Draft of the National Strategy of Social Protection in the Republic of Serbia from 2019 to 2025* (7. mart 2019). Inicijalna verzija, Ministarstvo za rad zapošljavanje, boračka i socijalna pitanja: EU podrška socijalnoj zaštiti u Srbiji, http://www.zavodsz.gov.rs/media/1820/nacrt-strategije-socijalne-zastite-2019-2025-27032019.docx [accessed on 23 Januar 2021].

European Union Agency for Fundamental Rights & Council of Europe[FRA&CoE].2017.*Handbook on European law relating to the Rights of the Child*. Luxembourg: Publications Office of the European Union.

General Assembly UN, Human Rights Council[UNHCR],A/HRC/45/L.48/Rev.1 (2020),Resolution Rights of the child: realizing the rights of the child through a healthy environment, [online].Available at:http://undocs.org/A/HRC/45/L.48/Rev.1[accessed on 11 Januar 2021].

Goldman,Philip, et al. 2020. "Institutionalisation and Deinstitutionalization of Children: Policy and Practice Recommendations for Global, National, and Local Actors." *Lancet Child Adolesc Health* 4:606–33.doi.org/10.1016/ S2352-4642(20)30060-2.

Human Rights Council, General Assembly[UNHCR] (20 March 2009), Agenda of Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to development,[online].Available at:https://www.un.org/development/desa/disabilities/promotion-and-protection-of-all-human-rights-civil-political-economic-social-and-cultural-rights-including-the-right-to-development.html[accessed on 11Januar 2021].

International Social Security Association. 2010. *Demographic changes and social security: Challenges and opportunities*. World Social Security Forum, 30th ISSA General Assembly, Cape Town, [online]. Available at: http://www.actuaries.org/PBSS/Library/Files/SocSec_General/2Demography.pdf[accessed on 10 Januar 2021].

Jašarević,Senad. 2009. „Socijalna sigurnost i socijalna drzava.“ *Zbornik Pravnog fakulteta u Novom Sadu*3:151-165.

Koulu, Sanna. 2019. “Children’s Right to Family Life in Finland: a Constitutional Right or a Side Effect of the ‘Normal Family’?”, In *Children’s Constitutional Rights in the Nordic Countries,* eds.Trude Haugli, Anna Nylund, Randi Sigurdsen, and Lena R.L. Bendiksen. E-Book, Brill | Nijhoff.

Milošević-Đorđević, Jasna &Đurić, Živojin. 2018. “Hybrid Civic Activism as a Tool for Building Social Inclusion.” *Serbian Political Thought* 2(18):15:32.https://doi.org/10.22182/spt.18212018.2.

Mol, Charlotte. 2016. “Non-traditional Family Forms & the International Dimension of Family Life: A Report on the ERA Seminar, ‘Recent Case Law of the European Court of Human Rights in Family Law Matters.” *Family&Recht*, June 2016, doi: 10.5553/FenR/.000027, [online]. Available at: http://www.familyandlaw.eu/tijdschrift/fenr/2016/06/FENR-D-16-00006/fullscreen[accessed on 15 December 2020].

Perišić,Natalija. 2016. “The Serbian Welfare State: A Transition Loser” In: *Challenges to European Welfare System*, eds. Schubert K., et al, 647- 669.Switzerland: Springer International.

Roagna, Ivana. 2012. *Protecting the Right to respect for private and family life under the European Convention on Human Rights*.Council of Europe human rights handbooks.Strasbourg:Council of Europe.

Roby, Jini. 2011. *Children in Informal Alternative Care*.New York: United Nations Children’s Fund (UNICEF).

Sepúlveda Carmona, Magdalena. 2017. *A Contemporary View of ‘family’ in International Human Rights Law and Implications for the Sustainable Development Goals*, UN Women, Discussion Paper, No.21, [online].https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/discussion-paper-a-contemporary-view-of-family-in-international-human-rights-law-en.pdf?la=en&vs=5042[accessed on 18 December 2020].

The Family Law, "Official Gazette of the Republic of Serbia", No.18/2005, 72/2011 –other law and 6/2015.

The Social Protection Law, "Official Gazette of the Republic of Serbia", No.24/2011.

The Convention on the Rights of the Child[UNCRC], 20 November 1989,E/CN.4/RES/1990/74.

UNICEF, Inter-American Commission on Human Rights, Organization of American States.2013.*The Right of Girls and Boys to a Family Alternative Care. Ending Institutionalization in the Americas*, [online].https://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf[accessed on 2 December 2020].

*V.D. and others v. Russia*, No. 72931/10, Judgement of the European Court of Human Rights (Third Section) on Merits of 9 April 2019.*

* Manuscript was received on July 22, 2021 and the paper was accepted for publishing on October 23, 2021.

UDC: 323.28+327.88]:343.8
DOI: https://doi.org/10.22182/spm.7442021.7
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 155-175

***Aleksandra Ilić****

*University of Belgrade – Faculty of Security Studies*

# A CRITICAL ANALYSIS OF CONTEMPORARY COUNTER-TERRORISM

## Abstract

In this paper the author analyses the contemporary counter-terrorism especially in the context of relevant international and national regulatives. The author first considers counter-terrorism measures in investigation of crimes of terrorism. In the name of protecting states and citizens, "war on terrorism" in some countries legitimized many actions directed towards the suppression of any potential danger from terrorism. Some boundaries have been crossed when the treatment of suspicious individuals is concerned and in that sense the author discusses the use of torture in fight against terrorism. Another issue that is subject of disscusion in this paper is treatment of persons convicted for terrorism. There are two dimensions of that treatment. On the one side is penintentiary treatment ie. the process which take place in prisons and on the other side we can talk about post-penal treatment of convicts for terrorism. The author criticizes the way how dominant approach in contemporary penintentiary and postpenal treatment of terrorists – the program of deradicalization, is realizing. Finally, the author considers counter-terrorism activities of some countries during the Covid-19 pandemic and possible future situation when it comes to terrorism which will influences the application of counter-terrorism measures.

**Keywords**: critical analysis, counter-terrorism, terrorism, measures, investigation, penintentiary treatment, post-penal treatment, Covid-19 pandemic

* aleksandra.ilic@fb.bg.ac.rs

## INTRODUCTION

Nowadays when terrorism attracts public interest it is expected that counter-terrorism activity is very popular topic worldwide. The special attention is given to those measures undertaken by the most powerful countries especially in the past two decades. The occurrence of 11 September 2001, the terrorist attack on the United States of America (USA), was without a doubt, responsible for significant changes globally when the counter-terrorism measures are concerned. The following sequence of events linked to terrorism, in Europe, amplified on the one side the feeling of fear among the global population and on the other side, strengthened the readiness of states to oppose more intensively and radically to the problem of terrorism. Those changes affected both those countries which had previous experience with terrorist attacks and the ones which had no contact with them whatsoever.

The main characteristic of dominant counter-terrorism approach today is one-sidedness of the official reaction which is in line with the retributive approach in the context of prosecution and punishment of terrorist acts. This paper will cover the general issues of the appearance and perception of the counter-terrorism approach which sometimes steps out of the framework of formal retribution and encompasses the measures which cannot, in principle, be considered as an allowed and legitimate means for fighting any type of criminal activity.

Special attention will be paid to use of torture as a counter-terrorism measure, especially how it is perceived, as it gained momentum after the terrorist attack on the USA in 2001. One of the question which arose over the context of suppression of terrorism, whether is allowed to limit or suspend some human rights of terrorists in order to gain information which can save people's lives. The verdicts of relevant judicial institutions, like European Court of Human Rights (ECtHR), show us the possible path to do it.

The position of prisoners convicted for terrorism while they are serving sentence or during the post-penal treatment also attracts public interest. Different programs of deradicalization bring into the question the validity of such approach especially if we consider this issue in the generally context of resocialization. Majority of

states, worldwide, especially in Europe and North America, have uniform rules for penitentiary treatment of all prisoners which are in accordance with international rules in that field. Having that in mind every attempt for introducing some new rules in treatment of prisoners for terrorism must be in line with exsisting ones.

Finally, Covid-19 pandemic influences the activities of terrorist organizations and vice versa counter-terrorism activities of states. Some changes are visible but what will happen during the next period remains to be seen.

## COUNTER-TERRORISM MEASURES IN INVESTIGATION OF TERRORISM

Even though the suppression of terrorism is one of the mayor preoccupations of some Western countries like USA, Great Britain, France or Spain but also some other countries like Israel, implementing counter-terrorism measures is not a matter of national policy anymore. After 11 September, United Nation (UN) Member States are not only entitled to defend their "national security" against terrorist threats but now have an obligation under international law to implement specific measures as set out in UN Security Council Resolution (UNSC, S/RES/1373) as well as "other measures" to combat terrorism (Redress 2004). However the biggest public attention attract activities which undertakes the USA. The Bush Administration rejected the previous American approach to counter-terrorism, which had primarily employed the combined tools of diplomatic cooperation, economic sanctions, and internationally coordinated law enforcement measures (Weiner 2007, 137).

In the name of protecting states and citizens from terrorists, such counter-terrorism measures have begun to be used, which often call into the question the clearly established concept of human rights. The question arises whether the importance of the fight against terrorism might permit states to use all necessary means, even if these means infringing upon other norms which protect fundamental human rights and values of the international community (De Beer 2018, 55).

It was at that point that the "war on terrorism" was declared and, like many similar wars, led by one of the greatest powers in the world. USA's global dominance on different levels appeared anew in the sphere of fighting terrorism. It should not be forgotten that the subject of terrorism was regularly present in American presidents' speeches ever since the 1970s. Such speeches were directed towards promoting the aggressive reactionary politics in order to demonstrate USA's zero tolerance policy towards terrorism and make it abundantly clear that the perpetrators will be harshly and instantly punished (La Free and Dugan 2009, 423). "War on terrorism" legitimized many actions directed towards the suppression of any potential danger from terrorism. For the sake of state's security, especially the security of their citizens and as a way of prevention of possible terrorist attacks, boundaries have been crossed when the treatment of suspicious individuals is concerned, i.e. a well-known method of "establishing the truth" has made its entrance through the back door – torture. In the face of an apocalyptic scenario of a possible attack where the terrorists would be ready to use firearms for mass destruction, why would we not resort to torture so as to gather necessary information and save numerous human lives (Di Čezare 2020, 12). Although torture is an illegal activity, on what on a global level refers the UN Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment (Convention against Torture RES/39/46), the manifold examples of its use speak in favor of the fact that it is an increasingly present, especially within the context of terrorism suppression. Throughout human history, torture has been most frequently employed against people who are not full members or citizens of a society, such as slaves, foreigners, prisoners of war, and members of racial, ethnic, and religious outsider groups (Einolf 2007, 117).

One of the main characteristics of modern counter-terrorism is justifying the obviously illegal and illegitimate measures for the sake of protecting the population and national interests of the affected countries. This use is enabled by the political power which is used for population manipulation by creating the image of terrorism as a constant and serious threat that targets basic values of one society. Political power encourages giving complete authorization for torture application, which would become an emergency counter-terrorism measure and which would primarily work through the

mechanism of intimidation (Di Čezare 2020, 12, 13). Advocates of torture application point towards the final goal of each information gathering process – establishing the truth which can, in their opinion, be determined only through this mechanism when terrorism is concerned. However, torture should not be observed through the law of truth, but through the law of power (Di Čezare 2020, 15). The act of transitioning to the use of torture made it impossible to establish any truth, it was disabled in advance because a clear pre-determined meaning, which could never be questioned, but rather confirmed through the use of torture, was attributed to it.

It can be asked if the prohibition of terrorism and the prohibition of torture are both norms of *jus cogens* which allow no derogation, is there a norm conflict when both norms are applied to the same situation, and can this be resolved through the limitation of one of the norms, namely the prohibition of torture (De Beer 2018, 69). The answer could be that the prohibition of terrorism and the prohibition of torture respectively, both protect the same fundamental value, namely the right to human dignity. Accordingly, there can be no balancing or limitation of values in order to arrive at any type of normative hierarchy (De Beer 2018, 78). But what happens afterwards when the judicial system is included in the process of torture legitimization? Namely, there are two possible directions, i.e. results, one which would, at first, seem more logical, more meaningful, and would imply that the judicial system dismisses torture as unequivocally prohibited measure that represents the negation of basic human rights. However, sometimes it is expected that the judicial system contributes to the war against terrorism, as it is not enough to secure a "win" on the home court and reach "truth", but rather necessary to give a formal framework to the said process. In the end, this means that the other direction is, in fact, the only possible one that, regardless of the general prohibition of torture (both within the international and national framework), pre-set binding principles and regulations are broken in case of terrorism.

The role of the ECtHR in defending the sanctity of a system of justice, untainted by torture, has been marginalized when observing the matters from the point of view of the most powerful states, i.e. their governments, especially when Great Britain and

the USA are concerned (Silverman and Thomas 2012, 283). It is notable how the United Kingdom government argued before the ECtHR in *A. and others v. the United Kingdom* (ECtHR, 3455/05) that the exception to the right to liberty should be broadened in the counter-terrorism context by balancing society's interests in combating terrorism against the individual's interest in a reasonably prompt release from detention pending deportation (Hamilton and Lippert 2020, 140). The additional risk of breach of the guarantee of a fair trial arises from the international character of modern terrorism. In view of the severe antagonism, after being extradited or deported, terrorists face a greater risk of violation of due process, being tortured and being exposed to capital punishment (Wilt and Paulussen 2019, 321). The most recent judgment the Grand Chamber of the ECtHR passed in the case of *Big brother watch and others v. the United Kingdom* (ECtHR, 58170/13, 62322/14 and 24960/15) should be mentioned, as it is important from the point of view of counter-terrorist measure application. It is pointed out in a secluded opinion of a few judges who agree with the majority on all counts in the operative part of the judgment, except for operative points 3 (no violation of Article 8 of the Convention in respect of the receipt of intelligence from foreign intelligence services) and 5 (no violation of Article 10 of the Convention in respect of the receipt of intelligence from foreign intelligence services) that this judgment fundamentally alters the existing balance in Europe between the right to respect private life and public security interests, in that it admits non-targeted surveillance of the content of electronic communications and related communications data, and even worse, the exchange of data with third countries which do not have comparable protection to that of the Council of Europe States (ECtHR, 58170/13, 62322/14 and 24960/15, par. 1 and par. 59)[1]. Furthermore, with the present judgment, the Strasbourg Court has just opened the gates for an electronic "Big Brother" in Europe (ECtHR, 58170/13, 62322/14 and 24960/15, par. 60)[2]. In another case before the Grand Chamber of the ECtHR – *Centrum för rättvisa v. Sweden* (ECtHR, 35252/08) for which the judgment was passed the same day as the *Big Brother* case, a similar ques-

1 Joint partly concurring opinion of judges Lemmens, Vehabović and Bošnjak; Partly concurring and partly dissenting opinion of judge Pinto de Albuquerque.

2 Partly concurring and partly dissenting opinion of judge Pinto de Albuquerque.

tion arose. Unlike in the previous case, all judges voted with the majority on all counts of the operative part while separate opinions indicated that the judgment should go considerably further in upholding the importance of the protection of private life and correspondence, in particular by introducing stricter minimum safeguards, but also by applying those safeguards more rigorously to the impugned bulk interception regime[3].

When it comes to the USA the responses of the Bush Administration after 11 September were not solely about bringing anyone to justice for the terrorist attacks, it was also about expanding USA global power and conquest all in the name of righteousness (Rothe and Muzzatti 2004, 347). Jose A. Alvarez argues that the Bush Administration's torture memoranda are a massive retrograde step wherein those sources of international obligation that are not ignored or relegated to mere considerations of "policy" are mangled beyond recognition. In that sense Alvarez (2006, 222) points out that memoranda writers torture the foundational instruments of modern international law, presumably for policy ends.

It is important to emphasize that the path towards overcoming the limitations of terrorism treatment wasn't a simple and spontaneous one. This is clearly observed in the example of the USA. Forming torture as a legitimate measure for resolving serious national issues, among which threats from terrorism as well, started with the above-mentioned declaration of war on terrorism in the American public space, yet it was necessary to take a series of other more sophisticated steps so as to set every single thing in its current place. The creation of the corresponding discourse on torture implied the engagement of bearers – both those from the political and the intellectual sphere of the American life. Donatella Di Cesare (2020) underlines that it all began with a single essay written by Thomas Nagel, one of the most authoritative voices of American analytical philosophy, in 1971, titled "War and Massacre" (38). Starting with the dilemma whether the "moral basis for war rules" exists and studying the preferable "behavior" during war operations, Nagel compares two possible approaches – the absolutist one equated to pacifism, i.e. the point of view which does not make any compromises when its principles are concerned and

3 Joint concurring opinion of judges Lemmens, Vehabović and Bošnjak.

which does not allow any rule breaking, under any circumstance, even if the said rule breaking would prevent far greater damage in comparison to how little damage would be made when breaking the said rules. On the other hand, he highlights utilitarianism as an approach that aims towards the "maximization of good and minimization of evil", which is achievable both through institutional (within the formal framework) and through individual action (Di Čezare 2020, 39). A utilitarian is a noble tormentor who needs to "get his hands dirty" in order to eliminate greater damage at the expense of inflicting lesser evil. They are sufficiently aware of the moral and legal principles, what is more, they break them with a heavy heart, yet do it in highly extreme circumstances so as to achieve a noble goal (Di Čezare 2020, 42).

Furthermore, that does not mean that by doing so the rules are negated or dismissed, because the exceptions such as terrorism, in fact, just confirm them. The most compelling argument that torture may be necessary or justified is the "ticking time bomb" scenario. Blanket condemnation of torture are often countered with a hypothetical situation in which a captive knows where a time bomb has been hidden and refuse to divulge the information (Pfiffner 2005, 316). Some authors consider "ticking time bomb" scenario as a case of extreme emergency and have dilemma whether it is justifiable to abuse prisoners terrorists in order to gain information (May 2018, 232). Emphasizing the "positive aspects" of the utilitarian and the "negative aspects" of the absolutist approach has led, in time, to torture being accepted as a noble mechanism which is, although inflicting pain, completely acceptable to use in dire situations such as necessity for protection against terrorist attacks. Basically, terrorism is the Trojan horse of the democratic political establishment because trying to stop the terrorists who stealthily emerge from this horse to raze the democratic establishment, by methodically curtailing the freedom rights can turn any avid promoter of the war on terror into a dictator (Köhalmi 2016, 164).

Fostering the belief within the general public that the application of force is the only effective measure for fighting terrorism disables any kind of discussion on the subject of prevention of terrorism. Prevention is considered only within the framework of repressive measure application, in order to dissuade any potential

terrorism perpetrators from the idea of committing such acts, while it does not contribute at all to eliminating the conditions which lead to committing terrorist acts. Tightening the penal policy is, in the formal sense, the basic mechanism for fighting terrorism, whereby is supported by the above-mentioned "extreme" counter-terrorism measures whose legitimacy and legal status can be questioned in many situations.

At this point, the notorious American counter-terrorism strategy should be mentioned, the "targeted killings", which are, also, presented to the public as one of the key methods for fighting the new religious-based Islamic terrorism. Such behaviour is justified by the attitude that the execution of terrorist groups' leaders (like for example the leader of Al-Qaeda) is a highly important objective which should be taken with the aim of suppressing that type of terrorism. One of the most recent examples of the "targeted attacks" is assassination of Iran's General Qasem Soleimani in early January 2020. In general USA drones and planes shatter Middle Eastern cities, destroy buildings and kill people (Clement and Scalia 2020).

Many pieces of evidence suggests that relying on severe sanctioning alone to counter- terrorism is unlikely to be successful (La Free and Dugan 2009, 426). Although small effects consistent with a deterrence perspective were discovered, these become inconsequential when their backlash counterparts are taken into account (Carson 2017, 213).

Literature points out that applying retributive counter-terrorism measures affects the change of terrorist strategies, i.e. terrorist organizations adapt to introduced measures in order to avoid critical points, or in different words, the areas in which they can be easily discovered, such as airports. Introducing harsh counter-terrorism measures within airport control reduced the probability of terrorist attacks in the field of air traffic, but it also redirected terrorist activities towards choosing other, more convenient places (La Free and Dugan 2009, 427). Even some more radical counter-terrorist measures, like the aforementioned "targeted killings", have proven to be stimulating for terrorist populations, so some results of several concrete pieces of research on backlash as it pertains to counter-terrorism showed the killings of Al Qa'ida leaders may have rallied support for the global jihadist base (Carson 2017, 213).

At first glance it seems paradoxical that the application of counter-terrorism measures, which are to a great extent preventive and limiting, can be an instigator of terrorist actions. By introducing various limitations and measures of control, attention is paid to terrorists, thus they are given more power. So, Western countries' governments, through "war on terrorism", actually become accomplices to terrorism strengthening (Bek 2011, 26). In that sense, we can come across various opinions, in the context of terrorism suppression, which stem directly from some counter-terrorism policy makers. Thus, using the example of France, we can mention the attitude presented by certain local policy-makers that a simplistic repressive approach cannot be the solution to terrorism. This critique calls for a most honest analysis of the causes of terrorism and for a more comprehensive policy approach, able to deal with the numerous aspects and dimensions of the issue (Amato 2019, 343).

Within the scope of criminological thoughts it can be notified punching of the different directions which include theories that contains legitimacy, strain, and situational variables and which indicate that strategies which aimed at decreasing the benefits of terrorism through improving the legitimacy of government, solving widespread grievances that produce strain, or attending to situational features that increase the costs of terrorism might be more effective than strategies based only on increasing punishment (La Free and Dugan 2009, 416).

Concerning the Criminal Courts' penal policy, the influence of certain illegal circumstances, especially in those countries which have experienced large terrorist attacks, should be underlined. Research results thereof indicate that the timing of an offender's adjudication in proximity to major terrorist incidents significantly affects sentencing outcomes (Amirault and Bouchard 2017, 283).

## PENINTENTIARY AND POST-PENAL TREATMENT OF TERRORISTS

A special segment of counter-terrorism activities refers to how the countries treat the perpetrators in correlation to terrorism while they are serving imprisonment sentence or as a part of the post-penal treatment after being released from the prison. The

discourse on the special treatment of convicts for acts of terrorism dominates in the public sphere and has become especially relevant in the context of the debate on returnees from the battlefield in Syria and other Middle Eastern countries where the Islamic State is active, given the fear of interested countries from the negative influence of radicalized individuals. These are basically requests for deradicalization of these persons, mostly insisting on a certain intervention that would primarily be applied in prisons during the execution of a prison sentence, but also emphasizing the need for continuous treatment, which would include special post-penal treatment. It should also be mentioned that the importance of special treatment of defendants for the acts of terrorism is often emphasized in public, during their detention, forgetting the presumption of innocence and that those persons cannot be subjected to treatment before the end of the criminal procedure.

The treatment of convicts as well as the post-penal treatment of persons who have served a prison sentence are traditionally regulated in the relevant laws in the field of execution of criminal sanctions. After the Second World War, there was a need to build a new, different system of imprisonment instead of the previous combined-progressive system. Influenced by appropriate theoretical directions - positivist thinking about the causes of crime and the need to combat them through prison treatment and the New Social Defense Movement, which advocated the humanization of criminal law, the League of Nation first adopted a set of rules on the treatment of prisoners (Ignjatović 2019, 181). At the First Congress of the United Nations for the Suppression of Crime and the Treatment of Criminals, the Standard Minimum Rules for the Treatment of Convicts were adopted, which are still valid today (Standard Minimum Rules, RES/663 C and RES/2076).

Regardless of the differences that exist within the national framework, the treatment of convicts in prisons as well as post-penal treatment is in principle regulated so that rules are applied regardless of the type of crime for which a person has been convicted. Individualization in the execution of criminal sanctions is one of the most important principle applied here and which implies that all convicts should be treated in accordance with their re-education capabilities. It is the same when it comes to terrorists

and other persons who are perpetrators of a crime which has an extremist character. This further means that the decision on the choice of treatment that will achieve the best possible effect is left to the experts within the institutions for the execution of criminal sanctions as well as to the appropriate services in the post-penal process.

Another important momentum should be pointed out in the context of dealing with any convict, including persons convicted for a terrorist act. It is a question of voluntary participation in the implementation of resocialization treatment as well as post-penal treatment, which is the gold standard in the field of execution of criminal sanctions. If someone does not want to be subjected to treatment of any kind, he cannot be forced to do so, because in that way the possibility of adequate and efficient implementation of a certain treatment is seriously questioned. Penitentiary treatment is a dynamic aspect of the resocialization process and it cannot be achieved if the convicted person does not actively participate in its implementation. If we consistently implement the principle of voluntariness, we cannot force those convicted of terrorism to undergo any treatment inside or outside prison. In other words, it is necessary to obtain prior consent.

The question then arises as to how the narrative of special treatment that should be applied to terrorists and similar categories of perpetrators fits into all of the above. This special treatment is usually called: *deradicalization program* which main goal is the elimination or removal of all those factors that led to the radicalization of the individual and his participation in activities that have a terrorist character. That narrative does not mention any kind of voluntariness, but on the contrary, the "obligation" of the treatment that will be applied without exception. Without the intention to minimize the importance of a different approach to solving the problem of terrorism and extremism, there is no justification for bypassing something that was established seven decades ago as a standard in the treatment of convicts.

However, when considering the experience of various actors at the international level regarding the response to terrorism and extremism, different conclusions are drawn. Responses to violent extremism and the prevention of radicalization that leads to

violence, including in prisons, remains a key priority for many governments and a major issue of discussion at the international level (Penal Reform International 2020, 12). In regards to this, almost every media report on terrorism follows and discusses the process of de-radicalization of persons who are affiliated to terrorism. It is usually indicating to the authorities' inadequate response, due to absence of de-radicalization program in prisons is concerned, or insisting on the inefficiency of existing programs, which is, according to analysts of the prison system, proven by the fact that recidivism linked to extremism and terrorism still exists. The dominant discourse on how recidivists should be treated puts emphasis on the necessity to apply special and different treatment from everything that exists in the penal practice of one state and can have different consequences. There is a tendency to widely define the idea of "extremism" which is used as an excuse for taking counter-terrorism measures within prisons.

The UN Special Rapporteur on the promotion and protection of human rights pointed in March 2020 that the use of the terminology of "extremism" and its expanding ambit and underlined that 'the category of "extremist" crimes is particularly vague and problematic' with abuse of 'extremism' law and practice potentially leading to sustained human rights violations (Penal Reform International 2020, 12). All convicted for any act of an extremist nature, no matter whether it is affiliated to terrorism or not, are, in effect, categorized together, which means co-accommodation and subjection to the same, special treatment. Therefore, it should not come as a surprise that criminal infestation occurs, in lieu of the effect of de-radicalization.

At the end of this section, attention should be given to another vastly important matter in regards to understanding the process of de-radicalization in prisons. At this point we will reflect on the example of the Republic of Serbia, considering that we can hear the narratives, in public, which insist on the application of special programs for terrorist convict de-radicalization (and in a broader sense, extremism), along with introducing special post-penal programs dedicated to this category of convicts. First of all, it should be underlined that the questions of how convicts should be treated, especially within the post-penal treatment, compared to all other

convict categories, are established by corresponding legal regulations (LECS 2019, LENCAM 2018) which do not make a difference between the convicts, but rather anticipate a certain mechanism through which a suitable individual program of prison treatment, i.e. post-penal program, is chosen. Whereby a clear assignment is given to trained professionals to establish all relevant facts for the creation of aforementioned programs, and that would, within the context of terrorism, mean paying attention to the moment of radicalization as well. The question why would special treatment be given to the perpetrators of terrorist acts in comparison to other convicts, especially those who were convicted for other serious felonies (such as murder, rape...) is raised. This question alone bears additional weight in the light of the statistical information on the number of crimes affiliated to terrorism committed on a yearly basis in many states, is highlighted, particularly if the relative part to the total number of crimes perpetrated within one year in one territory is analysed. This can be clearly seen in the example of Serbia. During 2019, a total of 28112 people were convicted in the Republic of Serbia. Out of that number, only one person was convicted for a terrorist crime, while seven people were convicted for the act of terrorist association (Statistical Office of the Republic of Serbia 2009, 68-74). On this basis it can be concluded that insisting on special de-radicalization programs represents an exaggeration which cannot in essence contribute to the enhancement of counter-terrorist measures.

## COUNTER-TERRORISM DURING THE COVID-19 PANDEMIC

The global pandemic of the corona virus (Covid-19) generally affected crime trend, including terrorism as well. The influence of the pandemic, i.e. the newly formed circumstances within which the world functions, can be observed in relation to the problem of terrorism from the positive and negative point of view. On the one side, closing down countries with the aim of suppressing the pandemic and closely monitoring current waves of virus-spreading in the past 18 months, significantly affected (and affects) people and commodity transportation, both within the national and international frameworks. This has, inevitably, left a mark on the

functioning of terrorist groups in regards to potential plans both in terrorist propaganda expansion, i.e. organizing activities which would gather new participants and followers, and in the context of committing terrorist acts. Closing down the public space almost all over the world, made it impossible for the terrorists to spread propaganda in such a way and organize the committing of terrorist acts in such areas. In other words, terrorists are denied the opportunity to realize one of the most important short-term goals of terrorism – causing and sowing fear among the population, which is the easiest and fastest to achieve through a surprising terrorist action in an area where there is constant movement and presence of a large number of people.

During the pandemic, according to the UN Institute for Training and Research (UNITAR 2020) by spreading disinformation, conspiracy theories and propaganda about the virus through online and offline settings, violent extremist movements and terrorist groups aim at sowing mistrust in authorities. The fact is that spreading propaganda, attracting followers and recruiting new active members through the internet have increased in recent years. Due to restrictions of movement, violent extremist and terrorist groups may further increase their efforts to recruit new members through social media and other online forums. Young people remain particularly vulnerable as they are likely to spend more time online due to closed schools, shut down of leisure activities and lost employment opportunities.

Shutting down the borders and directing countries towards resolving their own local issues, first and foremost within the context of the pandemic – such as how to control the virus-spread, how to conduct vaccination and balance the inevitable restrictions, led to certain changes when it comes to how terrorists behaved. Small number of terrorist acts are of a limited scope occurred, in the sense that there was a low number of participants and that the target choice was limited, and mostly these were situations of a local character. Apart from the "expected" sites and places of attack, such as the examples which occurred in France in September and October 2020 (the execution of a teacher in a Parisian suburbs for showing the caricature of the prophet Muhammad or the attack on two people not far from the editorial office of Charlie

Hebdo magazine), there was also one unexpected terrorist attack, from the point of view of Western public. The target was Austria, i.e. more precisely its capital Vienna, in November 2020. This attack on Austria was a surprise, because all the previous, regular terrorist activities focused towards "typical" terrorist targets such as France, Great Britain, Spain, were abandoned. This surprise indicated to a series of issues, because on one end, it demonstrated the unpreparedness of less "risky" countries to properly react when terrorism is concerned, whereas the question of vulnerability and risk of terrorism arose anew, as if some countries have only then woken up from their lull and realized that they, too, can be targets of terrorism, while not being completely ready for that. Media reported that the perpetrator of the terrorist act was caught buying ammunition for a Kalashnikov in Slovakia earlier that year in July, and was not successful as he did not have the adequate licence. Slovakia's officials state that they have forwarded the information regarding this attempt to the Austrian officials, but an adequate reaction from their end was missing. In public, that terrorist attack was presented as an act of a lone terrorist, a sympathizer of the Islamic state, although it could also be heard that the Islamic state took responsibility for this attack (BBC 2020).

It would appear that the long-lasting pandemic and countries' focus on the epidemiological situation has put the issue of terrorism in the background. This can have an upside to it, mostly because the overemphasized tension present ever since 11 September has deflated, yet we should remain aware of the possible downside of that change. The main dilemma is how the perpetrators of terrorist acts will behave at some point after the evident calm in terrorists' activities and the lack of media interest due to other currently burning subjects. At one hand, the weakened attention of the general public can have a stimulating effect on the terrorists who will, once the global situation is completely normalized, i.e. when the pandemic ends, take the offensive when it comes to getting attention and spreading what is momentarily a weaker version of fear of terrorism, to which the countries must be prepared. Re-opening the borders and cutting off restrictions in regards to travelling is something which has long been awaited by the general population, whereas we should not dismiss the fact that terrorists are also "looking forward" to this normalization. This does not mean that

we should go from one extreme to the other and obsess over risks from a potential attack, but, of course, caution is necessary.

## CONCLUSION

Fighting terrorism within the modern framework is an extremely complex process. Although, from the point of view of criminal sciences, it represents just another form of crime, as opposed to a series of other crimes, its occurrence, manifestation, understanding, and in the end reaction of different participants, is affected by a sequence of local and global factors which are intertwined and make a complete and clear portrayal of this phenomenon difficult. Regardless of the fact that terrorism is primarily a form of crime, it should not be neglected other dimensions important for a complete and adequate understanding of this phenomenon, like political context in which terrorism occurs.

Suppression of terrorism is very difficult task for most countries faced with that problem. The main dilemma is what type of counter-terrorism approach has the best chances for success – repressive one which is now dominated or officials should do much more to improve prevention activities. With no doubt public generally expects repressive attitude toward crime in generally and especially when it comes to some forms of crime, like terrorism. Having that in mind is not difficult to make conclusion that public will be probably willing to provide consent for some extreme measures if necessary beyond the fact that is might not in accordance with law or legitimate. The reality of torture is not something which fits the universal concept of human rights but when necessary the advocates of using torture and similar extreme measures in fight against terrorism point to the necessity of protecting lives of people potentially endangered by terrorists.

Part of the counter-terrorism approach is special treatment of prisoners convicted for terrorism and similar crimes, as well as the treatment of those who have served their sentences and been released from prison. The debate on these situations very often undermines the need to align these efforts with the existing framework, for dealing with these categories, which is set out long time ago. The main problem is the attempt to establish at all costs

some new and different rules for dealing with terrorists and other extremists without enough thought that the existing ones can also provide an adequate response.

Finally one of the most important issues that must not be forgotten in counter-terrorism activities is that suspected terrorists and condemned terrorists as well are still humans which means that their human rights must be protected in accordance with domestic and international regulative.

We could therefore say that the task of the present, i.e. us who live in it to try to get rid of "inherited conflicts from the past" and in that way provide ourselves and the coming generations a future that will be aware of the differences, and be clairvoyant for the similarities. The truth, we write these words with certain trepidation, because the question is whether the exposed understanding of the solution has a realistic chance for success. Shall we fail because we have been prone to fall, or will we move from the word, from which it all began, to deeds that will direct us to some brighter horizons? That is the question to which is very difficult to give a precise answer.

## REFERENCES

*A and others v. the United Kingdom,* No. 3455/05, 19. February 2009, ECLI:CE:ECHR:2009:0219JUD00345505.

Alvarez, Jose. A. 2006. „Torturing the Law." *Case Western Reserve Journal of International Law* 37(2): 175-223.

Amato, D'Silvia. 2019. „Islamization of criminal behaviour: The path to terrorism?" Terrorist threat and crime in French counterterrorism policy-formulation. *European Journal of Criminology* 16 (3): 332-350.

Amirault, Joanna and Martin Bouchard. 2017. „Timing is everything: The role of Contextual and Terrorism – Specific Factors in the Sentencing Outcomes of Terrorist Offenders." *European Journal of Criminology* 14 (3): 269-289;

BBC News. 2020. „Napadi u Beču: Suspendovan šef antiterorističke jedinice“, 10. May 2021. https://www.bbc.com/serbian/lat/svet-54788245.

Bek, Ulrih**.** 2011. *Svetsko rizično društvo: u potrazi za izgubljenom sigurnošću* (translation of the book: *Weltrisikogesellschaft*: *Auf der Suche nach der verlorenen Sicherheit*, translator: Ljiljana Glišović). Novi Sad: Akademska knjiga.

*Big brother watch and others v. the United Kingdom,* Nos. 58170/13, 62322/14 and 24960/15, Joint partly concurring opinion of judges Lemmens, Vehabović and Bošnjak and partly concurring and partly dissenting opinion of judge Pinto de Albuquerque of 25. May 2021,ECLI:CE:ECHR:2021:-0525JUD005817013;ECLI:CE:ECHR:2021:-0525JUD006232214; ECLI:CE:ECHR:2021:-0525JUD002496015.

Carson, Jennifer Varriale. 2017. „Assessing the Effectiveness of High-Profile Targeted Killings in the “War on Terror” A Quasi-Experiment.“ *Criminology and Public Policy* 16 (1): 191-220.

*Centrum för rättvisa v. Sweden*, No. 35252/08, Joint concurring opinion of judges Lemmens, Vehabović and Bošnjak of 25. May 2021, ECLI:CE:ECHR:2021:0525JUD003525208.

Clement, Matt and Vincenzo Scalia. 2020. „The Strategy of Tension: Understanding State Labeling Processes and Double-Binds.“ *Critical Criminology*, https://doi.org/10.1007/s10612-020-09494-5.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Convention against Torture], RES/39/46 Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with Article 27 (1).

De Beer, Aniel. 2018. „The Use of Torture in the Fight against Terrorism“ *International and Comparative Law Review* 18 (1): 51–88, doi: 10.2478/iclr-2018-0026.

Di Čezare, Donatela. 2020. *Tortura* (translation of the book: *Tortura*, translator: Gordana Subotić). Beograd: Dereta.

Einolf, Christopher. 2007. „The Fall and Rise of Torture: A Comparative and Historical Analysis." *Sociological Theory* 25 (2): 101-121.

Hamilton, Claire and Randy K. Lippert. 2020. „Governing Through Human Rights in Counter-terrorism: Proofing, Problematization and Securitization." *Critical Criminology* 28: 127-145.

Ignjatović, Đorđe. 2019. *Kriminologija*. Beograd: Univerzitet u Beogradu - Pravni fakultet.

Köhalmi, Laslzo. 2016. „Terrorism and human rights." *Journal of Eastern-European Criminal Law* (1): 159-165.

La Free, Gary and Laura Dugan. 2009. „Research on Terrorism and Countering Terrorism." *Crime & Justice: A Review of Research* 38: 413–478.

Law on Execution of Criminal Sanctions [LECS], *Official Gazette of the RS,* No. 55/2014 and 35/2019.

Law on the Execution of Non-custodial Sanctions and Measures [LENSAM], *Official Gazette of the RS,* No. 55/2014 and 87/2018.

May, Larry. 2018. „Humanity, prisoners of war, and torture." In *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory,* ed. Steven. P. Lee 1: 137-153. Dordrecht: Springer.

Penal Reform International. Thailand Institute of Justice. 2020. *Global Prison Trend 2020: Special Focus Pull-out Section. Alternatives to Imprisonment*. London: Penal Reform International.

Pfiffner, James P. 2005. „Torture and Public Policy." *Public Integrity* 7 (4): 313-329.

Redress. 2004. *Terrorism, Counterterrorism and Torture – International Law in the Fight against Terrorism*. London: Redress.

Rothe, Dawn and Stephen L. Muzzatti. 2004. „Enemies everywhere: terrorism, moral panic, and us civil society." *Critical Criminology* 12: 327-350.

Silverman, Jon and Lisa Thomas. 2012. „'I feel your pain': Terrorism, the Media and the politics of response." *Crime Media Culture* 8 (3): 279-295.

Standard Minimum Rules for the Treatment of Prisoners Standard Minimum Rules], RES/663 C (1957) and RES/2076 (1977) Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Statistical Office of the Republic of Serbia. 2020. *Bulletin - Adult perpetrators of crimes in the Republic of Serbia: reports, charges and convictions*. Belgrade: Statistical Office of the Republic of Serbia.

United Nation Institute for Training and Research (UNITAR). 2020. „Impact of COVID-19 on violent extremism and terrorism." 15 april 2021. https://www.unitar.org/sites/default/files/media/file/COVID19%20and%20Its%20Impact%20on%20Violent%20Extremism%20and%20Terrorism%20Factsheet_0.pdf.

United Nations Security Council [UNSC], S/RES/1373 (2001), Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001.

Weiner, Allen S. 2007. „Law, just war, and the international fight against terrorism: is it war?" In *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory*, ed. Steven P. Lee 1: 137-153. Dordrecht: Springer.

Wilt, Harmen van der and Christophe Paulussen. 2019. „The role of international criminal law in responding to the crime-terror nexus." *European Journal of Criminology* 16 (3): 315-331.*

* Manuscript was received on September 9, 2021 and the paper was accepted for publishing on November 14, 2021.

UDC: 314.745.22(=222.5)(560)
DOI: https://doi.org/10.22182/spm.7442021.8
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 177-205

***Milica Topalović***
*Institute for Political Studies, Belgrade*

# SECURITISATION WITHOUT SPEECH ACTS: SECURITISATION OF MIGRATION AND FAILURE OF TURKEY-KURDISH PEACE NEGOTIATIONS

## Abstract

After decades of marking the Kurds as an existential threat to Turkey's territorial integrity and ontological security, a new peacetime period is coming, accompanied by peace initiatives and the conflict's de-escalation. Taking into account the fact that the Turkish-Kurdish peace process failed during the most significant migrant crisis of the modern age, the paper seeks to examine the causality of these processes, i.e. to answer the question of whether and how the securitisation of the migration affected the failure of peace process. Using the analysis of verbal and non-verbal acts of securitising actors, but also a descriptive method of internal and external processes of Turkish politics in the period from 2009 to 2015, the paper will explain that securitisation without the use of verbal acts of Kurdish refugees contributed to mutual mistrust which would lead to the collapse of peace talks.

**Keywords**: Turkey, Kurds, peace processes, securitisation of migration, speech acts

## INTRODUCTION

The Kurdish-Turkish relationship has been used on the international scene for centuries as a synonym for asymmetric, diffuse and unbalanced ethnic conflict. Nevertheless, historically, initiatives to resolve this conflict have been repeated cyclically, depending on regional and international conditions. The last such attempt, although different in terms of actors – negotiators, process and dynamics, had the same outcome as all the previous ones.Many authors believe that the negotiations were doomed before the Government declared their beginning because one side was looking for what the other could not offer in a hundred-year relationship. Even when starting from such an assumption, the negotiations did fail, but that does not diminish the need to analyse potential causes, i.e. what was used as an alibi to make the negotiations fail.

As the largest ethnic minority globally, the Kurds have never managed to create a single state, both because of their fragmentation into the territories of the nation-states of Turkey, Iran, Iraq and Syria, and because of mutual cultural, linguistic and religious divisions. Unlike other Middle Eastern countries, Turkey wanted to bring its tradition closer to European cultural values in order to be recognised as a modern, contemporary state. At the same time, it is a militant community with a conquering tradition that has inherited its identity through the processes of securitisation of the Other. Regardless of whether the enemy was portrayed in the character of radical Islamists, socialism or terrorism, in the modern Turkish state, there has always been anOtherin relation whom the unity of the nation has been created. Ever since the founding of the Turkish state in 1923 under Kemal Atatürk, with a population of 15–20 million, the Kurds have been an easy target for securitisation in Turkey, both because of the political elite's justified fear of Kurdish separatism and because of the need to prevent any opportunity for unification with ethnic relatives in the countries of the region.

In 2013, peace process between the Turkish Government, led by the Justice and Development Party (AKP) and the leader of the Kurdish Workers' Party (PKK), Abdullah Öcalan, appeared to come to an end, preceded by the "Kurdish opening" in 2009. The Kurdish opening was reflected in starting a public debate and

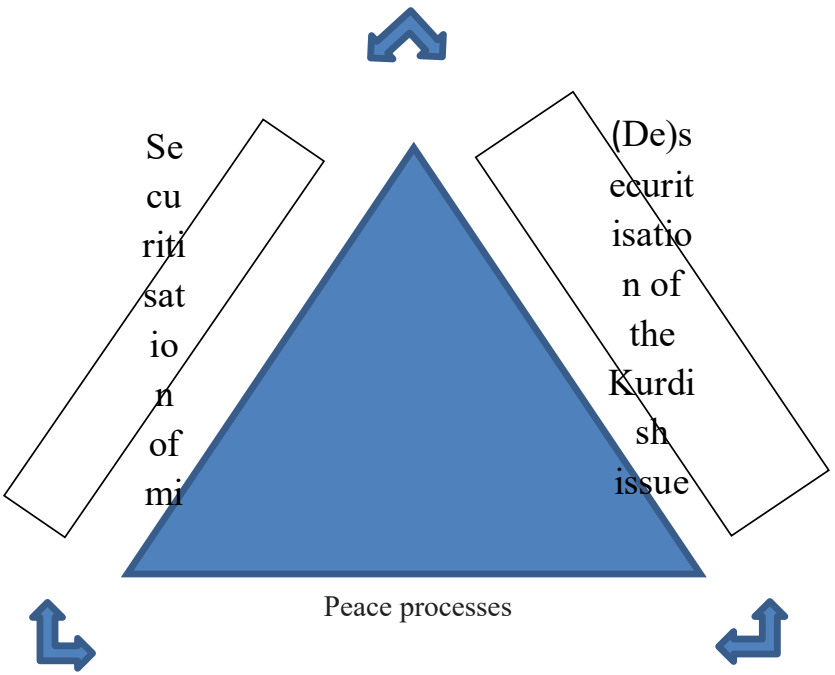
involving all stakeholders in peace processes and finding the most adequate and lasting solutions. Only after the secret negotiations known as the Oslo process, it could be talked for the first time about the indications of peace talks between the Kurdish and Turkish representatives. The conditions for a successful start of negotiations were met thanks to strong leaders of widespread legitimacy on both sides, the creation of favourable political opportunities reflected in the unilateral ceasefire of the PKK, as well as predetermined principles and methods of negotiations (Weiss 2016). Considering the main reason for the Kurds' dissatisfaction –the lack of territorial autonomy or independence, Turkey has never entered into peace negotiations with them sincerely enough. Even if it did, Turkey had to change its original intentions due to internal circumstances and the savagery of the civil war in Syria, the fight against the Islamic State and the influx of a large number of refugees from the war-torn areas. However, it is problematic that Turkey, despite affirmative speeches on the issue of open reception of refugees, still applied securitisation measures that were not accompanied by securitisation speeches. The practical return of the Kurdish issue to the emergency sphere was reflected in the emergence of mistrust among the negotiating parties and escalated with the peace negotiations' collapse. The conciliatory rhetoric, accompanied by the Turkish Government's openness to concessions, soon turned into an open confrontation between the parties and returned the relations between the two sides to their original state.

The consequences of the Arab Spring, which began in Tunisia in 2010, started as a call for more democratisation in traditionally undemocratic societies, and ended with the spillover of conflicts to all countries in the region, and culminated in the outbreak of war in Syria.[1]Overall, the consequences of conflict spillover theory which posits that there is a greater possibility of conflict in a country geographically closer to that in which the conflict is active have become visible owing to a large number of migrants and refugees from Syria, Iraq, Iran and Afghanistan, towards the countries of the European continent. An unavoidable point on that journey was Turkey as a transit country. Among the first who came were the

1 Read more about refugees interdependence and the outbreak of conflict in I. Salehyan and K. S. Gleditsch. 2006. "Refugee flows and the spread of civil war."*International Organization*, 60(2): 335–366.

Syrians, whose war began when the desecuritisation of the Kurdish issue in Turkey had just begun. Until the Kobane crisis outbreak in 2014, Turkey was propagating a policy of open borders towards the migrant and refugee population. However, as a large influx of Kurdish people from Syria began in 2014, Turkey changed its policy of receiving migrants. As the processes of securitisation of migrations co-occur with the growth of mistrust between the parties in the peace process, the author wants to investigate the consequences of the securitisation of the migrant crisis in Turkey after the start of peace negotiations, i.e. has their securitisation doomed the negotiations? To determine the connection between these processes, the author will re-examine how the Kurds' securitisation went hand in hand with the return of the Kurds to the field of emergency political measures.

The paper is conceived as an equilateral triangle composed of three processes whose cause-and-effect relationship the author seeks to examine: (de)securitisation of the Kurdish issue, the course of peace negotiations and the securitisation of migration. In the first part after the introduction, the author will review the works of authors who dealt with the same or similar topics, present the theory of securitisation and desecuritisation, its significance and criticism, and present different views on migrants, as a security threat to the reception state. In the next part, the author will chronologically go through a historical overview of Turkish-Kurdish relations and the most important initiatives to resolve the Turkish-Kurdish conflict peacefully. The emphasis will be on the period after the Kurdish opening. Finally, thanks to the analysis of discourse, migrations will be presented, i.e. the influx of Syrian Kurds as a possible indicator of the Kurdish-Turkish peace processes' failure, which will follow by a discussion and conclusion.




*Source*: Processed by the author

## LITERATURE OVERVIEW

The topic of the relationship of the migrant crisis to security discourses in Turkey, especially when observed as one of the indicators of the failure of peace processes between the Kurds and Turkey, has not been analysed in more detail in Turkish and international academic circles. Such a statement does not directly mean that migrations were not the subject of securitisation in Turkey, nor that the topic of peace negotiations was not eagerly followed in the academic world. On the contrary, to answer the research question clearly, it is necessary to select the most influential authors who dealt with the field of conflict resolution, classical securitisation-theory, its critics, and those who focused their research on studying migration as a reference object of securitisation.

In the context of studying peace processes, conflict resolution or its transformation, it is essential to understand that such processes do not occur in a vacuum. Their direction, duration and outcomes should correlate with other significant dynamics that can lead to peace process transformation. Taking the typology of Väyrynen, it is possible to distinguish five different frameworks that affect the transformation of peace processes –the transformation of context, structure, actors, goals, and individual/group transformation (Ramsbotham 2016). The case study of the Kurdish-Turkish peace processes is certainly the contextual transformation, which occurs through a change in security dynamics and it is reflected in numerous securitisation moves.

The securitisation theory represents one of the most significant contributions of the Copenhagen School of Thought created in the post-Cold War period, whose creator is Ole Waever. As a radical type of politicisation seen in its traditional sense, securitisation is viewed through the locating of an existential threat in one of the security sectors –political, military, social, economic and environmental sectors (Buzan, Waever, and de Wilde 1998, 21–23). Weaver states that securitisation is an altered political elite's discourse that identifies phenomena as security threats to the reference object and demands legitimacy against them to introduce special measures that deviate from standard political procedures and processes (Wæver1995, 46–86). On the other hand, desecuritisation is a reverse process in which the state of extraordinary measures returns to the political process's normal state (Emmers 2007, 111). The essential elements of the theory are the securitising act, the securitising actors, the extraordinary measures, and the audience that gives legitimacy to their application. The classical theory of securitisation has suffered much criticism since its inception, but it still survives as the theoretical basis of almost all processes shifting a particular phenomenon from the sphere of everyday political practice to extraordinary one.

The securitisation theory's contribution is also the theory of speech acts as an analytical tool in the securitisation process research. Speech acts are borrowed from linguistics, i.e. from John Austin and John Searle's works, thanks to which Weaver explained that mere pronunciation is a securitising act in itself (Wæver1995,

55). Securitising actors are high political representatives, officials, leaders of political parties, heads of security agencies, generals, and representatives of civil society, the opposition, the church, who seek legitimacy through the acts of speech to introduce special measures. Some criticisms could apply to Turkey's case, which is related to the conclusion that in non-democratic societies, it is not necessary to view the use of extraordinary measures exclusively as an act of the securitisation process (Vuori 2008, 69). In such states, special measures become a means of regular political life. Excluding the securitisation processes during the military juntas in Turkey, the securitisation processes that are the subject of this paper occurred when Turkey had deeply entered into institutional reforms and harmonisation of legislation with the *acquiscommunautaire* of European Union. For securitisation processes to be successful, it is necessary to meet three criteria (Buzan, Wæver and de Wilde, 31–33). It is necessary to adhere to the security grammar, i.e. dramatise the story of "existential threats" and "survival"; securitising actors must have the social capital, credibility, or moral authority to speak out about security; and finally, the threat must be accepted as potentially threatening by the majority (Ejdus 2016, 205).

In practice, the theory of speech acts is realised through direct address to the audience, or through the media as functional actors. Functional actors are presented in classical securitisation theory as non-state actors who do not participate directly in securitisation decision-making but facilitate it through their activities. The media is becoming a dangerous securitisation channel for countries with a deficit of democracy, such as Turkey. The mass media provide a distorted picture of the cohesion of Government, civil society and the military around specific and daily political decisions and thus legitimise the introduction of special measures (Birdisli 2014, 4). That is why the processes of securitisation or desecuritisation in Turkey took place promptly, and in most cases, received great trust and support from the citizens.

One of the fundamental criticisms of the traditional school of securitisation is the lack of imagination in determining the scope of social sector, which should include the ability of society to maintain traditional aspects of culture, language, religion and national identity (Booth 2005, 34). On the same track is Birdisli(2014)who,

dealing with the issue of securitisation of the Kurds, understood their demands for recognition of identity and autonomy as a threat to the Turkish national being because since the end of the Second World War the state has been understood as one nation, one identity and one language (1). In the modern understanding, security is not concentrated only on the protection of the state from ideological and military threats, but also refers to the issue of migration, ethnic, spiritual survival, and the identity of the actors (Kaya 2009, 8). Therefore, the authors are increasingly focused on researching the specific domain of ontological security and securitisation of migration.

Ontological security is the connective tissue of the case study because the securitisation of the Kurdish minority and the migrant/refugee population begun due to the threat to the Turkish state's self from the significant Other. Borrowed from the works of sociologist Anthony Giddens, ontological security applied to the understanding of the "experience of oneself as a whole", i.e., the state's self in learned relations with the significant Other (Mitzen 2006, 342–344). Whether it is good or bad relations, the subject learns and determines his own identity in relation to someone. Mitzen (2006) comes to significant conclusions that actors who are in a long-standing conflict are beginning to feel safe in that role of being threatened. It is concluded that such states prefer conflict, rather than peace, because only through conflict they know who they are (361). It is necessary to say that there are different understandings of the relationship between peace and war and what is expected of them. One side can expect to provide self-identification through conflict, while the other may view conflict as a way to survive (Bercovitch and Jackson 2009). While some feel comfortable using violence, others try to avoid it. In the example of Kurdish-Turkish relations, whose history dates back a hundred years of experience, it is necessary to look at the problem from the perspective of learned roles. Decades of bad relations have not only diminished the possibility of a solution but have built a relationship of self-determination concerning each other, precisely through violence and securitisation. Following this logic, Turkey's ontological insecurity did not arise when the Kurdish issue was securitised. On the contrary, it arose when, after many years of established relations, the conflict de-escalated by the Kurdish

opening, by which the predictability of action was lost. It is an exciting finding that states that even in cases of desecuritisation of a long-term Other, can reactivate the created conflict identity with completely new opponents (Ejdus 2016, 214).

The entry of refugees/migrants into a society causes ambiguities that the modern state cannot quickly solve because, since in the nation-state, such a person is a disturbing element. It breaks the identity between man and citizen, birth and nation, and therefore endangers sovereignty's original function (Agamben 1995, 117). This thinking tends to amnesty the securitisation processes that, according to this view, take place in every nation-state in which a large number of non-residents enter. Bourbeau(2011)states that securitisation of migration is necessary because the domicile population's ontological security is endangered by the entry of a mass of non-citizens as a disturbing factor (1).

One of the essential representatives of the Paris School, Huysmans, expands the concept of securitisation by focusing on the securitisation of migration. In his view, the securitisation of migration does not end with the speech act, and it is enriched by the action of bureaucracy, which further shapes (in)security through risk assessment and statistical calculations (Huysmans 2006). Despite their exclusive focus on Western European countries, i.e. the European Union, Huysmans's postulates can be applied to Turkey as a *de facto* democracy. He states that since the 1990s, migration has been seen as a potential threat to internal stability (17). Huysmans wrote the book before the migration crisis, but after the declaration of the global war on terrorism, so that the reasons for the securitisation of migration in Turkey can be treated equally as a threat to ontological security, socioeconomic prosperity, but also in line with the fight against terrorist organisations (ISIL, Gulen movement). Regardless of the cause of the securitisation of migrants, Huysmans relativises speech acts as necessary for the securitisation process. Securitising practices include discursive and non-discursive acts that protect the domiciled community from the dangerous force of migrants(93).

Unlike Huysmans, who does not exclude speech acts, but relativises their necessity, Bigo criticises the Copenhagen school's postulates and further elaborates the work of bureaucracy and the

socio-cultural way of securitising migrations, putting speech acts in the background. According to him, it is possible to securitise a particular phenomenon without using linguistic acts, following political practice, manoeuvres, discipline that is of equal importance in the security grammar as discursive practice (Bigo 2006, 198). Sara Léonard (2010) went a step further by analysing the European Union's migration policy, which believes that it is wrong to interpret securitisation speeches when securitisation is deeply institutionalised through political frameworks, which primarily refers to the issue of migration (234).

Peace studies and security studies have brought significant papers in the field of Kurdish-Turkish peace negotiations and on the Middle East's security dynamics, which have produced one of the greatest migrant crises in human history. Research on migration as a consequence of security processes, and not as a cause of creating new ones, leaves much room for analysis. The fact is that the current migrant crisis is a process the duration of which is still unpredictable, as well as that many transits and final destination countries have opened their doors to the migrant population due to the duration of various peace and security processes. Research on the securitisation of migration, i.e. their perception as a security issue, and indicators of various peace negotiations' potential outcomes have received little attention from peace and security studies. In contrast, the paper seeks to link refugee securitisation processes and their impact on the outcomes of the processes that began before they were placed in the field of extraordinary political practice.

## HISTORICAL REVIEW: KURDISH MINORITY SECURITISATION PROCESSES

Securitisation of Kurdish minority was expressed through public discourses of political elites, spread through the media and education system, and achieved by concrete measures that have always been radical. Depending on Turkey's internal political developments, the attitude towards the Kurdish minority was different, but it was always reduced to more or less securitisation and can be divided into several epochs. It is necessary to explain

the development of the learned roles and mutual learned relations to understand the context and mistrust between the parties to the peace process.

After the war for liberation and the creation of a modern Turkish state, the Kurds, thanks to their participation in the liberation struggle, were spared the introduction of extraordinary measures and securitisation, as seen in the *Amasya Protocol* (Yeğen 2007, 127). However, the Kurds have more or less always been excluded from everyday political life. The first phase in which Kurds' political and civil rights were set aside is related to the period from 1925 to 1961. It is a period of social and political transformation of the multiethnic identity of the Ottoman Empire into the project of creating the nation-state of Kemal Ataturk, in which a strong centralisation of the state was carried out, and any possibility of survival of the Kurdish minority was disputed (Yavuz 2001, 3). From 1962 to 1983, the second phase completely securitised the Kurdish identity and put it in the same camp with the growing socialist ideology's followers. The West welcomed such policies and the religious moment's return to the secular Turkish state because it saw Turkey as a geopolitical guardian against the spread of communism and Soviet influence (Criss 2003, 67).

The Kurdish issue became one of the burning issues of the Turkish state in the 1980s with the election victory of TurgutÖzal, who, by changing the political discourse towards the creation of a Turkish-Islamic synthesis, distanced himself from Kemalist ideals. Later in the 1990s, Kurdish political activity was reflected in terrorist acts by paramilitary formations and the activities of the PKK, which is still associated with the symbol of Kurdish separatism.[2]As early as 1984, there was a major armed conflict between Kurdish guerrillas and the Turkish army that resulted in the violent death of 40,000 people, the burning of 5,000 Kurdish villages and approximately one million refugees and displaced persons (Savran 2020, 778). The establishment of the OHAL region

2 Founded in November 1978 as a Marxist-Leninist party by Abdullah Öcalan. After the 1980 military coup, Öcalan fled to Syria where he reformed the PKK and after 1987 began to carry out terrorist attacks in Turkey. They were mostly aimed at the Kurdish population, which did not want to join the organization. Between 1987 and 2012, 22,849 terrorists and 11,785 members of the armed forces and 10,885 Turkish civilians were killed. See Birdisli 2014, 6–9.

(State of Emergency Region) in 1987 in the Kurds' south-eastern provinces was a response to the Kurds' separatist aspirations. The securitisation of the daily life of the Kurdish minority in the territories inhabited by Kurds in Turkey lasted for more than twenty years. It was reflected in the extreme violation of human rights, killing, displacement from villages and settlements destroyed by the army and gendarmerie (Çelik 2015, 54). Such measures had the opposite effect from what the Turkish authorities expected by applying institutionalised discrimination –strengthening of Kurdish nationalism and even more decisive separatist intentions. The President SüleymanDemirel and Prime Minister TansuÇiller tried for the first time to calm Kurdish separatism with mild options. They proposed establishing a special civil-parliamentary National Security Council whose only activity was focusing on the Kurdish issue: the beginning of the broadcasting of Kurdish shows on television, the possibility of choosing the Kurdish language in schools and the possibility of applying the "Basque model" to solve this issue (Barkey 1998, 137). Demirel was the first president to use the word Kurd to refer to this community's ethnicity in 1991, but he emphasised creating a collective, civic identity of all Turkish citizens from which common constitutional rights and obligations would be derived (Yavuz2001, 17).Two years later, he acknowledged the "Kurdish reality", thus beginning the first peace initiatives that the PKK prevented by opening fire (Ensaroglu 2013, 11).

With Turkey's strategic move towards the European Union and gaining candidate status, the Kurdish issue has been internationalised. Simultaneously with the arrest of the PKK leader, Abdullah Öcalan, a more peaceful period for Turkish-Kurdish relations ensued, as Öcalan renounced violence with a promise to fight for Kurdish rights by democratic means(Yavuz 2001, 16).Officially, desecuritisation began at the end of the last millennium, when Turkey started fulfilling the Copenhagen criteria. The Copenhagen criteria, among other things, included the protection of the cultural rights of minorities, i.e. encouraged institutional solutions that were mostly related to Kurdish status (Weiss 2016, 6).Apart from several incidents with outlaws of Öcalan's negotiating strategy, the early beginnings of the AKP, led by then-Prime Minister Erdoğan, brought more optimistic solutions and the readiness of Turkish political elite to resolve the "Kurdish issue" and break out of habitual hostile relations.

Through the Grand National Assembly, Erdoğanpushed through five harmonisation packages with the *acquiscommunautaire* of the European Union, which in 2003 and 2004 wholly democratised the attitude towards the Kurds, abolished torture and enabled them freedom of expression and association (Pusane 2014, 85). Allowing the use of Kurdish at universities in predominantly Kurdish cities and the opening of radio and television stations, in no way encouraged the Turkish political elite to consider constitutional changes and the introduction of Kurdish as the second official language in the country (Tol 2012). Finally, the Kurdish minority is allowed to give children Kurdish names that are not subversive –they do not have the letters x, z, w that do not exist in the Turkish alphabet (Romano 2014, 175–176). On the other hand, there was work on the partial amnesty of PKK prisoners and the presentation of a project (Return to Village and Rehabilitation Project) for the repatriation of internally displaced persons (Pusane 2014, 85).

Even though Kurdish–Turkish relations have had drastic amplitudes since the creation of the modern Turkish state, it is inevitable to conclude that every period of desecuritisation of the Kurdish issue was stimulated by the development and prosperity of the state. The more stable the situation in regional and internal security was, the more democratic the attitude towards the Kurdish minority was. Given that the paper is limited in time to the beginnings of institutional and political reforms in Turkey, which suspended emergency measures against the Kurds and reduced them to everyday political decision-making, it is clear that this is a process of desecuritisation that resulted in the Kurdish opening and launching of the first official peace negotiations in 2013.

## KURDISH OPENING AND THE COURSE OF PEACE PROCESSES

Desecuritisation of the Kurdish issue began not only with the abolition of emergency measures but also with the creation of a social contract between the political elite and the citizens of Turkey which transferred the Kurds to the political sphere and marked the relationship with the PKK's paramilitary part –a declared terrorist organisation, as a security problem (Oğuzlu 2007, 88). Turkish

authorities have made a distinction between PKK civilians who have chosen nonviolent means to achieve their goals and PKK paramilitary organisations with which the Turkish Government has continued violence. Otherwise, it would not be possible to enter into negotiations with a terrorist organisation. A precondition for such an understanding was the arrest of PKK leader Öcalan in 1999, who soon stated that the essential principles he wanted to build the Turkish-Kurdish future were "Democratic Nation, Shared Homeland, Common Individual and Collective Rights and Freedom" (Unver 2015, 160). The PKK demanded the exercise of civil liberties and rights, the recognition of Kurdish identity, and the right to autonomy of Kurdish-populated areas through constitutional solutions (Savran2020, 778). In the decades-long conflict between the two sides, for the first time, it became clear that a solution can be reached only through negotiations, i.e. that neither side can pursue its interests by violence. However, such initial positions of the negotiating parties collapsed in the summer of 2015.

Along with democratic reforms and the beginning of the Kurdish issue's desecuritisation, the Turkish Government has skilfully used the alibi of *de facto* the fight against terrorism to destroy PKK members who opposed Öcalan's nonviolent fighting strategy. Due to acting decisively against terrorists in numerous actions on the one hand, and building a new presidential arrangement of the state on the other, the peace processes remained in the background. It appears that the Turkish side has not wholeheartedly entered the negotiation process, or that it has used the Kurdish standstill to distract the international public from regional issues in which Turkey has been involved, rejecting the "zero-problem with neighbours policy" set by the former Foreign Minister Davutoğlu.

The transformation of the death penalty into the life sentence of Öcalan led to secret negotiations between the diaspora, the PKK and Turkish representatives from 2009 to 2011, better known as the Oslo process (Pope 2015, 149). During the secret negotiations, Öcalan stated that the Kurds' political rights should be realised by non-military means, so he officially gave up all other paramilitary activities (Yeğen2016, 13).Öcalan's statement encouraged PKK members but also abstaining Kurds, to start believing in nonviolent

means. Turkish think-tank KONDA published data that the public supported peace processes with 81 per cent (Savran2020, 784). After enabling precise negotiation principles, Öcalan officially announced in 2013 that he would enter the negotiation peace process with representatives of the Turkish Government. In that way, the Turkish Government *de jure* completed the process of desecuritisation of the Kurdish issue, officially starting peace negotiations with the civilian part of the PKK. When it comes to the parts of PKK who did not believe in peace talks and thus continued to fight by violent means, the Turkish authorities continued to view them as terrorists.

That there has been no radical change in the attitude toward the Kurds, although the discourse analysis cannot claim this, is proved by the numerous actions that Turkey carried out from the moment of the Kurdish opening until the collapse of the peace negotiations. Under the slogan of the fight against terrorism, in April 2009, when the Kurdish democratic opening was declared, broad actions were approved against activists suspected of having ties to the Kurdistan Communities Union; thousands of people were arrested under accusation of spreading terrorist propaganda (Pope 2014). The Kurdistan Communities Union brings together many Kurdish parties in the Middle East but is most strongly influenced by the PKK. That is why it is not surprising that Turkey is afraid of their strengthening, as well as this kind of action, which is just one in a series of the same action that were carried out until 2015 and in some way abused the distinction made between civilian and paramilitary (dispersive) PKK, as well as the motivation of the civilian part of the Kurdish community to enter into negotiations. One of the manifestations is the broad interpretation and non-selective application of the Anti-Terror Law, which served to abolish the previously given freedom of expression of the Kurds, interpreting it as calls for separatism and use of violence (Weiss 2016, 9).Thus, Kurdish activist LeylaZana was re-arrested for spreading propaganda and because of her links to PKK leaders, as well as many other individuals who chose to fight by political, nonviolent means – academics, professorsand journalists (9). According to one PKK leader, Murat Karayılan, 85 per cent of those arrested had nothing to do with their actions, nor were they members (International Crisis Group 2012, 22). The hasty reactions of the Turkish military, which

in 2011 mistakenly identified as terrorists and bombed 34 Kurdish smugglers near the Iranian border, further demotivated Kurdish civilians to resolve the Kurdish issue through peace talks (25–26). By changing the public narrative only, the Turkish Government blurred the distinction it had made. Thus, Turkey continued its showdown with the Kurdish separatists, even where none existed, while public discourse indicated its determination to reach a lasting solution. Turkey has applied a similar policy of applying extraordinary measures without securitising discourse to Syrian migrants, which will be discussed in more detail in the next part of the paper. The previous policy of stifling the Kurds' freedoms and rights continued under the slogan of efforts to start the peace process, even though the trust in the Turkish Government and its motivation to negotiate on concessions to the Kurds decreased.

With interruptions, peace talks managed to survive until 2015. That year is crucial for several reasons. First of all, the ruling AKP lost the majority in the elections, while the majority Kurdish party Peoples' Democratic Party (HDP) managed to enter the parliament as the third-largest. With such a redistribution of votes, Erdoğanneeded to maintain the declared peace with the Kurds for as long as possible to use the necessary support to hold a referendum to change the system from a parliamentary to a presidential one and thus further expand presidential powers. On the other hand, the PKK launched a new wave of terrorist attacks and expression of dissatisfaction with Turkey's official policy towards the Kobane crisis. It was expected that the Kurdish minority would not be satisfied with the *status quo* position, which guaranteed them negative peace, i.e. the absence of physical violence. At the same time, their ethnic relatives enjoyed broad political and cultural autonomy in Syria and Iraq (Tezcür 2013, 75). Besides, in 2015, another securitisation process began in Turkey, but this time aimed at the migrant population that came from the war-torn countries and encouraged by the immigration of Syrian Kurds.

## MIGRATIONS: A SIMULTANEOUS CATALYST FOR PEACE AND CONFLICT IN TURKEY

Since the beginning of its secessionist struggle in the 1980s, the PKK has used the northern parts of Syria as a base for attacks against Turkey, leading to a significant deterioration in the bilateral relation of Turkey and Syria (Okyay 2017, 832). Relations with Syria improved after the Syrian authorities expelled Öcalan in 1998 and, under the Turkish army's military intervention ultimatum, closed all terrorist camps in the South (832). A joint initiative against the creation of a Kurdish state, but also an economic, neoliberal shift between the two countries, led to the signing of various agreements on the free movement of goods and services in 2004, projects on transport, and the conclusion of reciprocal visa waivers in 2009 (833). As interstate relations experienced a renaissance, in addition to good relations between Erdoğanand Assad, it is not surprising that at the time of the start of the Syrian civil war in 2011, Turkey had a visa-free regime for Syrian citizens and an "open door" policy towards Syrian refugees and migrants.

It is important to note that by 2011 there were only 58,000 foreigners under international protection in Turkey, while in 2015 the number of Syrian refugees was around 2,500,000 (Erdoğan 2019, 2). The Turkish Government's attitude towards refugees is tough to observe only in a securitising framework, especially when talking about the consequences on the Kurdish-Turkish peace process. There are several explanations: first, the fact that Turkey had a different attitude towards migrants and refugees from Syria in early 2011 and 2015; the second is that the analysis of speech acts alone cannot say with certainty that there has been a securitisation of Syrian migrants/refugees, which supports Big's critique of the speech acts of the classical theory of securitisation.

The policy of open doors towards Syrian refugees can be understood as a Turkish Government's reaction to the insufficiently responsible policy it pursued in Syria. That is why in the early beginnings of the civil war, securitising speeches addressed to Syrian refugees cannot be diagnosed. The topic of refugees and migrants in public speeches had an exclusively humanitarian tone, which can be seen from the letter of the former Minister of Foreign Affairs, Davutoğlu, addressed to the UNHCR High Commissioner

in 2013 (Ministry Of Foreign Affairs, Republic of Turkey 2013). The same is stated by the president of AFAD (Disaster and Emergency Management Presidency) who believed that the issue of Syrian refugees would be delegated to the army if it was a security issue, and would not be seen as a humanitarian crisis (Korkut 2016, 10). Finally, Erdoğanstated in 2011 that "Syria is now an internal problem of Turkey", where protectionist policy towards migrants can also be interpreted, i.e. humanisation of foreign policy (4–5). Until 2014, regardless of the organisation of civil protests and occasional escalations between the domicile and migrant population, there was no public discourse securitising this population.

The situation changed drastically at the end of 2013 and the beginning of 2014. Turkey decided to build a wall on the border with Syria in October 2013, like the wall the United States built on the border with Mexico, in south eastern Turkey (*Nusaybin*) and north eastern Syria (*Quamişko*), known as the Wall of Shame (Koca 2015, 219). Locals began protests because the walls looked like an attempt to further separate Kurds from Turkey and Syria, but the Ministry of Interior explained that they built the wall for security reasons to reduce illegal crossings, smuggling routes, and prevent alleged clashes of Kurdish leaders on both sides of the border, but also to protect the local population from minefields (219). Regarding the construction of this type of wall, opponents stated:

*If it is about mines, they have been there for 60 years. Not that the Government was much concerned with their victims –if you walk around 10 minutes in Nusaybin, you will see people with missing hands and feet. If it is about smugglers, they have always been around and will continue to be around. If it is illegal crossings by Syrian refugees, they use the Senyurt-Derbesiye crossing 60 kilometresaway. Some days 400 to 500 people use that crossing to go to Turkey. The vast majority of them are Kurds. As long as that crossing is open, why would the refugees choose the dangerous way through a minefield?*(Taştekin, 2013).

Thus, the absence of securitisation speeches did not delay the implementation of securitisation measures. At the same time, the Party of Democratic Union (PYD), as the leading Kurdish organisation in Syria, managed to consolidate power in the territory of three districts where Kurdish majority was, such as Jazir,

Kobane and Afrin, as well there was declared territory of Kurdish autonomy (Jojić 2018, 38). The emergence of a new entity in Syria called Rojava, was frightening for the continuation of peace negotiations from Turkey's perspective, it was also dangerous given the fact that the autonomous territory was organised according to the principles of democratic confederalism devised by Öcalan (Leezenberg 2016, 681).

Another reason for the turn of Turkish policy towards the peace processes happened with the Islamic State's incursion into the region of Kobane in Syria on September 14, 2014. Turkish authorities refused to take part in the crisis and the fight for this region's defence, which resulted in a conflict between the Kurds and the Turkish security forces that were on Syrian territory (Salih and Stein 2015). Despite the bombing of Ankara and Istanbul by the PKK military, Turkey did not want to send aid to Kurdish fighters, nor did it allow anyone to do so (Kadioglu 2016). The conflict in the border zone was stopped under the threat of Öcalan that he would leave the peace process if the mentioned Turkish-Kurdish conflict continued. Since the region itself had close ties to the PKK terrorist, and as a result of the Islamic State's attack on Kobane, there was an influx of a large number of Kurdish population into Turkey. Turkey found itself in a securitising dilemma. It was challenging to separate civilians from terrorists and let them enter Turkish territory unhindered. It was even harder to allow the Kurds who wanted to do so – to return to Syria and help to fight the Islamic State. On the one hand, fighting the terrorism of the Islamic State, and on the other, with a holistic approach towards the migrant population, Turkey found itself in an unenviable position. Pursuing a policy of friendship towards the Kurds from Kobane would lead to significant concessions to Turkey's decades-old enemies – the Kurdish separatists, and it would significantly weaken Turkey's negotiating position (Korkut2016, 15).

It was clear that the open door policy primarily referred to the Syrian Arabs and Sunnis, and any dislocation of the Syrian Kurds from the refugee reception policy would have political consequences for the peace process. On the one hand, in 2014, securitisation and discrimination against the Kurds would condemn the peace talks to ruin with the exit of the Kurdish side, while on the other

hand, the unhindered influx and equal rights of these people with other refugees would weaken Turkey's negotiating position and demand additional concessions. That is why Turkey chose the third way – selective humanisation and silent securitisation. The choice between securitisation and humanitarisation of refugees from Kobane would not have been of great importance, had it not been happening during the Kursk-Turkish peace talks. Since the Kobane incident, official border crossings near Kobane have been closed to those who seeking asylum in Turkey (Amnesty International 2014, 9).Such restrictions were accompanied by the decline of several border crossings to the Islamic State, which meant that only three of the eight border crossings remained for crossing, humanitarian aid and trade, which were occasionally closed (Kanat and Ustun 2015, 12). Since then, the return of Syrians without passports from the border began, unless they needed urgent medical care (Amnesty International10).Ankara allowed entry only to those who had a place in the camps, which were already overloaded. The only alternative for entering Turkey were dangerous irregular crossings or transport by smugglers(Koca2015, 217).Turkey appears to have opted for a non-verbal securitisation option to drastically reduce the influx of Kurdish refugee populations. What can certainly be classified as securitisation without speech acts is Ankara's insufficient precision about the selective entry of Syrian Kurds. However, given the time indicator since such a measure came into force, it is easy to conclude to whom it refers. It is essential to emphasise that the public discourse on refugees, especially towards the Syrian Kurds, has remained unchanged.

Prime Minister BülentEcevit's statements highlight hospitality and openness to Syrian refugees, as "Turkey has to protect the population fleeing to save their lives"(Korkut2016, 16).Although about 230,000 Kurds from Kobane arrived in Turkey, AFAD data from September 11, 2014 indicated that refugees from Kobane did not have access to temporary protection status and, therefore, health and social services (16). According to official information, on the Turkish-Syrian border, in 2014 alone, more than 40 people were shot or died due to beatings by the Turkish border police (Amnesty International 14). The lack of an adequate border control mechanism contributed to the concealment of human rights violations from the public, so there is a reasonable suspicion that

there were many similar undocumented cases (Koca 2015, 218). Discrimination against a specific part of the population from the wider refugee group, placing it outside the legislative framework, is a form of applying extraordinary measures, even though there were no discursive actions. The conclusion is that, in the wake of securitisation advocates without securitising discourses, Turkey did not want to be accused of the failure of peace talks by securitising the Syrian Kurds. However, the absence of speech acts did not delay the application of securitisation acts, which in this case were reflected in a different approach to the migrant population depending on its ethnic identity.

The question is why Turkey securitised 230,000 Syrian Kurds when more than three million refugees transited through its territory? It is crucial to emphasise that of all the ethnic Kurds, the Turkish and Syrian are the closest, because they see the Syrian–Turkish border as non-existent, which significantly endangers Turkish security interests. When peace talks were ongoing, and the Kurds managed to organiseself-government in one part of Syria, Turkey's ontological security was significantly compromised due to the influx of Kurdish ethnic relatives, and this influenced the parties to come to a confrontation again, rather than a solution. Ankara's decision not to provide equal access to services to all ethnicities of refugees was significant, but it was even more essential to prevent Syrian Kurds from crossing the border with Syria and help the fight against the Islamic State. The creation of frustration among Turkish and Syrian Kurds in Turkey has led to increased support for the PKK's paramilitary part. The Government accused the PKK of using peace processes to expand regional political and military influence (Savran2020, 784). It is not difficult to conclude that panic, mistrust, and fear spread among the Turkish negotiating party ranks. The PKK's call for the Kurdish population to show their dissatisfaction with the Turkish Government's policies in Syria in 2014 and with the prevention of border crossings resulted in mass protests that froze peace talks for a while (Yeğen 2015, 174). In 2015, after the elections in Turkey, the PKK violated the ceasefire agreement, to which the Turkish Government responded by bombing their camps in Syria which was the official failure of the negotiations. Erdoğan's statement that he would oppose any Kurdish independence, even in Argentina best describes the end

of the peace negotiations (Stansfield 2014, 17). The failure of the peace negotiations completed the last process set in the work, which was the parties' return to their initial negotiating positions, the re-securitisation of the Kurdish issue and their transfer to the field of extraordinary political processes.

The securitisation of ethnic groups is so historically rooted in Turkey that it is not surprising that the securitisation of migration has been successful even though it was not meet all the necessary security grammar criteria. Following the logic of Biga and Leonardo, placing the Other in the realm of extraordinary political practice in societies like Turkey, where it is deeply institutionalised, is not necessarily accompanied by securitising speeches. Perhaps the securitisation of the Syrian Kurds would have gone unnoticed and unaccompanied by functional actors if the restriction of movement of only one part of the population, the closure of borders, the erection of walls had not caused consequences that aroused mistrust between the parties and ultimately failed peace talks.

## CONCLUSION

The paper has sought to include and analyse the processes related to whether and how the securitisation of migration can affect the processes that began before they were placed in the field of extraordinary political decision-making. On the example of the Kurdish-Turkish peace initiative, the question had to be answered whether the securitisation of the influx of one ethnic community's population into the Turkish state condemned the peace negotiations to ruin. It has been shown, first of all, that there was no traditional securitisation of the threat in Turkey, i.e. grammar of security set by the Copenhagen school was not respected, but that a latent securitisation was at work, which was not aimed at pulling Turkey out of the peace negotiations. On the contrary, by the absence of speech acts, Turkey has shown that it abused the securitisation of only a specific part of the Kurdish refugees from Syria, to whom it has applied extraordinary measures. Extraordinary measures were reflected in the construction of a wall on the Turkish-Syrian border, the demolition of border crossings, the impossibility of this population's right to gain access to temporary protection, and the restriction of movement after 2014 and the Kobane crisis. Turkey

did not want to allow the Syrian Kurds to cross the border with Syria and defend the territory of Kobane from the Islamic State, because that would significantly weaken the negotiating position and endanger Turkey's national interests. The creation of autonomous areas that could potentially include Kurds' territories in four different states could lead to unification and the creation of a common Kurdistan state. Considering that the civilian part of the PKK, the negotiating party, also received confirmation that it would not get what it stood for through peace negotiations – territorial autonomy, it decided to return to violent means and terrorist attacks to achieve its goals. On the other hand, Turkey, acting under the influence of fear, returned the Kurdish issue as a subject of dispute to the security framework, re-securitising it.The peace talks' failure ended with the re-securitisation of the Kurdish minority and the beginning of unprecedented conflicts between the parties. The Turkish-Kurdish relationship can be explained by the statement of a pro-Kurdish leader who stated: "Turkey is 'us' too … but the Turks have fear in their genes that 'if we give the Kurds anything, we won't be able to stop them."[3]

The peace processes officially began in 2013, after the successful desecuritisation of the Kurdish issue, and the temporary negative peace between Turkey and the Kurds was interrupted by the securitisation of a part of the migrant population. Although the selective application of extraordinary measures did not jeopardise Turkey's open migration policy, the securitisation of only one ethnic group of refugees reminded the Kurds that they could not expect the territorial autonomy for which they advocated from Turkey. Although securitisation did not directly lead to the Kurdish-Turkish peace talks' failure, it created mistrust and fear among the negotiators under whose influence the talks failed in 2015, confirming the initial hypothesis and interconnectedness of the processes that influenced each other. The desecuritisation of the Kurdish issue was a precondition for starting peace negotiations; peace negotiations were slowed down and shaken by the emergence of the securitisation of the Kurdish part of the migrant population,

3 For further information and interviews read Crisis Group interview, RemziKartal, exiled Kurdish movement leader, Brussels, June 2012, p. 27, Available at: https://d2071andvip0wj.cloudfront.net/219-turkey-the-pkk-and-a-kurdish-settlement.pdf Last accessed 8 August 2021.

while the desecuritisation of migration facilitated the return of the Kurdish issue to the field of emergency policy.

Turkey's attitude towards the Kurds from Syria, who fled the war-torn area, did not receive enough attention in security studies and peace studies due to the war in Syria and security dynamics in the entire region in the second decade of the twenty-first century. The findings of this research confirm and deepen the already researched relations in Turkey in the relation between securitisation and peace processes. The inconsistency of public discourses and the covert application of extraordinary measures can lead to implications, not only on domestic issues, but also on the international level. Turkey has built the image of an actor who cannot be trusted at the negotiating table and thus returned to the role with predictable actions with the Other. On the other hand, Turkey's maximalist policy towards the Kurds has led to a severe national security threat.

## REFERENCES

Agamben, Giorgio. 1995. "We Refugees." *Symposium: A Quarterly Journal In Modern Literatures,* 49(2): 114–119. doi: 10.1080/00397709.1995.10733798.

Amnesty International. 2014. *Struggling to Survive: Refugees from Syria in Turkey*. London: Amnesty International Ltd.

Barkey, Henri J. 1998. *Turkey's Kurdish question*. New York: Rowman& Littlefield Publishers.

Bercovitch, Jacob, and Richard, Jackson. 2009. *Conflict Resolution In The Twenty-First Century: Principles, Methods, And Approaches.* University of Michigan Press.

Bigo, Didier. 2006. "When two become one: internal and external securitisations in Europe." *International relations theory and the politics of European integration, power, security and community.*171–204.Routlage.

Birdisli, Fikret. 2014. "Securitisation of Kurdish question in Turkey." *International Journal of Research in Social Sciences,* 4(2): 1–15.

Booth, Ken. 2005. *Critical Security Studies And World Politics*. London: Lynne RiennerPublishers.

Bourbeau, Philippe. 2011. *The SecuritisationOf Migration*. Milton Park, Abingdon, Oxon [England]: Routledge.

Buzan, Barry, Ole Wæver, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis*. Boulder, CO: Lynne Rienner.

Çelik, Ayşe Betül. 2015. "The Kurdish issue and levels of ontological security." In *Conflict resolution and ontological security: Peace anxieties,* ed. BaharRumelili,52–70. London and New York: Routledge.

Criss, Nur Bilge. 2003. "A Short history of anti-americanism and terrorism: The Turkish case." In *History and September 11*th, ed. Joanne Meyerowitz, 56–72.Philadephia: Temple University Press.

Ejdus, Filip. 2016. „Diskurzivna i praktičnakonstruukcijamеđunarodne (ne)bezbednosti." U*Konstruktivističketeorijemeđunarodnihodnosa,*ur. DejanJović, 199–227. Zagreb: FakultetpolitičkihznanostiSveučilišta u Zagrebu.

Emmers, Ralf. 2007. "Securitization." In *Contemporary Security Studies*, ed. Allan Collins, 109–125. Oxford, England: Oxford University Press.

Ensaroglu, Yilmaz. 2013. "Turkey's Kurdish question and the peace process." *Insight Turkey*, 15(2): 7–17.

Erdoğan, M. Murat. 2019. "Syrian Refugees In Turkey."*Kas. De*. https://www.kas.de/documents/283907/7339115/Syrian+Refugees+in+Turkey.pdf/5d3d4091-e56d-3c42-2a9c-4e7f5d98706f?version=1.0&t=1571303379232. Last accessed September 7, 2021.

Huysmans, Jef. 2006. *The Politics Of Insecurity: Fear, Migration And Asylum In The EU*. London and New York: Routledge.

International Crisis Group.*Turkey: The PKK and a Kurdish Settlement.*I*CG* Europe Report N°219, 11 September 2012, https://d2071andvip0wj.cloudfront.net/219-turkey-the-pkk-and-a-kurdish-settlement.pdf. Last accessed August 8 2021.

Jojić, Stefan. 2018. "Kurdskifaktor u sirijskomgrađanskomratu: regionalneimplikacije i dometinjihovihnastojanja." *Političkeanalize*, 9(35): 36–44.

Kadioglu, Aytac. 2016. "The End OfTurkey'S Kurdish Peace Process?" *Nottspolitics.Org,* Ballots & Bullets School of Politics & International Relations, University Of Nottingham http://nottspolitics.org/2016/02/15/the-end-of-turkeys-kurdish-peace-process/ Last accessed July 12 2021.

Kanat, KilicBugra, and KadirÜstün. 2015. *Turkey's Syrian Refugees: toward Integration*. Ankara: SETA Foundation for Political, Economic and Social Research.

Kaya, Ayhan. 2009. *Islam, migration and integration: The age of securitization*. London: Palgrave.

Koca, Togral B. 2015. "Deconstructing Turkey's 'Open Door' Policy Towards Refugees From Syria." *Migration Letters,* 12(3): 209–225. doi: 10.33182/ml.v12i3.275.

Korkut, Umut. 2016. "Pragmatism, Moral Responsibility Or Policy Change: The Syrian Refugee Crisis And Selective Humanitarianism In The Turkish Refugee Regime." *Comparative Migration Studies,* 4(1): 1–20. doi: 10.1186/s40878-015-0020-9.

Leezenberg, Michiel. 2016. "The Ambiguities Of Democratic Autonomy: The Kurdish Movement In Turkey And Rojava." *Southeast European And Black Sea Studies,* 16(4): 671–690. doi: 10.1080/14683857.2016.1246529.

Léonard, Sarah. 2010. "EU Border Security And Migration Into The European Union: FRONTEX And Securitisation Through Practices." *European Security,* 19(2): 231–254. doi: 10.1080/09662839.2010.526937.

Mitzen, Jennifer. 2006. "Ontological Security in World Politics: State Identity and the Security Dilemma." *European Journal of International Relations,* 12(3): 341–370. doi: 10.1177/1354066106067346.

Oğuzlu, Tarik. 2007. "Soft power in Turkish foreign policy." *Australian Journal of International Affairs,* 61(1): 81–97. doi: 10.1080/10357710601142518.

Okyay, Asli S. 2017. "Turkey's Post-2011 Approach To Its Syrian Border And Its Implications For Domestic Politics." *International Affairs,* 93(4): 829–846. doi: 10.1093/ia/iix068.

Pope, Hugh. 2014. "Why Syria's Disaster Threatens a War in Turkey." *The Guardian*, October 10.

Pope, Hugh. 2015. "Turkey, Syria and Saving the PKK Peace Process."In *Global Turkey in Europe III: Democracy, trade, and the Kurdish question in Turkey-EU relations,* eds. Senem A–Duzgit, Daniela Huber, MeltemMuftulerBac et al.,149–157. Rome: EdizioniNuovaCultura.

Pusane, KayhanÖzlem. 2014. "Turkey's Kurdish opening: Long awaited achievements and failed expectations." *Turkish Studies*, 15(1): 81–99. doi: 10.1080/14683849.2014.891348.

Ramsbotham, O., T. Woodhouse and H. Miall. 2016. *Contemporary conflict resolution*, 4th edition, Cambridge and Malden: Polity Press.

Republic Of Turkey Ministry Of Foreign Affairs.2013. http://www.mfa.gov.tr/address-by-h_e_-ahmet-davutoglu_-minister-of-foreign-affairs-of-turkey_-at-the-high-level-segment-meeting-during-the-64th-excom.en.mfa Last accessed July 28 2021.

Romano, David. 2014. "The long road toward Kurdish accommodation in Turkey: the role of elections and international pressures." In *Democratization and Ethnic Minorities: Conflict or Compromise*?, eds. Jacques Bertrand and OdedHaklai, 164–181. Abingdon: Routledge,

Salehyan, I., and K. S. Gleditsch, 2016."Refugee flows and the spread of civil war."*International Organization*, 60(2): 335–366. doi: 10.1017/S0020818306060103.

Salih, Cale, and Aaron Stein. 2015. "How Turkey Misread Kurds." *Aljazeera*.https://www.aljazeera.com/opinions/2015/1/20/how-turkey-misread-the-kurds Last accessed August 20 2021.

Savran, Arin. 2020. "The Peace Process between Turkey and the Kurdistan Workers Party, 2009–2015." *Journal of Balkan and Near Eastern Studies,* 22(6): 777–792. doi: 10.1080/19448953.2020.1801243.

Stansfield, Gareth. 2014. "Kurdistan rising: To acknowledge or ignore the unravelling of Iraq." *Middle East Memo,* 33: 2–16.

Taştekin, Fehim. 2013. "Turkey's wall of shame." *Al-Monitor*. https://www.al-monitor.com/pulse/originals/2013/11/turkey-wall-syria-border.html#ixzz3idMKarMb Last accessed August 10 2021.

Tezcür, Güneş Murat. 2013. "Prospects for Resolution of the Kurdish Question: A Realist Perspective." *Insight Turkey* 15(2): 69–84.

Tol, Gonul. 2012. "Kurdish Consensus at Home can Serve Ankara Abroad." *Middle East Institute*, 9. https://www.mei.edu/publications/kurdish-consensus-home-can-serve-ankara-abroad Last accessed 1 September 2021.

Ünver, Hamid Akin. 2015. *Turkey's Kurdish Question: Discourse & Politics Since 1990*. London and New York: Routledge.

Vuori, J. A. 2008. "Illocutionary logic and strands of securitization: Applying the theory of securitization to the study of non-democratic political orders." *European journal of international relations,* 14(1): 65–99. doi: 10.1177/1354066107087767.

Wæver, Ole. 1995. "Securitization and Desecuritization." In *On Security,* ed.RonnieLipschutz, 46-86. New York: Columbia University Press.

Weiss, Matthew. 2016. "From constructive engagement to renewed estrangement? Securitisation and Turkey's deteriorating relations with its Kurdish minority." *Turkish Studies,* 17(4): 567–598. doi: 10.1080/14683849.2016.1228456.

Yavuz, M. Hakan. 2001. "Five stages of the construction of Kurdish nationalism in Turkey." *Nationalism and Ethnic Politics*, 7(3): 1–24. doi: 10.1080/13537110108428635.

Yeğen, Mesut. 2007. "Turkish nationalism and the Kurdish question." *Ethnic and racial studies,* 30(1): 119–151. doi: 10.1080/01419870601006603.

Yeğen, Mesut. 2015. "The Kurdish peace process in Turkey: Genesis, evolution and prospects." In *Global Turkey in Europe III: Democracy, trade, and the Kurdish question in Turkey-EU relations,* eds. Senem A-Duzgit, Daniela Huber, Meltem-MuftulerBac et al., 157–184. Rome: EdizioniNuovaCultura.

Yeğen, Mesut. 2016. "Armed Struggle to Peace Negotiations: Independent Kurdistan to Democratic Autonomy, or The PKK in Context." *Middle East Critique,* 25: 365–383. doi: 10.1080/19436149.2016.1218162. *

* Manuscript was received on October 1, 2021 and the paper was accepted for publishing on November 24, 2021.

UDC: 340.5(498)
DOI: https://doi.org/10.22182/spm.7442021.9
Original scientific paper

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 207-233

***Ana Knežević Bojović****
*Institute of Comparative Law, Belgrade*

***Milica V. Matijević***
*Institute of Comparative Law, Belgrade*

***Mirjana Glintić***
*Institute of Comparative Law, Belgrade*

# CONFIDENTIAL COUNSELLING ON ETHICAL ISSUES FOR JUDGES, LEGAL TRANSPLANTS AND THE CASE OF ROMANIA

## Abstract

In the paper, the authors examine the introduction of the mechanisms for confidential counselling on ethical matters for judges as a practice that can be classified as legal borrowing, viewing it in a broader context of legal transplants in the judicial sector. Based on the dogmatic, comparative and case study methods, the authors investigate the current developments related to judicial ethics and give an overview of the key theoretical positions regarding legal transplants and the requirements for their success. The case study of Romania is used as a lesson-learning exercise on the subject of failed legal transplants, which confirms that the success of legal transplants is conditional on a thorough understanding of the existing judicial culture and the way in which the judiciary functions. The case study also points to the importance of pursuing legal transplantation as a comprehensive package embracing systemic normative and dogmatic interventions coupled with the necessary

* a.bojovic@iup.rs

societal and political support. Finally, the authors conclude that mechanisms for providing ethical guidance to judges cannot be transplanted through blind copy-paste acts. Instead, just like codes of ethics, bodies in charge of providing guidance on how to act in line with ethical norms are also to be developed in a process that should ensure continuous and broad involvement of the members of the judicial profession.

**Keywords**: legal transplants, judiciary, judicial ethics, confidential counselling, failed legal transplants, GRECO, case study, Romania.

## INTRODUCTORY REMARKS AND CONTEXT

Judicial ethics and integrity are an important staple of multifaceted international legal and institutional framework for countering corruption. The codes of professional conduct for public officials, including judges, are among the key instruments in strengthening integrity and countering corruption.[1] The implementation of anti-corruption standards in Council of Europe (CoE) countries is monitored by the Group of Countries Against Corruption (GRECO).Through its rounds of evaluation of the state of affairs in each CoE country and relevant recommendations, this body aims at the improvementof the level of compliance with the anti-corruption standards. The fourth round of GRECO evaluations was dedicated to the prevention of corruption in respect of members of parliament, judges and prosecutors, where ethical principles and rules of conduct for these categories of public officials were among the key topics. Through this round of evaluation, GRECO often examined the existence of a mechanism for the so-called "confidential counselling" on ethical matters, through which judges could seek guidance from their peers, in a confidential procedure, on how to correctly implement ethical standards in their actions. Where such a mechanism did not exist, GRECO oftenrecommended its introduction.[2]

1 This standard was set inCoE, RES/24.

2 The legal and institutional nature of this mechanism and concrete solutions found in comparative practice will be presented in more detail further in the text.

When it comes to Serbia, GRECO clearly indicated in its report the need for confidential counselling within the judiciary to be provided for all categories of judges (GRECO, RC4(2017)8, para.131). Interestingly, GRECO has also recommended a confidential counselling mechanism to be placed outside of the official hierarchy, *i.e.* the High Judicial Council, and organised on the level of appellate courts (GRECO, RC4(2017)8, para. 131).

Serbia has failed to fully implement the said recommendations, although some steps are currently being taken in this direction (GRECO, RC4(2020)12, para. 45). Hence, it might be useful to look at various comparative solutions and take under advisement the lessons learned in countries with similar institutional and legal milieu. In doing so, it is of particular importance to recognise that comparative experiences provide valuable insights not only when they represent good practice examples but also in cases when they are about practices that should not be replicated. This position is not purely a practical one – academic literature provides a sound theoretical framework for discussions on whether legal solutions from one country can be successfully transferred to another and what are the limitations of such an undertaking. These various theoretical positions will be presented in the section of the paper dealing with legal transplants.

This paper takes the position that legal transplants are possible and that successful legal and institutional transplants can contribute to the positive development of not only law but of society as a whole. Further, the authors posit that legal transplants need to be transferred to the transplanting system as a part of a comprehensive package, which is not limited only to normative and dogmatic interventions, but also entails the establishment of the necessary societal and political support that will enable the transplant to be fully functional and effective (Knežević Bojović 2019, 407). Further, based on the experiences of Slovenia, Romania and the current developments in Serbia, the authors are on the position that it is possible to identify tendencies similar to those that have preceded the broad advocacy for the establishment of judicial councils with regards to the upgrading national advisory frameworks for ethics and integrity matters for judges. Namely, the fourth round of GRECO evaluations seems to have given impetus

for a number of regulatory and institutional interventions, which are sometimes informed by comparative analysis or various technical support projects funded by the EU.[3]

That is in the paper illustrated through the analysis of the Romanian case, where the introduction of the mechanism for confidential counselling was to a great extent shaped through a joint Romanian-Dutch cooperation project initiated in 2014. The authors of the paper argue that the attempted introduction of confidential counselling in Romania was an unsuccessful legal transplant and that the lack of success of the transplant can be attributed to the failure to duly understand how the judiciary functioned in the given state. Finally, based on such analysis, in the paper's conclusion, the authors outline the lessons learned from the Romanian experience in finding the optimal solution for the provision of confidential counselling to judges.

## JUDICIAL ETHICS

Ethics is not only a theoretical discipline but also a philosophical one researching morality, moral values and the criteria of morality (Babić 2008, 35).Society increasingly demands moral excellence from a wide range of professionals, where judges, who are "the living voice of the law" (*iudexest viva vox legis),*have an additional obligation to consistently abide by ethical norms and principles not only in their work but also in their everyday life (Sancho 2007).As Garoupa and Ginsbourg (2015) duly point out, judicial ethics is of key relevance for judicial reputation, and judges must take care of the reputation of the entire judiciary in order to maximise their individual reputations (65, 188).

Over the past decades, the topic of judicial ethics and integrity has been in the focus of different supranational bodies, both global and regional. Undoubtedly, the most influential document developed as a part of such efforts are the Bangalore Principles of Judicial Conduct (ECOSOC 2006/23). The Bangalore Principles aim to establish a framework for the ethical conduct of judges and thus indirectly contribute to curbing corruption (Terhechte2009, 514). In Europe, the CoE has taken a key role in formulating judi-

3 See, for instance, GRECO RC4(2017)14 and RC4(2016)4.

cial ethics and integrity standards, which are outlined in the CoE CM/Rec(2010)12 Recommendation on judges: independence, efficiency and responsibilities and later confirmed in the Magna Carta of Judges, adopted by the Consultative Council of European Judges (CCJE).More detailed formulations of these standards were developed by the CCJE, anadvisory body of the CoE comprised of national judges. When it comes to the ethical rules for judges, the CCJE Opinion 3/2002 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality is the most topical document on the subject, but standards relating to various aspects of ethical behaviour and good professional conduct can be found in practically all opinions adopted by the CCJE. Concurrently with the CoE, the European Network of Judicial Councils (ENCJ) has developed its Judicial Ethics Report, which was additionally endorsed in the London Declaration, in an attempt to systematise the common values inherent to judicial office, as well as the qualities and virtues that a judge needs to possess.

The standards relating to judicial ethics can be summarised to envisage the following: in their activities, judges should be guided by principles of professional conduct; the principles should offer guidelines for judges on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality; the principles should be drawn up by the judges themselves and be separate from the judges' disciplinary system; it is desirable to establish in each country one or more bodies within the judiciary to advise judges confronted with a problem related to judicialethics.

## LEGAL TRANSPLANTS AND JUDICIAL REFORMS

Legal transplant is a term developed by Alan Watson in 1974 (Watson, 1974), which relates to the practice of development of the law through legal borrowing - transposing or transplanting of a rule or a system of rules from one country to another (Đorđević 2008, 64). While Watson famously took the position that legal transplants are the most fertile source of change in law, other legal scholars – most notably, Pierre Legrand (1997)claimed that legal transplants are logically impossible (Grbić 2019, 141).Despite

Legrand's attempts at refuting the notion of legal transplant, over the past decades, Watson's concept has been supported by many legal scholars, who find legal transplants not only possible but have also analysed the conditions under which legal transplants can be successful.[4]Scholarly literature (Miller 2003) points out the existence of legal transplants that are not a mere copy-pasting exercise but are a consequence of harmonisation of legal ideas with existing legal tendencies. Berkowitz, Pistor and Richard (2003)note that one of the key factors for the success of legal transplants lies in the receptivity of the transplanting legal system, while Hantrais(2009) shows that transplants are more likely to succeed in cases of shared political orientations and values of the source country and the transplanting legal system (45). Garoupa and Ogus (2006) note that, in the case of legal transplants, particularly those that are a result of the said harmonisation of legal ideas, changes may be more visible on formal than on substantive level, given that the cost of formal compliance is lower than the price of substantive changes (358). Some authors also indicate that a successful legal transplant implies the transfer of not only norms but also of the underlying dogmatic approach, supported through adequately conducted *ex-ante* and *ex-post* regulatory impact assessment while ensuring that the transplants are transferred through a broad and inclusive social dialogue (Breneselović 2013, 346; Knežević Bojović 2019, 406-407).

In the judicial sector in Central and East European countries, one of the key legal transplants based on the harmonisation of legal ideas was the judicial councils as the judicial self-administration bodies. Supported by the CoE[5], particularly through the work of the Venice Commission,[6]as well as through a clear political push from the European Union, judicial councils emerged as a standard of judicial independence to be implemented by former communist countries on their path towards European integration(RakićVodinelić, Knežević Bojović and Reljanović 2012, 15; Marković 2017, 209; Preshova, Demjanovski, and Nechev2017, 13). Although

4 A useful overview of various theoretical positions on legal transplants can be found in Reyes 2014.

5 The key CoE document which referred to this standard at the time wasCM R 94(12).

6 The most important documents of the Venice Commission in this field are: VC, CDL-AD(2007)028-e; VC,CDL-AD(2010)004; VC,CDL-AD(2016)007.

initially acclaimed almost as a panaceafor the inherited problems of the socialist model of judicial administration, which included the considerable influence of politics on the judiciary, the newly-established judicial councils of the Southern European type,once implemented in Central and East European countries, had limited practical results (Kosař2018,1568; Bobek and Kosař 2014; Garoupa and Ginsburg 2009, 58; Voermans 2003, 2134; Castillo-Ortiz 2019, 504).

More specifically, they did not considerably contribute to the independence and accountability of the judicial power, nor did they improve trust in the judiciary (Kosař2018, 1602-1612; Urbániková and Šipulová 2018). The reasons for this are manifold. Some authors point to the influence of the political and social heritage (Magalhães 1999, 58-59); others tot he adverse effects of the conditionality policy (Mendelski 2015, 332-333), coupled with the fact that thepre-existing judicial culture and the specific features of the national judiciary were not duly factored in when the judicial councils were established (Preshova, Demjanovski, and Nechev 2017, 24).When it comes to the judicial sector reforms, the success of legal transplants is further made conditional on a thorough understanding of the existing judicial culture and the way in which the judiciary functions.

## CONFIDENTIAL COUNSELLING ON ETHICAL ISSUES FOR JUDGES

The implementation of ethical principles for judges is closely linked to the adoption of professional codes of conduct or ethical codes, developed by judges themselves, which have the added value of being flexible and adaptable to the fast-changing legal and social environments (Sremčev Ilić 2015). The existence of a body that judges can address for additional guidance on how to ensure that their actions are in line with the codes is an important standard in this regard. Confidential counselling, however, is a step further: it is an institutionalised, peer-to-peer mechanism, which enables judges to receive timely advisory support and guidance on their ethical dilemmas in a confidential procedure precisely in order to avoid infringement of the code (Mrčela 2020).

For the success of confidential counselling, it is important that the holders of judicial offices perceive this mechanism as independent, reliable and fully confidential. It is also imperative that judges are not adverted from using it for the fear that by asking questions on how to act ethically they might face adverse consequences. That is particularly important in those countries where some types of violations of ethical codes constitute a disciplinary offence,[7] as is the case in Serbia (ZS 2021, art. 90), France and Hungary (ENCJ, Report 2015, 60 et seq.).

It is not always clear whether the body which monitors the implementation of ethical code is at the same time the body providing confidential counselling or not. The solutions found in comparative practice are divergent and depend on several matters such as, whether judicial ethics is regulated in a systematic manner, whether the ethical code is binding on all judges or not,[8]as well as on the pre-existing judicial culture of a country. It seems that in a significant number of countries, it is ethical boards or commissions, regardless of whether they operate under the frame of judicial councils (Spain and Lithuania) or act as independent bodies (Latvia) which are in charge of monitoring the implementation of codes of ethics and adopting opinions or general positions on whether an action is in line with the code of ethics (Cardoso *et al.* 2021). However, there are some comparative examples of clear distinction between the two.

France, for example, has two bodies. The first one is the College of Ethics of the Magistrates (*Collège de déontologie des*

7 International standard-setting documents in this field state that a clear distinction needs to be made between the violation of ethical and professional conduct standards and disciplinary offences. Disciplinary sanctions must be reserved for serious and flagrant misconduct, not simply for failures to observe professional standards. See in particular CCJE2/2001 and CCJE 3/2010, principle 18, Explanatory memorandum to the CM/Rec(2010), para. 71.

8 In some countries, there are no codes of ethics or of professional conduct that all judges are bound to apply. For instance, there is no ethical code for judges in Germany, Austrian association of judges has adopted a code of ethics for judges only recently, and it is binding only on its members (Titz 2009, 36).In Italy the existing code of ethics envisages rather broad ethical principles and is generally perceived as interference on the part of the executive (D'Alessandro 2011, 5). Conversely, Serbia, Croatia, Slovenia and Estonia, for instance, have clear codes of ethics that are binding (ENCJ, Report 2015, 60 et seq).

*magistrats de l'ordrejudiciaire*), which is mandated with providing opinions on any ethical question concerning a magistrate personally, along with examining the declarations of interest of judges. The second body is the Deontological Assistance and Monitoring Service of the Superior Council of Magistrates, formed as an on-call informal service that provides prompt advice and guidance to judges on ethical issues.

Similarly, Slovenia launched in 2019 a pilot project that has reportedly yielded very good results aimed at introducing a new body, the Advisor to the Judges on Ethics and Integrity, which should complement the work of its Commission on Ethics and Integrity. Unlike the Commission on Ethics and Integrity,[9] which has the mandate to adopt opinions in principle on the conduct in breach of the Code of Judicial Ethics and issue recommendations for compliance with the rules of judicial ethics and integrity, the mandate of the Advisor to the Judges on Ethics and Integrity is limited to providing written or oral advice, information on ethical standards and professional assistance. The Advisor does not propose concrete solutions, nor does he/she issue binding decisions. The relationship between the Advisor and the judge seeking advice is regulated as a confidential relationship (Pravilnik o delusvetovalcasodnikom2019, art. 1).

The Netherlands, conversely, has a highly decentralised system for providing guidance on ethical issues to judges and prosecutors. Namely, the Netherlands reported to GRECO in 2012 that all of its courts have decided to establish their own integrity commissions, which are usually composed not only of judges but also of court staff and human resources personnel. The objective of these commissions is to promote integrity and provide advice to judges, court staff, and the court board in case of ethical dilemmas and bring coherence to the court's integrity policy. According to the available information, integrity matters are also occasionally discussed in the course of judges' appraisal, as well as through a type of peer review mechanism established among judges who work in the same court, within which they can follow each other's work and provide constructive criticism and suggestions about each other's ethical conduct (GRECO, Eval IV Rep (2012) 7E, para. 127, 128).

9 The Commission on Ethics and Integrity is formed in line with ZSS 2017, Art. 49.

According to the available sources, the mechanism for confidential counselling established in the Netherlands served as a model for an attempt to develop a similar mechanism of confidential counselling for judges in Romania. This attempt, which will now be presented in more detail, is analysed for two reasons. Firstly, the relevance of the Romanian case for the present study lies in its potential to be used as a lesson-learning exercise on the subject of failed legal transplants. Secondly, its relevance is closely related to the fact that in the last evaluation round, GRECO recommended to Serbian authorities to establish a decentralised mechanism for confidential counselling for judges by attaching it to the courts of appeal (GRECORC4(2017)8, para. 55).

## CASE STUDY OF ROMANIA: ETHICS COUNSELLORS AS AN EXAMPLE OF A FAILED LEGAL TRANSPLANT[10]

Ethical counselling was in Romania first introduced in its state administration bodies. With the aim to preserve and maintain the integrity of public institutions, already in 2007, the position of ”ethics counsellors” was instituted in the Romanian state administration. The law envisioned that the ethics counsellors were to be chosen among the civil servants and appointed by the head of a public institution. The ethics counsellor was to be in charge of providing counselling on ethical matters and monitoring whether the behaviour of colleagues complies with the rules of code of conduct (Legea nr. 7/2004, Art. 21, para. 1).[11]

Several years later, the Superior Council of Magistracy (SCM), as the guardian of independence and integrity of the judiciary in Romania, embarked on the same path. With the adoption of the Action Plan for the Implementation of the Justice System Integrity Strategy for 2011-2016, the SCM had envisioned the establishment of a national network of ethics counsellors as an instrument for the standardisation of ethical practices in the Romanian judiciary (Plan

10 This analysis was informed by the research conducted by the authors in 2021 for the purpose of an “Expert analysis of the systems of confidential counselling for judges and prosecutors on ethical matters across the CoE Member States”, an activity within the joint European Union/Council of Europe action “Strengthening independence and accountability of the judiciary”.

11 More on this in Georgescu (2012).

de acțiune 2011, acțiune 1.2). The same measure was repeated in the following Action Plan (Plan de acțiune2016, acțiune C.1.3.), and in 2016 the idea was finally laid down in legally binding provisions. In its Decision no. 434 (Hotărârea nr. 434), the Judicial Section of the SCM decided to introduce the institution of ethics counsellors ("consilieri de etică") in the Romanian judiciary.[12] Two in the courts of appeal and one in each basic court (Art. 1), the ethics counsellors were set to provide, *ex officio* or upon request, ethical counselling to judges and undertake other activities, such as organisation of trainings, round-tables and debates, aimed at preserving the integrity of judges and judicial institutions (Art. 4). In the same act, the Judicial Section of the SCM set the competences, the selection criteria, the methods of appointment, and other important rules for establishing the ethics counsellors in the Romanian judiciary.

The position of ethics counsellors in the court of appeal was to be filled by judges who have at least 15 years and in the basic courts at least 10 years of experience of serving as a judge. A judge could have become a candidate for the position of ethics counsellor only in the court in which he/she served. Others on the list of cumulative criteria to be met by the candidates for ethics counsellors were that a judge had received the grade "very good" in all appraisal procedures to which he/she was subject before the candidature, was never subject to disciplinary sanctions, had never violated rules of the Judicial Code of Ethics, that he/she enjoyed a good professional reputation, exhibited high moral integrity and had good communication skills (Art. 2).

Decision no. 434 also provided detailed rules on the process of filling in the position of ethics counsellors. The selection procedure was to be carried out in three stages and could be summarised as follows (Art. 3). In the first stage, judges were to be invited to submit their candidacy for the position of ethics counsellors. If there were no candidates, the President of the court was to propose a candidate among the judges serving in the court who fulfilled all the requirements upon the condition that express consent was obtained from the candidate. Prior to the final nomination of a

12 The Prosecutorial Section also adopted a decision in which it laid down rules on ethics counsellors (Hotărâre nr. 363 din 30 mai 2016).

candidate for the position of ethics counsellor, the President of the court was to conduct confidential consultations with all judges of the court regarding the candidate's merits and record the results of these consultations in a special report. Upon completing these steps, the President of the court was to propose the candidate for the position of ethics counsellor to the Judicial Board of the court. In the second phase, the candidate was to undergo training provided by the National Institute of Magistracy, a body in charge of initial and in-service training of judges and prosecutors coordinated by the SCM. The completion of the selection procedure and the appointment was to be conditioned upon a positive opinion of the trainers about the candidate's participation in the training.[13] In the final, third phase, the Judicial Board of the Court was to appoint a successful candidate to the position of ethics counsellor.

For a complete understanding of the system of ethical counselling that was to be introduced in the Romanian judiciary via the 2016 Decision, it is also useful to take a look at the rules that regulated the removal of a judge from the position of ethics counsellor. According to Article 6 of Decision No. 434, there were several reasons for the termination of a judge's appointment to the ethics counsellor position. These reasons concern both his/her performance in the role of a judge and the ethics-related issues. Namely, the removal from the office was to take place if a judge had not received positive assessment ("very good") in the process of appraisal of his/her performance as a judge (a), if he/she was found to be in breach of disciplinary rules in a final decision (b), if a judge was found to be in violation of the rules of the Code of Ethics (c), and, finally, for the non-exercise or improper exercise of the competences of ethics counsellor(d).

A closer look at the provisions of Decision No. 434 shows that there are several of its rules which had been problematic *vis-à-vis* the basic requirements of successful confidential counselling, that is, to secure that the judges perceive this mechanism as independent, reliable and fully confidential. As we see from Article 4(e), the ethics counsellors were to advise on ethical matters not

13 The exact text of the given rule was as follows: "After the completion of the training program, the judges who participated in these training sessions receive from the trainers, based on a procedure developed by the National Institute of Magistracy, the opinion "recommended" / "not recommended"."

only upon request but also *ex officio,* which could have meant that their role would have also included monitoring of the conduct of fellow judges. Unusual is also the solution found in the rules on the selection procedure according to which the appointment was to depend on the assessment of the quality of the candidate's attendance of the training for the position of ethics counsellor (Art. 3(b)). From the point of view of a need to ensure integrity and independence of the very institution of ethics counsellor, which is a *sine qua non* for the possibility to establish a relationship of confidence between the ethics counsellor and the fellow judges, not less problematic is the solution found in Article 6(d), according to which the mandate of ethics counsellor can be terminated for the non-exercise or improper exercise of its competences.

These and some other rules on ethics counsellors were among the reasons which have prompted the two professional associations of judges and prosecutors to request from the SCM a cancellation of its decision on the establishment of ethics counsellors and, subsequently, to initiate administrative proceedings against the impugned acts. In the capacity of plaintiffs, the National Union of Judges of Romania and the Association of Romanian Magistrates have raised before the Bucharest Court of Appeal a number of arguments for the annulment of Decision No. 434 (Acţiune, nr. 373). In the pleadings, the associations claimed that the institution of ethics counsellor jeopardises the independence and integrity of judges and violates several other fundamental principles that should guide judges in their work and asked for an immediate suspension of its execution. They have, in particular, pointed out the negative aspects of the rules which provide for *ex officio* ethical counselling (Art. 4(e)), confidential nature of consultations to be held in the first phase of the selection procedure (Art. 3(a)), the criteria for filling in the position of ethics counsellor (Art. 3(c) and Art. 6), to the ambiguity of the rules on selection procedure (Art. 2), the possibility that ethical issues discussed during the ethical counselling were also being discussed publicly in round tables (Art. 4) and to some other rules laid down in Decision No. 434. The two associations also claimed that the Judicial Section of the SCM did not have the competences to adopt such a decision. Eventually, the plaintiffs stated that the contested decision granted the ethics counsellors the powers, which could be detrimental for the independence of

judges and could lead to the creation of a parallel structure within the Romanian judiciary (6). For all these reasons, such a network, in the plaintiffs' words, could become a network of "informants" whose methods of work could have started resembling methods used by Ceausescu's regime.

The National Union of Judges of Romania and the Association of Romanian Magistrates in the pleadings also claimed that the shortcomings of the rules contained in Decision No. 434 to a significant extent ensued from the fact that the network of ethics counsellors was modelled after the mechanism for ethical counselling existing in the Netherlands, without taking adequate account of the characteristics of the Romanian judiciary (Acţiune, nr. 373, 7). The plaintiffs noted that the Judicial Section of the SCM referred in Decision No. 434 to a joint Romanian-Dutch cooperation project "Strengthening the Integrity of the Romanian Judicial System", initiated in 2014. According to the text of the Decision, the project's objective was to bring together Romanian and Dutch experts to share good practices in order to further elaborate the ethical rules and establish in Romania "an Integrity Council and a network of integrity counsellors" (4).[14] Further, the Judicial Section also quoted the GRECO's fourth-round evaluation report in which the GRECO evaluation team rather briefly mentioned the named project and welcomed the initiative (2).

In this context, it is interesting to note that in its reports GRECO has never explicitly recommended to the Romanian authorities to create a mechanism for confidential counselling as it did in the recommendations to some other countries, including those prepared for the Serbian authorities. It has only recommended that "the justice system be made more responsive to risks for the integrity of judges and prosecutors, in particular by i) having the SCM and the Judicial Inspectorate play a more active role in terms of analyses, information and advice and ii) by reinforcing the role and effectiveness of those performing managerial functions at the head of courts and public prosecution services, without impinging on the independence of judges and prosecutors" (GRECO, Rep (2015)4E, para. 114). Moreover, a careful analysis of the rules

14 See also Press Release on the National Conference "Strengthening the integrity of the judiciary" of 26 November 2015, issued by the SCM Unit for Public Information and Mass-Media Relations.

laid down in Decision No. 434 shows that the ethics counsellors were not conceived as a mechanism for confidential counselling in a true sense of a word given that the Decision contains no rule which would ensure that the advisory role of ethics counsellor is to be provided in a confidential procedure. In order words, according to the relevant rules, confidentiality was not meant to be a principal feature of the advice-giving activities of the ethics counsellors. The only reference to confidentiality is made in the above-analysed rules which mandate that the consultations between the President of the court and the judges on the suitability of a candidate for the position of ethics counsellor should be conducted in a confidential manner (Art. 3(a)). In that sense, one could eventually argue that the attempted introduction of ethics counsellors was a try to set up a mechanism for ethical counselling which is not necessarily the same with the confidential counselling according to the international standards we have presented in the previous chapter.

Whether or not we can qualify it as falling within the ambit of confidential counselling, at this point of the analysis, it is important to note that the idea to establish a network of ethics counsellors was never put into practice. Four months after the adoption of Decision No. 434, the Bucharest Court of Appeal decided in favour of the plaintiff, the National Union of Judges of Romania and the Association of Romanian Magistrates and suspended its execution until the final verdict was pronounced (Sentinţa civilă nr. 3192). The first instance court's decision was upheld by the High Court of Cassation and Justice three years after (Decizia nr. 2783). The second instance court based its ruling, among else, on the findings that the adoption of the contested decision goes beyond the mandate of the Section of Judges of the SCM. The High Court of Cassation and Justice also found that Decision No. 434 unlawfully modifies the rules on the incompatibility of judges for the performance of the judicial function, thus "creating the framework in which a third party to the act of justice, namely the ethics counsellor, can intervene, *ex officio*, in the judicial activity carried out by the judge - an essentially independent activity, guaranteed as such at the constitutional level" (point 5). Eventually, in a Decision No. 1305 of 29th October 2020 (Hotărârea nr. 1305), the Judicial Section of the SCM stated the annulment of Decision No. 434 on the ethics counsellors, as ordered by the sentence of the Bucharest Court of

Appeal and confirmed in the judgment of 24 May 2019 by the High Court of Cassation and Justice (Art. 1).

## Reflections on the reasons for a failed legal transplant

Apart from the reasons explicitly stated in the courts' decisions, the causes of the failure of this legal transplant can also be sought in some other aspects of the process of legal transplantation. The most obvious one is the difference between the social and political milieu in which the magistrates in the Netherlands and the magistrates in Romania operate. Since 2006,Romania's progress in undertaking judicial reforms and stepping up the fight against corruption is monitored against a set of benchmarks under the EU Cooperation and Verification Mechanism.[15] After the events of 2017, when a series of reforms concerning Romania's justice system led to large public protests, Romania has been a subject of an *ad hoc* evaluation procedure under Rule 34 of the GRECO Rules of Procedure (GRECO, AdHocRep(2018)2, para. 2).[16] Such a situation, existing already at the time of adoption of Decision No. 434, could have warranted a more cautious approach to the idea to introduce the network of ethics counsellors, given that it concerned matters of great importance for independence and integrity of judges. That was probably one of the reasons why the two professional associations requested from the SCM to conduct a comparative analysis of mechanisms for confidential counselling found in other European countries with the judicial systems more similar to the Romanian one (Acţiune, nr. 373, 13, 14).

Other reasons were in an indirect way addressed in the text of pleadings submitted by the National Union of Judges of Romania and the Association of Romanian Magistrates. The two associations, for instance, referred to a lack of a prior in-depth analysis

15 Following the conclusions of the Council of Ministers, 17 October 2006 (13339/06), the Mechanism was established by the Commission Decision of 13 December 2006 (C(2006) 6569). For the latest report, see European Commission (COM(2021) 370 final).

16 This *ad hoc* procedure "can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe" (GRECO, AdHocRep(2018)2, para. 2). See also CJEU, C-83/19, C-127/19 and C-195/19.

of the needs and characteristics of the Romanian judiciary that should have had informed the process of legal transplantation in the first place (Acţiune, nr. 373, 13). That could be another important aspect to consider in our attempt to understand the causes of the failure of this legal transplant as the subject of the present analysis. As noted earlier, one of the conditions for successful legal transplantation is that the process is based on adequate and timely conducted assessments of broader social conditions that could be conducive or could have adverse effects on the given legal intervention, its effectiveness in achieving objectives, its interaction with other relevant existing or planned interventions, and of other issues which are commonly part of impact assessment or similar evaluation methodologies (Noguera 2013, 315). The scholarship also points that a success of a legal transplant is directly conditional upon the inclusiveness of the process of transplantation (Knežević Bojović 2019, 407), which has been confirmed in the associations' complaints that the members of the judicial profession in Romania were not adequately consulted in the phase of the conception of the legal intervention and that the Decision No. 434 did not include the opinion expressed by many Romanian judges and professional associations (Acţiune, nr. 373,13). For the creation of a mechanism of confidential counselling, it is important not only that "judges should be able to seek ethical advice from a body within the judiciary" (CoE, CM/Rec(2010)12, Ch. VIII, para. 74), in other words, among their peers, but also that they have a major role in the elaboration of this mechanism.

## CONCLUSION

Over the past decades, the topic of judicial ethics and integrity has been in the focus of different supranational bodies. In Europe, the Council of Europe has taken a key role in formulating standards on judicial ethics and integrity. The monitoring of compliance with these standards is entrusted to the Group of States against Corruption (GRECO), which dedicated its fourth round of evaluations to the prevention of corruption in respect of members of parliament, judges and prosecutors. The key topics of these country-specific evaluations were judicial ethical principles and rules of conduct and the need to strengthen judicial integrity by providing support and

guidance to judges *vis-à-vis* the most suitable responses to various ethical dilemmas they encounter in daily work and life. In relation to that, GRECO often examined the existence of a mechanism for the so-called "confidential counselling" as an institutionalised, peer-to-peer mechanism, which enables judges to receive timely advisory support and guidance on their ethical dilemmas in a confidential procedure. Where such a mechanism did not exist, as was the case with Serbia, GRECO often recommended its introduction.

The fourth round of GRECO evaluations seems to have given impetus for a number of regulatory and institutional interventions, which were sometimes informed by comparative analyses or various technical support projects funded by the EU and its member states. In this paper, we analyse one such intervention through the case study of the Romanian judicial authorities' efforts to introduce a mechanism for ethical counselling, which was prompted by a cooperation project between the Superior Council of Magistracy and the Judicial Council of the Netherlands. Serbia has yet to fulfil the GRECO recommendations which concern a need to create a mechanism for confidential counselling. Some steps in that direction have been undertaken recently, but it still might be useful to look at various comparative solutions and take under advisement the lessons learned in countries with the similar institutional and legal milieu. The case of Romania could provide valuable insights, given that much can be learned not only from the good practice examples but also from the practices that should not be replicated. The Romanian experience is not only useful for our search for the confidential counselling mechanism that would suit the best Serbian legal and institutional reality but also as a practical investigation of the requirements for a successful legal borrowing and the limits of such intervention.

The paper departed from the position that legal transplants are possible and that successful legal and institutional transplants can contribute to the positive development of not only law but of society as a whole, provided they are based on a thorough understanding of the social context in which the transfer is to take place and coupled with the necessary societal and political support. In that sense, there is no doubt that the success of legal transplants undertaken as part of the judicial sector reforms is conditional upon

an in-depth understanding of the way in which the judiciary functions and on the inclusiveness of the given legal intervention. That is evident in the failed attempt of Romanian judicial authorities to introduce a mechanism for ethical counselling, which, according to the available sources, was modelled after the one existing in the Netherlands. As noted in the case study, the professional associations of judges and prosecutors complained about a lack of prior in-depth analysis of the needs and characteristics of the Romanian judiciary that should have had informed the process of legal transplantation in the first place. It appears as well that the process of transplantation in the Romanian case was not inclusive enough, given that the associations also complained that the members of the judicial profession in Romania were not sufficiently consulted.

The analysis shows that the mechanisms for providing ethical guidance to judges and prosecutors cannot be transplanted as blind copy-paste acts. Good practice examples could always be useful as a source of inspiration and as reference points, but not all measures for the advancement of professional ethics are suitable for each country. While it can be claimed that there is a consensus on what are the core principles and values of judicial ethics, these are formulated in soft-law instruments, addressed not to states but to the holders of judicial and prosecutorial office, which inherently entail adaptations to the relevant national legal and social frameworks. That is clearly supported in the standard, which states that codes of ethics should be developed by judges themselves. From this, it logically follows that the bodies in charge of providing guidance on how to act in line with ethical norms are also to be developed in a process that provides for continuous and broad involvement of the members of the judicial profession. That is, undoubtedly, the best way to secure the success of confidential counselling, which in the first place needs to be perceived by the judges as independent, reliable and confidential.

## REFERENCES

Acţiuneîncontenciosadministrativ, AsociaţiaMagistraţilor din România (AMR) siUniuneaNaţională a Judecătorilor din România (UNJR), nr. 373 din 29.07.2016.

Asociaţia 'ForumulJudecătorilor Din România' v InspecţiaJudiciară, C-127/19 Asociaţia 'ForumulJudecătorilor Din România' and Asociaţia 'MişcareaPentruApărareaStatutuluiProcurorilor' v Consiliul Superior al Magistraturii and C-195/19 PJ v QK and in Cases C-291/19 SO v TP and Others, C-355/19 Asociaţia 'ForumulJudecătorilor din România', Asociaţia 'MişcareaPentruApărareaStatutuluiProcurorilor' and OL v Parchetul de pe lângă ÎnaltaCurte de CasaţieşiJustiţie - Procurorul General al României and C-397/19 AX v StatulRomân - MinisterulFinanţelorPublice, Joined Cases C-83/19, C-127/19 and C-195/19, Judgment of the Court of 18 May 2021, ECLI:EU:C:2020:746.

Babić, Jovan. 2008. „Etika i moral."*Theoria* 51 (2): 35-48.

Berkowitz, Daniel, Pistor, Katharina and Jean-Francois, Richard. 2003. "The Transplant Effect." *The American Journal of Comparative Law* 51 (1): 163-203. doi: https://doi.org/10.1016/S0014-2921(01)00196-9.

Bobek, Michael and Kosař, David. 2014. "Global solutions, local damages: a critical study in judicial councils in Central and Eastern Europe." *German Law Journal* 15(7): 1257–1292. doi: 10.2139/ssrn.2351299.

Breneselović, Luka. 2013. „O zaštitiosnovnihprava u Srbiji u svetlulošeocene Evropske komisije – razloziniskogstepenastvarnezaštiteosnovnihprava u RepubliciSrbiji i neophodne mere za njenopoboljšanje."*Evropskozakonodavstvo* 12(43-44): 335-360.

Bucharest Court of Appeal [CAB], Decision no. 3192 of 24 October 2016.

Cardoso, José Manuel Duro Mateus et al. 2021. Final Report with Recommendations for a System of Confidential Counselling for Judges and Prosecutors on Ethical Matters, June 2021, https://rm.coe.int/hf9-confidential-counselling-eng/1680a35870, last accessed 29 September 2021.

Castillo-Ortiz, Pablo. 2019. "The politics of implementation of the judicial council model in Europe" *European Political Science Review* 11: 503–520, doi:10.1017/S1755773919000298.

Committee of Ministers' [CM], R (94)12, Recommendation 94(12) to the member states on the independence, efficiency and role of judges, Adopted by the Committee of Ministers at the 518th meeting of the Ministers' Deputies, on 13 October 1994.

Consultative Council of European Judges [CCJE], 2/2001, Opinion 2/2001 on the funding and management of the courts Adopted by the Consultative Council of Judges, on 23 November 2001.

Consultative Council of European Judges [CCJE], 3/2002, Opinion 3/2002 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality Adopted by the Consultative Council of Judges, on 19 November 2002.

Consultative Council of European Judges [CCJE], 3/2010, Magna Carta of Judges Adopted by the Consultative Council of Judges at its 11th plenary meeting, on 17 November 2010.

Council of Europe [CoE], RES/24 (1997), Resolution 97/24 on the twenty guiding principles for fight against corruption Adopted by the Committee of Ministers at the 101st session, on 6 November 1997.

Council of Europe [CoE], CM/Rec(2010)12, Recommendation 12/2010 on judges: independence, efficiency and responsibilities Adopted by the Committee of Ministers of the Council of Europe, on 17 November 2010.

Curtea de Apel Bucureşti, Secţia a VIII-a contenciosadministrativşi fiscal, Sentinţacivilă nr. 3192 din 24 octombrie 2016.

D'Alessandro, Luigi, Marini, Matteo, Mariscoti, Roberta. 2011. *Ethics and Discipline: The Transition from Case Law to the Codification of Disciplinary Violations in the Italian Reform of the Judicial System, Effects on Freedom of Expression and Association,* Bordeaux.

De Jong, Martin, Mamadouh, Virginie, Lalenis and Konstantinos. 2002. „Drawing Lessons About Lesson Drawing, The Theory and Practice of Institutional Transplantation." In *The Theory and Practice of Institutional Transplantation*, eds. De Jong, Martin, Mamadouh, Virginie, Lalenis and Konstantinos, 283-299. Basingstoke: The GeoJournal Library.

Đorđević Miroslav. 2008. „Pravni transplanti i Srbijanski građanski zakonik iz 1844."*Strani pravni život* 52(1): 62-84.

European Commission, COM(2021) 370 final, Report on Progress in Romania under the Cooperation and Verification Mechanism, Adopted by the Commission to the European Parliament and the Council on 8 June 2021.

European Network of Councils for the Judiciary [ENCJ], London Declaration on Judicial Ethics, Adopted the General Assembly of ENCJ, on 2-4 June 2010.

European Network of Councils of Judiciary [ENCJ], Report on Minimum Judicial Standards: Disciplinary Proceedings and Liability of Judges, 2014-2015, 5 June 2015.

Garoupa, Nuno and Ogus, Anthony. 2006. "A Strategic Interpretation of Legal Transplants."*The Journal of Legal Studies* 35(2): 339-363. doi: 10.1086/505053.

Garoupa, Nuno and Ginsburg, Tom. 2009. „The comparative law and economics of judicial councils."*Berkeley Journal of International Law* 27(1): 53–83. doi: 10.15779/Z383S9H.

Garoupa, Nuno and Ginsbourg, Tom. 2015. *Judicial reputation:A comparative theory*. Chicago: University of Chicago Press.

Georgescu, Catalina Maria. 2012. "Regulating Ethical Values, Integrity and Transparency in Romanian Public Employment: Strategy and Legal Provisions." Revista de StiintePolitice 36: 147-157. Last accessed on 12 May 2021. http://lfv.ucv.ro/revistadestiintepolitice/files/revistadestiintepolitice36.pdf#page=147.

Group of Countries Against Corruption [GRECO], RC4(2016)4, Evolution Report on Latvia, adopted by GRECO at its 71st Plenary Meeting, on 18 March 2016.

Group of Countries Against Corruption [GRECO], RC4(2017)14, Evolution Report on Montenegro, adopted by GRECO at its 77th Plenary Meeting, on 18 October 2017.

Group of Countries Against Corruption [GRECO], Eval IV Rep (2012) 7E, Evaluation Report on the Netherlands, adopted by GRECO at its 60th Plenary Meeting. on 21 June 2013.

Group of Countries Against Corruption [GRECO], Rep (2015)4E, Evaluation Report on Romania, adopted by GRECO at its 70th Plenary Meeting on 4 December 2015.

Group of Countries Against Corruption [GRECO], AdHocRep(2018)2, *Ad hoc* Report on Romania (Rule 34), adopted by GRECO at its 79th Plenary Meeting on 23 March 2018.

Group of Countries Against Corruption [GRECO], RC4(2017)8, Evolution Report on Serbia, adopted by GRECO at its 77th Plenary Meeting, on 18 October 2017.

Group of Countries Against Corruption [GRECO], RC4(2020)12, Evolution Report on Serbia, adopted by GRECO at its 86th Plenary Meeting, on 29 October 2020.

Grbić, Sanja. 2019. "Pravni transplanti i razvojprava: zaštitapravaosoba s invaliditetom i Europskakonvencija o ljudskimpravima."*Harmonius, Journal of Legal and Social Studies in South East Europe* 9: 139-165.

Hantrais, Linda. 2009. *International comparative research: theory, methods and practice*. New York: Palgrave Macmillan.

High Court of Cassation and Justice [HCCJ], Judgment no. 2783 of 24 May 2019.

Hotărâre nr. 363 din 30 mai 2016, Secțiapentruprocurori, Consiliului Superior al Magistraturii.

Hotărârea nr. 434 din 17 mai 2016, Secțiapentru judecători, Consiliului Superior al Magistraturii.

Hotărârea nr. 1305 din 29 octombrie 2020, Secțiapentru judecători, Consiliului Superior al Magistraturii.

ÎnaltaCurte de CasaţieșiJustiţie, Secţia de ContenciosAdministrativși Fiscal, Decizia Nr. 2783 din 24 mai 2019.

Knežević Bojović, Ana. 2019. "Institutional Transplants in Serbia – the Stories of Success and Failure." In *Common Law and Civil Law Today Convergence and Divergence*, ed. Marko Novaković, 381-412. Malaga: Vernon Press.

Kosař, David. 2018. "Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe." *German Law Journal* 19(7): 1567-1612. doi:10.1017/S2071832200023178.

Legea nr. 7/2004 privindCodul de conduită a funcţionarilorpublici a fostpublicată (republicată), "MonitorulOficial al României" nr. 525 din 2 august 2007.

Legrand, Pierre. 1997." The Impossibility of 'Legal Transplants." *Maastricht Journal of European and Comparative Law* 4 (2): 111-124. doi:10.1177/1023263x9700400202.

Magalhães, Pedro. 1999. "The Politics of Judicial Reform in Eastern Europe." *Comparative Politics* 32(1): 43-62. doi: https://doi.org/10.2307/422432.

Marković, Đorđe. 2017. „Nezavisnost sudstva u Republici Srbiji-Predlozi za promenu ustavnog okvira za izbor sudija i prestanak sudijske funkcije."*Srpska politička misao* posebno izdanje 2017: 201-228. doi: https://doi.org/10.22182/spm.specijal2017.11.

Mendelski, Martin. 2015. "The EU's Pathological Power: The Failure of External Rule of Law Promotion in South, Eastern Europe." *Southeastern Europe* 39(3): 318-346. doi: 10.1163/18763332-03903003.

Miller, Jonathan. 2003. "A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process." *The American Journal of Comparative Law* 51(4): 839-885. doi:10.2307/3649131.

Noguera, Angela Maria. 2013. "Impact Assessment: Empirical Evidence". In National Legal Systems and Globalization: New Role, Continuing Relevance, eds. Pierre Larouche and PéterCserne, 311-344. The Hague: Asser Press.

Mrčela, Marin. 2020. "Application of a Code of Conduct for Judges" *United Nations Office on Drugs and Crime*. Last accessed on 24 September 2021. https://www.unodc.org/dohadeclaration/en/news/2020/01/application-of-a-code-of-conduct-for-judges.html.

Plan de acțiunepentruimplementareaStrategiei de întărireaintegrității însistemuljudiciar, 2011 – 2016, adoptataînşedinţa din 22 noiembrie 2011 a PlenuluiConsiliului Superior al Magistraturii. Last accessed 05 May 2021. https://www.csm1909.ro/13/114/Plan-de-ac%C5%A3iuni-pentru-implementarea-Strategiei-de-%C3%AEnt%C4%83rire-a-integrit%C4%83%C5%A3ii-%C3%AEn-justi%C5%A3ie,-2011-2016.

Plan de acțiunepentruimplementareaStrategiei de dezvoltare a sistemuluijudiciar 2015-2020, HotărâreaGuvernului nr. 282/2016 privindaprobareaPlanului de acțiunepentruimplementareaStrategiei de dezvoltare a sistemuluijudiciar 2015-2020, "MonitorulOficial al României", Partea I, nr. 311 din 22 aprilie 2016.

Pravilnik o delusvetovalcasodnikom za področjeetike in integritete [Pravilnik o delusvetovalcasodnikom], 3 October 2019, http://www.sodni-svet.si/doc/kei/pravilnik-o-delu-svetovalca-sodnikom-za-eticne-zadeve-A.pdf, last accessed on 25 September 2021.

Preshova, Denis, Demjanovski, Ivan and Nechev, Zoran. 2017, "The effectiveness of the 'European Model' of judicial independence in the Western Balkans: judicial councils as a solution or a new cause of concern for judicial reforms."*Centre for the Law of EU External Relations*. Last accessed 12 September 2021. https://www.asser.nl/media/3475/cleer17-1_web.pdf.

Press Release on the National Conference "Strengthening the integrity of the judiciary" of 26 November 2015, issued by the SCM Unit for Public Information and Mass-Media Relations.

RakićVodinelić, Vesna, Knežević Bojović, Ana and Reljanović Mario. 2012. *Reformapravosuđa u Srbiji 2008-2012*. Beograd: Službeniglasnik.

Reyes, Maria. 2014. "The Challenges of Legal Transplants in a Globalized Context: A Case Study on 'Working' Examples." *Social Science Research Network*. Last accessed on 7 December 2017. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530811

Sancho, Ignacio. 2007. „ÉticaJudicial: el paradigmadelbuenJuez.", *Icade. Revista De La Facultad De Derecho*72: 117-138.

SremčevIlić, Sanja. 2015. „Sudijskaetika – srpski, evropski i međunarodnistandardi." *Strani pravni život* 59(1): 275-290.

Strafegiapentruîntărireaintegrităţiiînsistemuljudiciar 2011 - 2016 şiPlanul de acţiunipentruimplementareaStrategiei de întărire a integrităţii au fostadoptateînşedinţadin 22 noiembrie 2011 a PlenuluiConsiliului Superior al Magistraturii.

Superior Council of Magistrates Unit for Public Information and Mass-Media Relations. 2019. "Press Release on the National Conference 'Strengthening the integrity of the judiciary'". 26 November 2015.

Terhechte, Jörg Philipp. 2009. "Judicial Ethics for a Global Judiciary–How Judicial Networks Create their own Codes of Conduct." *German Law Journal* 10(4): 501-514. doi: 10.1017/S2071832200001188.

Titz, Andrea. 2009. „Über den Umgang mit richterlicher Ethik im Ausland." *DeutscherRichterbund*. Last accessed 05 September 2021. https://www.drb.de/fileadmin/DRB/pdf/Ethik/0902_Ethik_DRiZ_Titz_Ausland_.pdf.

United Nations Economic and Social Council [ECOSOC], E/RES/2006/23, Resolution 23 (2006) Adopted by the United Nations Economic and Social Council at its 41st Plenary Meeting, on 27 July 2006.

Urbániková, Marina and Šipulová, Katarina. 2018. "Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?" *German Law Journal* 19(7): 2105-2136. doi:10.1017/S2071832200023348.

Venice Commission [VC], CDL-AD(2007)028-e, Judicial Appointments - Report, Adopted by the Venice Commission at its 70th Plenary Session, on 16-17 March 2007.

Venice Commission [VC], CDL-AD(2010)004, Report on the independence of the judicial system part I: The independence of judges, Adopted by the Venice Commission at its 82nd Plenary Session, on 12-13 March 2010.

Venice Commission [VC], CDL-AD(2016)007, Rule of Law Checklist, Adopted by the Venice Commission at its 106th Plenary Session, on 11-12 March 2016.

Voermans, Wim. 2003. "Councils for the Judiciary in Europe: Trends and Models." In *The Spanish Constitution in the European Constitutional Context*, ed. Francisco Fernandez Segado, 21-33. Madrid: LibreriaDykinson.

Watson, Alan. 1974. *Legal Transplants: An Approach to Comparative Law*. Edinburgh: University of Georgia.

Zakon o sodnem svetu [ZSS], „Uradni list RS", št. 23/17.

Zakon o sudijama [ZS], „Službeniglasnik RS", br. 116/2008, 58/2009 (Odluka Ustavnog suda), 104/2009, 101/2010, 8/2012 (Odluka Ustavnog suda), 121/2012, 124/2012 (Odluka Ustavnog suda), 101/2013, 111/2014 (Odluka Ustavnog suda), 117/2014, 40/2015, 63/2015 (Odluka Ustavnog suda), 106/2015, 63/2016 (Odluka Ustavnog suda), 47/2017, 76/2021.*

* Manuscript was received on June 11, 2021 and the paper was accepted for publishing on October 23, 2021.

UDC: 159.923:004.8
DOI: https://doi.org/10.22182/spm.7442021.10
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 235-253

***Lana Tucaković***

*Digital Sociometrics Lab, Institute for Philosophy and Social Theory, University of Belgrade*

***Ljubiša Bojić****

*Digital Sociometrics Lab, Institute for Philosophy and Social Theory, University of Belgrade*

# COMPUTER-BASED PERSONALITY JUDGMENTS FROM DIGITAL FOOTPRINTS: THEORETICAL CONSIDERATIONS AND PRACTICAL IMPLICATIONS IN POLITICS

## Abstract

Accurately forming personality judgments is of vital importance in a wide range of social interactions. Although people are able to make fairly accurate personality judgments of others, recent technological advances in machine learning made computers better at predicting personality than humans. In this review, we will focus on computer-based personality judgments and their theoretical considerations and practical implications in politics. More precisely, we will discuss (i) the use of social platforms and digital devices in collecting so-called digital footprints, (ii) personality traits that are assessed based on digital footprints, (iii) advantages and disadvantages of using computer-based personality judgments, (iv) persuasive communication based on digital footprints of personality traits, and lastly, (v) the matters of privacy and informed consent.

* E-mail address: ljubisa.bojic@instifdt.bg.ac.rs

With this review, we aim to provide a guide how to use computer-based personality judgment in a way to serve the public interest.

**Keywords**: personality judgment, social media, digital footprint, persuasive communication.

## INTRODUCTION

Accurately forming personality judgments is of vital importance in a wide range of social interactions (Thielmann, Hilbig, and Zettler 2020, 175; Youyou, Kosinski, and Stillwell 2015, 1036). People use personality judgments for making decisions about who to trust, socialize with, employ, date, marry, elect as president, etc. (Funder 2012, 177; Hinds and Joinson 2019, 204; Youyou, Kosinski, and Stillwell 2015, 1036). Previous studies have demonstrated that people are able to make fairly accurate personality judgments of others, which help them navigate through daily social interactions (e.g., Beer and Watson 2008, 250; Connelly and Ones 2010, 1119; Funder 2012, 180; Hirschmüller et al. 2013, 351; Youyou, Kosinski, and Stillwell 2015, 1039).

However, when we compare the accuracy of human and computer personality judgments, studies suggest that computers are better at predicting personality than humans (Azucar, Marengo, and Settanni 2018, 150; Hinds and Joinson 2019, 205; Tskhay and Rule 2014, 25; Youyou, Kosinski, and Stillwell 2015, 1036). Computer personality judgments have higher external validity compared to human personality judgments when predicting relevant life outcomes such as political attitudes, substance use, physical health, etc. (Youyou, Kosinski, and Stillwell 2015, 1039). Therefore, in this review we will focus on computer-based personality judgments and their theoretical considerations and practical implications in the area of politics. In the next few paragraphs, we will discuss the use of social platforms and digital devices in collecting so-called digital footprints.

## DIGITAL FOOTPRINTS

The increasing usage of digital social platforms such as Facebook, Twitter, Instagram, YouTube, etc., provide us with a relatively new source of user generated ecological data, which are automatically collected (Settanni, Azucar, and Marengo 2018, 217). This type of data is known as digital footprints,digital traces or digital records defined as data created by users which they leave behind on digital platforms (Hinds and Joinson 2019, 204; Koops 2011, 230; Settanni, Azucar, and Marengo 2018, 217). Digital footprints can be distinguished from data shadows, which are information about users generated by others (Koops 2011, 230). Everybody has their own unique digital footprint, and based on it, it is possible to create a complete digital entity of a certain person (Deeva 2019, 185). Digital footprints can be used for various research purposes in diverse disciplines and among them for personality judgment (Settanni, Azucar, and Marengo 2018, 217). A single piece of information that is a part of digital footprint is not enough to produce an accurate personality prediction, but when multiple pieces of information are combined, the resulting personality prediction can be accurate (Risso 2018, 77).

We can distinguish between different types of digital footprints found on social media such as user demographics (e.g., gender, age, level of education, etc.), likes (e.g., on Instagram, TikTok, Facebook, etc.), user activity statistics (e.g., number of received likes, number of posts, number of uploaded videos or photos, number of comments, number of friends or followers, number of user tags, etc.), linguistic features (e.g., tweets, status updates, comments, blog posts, etc.), audiovisual content (e.g., profile pictures, videos, etc.), and so on (Azucar, Marengo, and Settanni 2018, 152; Farnadi et al. 2016, 113).

Digital footprints can also be collected offline, through digital devices (Hinds and Joinson 2019, 204; Lambiotte and Kosinski 2014, 1937). For example, individuals leave digital footprints when they wear devices that track physical states such as walking, running, and sleeping, join a Wi-Fi network, connect with Bluetooth, use Global Positioning System (GPS), make phone calls, write text messages, spend their money, etc. (Gladstone, Matz, and Lemaire

2019, 1087; Hinds and Joinson 2019, 204; Lambiotte and Kosinski 2014, 1937). When people wear digital tracking movement devices, they leave behind accelerometer data; when they use Wi-Fi and GPS, they leave geolocation data; when they connect with Bluetooth, colocation with other devices can be detected; when they spend money, they leave transaction data; and with records of phone calls and text messages, levels of social interaction can be measured (Gladstone, Matz, and Lemaire 2019, 1087; Hinds and Joinson 2019, 204; Lambiotte and Kosinski 2014, 1937).

Additionally, we can differentiate between users that post their content frequently and those who rarely post their own content. We can infer the personality traits of the second type of users when using computer-based personality judgment through things they like and share. We can also gain insights about the personality traits of the users we are interested in analyzing through indirect sources, such as comments that are directed at them, texts from web pages that they share link to, etc. (Yamada, Sasano, and Takeda 2019, 177–182).

Multidisciplinary collaborations are needed to make the best use and interpretation of digital footprints available on social media and digital devices for personality judgment (Lambiotte and Kosinski 2014, 1938; Schwartz et al. 2013). Multidisciplinary collaborations could happen between psychology, computer science, social sciences, linguistics, and applied mathematics (Lambiotte and Kosinski 2014, 1938). These diverse fields could be unified in the field of computational social psychology (Lambiotte and Kosinski 2014, 1938). In the section to follow, personality traits, that are assessed based on digital footprints, will be described.

## PREDICTING PERSONALITY TRAITS FROM DIGITAL FOOTPRINTS

Models have mostly been used to predict individuals' Big Five personality traits from digital footprints (Stachl et al. 2020a, 614). The Big Five model of personality (also known as the Five-Factor or OCEAN model) is regarded as the most widely used theoretical framework and most empirically supported model of normal personality traits (Chmielewski and Morgan 2013). The Big Five

model consists of five broad personality dimensions – Openness to Experience, Conscientiousness, Extraversion, Agreeableness, and Neuroticism (Chmielewski and Morgan 2013). These broad trait dimensions are used to describe individual differences in thoughts, feelings, and behaviors (Chmielewski and Morgan 2013).

It has been shown on a meta-analytical level that the predictive power of digital footprints in the case of Big Five traits is in line with the correlations obtained between behavior and personality in other studies of individual differences that use questionnaires (Azucar, Marengo, and Settanni 2018, 150). Correlations between digital footprints and personality traits range from .29 (in the case of Agreeableness) to .40 (in the case of Extraversion)(Azucar, Marengo, and Settanni 2018, 150). Accuracy is quite consistent across all Big Five traits and it can additionally improve when multiple types of digital footprints and accounts from multiple social media sites are used (Azucar, Marengo, and Settanni 2018, 150; Skowron et al. 2016, 108).

One more widely used model that has been used for personality prediction is the Myers-Briggs Type Indicator (MBTI; Yamada, Sasano, and Takeda 2019, 178). MBTI describes the preferences of an individual on four dimensions – Introversion-Extraversion, Sensing-Intuition, Thinking-Feeling, and Judging-Perceiving, and these basic dimensions combine into 16 personality types (Yamada, Sasano, and Takeda 2019, 178). Previous studies have shown that these basic dimensions can also be accurately predicted from digital footprints (Amirhosseini Hossein and Kazemian 2020; Yamada, Sasano, and Takeda 2019, 181). Other related psychological traits that have been successfully predicted from digital footprints are sensation seeking (Schoedel et al. 2019, 232), materialism (Gladstone, Matz, and Lemaire 2019, 1091), self-control (Gladstone, Matz, and Lemaire 2019, 1091), depression (Eichstaedt et al. 2018, 11203), traits from the Dark Triad model (i.e., Machiavellianism, narcissism, and psychopathy; Garcia and Sikström 2014, 92), etc. In the following paragraphs, advantages and disadvantages of using computer-based personality judgments will be discussed.

## ADVANTAGES AND DISADVANTAGES OF USING COMPUTER-BASED PERSONALITY JUDGMENTS

Advantages of using computer-based personality assessment compared to traditional personality assessment are the possibility to noninvasively collect personality-related data from large numbers of people and the possibility to collect data over extended periods of time (Mõttus et al. 2020, 1181). Data collection over extended periods of time allows to track short-term and long-term changes in personality (Mõttus et al. 2020, 1181). Computer-based personality assessment can also be cheaper than traditional personality assessment, and it is an automated process that doesn't require human social-cognitive skills (Matz and Netzer 2017, 7; Youyou, Kosinski, and Stillwell 2015, 1036). Additionally, computer-based personality assessment is not only more accurate, but also less prone to cheating and misrepresentation (Kosinski, Stillwell, and Graepel 2013, 5805). Furthermore, unlike questionnaires and surveys, using language data from social media allows researchers to observe individuals when they express themselves in their own words (Schwartz et al. 2013).

However, there are some possible downsides to using computer-based personality assessment. Firstly, test samples for personality assessment are collected usually only for a recent time period (Zhong et al. 2018, 269). Secondly, sometimes information used for algorithms for personality assessment is incorrect, i.e., users may give unreal answers about their personality traits on personality questionnaires. Thirdly, some people may hide their true thoughts and feelings when using social media, and generally people behave differently online and in real life (Al Marouf, Hasan, and Mahmud 2020, 587; Zhong et al. 2018, 269). With that being said, previous studies have shown that at least in the case of Facebook, users' information reflect their real personality, not their idealized version of personality (Wan et al. 2014, 220). Fourthly, indicators such as likes are limited, because peoples' preferences change over time (Hinds, Williams, and Joinson 2020). Finally, some people have accounts on social media, but don't use them very often, i.e., their digital footprint is small (Hinds, Williams, and Joinson 2020). In the paragraphs to follow, persuasive communication based on digital footprints of personality traits will be described.

## PSYCHOLOGICAL PERSUASION BASED ON DIGITAL FOOTPRINTS OF PERSONALITY TRAITS

Recent technological advances that allow us to assess personality traits can be used for persuasive communication in different contexts (Matz et al. 2017a, 12714). Persuasive communication is used in politics to mobilize the voting population to vote for a specific political candidate (Matz et al. 2017a, 12714). An approach where persuasive communication is tailored to people's unique psychological characteristics and motivations is referred to as psychological persuasion (Matz et al. 2017a, 12714). This includes persuasion based on individuals' personality traits (Matz et al. 2017a, 12714). Psychological persuasion can be on an individual and on a group level (Hirsh, Kang, and Bodenhausen 2012, 578; Matz et al. 2017a, 12717). The benefit of personalized psychological persuasion is that it provides a way to alleviate the problem of choice overload, by prioritizing content that individual users will prefer the most (Matz et al. 2017b, 279). By alleviating the problem of choice overload, this type of persuasion helps people to make better decisions, and also lead happier and healthier lives (Matz et al. 2017a, 12714). The main drawback of personalized psychological persuasion is that it can be used to exploit weaknesses in people, and to persuade them to make decisions that aren't in their best interest (Matz et al. 2017a, 12717).

One specific type of psychological persuasion that is used, among other things, in politics is called micro-targeting (Heawood 2018, 429). The term micro-targeting is defined as targeted messaging for specific groups (Heawood 2018, 429). Data that is used for micro-targeting is collected through traditional market research techniques such as surveys and focus groups, but also through tracking individuals' online behavior (Krotzek 2019, 3611). Effectiveness of political micro-targeting based on personality traits has been questioned (Zarouali et al. 2020). Nevertheless, it has been shown that individuals prefer advertisements that are tailored to their personality traits (Zarouali et al. 2020). The use of political micro-targeting has both good and bad sides (Zarouali et al. 2020). The good side is that individuals can get relevant information about issues they are really interested in (Zarouali et al. 2020). The bad

side is that electoral candidates and political parties can use this technique to influence how individuals intend to vote, and in that way undermine democratic values and informed self-determination (Boyd, Pasca, and Lanning 2020, 605; Zarouali et al. 2020).

The best-known case of an ethically wrong way of political micro-targeting based on personality profiling is the Facebook-Cambridge Analytica data scandal (Hinds, Williams, and Joinson 2020). The company Cambridge Analytica inappropriately used data from approximately 87 million Facebook users to make psychologically tailored advertisements which aimed to influence the outcome of the 2016 U.S. presidential election (Hinds, Williams, and Joinson 2020). In the case of the company Cambridge Analytica, data about personality characteristics were combined with other kinds of useful data from Facebook (such as Facebook 'Likes') and used for the purposes of political micro-targeting (Prichard 2021).

This was done, as follows – around 200 000 users voluntarily took a personality test on Facebook, but they hadn't been aware that the personal data from their family, friends, and acquaintances would also be collected, which increased the number of made psychological profiles to 87 million (Heawood 2018, 429). In addition, they hadn't been aware that their personality data was going to be used for a mass influence campaign i.e., they didn't give explicit consent (Prichard 2021). As we can notice, users' friends didn't give their informed consent either (Cadwalladr 2017). This was made possible by Facebook policies at the time (Cadwalladr 2017). Cambridge Analytica combined personality data with other data from Facebook in order to construct an algorithm that could analyze Facebook profiles and determine the personality traits of users that are linked to voting behavior (Cadwalladr and Graham-Harrison 2018). It was already previously shown in academic research that computer personality judgments can successfully predict political orientation (Youyou, Kosinski, and Stillwell 2015, 1039). The collected data could also be used as a search engine to find specific personality types such as undecided Democrats, which could more easily be swayed to vote for the Republican party (González 2017, 10). The personality data enabled Cambridge Analytica to craft individualized messages which would act as emotional triggers

(Cadwalladr 2017). These individualized messages aim to trigger inner fears, concerns, and exploit deep-rooted bias (Risso 2018, 78). This is based on the previously well-established fact that in political campaigns emotions play a more prominent role than facts (Risso 2018, 78).

Totalitarian institutions could utilize this type of personal data in the future to create psychologically tailored messages that could negatively influence the ideas, attitudes, and behaviors of the public (González 2017, 12). There is real danger that these psychologically tailored messages will be used for promoting extremist propaganda and certain political agendas (Hinds and Joinson 2019, 209). As an illustration, extremist groups might use highly personalized advertisements based on personality traits to promote violent messages. Another illustration would be the use of psychologically tailored political advertisements to show graphically disturbing content that portrays an opposing political candidate in a negative light. These are illustrations of ethically questionable marketing practices that prey on voters' emotions and bias (Risso 2018, 82).

Psychologically tailored messages might also be used to create voter disengagement i.e., to persuade voters of the opposition party to stay at home (Cadwalladr 2017). Additionally, psychologically tailored messages can be used to sway swing voters or undecided voters (Cadwalladr and Graham-Harrison 2018). Psychologically tailored political advertisements may contain misinformation, disinformation, false claims, incompatible promises, and false promises as well (Heawood 2018, 429-434). Since these political claims are made privately, they cannot be fact checked and potentially corrected (Heawood 2018, 429-434). When using psychologically tailored messages, it is impossible for individuals to notice that the messages are tailored to match their personality (Zarouali et al. 2020). Therefore, they cannot defend themselves from the psychologically tailored political advertisements as they would from traditional political advertisements (Zarouali et al. 2020). This is a clear form of 'online manipulation' that is done in such a way that uses individuals' personalities against themselves (Zarouali et al. 2020). In addition, this can be seen as an 'online manipulation', because this type of psychologically tailored advertisements might conceal they are political advertisements (Heawood 2018, 429-434).

On the other hand, computer-based personality prediction can be used for the public, to predict personality traits of political figures (Usher and Dondio 2020, 178). Politicians usually have their official accounts on Twitter, Facebook, and even Instagram. It has been shown, at least in the case of using tweets as material for personality prediction, that personality traits of politicians can be successfully predicted (Apriyanto and Anum 2020; Usher and Dondio 2020, 182). It should be noted, however, that this type of prediction can at most reveal a political representation of a certain character, not their true personality (Usher and Dondio 2020, 182). This is because politicians don't usually give their statements privatly on social media and their social media content is almost exclusively politically related. However, this can be a useful way in the future for the general public to assess the personality of political candidates and to help them make important decision which political candidate to vote for (Apriyanto and Anum 2020). It should also be considered that politicians can also use personality prediction to predict personality traits of their political opponents and in that way gain an advantage in the political race (Usher and Dondio 2020, 178). In the last paragraphs, we will discuss the matters of privacy and informed consent, companies that buy and sell third-party personal data for financial gain, and how to prevent situations like the Facebook–Cambridge Analytica data scandal from happening again.

## DISCUSSION AND CONCLUSIONS

A big concern when using personality prediction is the matter of privacy and the concept of informed consent (Alexander III, Mulfinger, and Oswald 2020, 643). There is a risk that political parties, commercial companies, governmental institutions, and other people in general could use social data to infer an individuals' personality, which he or she may have not intended to share, and thereby invade their privacy, as we have seen from the example of Facebook–Cambridge Analytica data scandal (Lambiotte and Kosinski 2014, 1938). The ever-growing amount of social data will make it difficult in the future for individuals to hide their personality traits and other personal attributes (Kosinski, Stillwell, and Graepel 2013, 5805). As research psychologist Kosinski best describes it:

”Our smartphone is a vast psychological questionnaire that we are constantly filling out, both consciously and unconsciously” (Grassegger and Krogerus 2017).

This enormous amount of personal online data (e.g., personality data) is seen as a source of income in a whole industry. This is a reason that personal online data is frequently called ‘oil’ of the new media economy (Heawood 2018, 429-434). In the US for example, almost all personal data is for sale (Grassegger and Krogerus 2017). Companies such as Google, Facebook, and Twitter can buy and sell personal online data, but after Trump’s influence on privacy regulations internet service providers such as Comcast, Verizon, and AT&T can also sell personal online data to third parties (González 2017, 10). All other personal data can be bought from specialized data broker companies like Acxiom and Experian (Grassegger and Krogerus 2017). There is a potential risk that personal data will be sold to the highest bidder and utilized in a way to undermine democracy in democratic regimes.

Social data should be collected and analyzed only when individuals give informed consent (Stachl et al. 2020b, 17680). It should be clearly stated in terms of use, the way data from social media and smartphones will be used (Stachl et al. 2020b, 17685). When conducting academic research with social data, researchers should inform participants about what social data are collected and that it would be used only for research purposes (Hinds and Joinson 2019, 209). Individuals might distrust or completely reject digital technologies if their data is not transparently used (Kosinski, Stillwell, and Graepel 2013, 5805). People should also be nudged to read carefully the parts with terms of use and not just skip it, in order to take better care of their private information. There is a need for raising awareness among users about online privacy risks (Hinds, Williams, and Joinson 2020; Sumner, Byers, and Shearing 2011, 211). They should be educated how to protect their online privacy in a way that doesn’t overload them with too many information they may find too difficult to understand (Hinds, Williams, and Joinson 2020). They can also better protect their private information through adjustment of privacy settings on social media sites, and on the internet in general. Default privacy settings differ between social media platforms (Settanni, Azucar,

and Marengo 2018, 218-219). On the one hand, there are social media platforms that make posts and updates public by default such as Twitter, Instagram, Reddit, Sina Weibo, etc. (Settanni, Azucar, and Marengo 2018, 218-219). On the other hand, there are social media platforms that make posts and updates visible only to users' friends, followers or connections by default, such as Facebook (Settanni, Azucar, and Marengo 2018, 218-219).

Digital literacy education programs and well-made regulatory controls are also needed, besides individual responsibility, in preventing the misuse of information derived from social media and smartphones (Sumner, Byers, and Shearing 2011, 211). Legal frameworks that exist for regulation of data protection are the General Data Protection Regulation (GDPR) by the European Union, while in the United States there are Family Educational Rights and Privacy Act (FERPA), Fair Credit Reporting Act (FCRA), and state laws (Alexander III, Mulfinger, and Oswald 2020, 642). These legal frameworks that exist in Europe and the United States have their focus on increasing the transparency in the way data is collected and making sure there are mechanisms for users to opt out of advertisements and data-processing activities (Matz et al. 2017a, 12717). Legal frameworks should be formulated in such a way to prevent 'online manipulation' in the domain of political campaigning. For example, receiving informed consent from users is not a security barrier strong enough for data broker companies to prevent them from making data breaches (Zarouali et al. 2020). A balance is needed between collection of vast social data and protection of individual privacy rights (Stachl et al. 2020b, 17685).

With all that being said, computer-based personality judgments are indeed a useful tool, they just need to be used wisely, and in accordance with different laws and regulations regarding data protection and privacy. With this review, we aim to provide a guide how to use computer-based personality judgments in a way to serve the public interest, especially in politics, where there needs to be more transparency in how personality data is used for psychologically tailored political advertisements.

## REFERENCES

Al Marouf, Ahmed, Md Kamrul Hasan, and Hasan Mahmud. 2020. ”Comparative analysis of feature selection algorithms for computational personality prediction from social media.” *IEEE Transactions on Computational Social Systems* 7 (3): 587-599. doi: 10.1109/TCSS.2020.2966910.

Alexander III, Leo, Evan Mulfinger, and Frederick L. Oswald. 2020. ”Using Big Data and Machine Learning in Personality Measurement: Opportunities and Challenges.” *European Journal of Personality* 34 (5): 632-648. doi: 10.1002/per.2305.

Amirhosseini, Mohammad Hossein, and Hassan Kazemian. 2020. ”Machine learning approach to personality type prediction based on the myers–briggs type indicator®.” Multimodal *Technologies and Interaction* 4 (1): 1-15. doi: 10.3390/mti4010009.

Apriyanto, Sigit, and Adelina Anum. 2020.”Personality of Politicians as the Object of Public Assessment.” *In Proceedings of the 2nd International Conference of Science and Technology for the Internet of Things*, Yogyakarta, Indonesia, EAI. doi: 10.4108/eai.20-9-2019.2290820.

Azucar, Danny, Davide Marengo, and Michele Settanni. 2018. ”Predicting the Big 5 personality traits from digital footprints on social media: A meta-analysis.” *Personality and Individual Differences* 124: 150–159. doi: 10.1037/a0030383.

Beer, Andrew, and David Watson. 2008. ”Personality judgment at zero acquaintance: Agreement, assumed similarity, and implicit simplicity.” *Journal of Personality Assessment* 90 (3): 250-260. doi: 10.1080/00223890701884970.

Boyd, Ryan L., Paola Pasca, and Kevin Lanning. 2020. ”The personality panorama: Conceptualizing personality through big behavioural data.” *European Journal of Personality* 34 (5): 599-612. doi: 10.1002/per.2254.

Cadwalladr, Carole, and Graham-Harrison Emma. 2018. "Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach." *The Guardian*. https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election

Cadwalladr, Carole. 2017. "The great British Brexit robbery: How our democracy was hijacked." *The Guardian*. https://www.theguardian.com/technology/2017/may/07/the-great-british-brexit-robbery-hijacked-democracy.

Chmielewski, Michael S. and Morgan, Theresa A. 2013. Five-factor model of personality. *In Gellman M.D., Turner J.R. (eds) Encyclopedia of Behavioral Medicine.* New York, NY: Springer.

Connelly, Brian S., and Deniz S. Ones. 2010. "An other perspective on personality: Meta-analytic integration of observers' accuracy and predictive validity." *Psychological Bulletin* 136 (6): 1092–1122. doi: 10.1037/a0021212.

Deeva, Irina. 2019. "Computational Personality Prediction Based on Digital Footprint of A Social Media User." *Procedia Computer Science* 156: 185-193. doi: 10.1016/j.procs.2019.08.194.

Eichstaedt, Johannes C., Robert Smith, Raina M. Merchant, Lyle H. Ungar, Patrick Crutchley, Daniel Preoţiuc-Pietro, David A. Asch, and Andrew H. Schwartz. 2018. "Facebook language predicts depression in medical records." *Proceedings of the National Academy of Sciences* 115 (44): 11203-11208. doi: 10.1073/pnas.1802331115.

Farnadi, Golnoosh, Geetha Sitaraman, Shanu Sushmita, Fabio Celli, Michal Kosinski, David Stillwell, Sergio Davalos, Marie-Francine Moens, and Martine De Cock. 2016. "Computational personality recognition in social media." *User modeling and user-adapted interaction* 26 (2): 109-142. doi: 10.1007/s11257-016-9171-0.

Funder, David C. 2012. "Accurate personality judgment." *Current Directions in Psychological Science* 21 (3), 177–182. doi: 10.1177/0963721412445309.

Garcia, Danilo, and Sverker Sikström. 2014. "The dark side of Facebook: Semantic representations of status updates predict the Dark Triad of personality." *Personality and individual differences* 67: 92-96. doi: 10.1016/j.paid.2013.10.001.

Gladstone, Joe J., Sandra C. Matz, and Alain Lemaire. 2019. "Can psychological traits be inferred from spending? Evidence from transaction data." *Psychological science* 30 (7): 1087-1096. doi: 10.1177/0956797619849435.

González, Roberto J. 2017. "Hacking the citizenry?: Personality profiling,'big data'and the election of Donald Trump." *Anthropology Today* 33 (3): 9-12. doi: 10.1111/1467-8322.12348.

Grassegger, Hannes, and Krogerus Mikael. 2017. "The data that turned the world upside down." *Vice Motherboard.* https://www.vice.com/en/article/mg9vvn/how-our-likes-helped-trump-win

Hall, Andrew N., and Sandra C. Matz. 2020. "Targeting item–level nuances leads to small but robust improvements in personality prediction from digital footprints." *European Journal of Personality* 34 (5): 873-884. doi: 10.1002/per.2253.

Heawood, Jonathan. 2018. "Pseudo-public political speech: Democratic implications of the Cambridge Analytica scandal." *Information Polity* 23 (4): 429-434. doi: 10.3233/ip-180009.

Hinds, Joanne, and Adam Joinson. 2019. "Human and computer personality prediction from digital footprints." *Current Directions in Psychological Science* 28 (2): 204-211. doi: 10.1177/0963721419827849.

Hinds, Joanne, Emma J. Williams, and Adam N. Joinson. 2020. ""It wouldn't happen to me": Privacy concerns and perspectives following the Cambridge Analytica scandal." *International Journal of Human-Computer Studies* 143: 102498. doi: 10.1016/j.ijhcs.2020.102498.

Hirschmüller, Sarah, Boris Egloff, Steffen Nestler, and Mitja D. Back. 2013. "The dual lens model: A comprehensive framework for understanding self–other agreement of personality judgments at zero acquaintance." *Journal of Personality and Social Psychology* 104 (2): 335–353. doi: 10.1037/a0030383.

Hirsh, Jacob B., Sonia K. Kang, and Galen V. Bodenhausen. 2012. "Personalized persuasion: Tailoring persuasive appeals to recipients' personality traits." *Psychological science* 23 (6): 578-581. doi: 10.1177/0956797611436349.

Koops, Bert-Jaap. 2011. "Forgetting footprints, shunning shadows: A critical analysis of the right to be forgotten in big data practice." *SCRIPTed* 8: 229-256. doi: 10.2966/scrip. 080311.229.

Kosinski, Michal, David Stillwell, and Thore Graepel. 2013. "Private traits and attributes are predictable from digital records of human behavior." *Proceedings of the national academy of sciences* 110 (15): 5802-5805. doi: 10.1073/pnas.1218772110.

Krotzek, Lennart J. 2019. "Inside the voter's mind: the effect of psychometric microtargeting on feelings toward and propensity to vote for a candidate." *International Journal of Communication* 13: 3609-3629.

Lambiotte, Renaud, and Michal Kosinski. 2014. "Tracking the digital footprints of personality." *Proceedings of the IEEE* 102 (12): 1934-1939. doi: 10.1109/JPROC.2014.2359054.

Matz, Sandra C., and Oded Netzer. 2017. "Using big data as a window into consumers' psychology." *Current Opinion in Behavioral Sciences* 18: 7-12. doi: 10.1016/J.COBEHA.2017.05.009.

Matz, Sandra C., Michal Kosinski, Gideon Nave, and David J. Stillwell. 2017. "Psychological targeting as an effective approach to digital mass persuasion." *Proceedings of the national academy of sciences* 114 (48): 12714-12719. doi: 10.1073/pnas.1710966114.

Matz, Sandra, Michal Kosinski, David Stillwell, and Gideon Nave. 2017. "Psychological Framing As an Effective Approach to Real-Life Persuasive Communication" *NA - Advances in Consumer Research* 45: 276-281.

Mõttus, René, Dustin Wood, David M. Condon, Mitja D. Back, Anna Baumert, Giulio Costantini, Sacha Epskamp, et al. 2020. "Descriptive, predictive and explanatory personality research: Different goals, different approaches, but a shared need to move beyond the Big Few traits." *European Journal of Personality* 34 (6): 1175-1201. doi: 10.31234/osf.io/hvk5p.

Prichard, Eric C. 2021. "Is the Use of Personality Based Psychometrics by Cambridge Analytical Psychological Science's "Nuclear Bomb" Moment?." *Frontiers in Psychology* 12: 581448. doi: 10.3389/fpsyg.2021.581448.

Risso, Linda. 2018. "Harvesting your soul? Cambridge analytica and brexit." In Brexit Means Brexit? *The Selected Proceedings of the Symposium, Akademie der Wissenschaften und der Literatur* , pages 75-90, Mainz, Germany, Akademie der Wissenschaften und der Literatur.

Schoedel, Ramon, Quay Au, Sarah T. Völkel, Florian Lehmann, Daniela Becker, Markus Bühner, Bernd Bischl, Henrich Hussmann, and Clemens Stachl. 2018. "Digital footprints of sensation seeking: A traditional concept in the big data era." *Zeitschrift für Psychologie* 226 (4): 232–245. doi: 10.1027/2151-2604/a000342

Schwartz, Andrew, Johannes C. Eichstaedt, Margaret L. Kern, Lukasz Dziurzynski, Stephanie M. Ramones, Megha Agrawal, Achal Shah, et al. 2013. "Personality, Gender, and Age in the Language of Social Media: The Open-Vocabulary Approach." *PloS one* 8(9): e73791. doi: 10.1371/journal.pone.0073791

Settanni, Michele, Danny Azucar, and Davide Marengo. 2018. "Predicting individual characteristics from digital traces on social media: A meta-analysis." *Cyberpsychology, Behavior, and Social Networking* 21 (4): 217-228. doi:10.1089/cyber.2017.0384.

Skowron, Marcin, Marko Tkalčič, Bruce Ferwerda, and Markus Schedl. 2016. "Fusing social media cues: personality prediction from twitter and instagram." In *Proceedings of the 25th international conference companion on world wide* web, pages 107-108, Geneva, Switzerland, International World Wide Web Conferences Steering Committee. doi: 10.1145/2872518.2889368.

Stachl, Clemens, Florian Pargent, Sven Hilbert, Gabriella M. Harari, Ramona Schoedel, Sumer Vaid, Samuel D. Gosling, and Markus Bühner. 2020. ”Personality research and assessment in the era of machine learning.” *European Journal of Personality* 34 (5): 613-631. doi: 10.1002/per.2257.

Stachl, Clemens, Quay Au, Ramona Schoedel, Samuel D. Gosling, Gabriella M. Harari, Daniel Buschek, Sarah T. Völkel, et al. 2020. ”Predicting personality from patterns of behavior collected with smartphones.” *Proceedings of the National Academy of Sciences* 117 (30): 17680-17687. doi: 10.1073/pnas.1920484117/-/DCSupplemental.y

Sumner, Chris, Alison Byers, and Matthew Shearing. 2011. ”Determining personality traits & privacy concerns from facebook activity. *Black Hat Briefings* 11 (7): 197-221.

Thielmann, Isabel, Benjamin E. Hilbig, and Ingo Zettler. 2020. ”Seeing me, seeing you: Testing competing accounts of assumed similarity in personality judgments.” *Journal of personality and social psychology* 118 (1): 172-198. doi: 10.1037/pspp0000222.

Tskhay, Konstantin O., and Nicholas O. Rule. 2014. “Perceptions of personality in text-based media and OSN: A meta-analysis.” *Journal of Research in Personality* 49: 25–30. doi: 10.1016/j.jrp.2013.12.004

Usher, James, and Pierpaolo Dondio. 2020. “BREXIT: Psychometric Profiling the Political Salubrious through Machine Learning: Predicting personality traits of Boris Johnson through Twitter political text. “ *In Proceedings of the 10th International Conference on Web Intelligence, Mining and Semantics,* pages 178-183, Biarritz France, Association for Computing Machinery. doi: 10.1145/3405962.3405981

Wan, Danlin, Chuang Zhang, Ming Wu, and Zhixiang An. 2014. “Personality prediction based on all characters of user social media information.” *In Chinese national conference on social media processing,* pages 220-230, Berlin, Germany, Springer. doi: 10.1007/978-3-662-45558-6_20.

Yamada, Kosuke, Ryohei Sasano, and Koichi Takeda. 2019. "Incorporating Textual Information on User Behavior for Personality Prediction". I*n Proceedings of the 57th Annual Meeting of the Association for Computational Linguistics: Student Research Workshop*, pages 177–182, Florence, Italy, Association for Computational Linguistics. doi: 10.18653/v1/P19-2024

Youyou, Wu, Michal Kosinski, and David Stillwell. 2015. "Computer-based personality judgments are more accurate than those made by humans." *Proceedings of the National Academy of Sciences* 112 (4): 1036-1040. doi: 10.1073/pnas.1418680112.

Zarouali, Brahim, Tom Dobber, Guy De Pauw, and Claes de Vreese. 2020. "Using a personality-profiling algorithm to investigate political microtargeting: assessing the persuasion effects of personality-tailored ads on social media." *Communication Research* 0093650220961965. doi: 10.1177/0093650220961965.

Zhong, Xiao-Feng, Shi-Ze Guo, Liang Gao, Hong Shan, and Di Xue. 2018. "A general personality prediction framework based on facebook profiles." In *Proceedings of the 2018 10th International Conference on Machine Learning and Computing*, pages 269-275, Macau, China, ACM. doi: 10.1145/3195106.3195124.1*

* Manuscript was received on October 2, 2021 and the paper was accepted for publishing on November 24, 2021.

UDC: 327::911.3]:620.9
DOI: https://doi.org/10.22182/spm.7442021.11
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 255-286

***Žarko Obradović****

*University in Belgrade – Faculty of Security Studies*

***Petar Stanojević*****

*University in Belgrade – Faculty of Security Studies*

***Zoran Jeftić*******

*University in Belgrade – Faculty of Security Studies*

# NATURAL GAS AS A SUBJECT OF GEOPOLITICAL INTERESTS OF STATES

## Abstract

In the last decade, the subject of sale, purchase or transit of natural gas between the countries in Europe has gained, in addition to the economic dimension, a much broader, and for some countries even more significant, geopolitical dimension. This is most evident based on the attitude of the United States and some European countries towards the projects for the construction of the Nord Stream 2, Turkish Stream and South Stream gas pipelines. By displaying a negative attitude towards these gas pipelines, the United States (with the support of some European countries) has formally emerged as a "protector of the energy interests of European countries" from Russian influence, i.e. Russian gas. Essentially, the United States is trying to slow down, reduce and suspend gas supplies from the Russian Federation (RF) to European countries, especially the most powerful ones (Germany, for example), and disguised by the need to "diversify gas supplies to European countries", thus reduce Russia's presence in Europe and quality of

* zarko.obradovic@fb.bu.ac.rs

** petar.stanojevic@fb.bu.ac.rs

*** zoran.jeftic@fb.bu.ac.rs

interstate relations. At the same time, the United States is trying to offer and sell its liquefied natural gas to European countries as an alternative to Russian gas, and to "fill in" the empty geopolitical space. The Russian Federation, on its behalf, instructed by the experiences from several "gas crises" with Ukraine, but also in accordance with its geopolitical interests, seeks (and has almost succeeded in doing so) to ensure the transport and sale of its gas by building new gas pipelines to Europe and improve relations with European countries. Other European countries, which need Russian gas, are trying to ensure energy security by participating in the construction of the gas pipeline, or by supporting the realization of that project. The fate of the gas pipeline and thus the possibility of gas distribution to individual states becomes a subject of interest (and conflict) of the great powers and their geopolitical interests.

**Keywords:** gas pipelines, Nord Stream 2, South Stream, Turkish Stream, energy security, geopolitical interests of the state

## THE IMPORTANCE OF NATURAL GAS

All countries in the world, regardless of the size of the territory, population and level of economic development, need one or more energy sources, either to maintain production in the country and ensure the quality of life of the population, or as a basis for greater economic development. Providing all the necessary energy sources for each country is becoming an important part of its overall energy security.[1] The needs of countries for energy exist, however there are very few of them that are able to achieve energy independence, while others are striving to procure the required energy source on the market. According to data available, the most frequently used energy sources are oil, gas and coal. With regards to gas and oil, the countries that produce the most gas in the world

1 Energy security is described as "the assured delivery of adequate amount of energy to meet a state's vital requirements, even in times of international crisis or conflict", as "ensuring the supply of sufficient energy to meet the basic needs of both production and uninterrupted supply to the final consumer", but it [energy security] also has the meaning of "diversifying primary energy sources and investment towards climate alternatives", or includes an element of "defense against competiton forces" (Michael T. Klare, 2012).

are the United States, the Russian Federation, Iran, Qatar, Canada, China, Norway, etc.[2] while the leading countries in oil production are the USA, Saudi Arabia, Russia, Iran, etc.[3]

Russia has the largest pipeline export of gas (80.9% of gas is exported to Europe, out of which 90% accounts for pipeline export), followed by Norway (with complete exports to Europe), Canada, USA, Algeria and Turkmenistan[4], while the largest importers of natural gas via pipelines are Germany, U.S., Italy, Turkey, Mexico, the Netherlands, Great Britain and China.[5]

Among European countries, gas as an energy source is important for the development of Germany, Italy, Spain, France and other countries. With regards to the export of Russian gas to the leading EU countries, and thus to the importance of Russian gas for the economy of those countries, it should be noted that Russia exports gas to Germany, 55.3 billion $m^3$, which accounts

2 According to data (British Petroleum [BP] 2019), most natural gas, expressed in billions of cubic meters, in 2018 was produced by the United States - 831.8 billion $m^3$, followed by Russia - 669.5 billion $m^3$, Iran - 239.5 billion $m^3$, Canada - 184.7 billion $m^3$, Qatar - 175.7 billion $m^3$, China - 161.5 billion $m^3$, Norway 120.6 billion $m^3$, etc. According to the same source, the countries with the biggest total proved natural gas reserves in 2018, in trillions of cubic meters, are Russia - 38.9 trillion $m^3$, then Iran - 31.9 trillion $m^3$, Qatar - 24.7 trillion $m^3$, Turkmenistan - 19, 5 trillion $m^3$, United States - 11.9 trillion $m^3$, Nigeria - 5.3 trillion $m^3$, Algeria - 4.3 trillion $m^3$, etc. (BP 2019).

3 According to the amount of oil produced in millions of tons, in 2018, the United States was in first place with 669.4 million tons, followed by Saudi Arabia with 578.3 million tons, the Russian Federation 563.3 million tons, Canada 255.5 million tons, Iran with 220.4 million tons, Iraq 226.1 million tons, etc. Regarding the oil reserves expressed in thousands of millions of tons, in 2018, the biggest reserves were determined in Venezuela - 48 billion t., then in Saudi Arabia - 40.9 billion t., Canada - 27.1 billion t., Iran - 21.4 billion t., Iraq 19.9 billion t., the Russian Federation - 14.6 billion t (BP 2019).

4 Considering the pipeline export of gas, the Russian Federation in 2018 exported 223 billion $m^3$ of natural gas (87% to Europe, and the rest to Belarus, Kazakhstan and other countries), followed by Norway - 114.3 billion $m^3$, Canada - 77.2 billion $m^3$ (to the U.S.), U.S. - 67.6 billion $m^3$ (to Canada and Mexico), Algeria - 38.9 billion $m^3$, Turkmenistan - 35.2 billion $m^3$, etc. (BP 2019).

5 In 2018, the Federal Republic of Germany imported 100.8 billion $m^3$ of natural gas via a gas pipeline. The second largest importer was the United States with 77.3 billion $m^3$ of gas, followed by Italy - 56.2 billion $m^3$, Turkey - 37.6 billion $m^3$, Mexico - 45.8 billion $m^3$, the Netherlands - 35.6 billion $m^3$, Great Britain 42.8 billion $m^3$and China - 47.9 billion $m^3$ of natural gas, etc. (BP 2019).

for about 55% of Germany's total demand for gas in 2018, to Italy 25.4 trillion $m^3$ or 45% of the demand of that country, etc.). The amount of gas supplied by the Russian Federation, for a long time now, has been at 35-40% of the demand of the European countries for the Russian gas. It can be clearly seen that Europe represents an important market for Russian gas and that there is a strong "gas dependence relationship" between some European countries and the Russian Federation. Concerning the EU Member States, data for 2018 show how much these countries are significant for Russia. Out of a total of 200.6 billion $m^3$ of gas that Russia exports to Europe, only 2.6 billion $m^3$ of gas is supplied to non-EU members (practically Serbia, B&H and North Macedonia). The rest of the volumes of Russian gas exported to Europe, 25.9 billion $m^3$, is to Turkey (BP 2019). Among other gas exporters to European countries, after Russia, the most important is one is Norway with 118.9 billion $m^3$ or 21%, then the Netherlands with 32.5 billion $m^3$ (5.9%), Algeria - 38.9 billion $m^3$ or 7.06%, Azerbaijan with 9.2 billion $m^3$ (1.67), Iran - 12.1 billion $m^3$ (2.2%), etc. (BP 2019).

The importance of natural gas, as one of the energy sources needed by countries, is growing rapidly. Projected global gas consumption for the period 2010-2030 is within the ragne of 23% to 28% of the world's primary energy demand, and by 2050 gas consumption should increase by 138% (Petrović 2010, 65-66). A growing number of countries is in demand of gas, either to use it to improve the quality of life of citizens (heating, transportation, etc.), or to maintain and develop national economies (gas is used in various industries: agriculture, chemical industry, glass, ceramics, construction materials, etc.). The use of natural gas, as compared to other energy sources (coal and oil, for example), offers the benefits such as far less pollution for the environment, and lower cost of transporting gas (by pipelines) in comparison to transporting oil. Having enough natural gas, for any country, means to have energy security that enables economic independence and safety, as well as social stability and vice versa. For many countries, a shortage in natural gas is not only an issue of energy instability, but it also raises doubts about the functioning of the economy, potential financial crisis and social instability. Natural gas, therefore, is becoming an increasingly important factor in the relations among countries, for the ones that have gas (a small number of them), for others that do

not have sufficient volumes of gas and want to have more (majority of them), as well as for the countries across the territories of which the gas pipelines are running (transit countries).[6]

The question of the importance of gas, therefore (whether being about its production, consumption, transport or market value), has primarily geopolitical, and only then economic significance. The volume of gas delivered to some country, or its transport across the territory of one or more countries, the place, i.e. state which becomes a gas hub or where the gas is stored, from the perspective of the great powers, this is primarily a matter of *possibilities for realizing their geopolitical interests*, and not of the interests of the state concerned, nor general interests. Big countries that are at the same time also gas producers (certainly, such as the RF and the U.S.), are highly interested in controlling, that is, in potential influencing the countries that are connected by gas or which consume gas, in order to influence the sale of their own gas or to prevent the purchase of gas, by the other, rival, party, and thus to achieve economic and geopolitical interests.

The extent to which the issue of gas supply to countries is primarily of economic nature, and the extent to which it is becoming a (geo) political issue, depends on the interests of the countries

6 The best example of the influence of natural gas on the geopolitical position of a country is Ukraine. Along with Belorusia, it was a transit connection (route) for the transport of gas from Russia to several European countries, which provided Ukraine with additional "relevance" in relations with Western countries. Although due to the events of the past few years in Ukraine (political changes, armed conflicts in the Dombas region, the referendum on Crimea's independence for the annexation of Russia, etc.) shifted the focus of the western countries' attitude to the political dimension of relations through providing a support to Ukraine opposite RF which also included the introduction of sanctions, the fact remains that Ukraine is primarily significant as a country of natural gas transit. By building new transit routes, some European countries met their needs for gas also from other gas pipelines, however for some countries, especially in the Balkans (Serbia, B&H, Macedonia, Bulgaria and Romania), the supply of Russian gas through Ukraine was almost the only source of supply. The "gas significance" was additionally strengthening the Ukraine's position with Western countries, because by supporting Ukraine, they could influence the fate of Russian gas, including the interruption of supplies, which until recently would be a big blow to the Russian economy. The gas crises of 2006, 2009, and 2014 showed the significance of Ukraine's transit position for the needs of (Western economies) (Vreme 2019), (Politika 2019), (Vreme 2014).

concerned.[7] "Relations" between Ukraine and the RF regarding gas have "spilled over" to numerous European countries and, more than ever, have raised the issue of the use of gas as part of the strategic interests of countries. The fate of the gas pipelines Nord Stream 1 and 2, Turkish Stream or the South Stream gas pipeline confirmed the influence of the strategic interests of the great powers on the final destiny of these pipelines.

The gas crises of 2006, 2009 and 2014, which started in the form of a dispute between Ukraine and RF over the issue of why Ukraine, as a transit country, is using or storign the Russian gas which is intended for European countries, then the price of transporting Russian gas through the territory of Ukraine, the volumes of gas transported (Putniković 2020), as well as the prices of gas itself (for Ukraine), which affected the energy situation in many European countries (partial or complete interruptions in the supply of Russian gas through Ukraine), "opened" a serious of various issues, such as the ones regarding the energy sector, economic and geopolitical issues in Europe, as well as globally.

For Ukraine, the transit of Russian gas through its territory was of manifold significance. First of all, Ukraine itself was also a user of Russian gas, which was a guarantee of its energy security and the smooth functioning of the economy. The transit position it occupied enabled Ukraine to gain significant financial resources (several billion dollars a year), which was of great importance for the country's budget revenue inflow. Nevertheless, for Ukraine, the most significant consequence of its transit role in supplying Russian gas to a large number of European countries lay in the fact that the largest quantities of Russian gas were delivered to Europe via Ukraine, which allowed it to have a special role among European countries – " the role of protector of energy interests and needs of several European countries."

For the RF, gas crises have opened the issue of searching for alternative routes of gas supply to European countries. In practice,

7 M. Stepic believes that the issue of achieving so-called resource security (natural conditions and resources, which, according to him, includes the management of territory, fertile land, water, flora and fauna, energy, ores ...) is "a top-level geopolitical issue and the reason for constant regional and local conflicts.", and that "in the postmodern era, energygeopolitics (primarily oil and gas geopolitics) has the most obvious global relevance. (Stepić 2016, 15-34).

this meant that Russia did not want to be a prisoner of Ukraine's interests, i.e. to depend on the will (interests) of the ruling political forces. In 2015, President of the RF V. Putin pointed out that "we see no reason to interrupt gas transit through Ukraine after 2018" (Union of Power Engineers of Serbia [SES] 2019). By initiatives to build new gas pipelines (Nord Stream 2 and Turkish Stream) Russia has shown a clear intention to build alternative gas pipelines to supply European countries with gas, and thus reduce the amount of its gas transported through Ukraine, and thus reduce the importance of Ukraine as a transit country.

Following the gas crises, European countries "understood" not only the importance of Russian gas for their own needs, but also the importance of preserving Ukraine's position. Given Ukraine's internal political divisions (pro-Western and pro-Russian political forces), Ukraine's "gas importance" for Western countries also meant actively providing greater political and financial support to those Ukrainian officials who advocated the supremacy of Euro-Atlantic integrations, (EU and NATO membership) as opposed to the cooperation with the RF.

For the United States, the gas crises of 2006 and 2009 represented a "sign" to start, more actively than before, the process of implementing the concept of "separating Europe from energy dependence on Russia", through achieving three strategic goals: 1) diversifying Europe's gas supply by construction of a gas pipeline that would bypass Russian gas (and the influence of the Russian Federation)[8], 2) strengthening Ukraine's position as the most important transit country, either originating from Russia or from some other Eurasian country, but exclusively through Ukraine and 3) increasing sales of its liquefied gas on the European market, as a substitute for Russian gas. This strategic, but objectively long-term goal, is the reason why the United States has so strongly supported the "Three Seas" Initiative. By achieving these goals, the United States has strengthened its geopolitical position in Europe[9], both

8 The Nabucco Project

9 That the sale of its liquefied gas in Europe is not the main reason for US action to reduce Russia's influence in the European gas market, but that America's primary geopolitical interests in Europe are (strengthening US influence, Ukraine's maintaining the position of a transit country for Russian gas and the one that has a common border with Russia, etc.) have been confirmed by data on the production

among EU Member States and among other European countries.

The "Three Seas" initiative, promoted by some EU members and supported by the United States, brings together 12 European countries and aims to connect countries in the area between the three seas: Adriatic, Black and Baltic Seas, through infrastructure (energy and transport) digital and other projects, includes a very important "gas dimension". These are projects for the construction of a new gas pipeline in the directions of the north and south, but also for the construction of a liquefied gas terminal. (The first liquefied gas terminals from America would be built in Poland and Croatia). In both cases, there are several goals: to reduce Russian gas sales, weaken Russia's ties with European countries, distance as many countries as possible and (if possible) confront with Russia, and simultaneously increas US sales of liquefied natural gas in Europe, particulary in the countries that are the members of this Initiative, and to bind those countries more tightly to the United States.[10] That the reduction of Russian influence (and gas) on European countries is the primary goal of America (and of the "Three Seas" Initiative) is also shown by the data on the delivery of liquefied gas from America to other countries, including European countries.[11]

of liquefied gas in the United States for 2019. That year, the United States produced five times less liquefied gas compared to the volumes of gas that the Russian company Gazprom exported to Europe, that is, the equivalent of natural gas expressed in liquefied gas. (Gazprom exported about 200 billion cubic meters of natural gas to Europe, which corresponds to 145 million tons of liquefied gas), while the volume of liquefied natural gas produced in the United States was 30 million tons - almost five times less (Marcinkevich, Boris 2019).

10 The member states of the Three Seas Initiative are: Austria, Bulgaria, the Czech Republic, Estonia, Croatia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia and Slovenia. The initiative originated as a Croatian-Polish project that was formally launched in 2016, at a meeting in Dubrovnik. So far, several summits of the Initiative member states have been held and several projects worth 45 billion euros have been promoted. The United States is a partner country. The US reaffirmed its support for the Three Seas Initiative at the Munich Security Conference, when Secretary of State Mike Pompeo pledged $ 1 billion (Blic online 2019), (DW 2019), (N1HR 2020), (N1HR 2020), (Pečat 2020), (Troptal 2019) ).

11 If it is known that the United States exported 28.4 billion $m^3$ of liquefied gas in 2018, and that European countries imported 67.6 billion $m^3$ of the same gas from other countries (Qatar, Algeria, Nigeria, Norway, etc.), and from the United States only 3.9 billion $m^3$, then it is clear how much, actually, the delivery of American liquefied gas represents a long-term and far-fetched goal, and that the primary goal

The gas pipeline, Nord Stream 1, which connects Russia via Germany with several European countries, was characterized by the EU already in the year 2000 as a project of "strategic importance for the entire Europe" (Marcinkevich 2019), which made it economically attractive for many investors and it thus became a "European-Russian project". The economic dimension of this project (additional volumes of natural gas required) was dominant at the time, while the political dimension remained in the background, although it could not be ignored. After all, this was not the first time that Russia has supplied gas to European countries. Even in the time of the Soviet Union, Russian gas was delivered (sold) to the leading countries of Europe, mostly Germany[12], but also to other countries (France, Italy, etc.) and its delivery was not interrupted or reduced by the disappearance of that country. On the contrary, the quantities of delivered gas were regularly delivered in increased volumes.

Russia's "gas influence" is expressed not only in the volume of gas delivered to European countries, but also in the fact that Gazprom "operates the entire network of European main gas pipelines and many underground gas storage facilities (PSG), fully integrated into the European gas supply system" (Euractive 2011). Among the underground storage facilities, the one that stands out in terms of importance is the Rehden storage facility, with a capacity of 4.7 billion cubic meters, which is the largest underground gas storage facility in the EU (DW 2018) (the size and capacity of the underground gas storage can be understood if it is known that the annual consumption of natural gas in Serbia in 2015 amounted to 2.8 billion cubic meters (Politika 2019 (Stanojević et al. 2020)). It is known that the annual consumption of natural gas in Serbia in 2015 amounted to 2.8 billion cubic meters (Politika 2019 (Stanojević et al. 2020)).

is to slow down the supplies of Russian gas and confront a number of European countries with Russia (VR 2019) (Zubovic 2019).

12 Exports of natural gas from the USSR in 1989 amounted to 102 billion $m^3$, out of which 17.9 billion $m^3$ were delivered to the Federal Republic of Germany and 7.4 billion $m^3$ to the Democratic Republic of Germany (Marcinkevich 2019).

## THE FATE OF THE NORD STREAM 2 GAS PIPELINE

The Nord Stream 2 gas pipeline is to provide new (additional) 55 billion $m^3$ of natural gas from Russia to Germany and other European countries. The route of the 1230 km long gas pipeline, the construction of which began in 2018, runs parallel to the Nord Stream 1, to the bottom of the Baltic Sea. The construction of the gas pipeline is financed by a consortium of companies. In addition to Gazprom, which finances 50% of the project, Wintershall and EON (from Germany), Austrian OMV, French Engie and the Anglo-Dutch company Shell (SES 2019) also participate in the construction costs for the gas pipeline (second half). As soon as it became announced and the construction started, Nord Stream 2 started to provoke various, divided, reactions from the USA, which were against its realization from the start. Former US Secretary of State R. Tillerson, during his visit to Poland in January 2018, stated that the Nord Stream 2 project "*undermines Europe's energy security and stability*" (Sputnik 2018). In December 2018, the US House of Representatives unanimously passed a Resolution on Imposing Sanctions to the Construction of Nord Stream 2. The resolution called on US President D. Trump "to support European energy security through market diversification and *reduced dependence on Russia*" (N1 2018) (DW 2018). The attitudes and sanctions of the US did not sway the European countries that support Nord Stream 2, nor did they stop the construction of the gas pipeline. That is why America has gone a step further. On December 20, 2019, D. Trump signed the US 2020 Defense Authorization Act (previously adopted by the House of Representatives and the US Senate), which includes sanctions against the NordStream 2 and Turkish Stream gas pipelines. Sanctions are targeting the companies participating in the construction of two gas pipelines.[13]. Germany, which under certain conditions[14] supported the construction of Nord Stream 2

13 More than 672 contractors (including about 370 German companies) were engaged in the construction of Nord Stream 2, a 1230 km long gas pipeline. Among them, only two companies specialize in laying pipes on the bottom of the Baltic Sea: the Swiss company Olsis and the Italian Saipem (Politika 2019).

14 Before the start of works on the construction of the Nord Stream 2 gas pipeline, the (then) Minister of Economy and Energy of Germany, Sigmar Gabriel, stated that German support for the construction of this gas pipeline has three conditions: Nord Stream 2 "It must meet the requirements of EU legislation, it must not jeopardize

from the beginning, reacted sharply against this attitude of America. The German government assessed the American sanctions as "interference in the internal affairs of the country" and that "the Government rejects those extraterritorial sanctions" ... which ... "affect German and European companies and represent *an interference in our internal affairs*" (B92 2019). The EU condemned US sanctions "against European companies participating in legal activities" (B92 2019). Minister of Foreign Affairs of Austria A. Schalenberg rejected US sanctions - claiming that "this gas pipeline contributes to the diversification of Europe's energy supply and does not harm the interests of Ukraine." (Sputnik 2020).

During the entire process of planning and construction of Nord Stream 2, Russia and Germany were emphasizing the economic aspect of the project and, logically, they were the most persistent in supporting the gas pipeline. Other European countries also supported the construction of a new gas pipeline. Austria and Norway (Europe's largest gas supplier itself) emphasized that the "project will strengthen European energy security" and that Russia is a reliable gas supplier (Sputnik 2020). Logically, the countries whose companies participated in the construction of the gas pipeline or already use Russian gas, such as France and the Netherlands, also joined the support for Nord Stream 2.

It should be noted that, when supportting the construction of the gas pipeline, the Austrian Minister uses the argumentation of the contribution of Nord Stream 2 to "diversification of Europe's energy supply", and that is actually the same position with which the USA disputes the construction of this gas pipeline. Also, one of the companies participating in the construction of Nord Stream 2, Shell, announced that it supports this project, regardless of US sanctions, because it is "important for Europe's energy security" (B92 2020). In this case, also, the same argumentation (Europe's energy security) which the United States uses to challenge and stop the construction of Nord Stream 2 is used to support the gas pipeline.

But it's not just the United States that opposes the construction of Nord Stream 2. The same attitude is shared by several

transit through Ukraine and it must not restrict gas supplies to Eastern Europe" (SES 2019).

European countries. Immediately before the start of works on the construction of this gas pipeline, nine EU Member States (Czech Republic, Estonia, Hungary, Latvia, Poland, Slovakia, Romania, Lithuania and Croatia) sent a letter to the President of the European Commission Jean-Claude Juncker objecting to the construction of Nord Stream 2, claiming that, if constructed, this gas pipeline would "generate potentially destabilising geopolitical consequences" (SES 2019). Ukraine is also among the opponents of this gas pipeline, but obviously some other European countries as well, which was confirmed by the US Ambassador to Germany R. Grenell, saying that in addition to the European Commission and the European Parliament, there are 15 European countries (without naming them) which "expressed their concern about Nord Stream 2" (Politika 2019). At the same time, Grenell described America's decision on sanctions against Nord Stream 2 as "pro-European" aimed at "diversifying European energy suppliers and making sure that no country has the abitility to create undue leverage over Europe in terms of energy." (Politika 2019).

The members of the Visegrad Group not only condemned the construction of the Nord Stream 2 gas pipeline as a political project, but also accused Brussels of applying double standards, because it "stopped the Russian South Stream gas pipeline through Serbia, while it does not stop the expanding of gas supply capacity to the West." According to Polish President Andrzej Duda, this is a project that is to "deepen Europe's dependence on Gazprom and whose goal is to bring discord into the European Union."

The European Parliament, in March 2019, voted against the construction of Nord Stream 2. The EP resolution, adopted by a majority of EU lawmakers, called for a halt to the Nord Stream 2 project, saying the project "strengthens the EU's dependence on Russian gas supplies and jeopardizes the bloc's energy policy and strategic interests" (B92 2019). This EP resolution, although non-binding, nevertheless illustrates the attitude of most EU countries towards the Nord Stream 2 gas pipeline.

Giving particular emphasis to the political dimension in the export of Russian gas to Europe (although Russian gas accounts for about 44% of the total gas consumption of European countries), is also present when it comes to gas supply to the area of Southeast

Europe. Thus, the Political Committee of the NATO Parliamentary Assembly, through the Subcommittee on NATO Partnerships, in its draft Report on Security in the Western Balkans from September 2018, stated that the RF is dominant as the main gas exporter to Serbia, North Macedonia and Bosnia and Herzegovina and that it utilises this position as "one of its primary geopolitical leverage points - energy politics - across the region" (Raynell 2018).

The American sanctions had an effect because the Swiss company Olsis, which laid pipes on Nord Stream 2, terminated further works and withdrew its ships from the Baltic Sea. Out of the planned 1230 km long gas pipeline, a 50 km long section remains to be completed (Politika 2013), (B92 2019). Representatives of Gazprom and the Government of the RF pointed out that Russia has the technical capabilities to complete the pipeline on its own (there are two ships that can complete the laying of the pipes) (Miller 2020). The leaders of the RF and Germany confirmed at the meeting held in early January 2020 in Moscow that Nord Stream 2 will be completed, regardless of the US sanctions (Sputnik Serbia 2020). It remains to be seen what is the completion date, i.e.. the timeframe within which the gas pipeline will be completed.

## THE FAILURE OF THE SOUTH STREAM GAS PIPELINE CONSTRUCTION PROJECT

The South Stream gas pipeline, which was supposed to supply Russian gas to several Central and Southeastern European countries, had a different fate than the Nord Stream, i.e. unlike the Nord Stream, which has been in use since 2011, the South Stream is not completed. The construction of the South Stream began in 2012 (the city of Apan, near Krasnodar), while the works were stopped at the end of 2014. The South Stream route is planned to start in Russia, extending beneath the Black Sea to Bulgaria, with two branches, one of which would extend to Greece and Italy and the other to Serbia, Hungary, Slovenia and Austria (Euractiv 2011), (Euractiv 2012). The length of the gas pipeline was 900 km, and the capacity was planned at 63 billion $m^3$ of gas. The project of the gas pipeline construction worth 15 billion euros (Euractiv 2012) involved as partners in the construction, in addition to Rus-

sia's Gazprom, which owned 50% of the project, Italy's Eni (20% ownership), Germany's Wintershall and France's EDF (15% each) (Euractiv 2012). The project of the gas pipeline construction later included two more countries: B&H and Croatia, which were supposed to be connected to the gas pipeline via two branches, on the route through Serbia (Euractiv 2014). Despite the fact that from 2008 to 2010 the Russian Federation signed interstate agreements with seven countries (including EU Member States) on joint participation in the construction of the South Stream (with Bulgaria, Serbia, Hungary and Greece in 2008, with Slovenia in 2009 and with Croatia and Austria in 2010) and that the project was presented at the EU headquarters (Brussels) in April 2011, the project was not granted the same status as Nord Stream (which since 2006 had the status of a project in accordance with with guidelines for Trans-European Energy Networks) (Euractiv 2014). In addition to the political interests of a number of EU Member States opposing the implementation of the project because it bypasses Ukraine and strengthens Russia's influence, and additionally strenthend by the entry into force of the Third Energy Package in the EU, in March 2011, which regulated the operation of the companies exporting gas to Europe by ordering them to unbundle the activities of production and transmission by the gas pipelines owned by them (Euractiv 2014). Russia's position was that "*the goal of the Third Energy Pact is to prevent Gazprom from expanding in the distribution sector in Europe*" (Euractiv 2014). That the legal issues which the South Stream gas pipeline had in regards to the European Union could stop its construction became evident on December 3, 2013, when the European Commission announced that all bilateral agreements signed by seven countries with Russia violate EU law, as well as that in addition to the legal and technical aspects (construction of the South Stream), a broader perspective of "developments in the relations between the EU and Russia" must be taken into account (Euractiv 2014). This "broader perspective of developments" referred to the events in Ukraine during March 2014, when the Parliament of the Autonomous Republic of Crimea first adopted the Declaration of Independence of Crimea from Ukraine, and then Crimean residents voted in a referendum to join Russia and eventually the Republic of Crimea became part of the Russian Federation. In response to the events in Ukraine

and concerning Crimea, the EU imposed sanctions on RF and postponed talks on South Stream (Euractiv 2014). The works on the construction of the South Stream gas pipeline were officially suspended on December 1, 2014, when V. Putin, the President of the Russian Federation, during his visit to Turkey, announced that "in the current conditions, Moscow will not implement the South Stream project because it has not received a permit from Bulgaria and the EU" (Danas 2018). Gazprom's loss due to the suspension of the construction of South Stream amounted to USD 800 million (Danas 2018). Two years later, Putin's words were confirmed by the Prime Minister of Bulgaria, Boyko Borisov. Addressing the youth of his party GERB in September 2016, at the gathering in Varna, Borisov said: "We stopped the South Stream", Europe said "No" to that project" (Danas 2018). Three years later, Borisov spoke of the enormous pressure from Western Europe and the United States to cancel South Stream (RTVBN 2019). The Prime Minister of Hungary V. Orban then (in 2014) accused Brussels of "sabotaging the South Stream gas pipeline, claiming that the EU was constantly working on undermining this program" (Euractiv 2014). The same position was repeated by the President of Hungary, Janos Ader, at the meeting of the Visegrad Group. Ader accused Brussels "of applying double standards because it stopped the Russian South Stream gas pipeline *whereas it did not stop the expansion of the capacity for gas deliveries to the West (via the Nord Stream 2 gas pipeline*)." (Euractiv 2018).

The South Stream gas pipeline, which was supposed to supply Russian gas to several European countries, has not been completed. It became a victim of global relations and geopolitical interests of the EU (and the United States) towards the Russian Federation. The EU (at that time a larger number of Member States, as well as the U.S.) did not allow Russia to increase the delivered volumes of gas and thus, to economically and politically, strengthen its presence in Europe. Ukraine was partly the reason for the negative attitude of the EU towards the Russian gas pipeline (due to the annexation of Crimea to the Russian Federation and the fact that the route of the gas pipeline bypassed the territory of Ukraine). Essentially, however, the geopolitical interests of the EU (and the U.S.) remain the primary reason for the negative attitude towards the South Stream. Concerning energy supply, the EU was

not jeparadized because, in addition to the previous gas pipelines, Russian gas was also delivered to Europe via Nord Stream. And the Russian gas was not the only one. The consumers in Europe were also using gas from the Netherlands and Norway.

Russia was defeated in this gas-political conflict. It lost one stage (battle) in its long-term effort ("energy war") to sell as much gas as possible to European countries, while bypassing Ukraine. That this is only one stage and that Russia does not want to depend on the will (interest) of Brussels is confirmed by two initiatives launched by Russia in 2014. A 30-year agreement was signed with the Chinese National Petrochemical Corporation on the delivery of Russian gas through the Power of Siberia gas pipeline. In addition, V. Putin announced the construction of a joint gas pipeline with Turkey. The biggest losers due to the suspension of the South Stream were the Balkan countries of Serbia and Bulgaria, which were almost completely supplied with gas from Russia via Ukraine. The "higher interests" of the EU left them without a secure energy source. Serbia, as a candidate country for EU membership, was not in a position to query anything, but it faced a fait accopmli. It was different with Bulgaria. It was involved in suspending the construction of the South Stream. As an EU Member State, Bulgaria agreed to subordinate its economic interests (direct supply of Russian gas plus revenues from the gas transit fee through Bulgaria) to the goals (interests) of the EU (and the U.S.). U.S. action against the construction of the South Stream took place indirectly: through Brussels (EU headquarters) and Bulgaria. In both cases, the United States succeeded in its goal - to stop the construction of a new gas pipeline that would deliver Russian gas to Europe.

## THE CONSTRUCTION OF TURKISH STREAM GAS PIPELINE

Although the Turkish Stream gas pipeline was announced at the end of 2014, during the visit of V. Putin to Turkey, it took almost three years to begin construction. The reason behind that were the worsened relations between the two countries[15]. After

15 The relations between Russia and Turkey deteriorated after Turkish forces shot down a Russian plane in Syria. That was the reason why the gas pipeline construction project was suspended in November 2015. Turkey later apologized to Russia

resolving the disputed issues, Russia and Turkey first signed an agreement on the construction of a gas pipeline across the Black Sea in October 2016, and in May 2017, the implementetion of this project began. The gas pipeline is 930 km long and includes two pipelines that connect the Russian city of Anapa with the Turkish village of Kıyıköy across the Black Sea. The capacity of each pipeline is 15.75 billion $m^3$ of gas, or a total of 31.5 billion $m^3$ of gas per year. The gas pipeline was intended to supply the necessary gas for Turkey, as well as the for the SEE countries. In the course of the construction of the gas pipeline, in early November 2018, Gazprom passed a decision that "the route of the Turkish Stream gas pipeline shall continue through Bulgaria, Serbia, Hungary and Slovakia" (Sputnik 2018).

The section of the gas pipeline up to Turkey (the so-called Turkish section) was completed at the end of 2019 and was officially commissioned on January 8, 2020. Erdogan called the start of the gas pipeline operation "a historic event for Turkish-Russian relations and for the regional energy map" (Novosti 2020). While assessing that the partnership between Russia and Turkey is growing stronger, V. Pupin said that the Turkish Stream gas pipeline is "a sign of interaction and cooperation for the benefit of our people and the people of the whole of Europe, the whole world" (Euroactiv 2020), and that gas will travel "from Western Siberia to Turkey, and then to the Balkan countries, including Serbia" (Politika 2020). Simultaneously with the construction of the Turkish Stream, other countries that are also interested in Russian gas, tried to do their part of the work on the branch of the gas pipeline from Turkey, through Bulgaria and Serbia to Hungary. Firstly, Bulgaria completed a portion of the gas pipeline from the border with Turkey to the Strandzha compressor station (11 km long), and then began work on the construction of a section through Bulgaria to Serbia (Novosti 2020). The works on the section through Bulgaria, from the southern border of Bulgaria with Turkey to the western border with Serbia in the length of 474 kilometers (works worth 1.1 billion euros) began later than planned (due to several lawsuits of companies involved in the selection of the contractors for the works), but they are being performed and are planned to be completed in 2020 (B92 2019).

for shooting down the plane. In addition, there were differences between the two countries regarding the events in Syria and Libya (Kurir. 2018).

The works on the construction of the section of the (main) transmission gas pipeline through Serbia from the border with Bulgaria to the border with Hungary are soon to be completed. The pipes of the gas pipelines have been installed on the entire route through Serbia in the length of 403 km. It is planned that the measuring stations and the large compressor station (B92 2020) will be completed by the second half of 2020. Following that, technical conditions would be created for the flow of gas from Bulgaria to Serbia. The flow of gas towards Hungary will start later, after the compressor stations on the Hungarian territory have been built (B92 2020). The importance of the construction of the Turkish Stream gas pipeline through Serbia is immeasurable for the future economic and social development of Serbia. It "builds the arteries and veins of energy security and the future" of Serbia (Danas 2020). The gas pipeline gives Serbia the opportunity to develop its secondary network, in line with economic development. The gas pipeline can facilitate future investments and certainly provides the country with revenues based on the gas transit fee (Danas 2020).

The construction of the Turkish Stream was not in the interest of the United States, neither when it comes to the delivery of gas from Russia to Turkey, nor in regards to the gas delivery schedule, by the other branch of the gas pipeline to Bulgaria, Serbia, Hungary and other European countries. In the course of the construction of the gas pipeline, in February 2019, U.S. Secretary of State M. Pompeo, during his visit to Hungary (EU and NATO members), asked the Prime Minister of Hungary to abolish the support to the construction of the Turkish Stream. However, the Prime Minister of Hungary "remained at the position of supporting the construction of the Turkish Stream, i.e. the gas pipeline that would go through Bulgaria, Serbia, Hungary" (Tanjug 2019). America confirmed its persistent intention to hinder the Turkish Stream by adopting the U.S. 2020 Defense Authorization Act (which was adopted by the U.S. House of Representatives, the U.S. Senate) which imposes sanctions on companies participating in the construction of the Turkish Stream (Politika 2019). The spending bill also included a halt on the delivery of new generation F-35 American planes to Turkey, in response to the fact that Turkey bought S-400 anti-aircraft systems (B92 2019) from Russia. The essence of the American sanctions against the Turkish Stream was explained by the U.S.

Under Secretary of State, D. Hale, in an interview to the Bulgarian National Radio, by assessing that "the second branch of the Turkish Stream, which will supply gas to SEE through Bulgaria ... is a problem" (B92 2020), because the United States views it as Russia's geostrategic project that does not ensure energy distribution for Europe and which destabilizes Ukraine, and allows Russia to bypass it"(B92 2020). As in the case of Nord Stream 2, the U.S. considers the construction of the second branch of the Turkish Stream (for European countries) a threat to "European energy security" and that Russia can use it to "exert an inappropriate level of political, economic and military influence" (Euractiv 2019).

The USA will not give up sanctions imposed to stop the construction of the second branch of the Turkish Stream gas pipeline. On account of caring for the Europe's energy future, the U.S. is acting against European countries that are participating in the construction of this gas pipeline. The United States cooperates with some of these countries bilaterally and within the EU (Bulgaria, Hungary, Austria), and with some it is an ally within NATO (Turkey, Bulgaria, Hungary). The fact that the gas supplied by the Turkish Stream will provide energy security to many countries and create conditions for economic development is not important for the United States either. The global conflict with the RF in Europe is obviously a priority for the United States as compared to the needs of European countries. Suspending the Turkish Stream for the United States is also important because of Ukraine's position. In case the Turkish Stream is stopped, Ukraine still has its significance in the transport of Russian gas, as a country that has a common border with RF and poor bilateral relations for several years. European countries will continue their "battle" for the Turkish Stream. Not because of Russia, nor against the USA, but out of the need to secure sufficient gas for their development. Turkey is the only one that has succeeded in that so far. It remains for the other member states of the Turkish Stream to implement their part of the construction works on the construction of the gas pipeline and to "convince" Brussels that the gas pipeline is in line with EU regulations and for the benefit of European countries and their citizens.

Despite numerous announcements by the Russian side, including the most important representatives of the Russian Federation, that once the ten-year agreement with Ukraine on gas transit has ended, deliveries of Russian gas to Europe in this direction will stop, that did not happen. Different interpretations and reactions of Russia and Ukraine, about the volume of gas transported through Ukrainian gas pipelines, the price of transport, the price of gas, etc. led to mutual suspicion, and eventually to litigation. Thus, the arbitration court of the Stockholm Chamber of Commerce, in the dispute between Russia's Gazprom and Ukraine's Naftogaz, ruled that Gazprom was obliged to pay USD 2.56 billion to the Ukrainian company, due to lower gas supplies from Russia compared to undertaken commitments (DW 2018). The court's decision further burdened negotiations between Russia and Ukraine on signing a new agreement on the transit of Russian gas through Ukraine, as well as increased the concern of a significant number of European countries about their "gas" fate if the agreement was not signed and if the gas supplies were[16]. But a compromise has been reached and Russia and Ukraine have signed several agreements on the delivery of Russian gas through Ukrainian territory. The agreement was signed for a five-year period (with the possibility of extension for another ten years) with Russia's obligations to deliver, within the five-year period, starting in 2020, 65 billion $m^3$ of gas to Europe in the first year, and 40 billion $m^3$ of gas annually in the next four years. The Russian company Gazprom undertook to pay funds to the Ukrainian Naftogaz in accordance with the decision of the court in Stockholm, and to mutually withdraw all claims regarding gas. Ukraine expects a revenue of at least USD 7 billion in five years of gas transport through its territory, regardless of the volume of gas to be transported. In this way, by signing the agreement, not only the issue of transit of Russian gas through Ukraine was resolved, but also a series of other important issues that are highly relevant for gas, which started the re-establishing of the "balance of interests of the two sides" between the two countries, at least when it comes to natural gas (B92 2020).

16 Hungary, Romania, Bulgaria, Serbia, Greece, Macedonia, B&H.

## CONCLUSION

That natural gas has become a political weapon and a subject of geopolitical interests of certain countries is best shown by the fate of the gas pipelines Nord Stream 2, South Stream and Turkish Stream. These pipelines are designed to connect Russia with Germany (Nord Stream 2), Bulgaria (South Stream) and Turkey (Turkish Stream), and then with other European countries that are on the route of the gas pipeline construction or that are in demand of Russian gas. On one side there is the RF, as a large producer and distributor of natural gas, and on the other there are countries that need that gas for economic and social development. There is no doubt that these gas pipelines were strategically planned by Russia during the years of disputes and conflicts with Ukraine over the price and volume of gas transported to other European countries. It is also indisputable that with the realization of these projects (construction of gas pipelines), Ukraine would lose its significance as a "transit country for Russian gas". These "two elements" of Russian gas: supplying European countries and improving mutual cooperation and bypassing Ukraine, were and still are the basis (reason) for U.S. action to prevent the construction of these gas pipelines. With the explanation of the concern about "European energy security" and "the need to diversify the gas supply of European countries", the USA is essentially acting against the RF and its presence in Europe. In addition, it offers its liquified gas (which is still insufficient) and the construction of new gas pipelines (which do not exist or are limited in terms of the gas volume), all to prevent the purchase of Russian gas and Russia's influence. In essence, the United States continues to act as a global leader and patron of Europe. The United States demonstrates global supremacy and leadership, without respecting (certain) European countries and their interests. In its politics (attitude) towards Russia, it also enjoys the support of a significant number of European countries, mostly Eastn European, former members of the Warsaw Pact and close allies of the Russian Federation in the last century, as part of the USSR. For them, the new political position, membership in the EU and NATO, mostly means a new, negative attitude towards Russia. The results of the United States are different. The Nord Stream 2 gas pipeline, although a small portion is not finished yet,

it will hardly be able to suspend. The reason for that is Germany, economically the strongest European country, and politically one of the most influential, which has established direct "gas" contact with Russia (because of its high demand for Russian gas), which is striving to finish the Nord Stream 2 and which opposes U.S. sanctions. In fact, Germany is the only complete winner in this great showdown between the United States and Russia. Germany has not damaged relations with the United States (despite opposition to its sanctions), has direct gas ties with Russia and increased the volumes of the Russian gas for the needs of its economy, and has managed to "persuade" the Russian Federation to find a "common language" with Ukraine, to sign agreement on gas transit through Ukraine until 2025 and thus "retain" the role and importance of Ukraine, not only as a transit country for gas but also as a neighbor of RF. The evidence of Germany's strength is reflected in the fact that, although a large number of EU members were opposing the Nord Stream 2, they failed to suspend the construction of the gas pipeline. On the contrary, the EU has supported Germany in regards to the gas pipeline by declaring its opposing to the U.S. sanctions.

South Stream is not constructed. Despite the fact that the gas from this gas pipeline would be very much needed by the countries of Southeast Europe, other European countries would also be supplied by additional volumes of gas. Also, it is clear that on the other side (from Russia) there was no strong EU member that would stand behind this project. That, in addition to the pressure exerted by the USA, determined its fate. The Turkish Stream is partially built. The construction of the second branch of the gas pipeline through Bulgaria and Serbia to other European countries is in progress. For now, the works are progressing without any serious issues. But that still does not mean that the gas pipeline will be completed. Even though there are EU and NATO members that are located on the route of its construction and which are also users. Even though the countries involved claim that the construction of part of the route through their territory is in line with EU regulations in the field of energy. The pressure exerted by the USA to suspend the construction of the other branch (according to European countries) still exists, as in the case of South Stream.

The United States ignores the interests of European countries in gas, and does not pay attention to the fact that it has excellent economic and political relations with most of those countries (as members of the EU and NATO). Relations within the EU, as well as relations in the triangle (EU, USA, Russia) will determine the fate of the other branch of the Turkish Stream gas pipeline. RF is trying to increase gas supplies to Europe, but also to find new consumers for its gas. The Nord Stream 2 gas pipeline is almost completed. South Stream is not built. However, that did not stop Russia. In the same year when it became clear that South Stream will not be built (in 2014), Russia agreed with Turkey and the People's Republic of China on the construction of a gas pipeline and gas delivery, which speaks of Russia's strategic presence. One suspended gas pipeline opened the door for two new gas projects. In early December 2019, the Power of Siberia gas pipeline, which supples Russian gas to China, was put into operation. It is planned to deliver 38 billion $m^3$ per year to China over a period of 30 years. The first part of the Turkish Stream has been completed, and the delivery of gas to Turkey, with a capacity of 15.75 billion cubic meters of gas per year, began in early January 2020. The construction of the second branch of the Turkish Stream gas pipeline is in progress. It has become clear that natural gas is not only one of the energy sources, but also a political tool of the governments and that the geopolitical interests of states, big countries (as a rule) determine the fate of individual gas pipelines, and thus affect the position and economic development of those countries which are in demand of gas, however they are not "strong" enough to be able to provide gas on their own. Their "gas fate" is decided by others – big countries and their interests.

## REFERENCES

Claire, T. Mike. 2012. "Energy Security", in Paul D. Williams, Introduction to Security Studies, Official Gazette, Faculty of Security Studies, University of Belgrade, Belgrade [In Serbian: Kler, T. Mike. 2012. „Energetska bezbednost", u Paul D. Vilijams, *Uvod u studije bezbednosti*, Službeni glasnik, Fakultet bezbednosti Univerziteta u Beogradu, Beograd.].

British Petroleum [BP] 2019., "BP Statistical Review of World Energy". London: British Petroleum.

Petrovic, Zoran. 2010. *Energy Geopolitics*. Institute for Political Studies, Center "Jugoistok", Belgrade. [In Serbian: Petrović, Zoran. 2010. *Geopolitika energije*. Institut za političke studije, Centar „Jugoistok", Beograd. ].

Vreme. 2019 "RUSSIA, UKRAINE AND THE REST OF EUROPE: No gas without a gas pipeline", January 15, 2009. [In Serbian: Vreme. 2019. „RUSIJA, UKRAJINA I OSTATAK EVROPE: Nema gasa bez gasovoda", 15. januar 2009, http://www.vreme.com/cms/view.php?id=799268].

Politika. 2019; "Ukraine measures Russian determination", August 2, 2010, [In Serbian: Politika. 2019; „Ukrajina meri rusku odlučnost", 02.08.2010, http://www.politika.RS/articles/details/144559].

Vreme. 2014. "Gas Market and Serbia: Where the Gas Pipelines Lead", April 24, 2014. [In Serbian: Vreme. 2014. „Tržište gasa i Srbija: Kuda vode gasovodi", 24. april 2014. https://www.vreme.com/cms/view.php? Id=119225]

Stepić, Milomir. 2016. "Geopolitics: ideas, theories, concepts", Institute for Political Studies, Belgrade. [In Serbian: Stepić, Milomir. 2016. „Geopolitka: ideje, teorije, koncepcije ", *Institut za politicke studije*, Belgrade.].

Putniković Jelica. 2020 "EUROPE 2014 - GAS CRISIS FOR THE THIRD TIME", January 17, 2020. [In Serbian: Putniković Jelica. 2020. „EVROPA 2014 – GASNA KRIZA TREĆI PUT ", 17.01.2020., www.balkan-magazin.net>nafta].

Union of Power Engineers of Serbia [SES]. "GREAT PROJECTS – AND GREAT DILEMMAS", 12.12.2019. http://www.senerges.rs/veliki_projekti_l.html [In Serbian: Savez Energetičara Srbije [SES]. „VELIKI PROJEKTI– VELIKE I DILEME ", 12.12.2019. http://www.senerges.rs/veliki_projekti_l.html].

Marcinkevich, Boris. 2019. "Structure of" Nord Stream 2: Duel of gas companies", March 22, 2019. [In Serbian: Marcinkevič, Boris. 2019. „Struktura „Severnog toka 2": Dvoboj gasnih kompanija", 22.03.2019. http://www.geoenergetics.rs/struktura-severnog-tok-2-dvoboj-gasnih_kompanija/boris-marcinkevich].

Blic online. 2019 "THREE SEAS INITIATIVE", June 6, 2019. [In Serbian: Blic online. 2019. „INICIJATIVA TRI MORA ", 06.06.2019, https://www.blic.rs>inicijativa-tri-m].

DW. 2019 "Three Seas Initiative: Germany does not want to stay aside" 06/06/2019. [In Serbian: DW. 2019. „Inicijativa tri mora: Nemačka ne želi da ostane po strani" 06.06.2019., https://www.dw.com>...Inicijativa].

N1HR. 2020. "USA - gives one billion dollars for the Three Seas Initiative". 02/15/2020. [In Serbian: N1HR. 2020. „SAD - daje milijardu dolara za Inicijativu tri mora". 15.02.2020. hk.n1 info.com>Vijesti>SAD - daje milijardu dolara za Inicijativu tri mora/].

*Pečat. 2020*. "Energy amputation of Europe", no. 609, March 6, 2020, p. 39-41. [*In Serbian: Pečat*. 2020. „Energetska amputacija Evrope ", br. 609, 6. mart 2020, str. 39-41.].

Troptal. 2019. "Another fair of presidential vanities or an actual business: Three seas will continue to be stirred by the Americans", June 10, 2019. [*In Serbian:* Troptal. 2019. "Još jedan sajam predsjedničkih taština ili konkretan posao: Tri mora i dalje će uzburkavati Amerikanci", 10.06.2019. https://www.troptal.hr>članak].

Zubovic, M. "The Three Seas Initiatives" 2019. „Perspectives of Energy Sector Development Within the Croatian Foreign Policy. Post – Soviet Issues"; 6 (1): 84-91. DOI: 10.24975/2313-8920-2019-6-1-84-91.

Euractiv. 2011. "Disagreement between the EU and Russia over energy" 25.02.2011. [*In Serbian:* Euraktiv. 2011. „Neslaganje EU i Rusije oko energetike " 25.02.2011. http://www.euraktiv.rs/eu-prioriteti/1259-neslaganje-eu-i-rusije-oko-energetike].

DW. 2018. "Putin's toy called Gazprom". 02/20/2018. [*In Serbian:* DW. 2018. „Putinova igračka zvana Gazprom". 20.02.2018. http://www.dw.com/sr/putinova-igra%C4%8Dka-zvana-gazprom/a-42652351].

Politika. 2019. "More than 2.5 billion cubic meters of gas from Turkish Stream is enough for Serbia." 11/01/2019. [*In Serbian:* Politika. 2019. „Srbiji više nego dovoljno 2,5 milijardi kubika gasa iz „Turskog toka"". 01.11.2019. http://www.politika.rs/scc/clanak/441039/Srbiji-vise-nego-dovoljno-2-5-milijardi-kubika-gasa-iz-Turskog-toka.].

Stanojević, Petar. Jeftić, Zoran. Obradović, Žarko. 2020. *The Western Balkans countries' accession to the European Union from the energy prospective*, The Review of International Affars, Belgrade, vol. LXXI, No. 1178. pp. 27-54. UDC 339.972:620.9(4-672EU:497).

Association of Power Engineers of Serbia [SES]. 2019. "BIG PROJECTS - BIG IDEAS: Interesting facts in the gas market". 12/22/2019. [*In Serbian:* Savez Energetičara Srbije [SES]. 2019. „VELIKI PROJEKTI – VELIKE IDEJE: Zanimljivosti na tržištu gasa ". 22.12.2019. http://www.senerges.rs/veliki-projekti-l.html.].

Sputnik. 2018. "Washington imposes sanctions on Nord Stream 2, December 12, 2018. [*In Serbian:* Sputnjik. 2018. „Vašington uvodi sankcije „Severnom toku 2", 12.12.2018. www.rs.lat.sputnik news.com/rusija/2018121211181.].

N1. 2018. "Tillerson: The United States is against the construction of Nord Stream 2." 01/29/2018. [*In Serbian:* N1. 2018. „Tillerson: SAD su protiv izgradnje Severnog toka 2". 29.01.2018. www. Rs.n1 info.com>comments>b2019. iznis].

DW. 2018. Nord Stream 2 and Opponents. 01/20/2018. [*In Serbian:* DW. 2018. „Severni tok 2 i protivnici ". 20.01.2018. https://www.dw.com/sr/severni-tok-2-i-protivnici/a-42348089].

*Politika.* 2019. "USA is late with sanctions against Nord Stream and Turkish Stream, December 19, 2019, p. 3. [*In Serbian: Politika*. 2019. „SAD kasne sa sankcijama protiv „Severnog" i „Turskog toka", 19. decembar 2019, str. 3. ].

B 92. 2019. "EU and Moscow condemn US" extraterritorial sanctions: Interference in internal affairs". [*In Serbian:* B 92. 2019. "EU i Moskva osudile američke „ekstrateritorijalne sankcije: Mešanje u unutrašnje stvari", http/.//www.b92.net/biz/vesti/svet.php?yyyy=2019&mm=21&nos_id=163354.].

Sputnik. 2020. Austria against sanctions on the Nord Stream 2 gas pipeline, 13.01.2020. [*In Serbian:* Sputnjik. 2020. Austrija protiv sankcija gasovodu „Severni tok 2", 13.01.2020. https://rs.sputniknews.com/evropa/202001131121528090-austrija-protiv-sankcija-gasovodu-severni-tok-2/.].

B 92. 2020. "Giant remains loyal to Russia": "We support Nord Stream 2", January 17, 2020. [*In Serbian:* B 92. 2020. „Gigant ostaje odan Rusiji": „Podržavamo Severni tok 2", 17.01.2020. http://www.b92.net/biz/vesti/svet.php?yyyy=2020 &mm=01&dd=17& nav_id=1643280.].

*Politics.* 2019. "The Last Attempt of the United States to Block Nord Stream 2". Politika, December 24, 2019, p. 3. [*In Serbian:* Politika. 2019. „Poslednji pokušaj SAD da blokira Sevrni tok 2", Politika, 24. decembar 2019, str. 3.].

B 92. 2019. "New threats to Russia: We are no longer partners, stop Nord Stream 2". 03/12/2019 [*In Serbian:* B 92. 2019. „Nove pretnje Rusiji: Više nismo partneri, obustavite Severni tok 2". 12.03.2019. https://www.b92.net/biz/vesti/svet.php?yyyy=2019&mm=03&dd=12&nav_id=1516418.].

Raynell Andreychuk. 2018. „SECURITY IN THE WESTERN BALKANS", Sub-Committee on NATO Partnerships (PCNP), www.nato-pa.int 178 PCNP 18 E Rev. 1 fin/Original: English/21 September 2018, p. 7.

*Politika.* 2013. "Germany and the EU against the United States over Russian gas pipelines", December 13, 2013. [*In Serbian: Politika*. 2013. „Nemačka i EU protiv SAD zbog ruskih gasovoda", 13. decembar 2013. http://www.politika.rs/scc/clanak/443962/Sukob-Nemacke-i-EU-sa-SAD-oko-ruskih-gasovoda.].

B 92. 2019. "Giving in to US pressure: Officially gave up Nord Stream 2, ships leave", December 30, 2019. [*In Serbian:* B 92. 2019. „Popustili pod pritiskom SAD: Zvanično odustali od Severnog toka 2, odlaze brodovi", 30.12.2019. http://www.b92.net/biz/vesti/svet.php?yyyy=2019&mm=12&dd=21&nav_id=1633441.].

Miller. 2020 "Miller: Russia will complete Nord Stream 2 without foreign assistance", January 12, 2020. [*In Serbian:* Miler. 2020. „Miler: Rusija će završiti „Severni tok 2" bez strane pomoći", 12. januara 2020. http://rts.rs/page/stories/ci/story/5/ekonomija/3807864/miler-rusija-ce-završiti-severni-tok-2-bez-strane-pomoći.html.].

Sputnik Serbia. 2020. "Four Hours – Face-to-Face: What Putin and Merkel Talked About", January 11, 2020. [*In Serbian:* Sputnik Srbija. 2020. „Četiri sata u četiri oka: O čemu su pričali Putin i Merkelova ", 11.01.2020. https://rs.sputniknews.com/rusija/202001111121519863-poceli-pregovori-merkelove-i-putina-u-moskvi/.].

Euractiv. 2012. „Final decision on South Stream pipeline in sight", 17.07.2012, http://www.euractiv.com/section/energy/news/final-decision-on-south-stream-pipeline-in-sight/

Euractive. 2011. "Europe's support for South Stream is important to Russia". March 22, 2011. [*In Serbian:* Euractiv. 2011. „Za Južni tok Rusiji važna podrška Evrope". 22.03.2011, http://www.euroactiv.rs/eu-prioriteti-1445-za -juni-tok-rusiji-vana-podrška-evrope.].

Euractiv. 2014. „South Stream pipeline project frozen over Crimea crisis", 11.03.2014, www.euractiv.com-https://www.euractiv.com/section/energy/news/south/streom-pipelive.project-frozen-over-crimea-crisis/.

Euractiv. 2014. „Soth Stream victim of Crimea annexation", 23.03.2014, https://www.euoctiv.com/section/energy/news/south-streom-victim-of-crimea-anerexation,

Danas. 2018. "Gazprom: Losses of USD 800 million due to South Stream", May 31, 2018. [*In Serbian:* Danas. 2018. „Gasprom: Zbog Južnog toka gubici od 800 miliona dolara", 31.05.2018, https://www.danas.rs/svet/gasprom-zbog-juznog-toka-gubici-od-800-miliona-dolara/.].

RTVBN, 2019. "South Stream interrupted due to Western pressure", September 20, 2019, [*In Serbian:* RTVBN, 2019. „Južni tok" prekinut zbog pritiska Zapada", 20.09.2019, https://www.rtvbn.com>cililica>ju...Pristupljeno.].

Euactiv. 2014. „Juncker says South Stream pipeline com still be built", 2.12.2014, https://www.euractiv.com/section/energy/news/junker-soys-south-stream-pipeline-com-still-be-built/.

Euractive. 2018 "Visegrad Group against double standards of the EU towards South and Nord Stream", October 12, 2018. [*In Serbian:* Euraktiv. 2018. „Višegradska grupa protiv dvostrukih aršina EU prema Južnom i Severnom toku", 12.10.2018, http://www.euractiv.rs/energetika/13148-višegradska-grupa-protiv-dvostrukih-aršina-eu-prema-juznom-i-severnom-toku-2. html.].

Kurir. 2018. "Putin is conquering the world with these three projects: And all without firing a bullet. The West can only watch", November 20, 2018. [*In Serbian:* Kurir. 2018. „Putin pokorava svet sa ova tri projekta: I to sve bez ispaljenog metka. Zapad može samo da gleda", 20.11.2018. http://www.kurir.rs/planeta/3158543/putin-pokorava-svet-sa-ova-tri-projekta-i-sve-to-bez-ispaljenog-metka-zapad-može-samo-da-gleda/.].

RTS. 2020. "Six things you need to know about the Turkish Stream gas pipeline". 01/08/2020. [*In Serbian:* RTS. 2020. „Šest stvari koje treba da znate o gasovodu Turski tok ". 08.01.2020. https://www.rts.rs/page/stories/sr/story/13/ekonomija/3801702/sest-stvari-koje-treba-da-znate-o-gasovodu-turski-tok.html.].

Sputnik. 2018. "Putin cut off: Turkish Stream through Serbia", November 22, 2018. [*In Serbian:* Sputnik. 2018. „Putin presekao: Turski tok kroz Srbiju", 22.11.2018. https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=11&dd=22&nav_id=1472655.].

*Novosti.* 2020. "Russian gas from autumn in Serbia?", January 9, 2020, p. 3. [*In Serbian: Novosti.* 2020. „Ruski gas od jeseni u Srbiji?", 9. januar 2020., str. 3.].

Euroactiv. 2020. „Turkey, Russia launch Turkish Stream pipeline carrying gas to Europe". 09.01.2020. https://www.enactiv.com/section/energy/news/turkey/-russia-launch-turkish-stream-pipeline-carrying-gas-to-europe.

*Politika.* 2020 "The first section of the Turkish Stream put into operation in Istanbul", January 9, 2020, p. 5. [*In Serbian: Politika*. 2020. „U Istanbulu puštena u rad prva deonica Turskog toka ", 09. januar 2020., str. 5.].

*Novosti.* 2020. "We are equipping the gas pipeline and waiting for the Bulgarians", January 9, 2020, p. 3. [*In Serbian: Novosti.* 2020. „Opremamo gasovod i čekamo Bugare ", 9. januar 2020, str. 3.].

B 92. 2019. "Finally: Cheap Russian gas arrives in Serbia, Bulgaria signed a contract", September 18, 2019. [*In Serbian:* B 92. 2019. „Konačno: Jeftin ruski gas stiže u Srbiju, Bugarska potpisala ugovor ", 18.09.2019. http://www.b92.net/biz/vesti/region.php?yyyy=2019&mm=09&dd=18&nav_id=1592891].

B 92. 2020. "Strategic gas pipeline for Serbia: Vučić in Istanbul for the commissioning of the Turkish Stream section", 08.01.2020. [*In Serbian:* B 92. 2020. „Strateški gasovod za Srbiju: Vučić u Istambulu na puštanju deonice Turskog toka ", 08.01.2020, http://www.b92.net/biz/vesti/svet.php?yyyy=2020&mm=01&dd=08&nav_id=1639125.].

Danas. 2020. “ Vučić: The construction of the Turkish Stream is building “arteries and veins “of energy security.” 01/09/2020. [*In Serbian:* Danas. 2020. „Vučić: Izgradnjom Turskog toka grade se „arterije i vene “ energetske bezbednosti “. 09.01.2020. https://www.danas.rs/ekonomija/vucic-izgradnjom-turskog-toka-grade-se-arterije-i-vene-energetske-bezbednosti/.].

Tanjug. 2019 “Vučić: Merkel was clear - the gas pipeline will be built”, February 16, 2019. [*In Serbian:* Tanjug. 2019. „Vučić: Merkelova bila jasna – gasovod će da se gradi “, 16.02.2019. https://www.b92.net/biz/vesti/srbija.php?yyyy=2019&mm=02&dd=16&nav_id=1506379.].

*Politika*. 2019. “USA is late with sanctions against Nord Stream and Turkish Stream”, December 19, 2019, p. 3. [*In Serbian: Politika*. 2019. „SAD kasne sa sankcijama protiv „Severnog“ i „Turskog toka“, 19. decembar 2019. str. 3.].

*Politika.* 2019. “The last attempt by the United States to block Nord Stream, December 24, 2019. p. 3. [*In Serbian: Politika.* 2019. „Poslednji pokušaj SAD da blokira „Severni tok “, 24. decembar 2019. str. 3.].

B 92. 2019. “Erdogan defends” Turkish Stream “from the USA: We are not a tribe state”, December 20, 2019. [*In Serbian:* B 92. 2019. „Erdogan brani „Turski tok“ od SAD: Mi nismo plamenska država“, 20.12.2019, http://www.b92.net/viz/vesti/svet.php?yyyy=2019&mm=12&dd=20&nav_id=1633180.].

B 92. 2020. “Washington opposes Turkish Stream”, 10.01.2020. [*In Serbian:* B 92. 2020. „Vašington se protivi Turskom toku“, 10.01.2020, http://www.b92.net/biz/vesti/region.php?yyyy=2020&mm=01&dd=10&nav_id=1640320.].

Euractiv. 2019. „Additional line to Tursish Stream would face US Sanction, 30.12.2019. https://www.euractiv.com/section/energy/news/additional-line-to-turkish-stream-would-face-us-sanctious/.

DW. 2018 “Balkans - a victim of the gas war between Russia and Ukraine?”, March 10, 2018. [*In Serbian:* DW. 2018. „Balkan – žrtva gasnog rata Rusije i Ukrajine?“, 10.03.2018, https://www.dw.com/sr/balkan-% c5% Bertva – gasnog-rata-Rusije-i-ukrajine/a-42917814.].

B92. 2020 “Dispute over gas transit resolved: Russia agrees to pay $ 2.9 billion to Ukraine”, January 10, 2020. [*In Serbian:* B92. 2020. „Rešen spor oko tranzita gasa: Rusija pristala da plati Ukrajini 2,9 milijardi dolara “, 10. januar 2020, http://www.b92.net/biz/vesti/svet.php?yyyy=2019&mm=12&dd=21&nav_id=1633521.].*

* Manuscript was received on October 15, 2021 and the paper was accepted for publishing on November 24, 2021.

UDC: 342.7:35.07
DOI: https://doi.org/10.22182/spm.7442021.12
Review article

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 287-303

***Andrej Semenov****

*Faculty of Philosophy – University of Pristina (Kosovska Mitrovica)*

# STATE COERCION AND CITIZENS' RIGHTS

## Abstract

The paper aims to explore which situations the state can exercise political power over its citizens. The art is to find the fine line between citizens' rights and state coercion. The best way to present an answer to this issue is by examining the principles when state coercion might be justified. Hence, wewill examine eight following principles: Harm Principle, Offense Principle, Legal Moralism, Legal Paternalism, Collective Benefits Principle, Justice Principle, Need Principle, Sufficiency Principle. In addition to defending liberal principles, wewill argue that Legal Paternalism and The Justice Principle can be adopted but only in specific situations. Finally, we suggest that The Need Principle and The Justice Principle cannot be used as justification to limit one's freedom but they might be translated and expanded into The Sufficiency Principle.

**Keywords**: state legitimacy, state authority, citizens' rights, the harm principle

## INTRODUCTION

The subject of this paper is the scope of political authority, i.e. in which (if any) situations can the state exercise political power over its citizens? It is worth emphasizing a fairly obvious point here: the assumption that the state is legitimate. The issue appears

* andrej.semenov@pr.ac.rs

simple but does not have an easy answer.We possess certain rights but at the same time, the state is justified in using coercive power to limit our rights. In order to explain this tension, it is necessary to introduce a list of principles under which coercion may be justified.

The point of departure is J.S. Mill's harm principle (1909),followed by Joel Feinberg's four principles (1984, 1985, 1986, 1988) along with the three extra principles discussed by Alan Wertheimer (2002): Harm Principle, Offense Principle, Legal Moralism, Legal Paternalism, Collective Benefits Principle, Justice Principle, and Need Principle. We alsoexamine the Sufficiency Principle which the above-mentioned authors do not discuss.

First, let us briefly introduce those principles. The Harm Principle states that the state is justified in limiting A's liberty if that act will prevent A from harming others. The Offense Principle supports state coercion if A is prevented to offend others. Legal Paternalism says that state coercion is justified if it aims to prevent A from harming himself. Legal Moralism says that the state is validated in limiting A's liberty in order to prevent A from engaging in immoral behavior even if A is not harmed or harming others. The Collective Benefits Principle limits liberty in order to provide public benefits that otherwise would not be offered. The Justice Principle says that the state can limit A's liberty to achieve justice. The Need Principle states that the limitation of A's liberty is just if it provides for other people's needs. The Sufficiency Principle says if the state can prevent B's suffering by sacrificing A's freedom, the state should limit A's liberty.

Before exploring the eight principles we have to stress that, as many authors have previously done, giving the list of liberty-limiting principles does not mean we are defending them. However, we firstly defend the liberal principles: the Harm Principle and the Offense Principle. Secondly, weexplore Legal Paternalism, arguing that the hard component of Legal Paternalism belongs to liberal principles. Furthermore, we assert that Legal Moralism, the Justice Principle, and the Need Principle, although they could be used to justify a limitation of citizens' liberty, are not as robust as the Sufficiency Principle which is often more appropriate.

Before diving into the discussion,let me highlight three intuitive but vital points. First, a valid liberty principle gives a justification for a policy that limits liberty but does not necessarily "provide positive reasons for a policy because there may be moral or practical reasons that 'outweigh' the reason for such a policy" (Wertheimer2002, 43). In other words, if we consider Class A drugs bad for people, we might criminalize them on the grounds of Legal Paternalism.However, while banning heavy drugs is reasonable, the economic and social benefits of not doing so might be higher such as the cost of enforcing the ban, taxation, and higher prison population particularly given the high rates of re-offense. Second, Wertheimer notes that a liberty-limiting policy may be supported not only by one principle.Therefore, drugs might be banned on grounds that they make people violent (the Harm Principle), that are bad for users (Legal Paternalism), that it is widespread among the population (the Collective Benefits Principle), that it is not socially accepted behavior (Legal Moralism). Thirdly, we will take into account Feinberg's distinction between the questions of constitutionality and moral justifiability: there are cases where an act is constitutional but not a justifiable limitation of individual liberty while other cases might be justifiable but not constitutional.

## THE HARM PRINCIPLE

The Harm Principle is everything but simple as Mill argues:

> The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (1909, 18).

What does it mean to harm others? How do we define "others"? If we claim others are people then one of the major issues we need to discuss is whether a foetus is a person. Put simply, if a foetus refers to a person then there is a strong case to ban abortion due to the Harm Principle. While there is no compelling reason to argue that the foetus cannot be harmed in the womb,the argument rest on the assumption that the foetus will suffer from harmful consequences of prenatal injuries. Along similar lines, Wertheimer (2002, 45) argues that if we consider "others" to mean species other than homo sapiens, "then we cannot limit behaviour" just because it harms animals. The question then poses itself: how do we criminalize behavior that harmful to animals? It is safe to conclude that the Harm Principle is not sufficient.

The second important question refers to "harm to others" and has several implications. Feinberg(1984) lists three of them. First, can we harm A by making them a worse person than they were before? In other words, does moral harm count as harm? It is reasonable to believe that making someone a worse person does not necessarily make them worse off.Thus, only if they desired to be a good person (for example, a nun) can they be said to have been harmed by making them behave in a morally reprehensible manner as defined by A's own morals. Second, can we harm person A by harming person B? It is my contention that this point is clear. If person A harms person B while person C has an interest in B's good, then we can say that A harms B as well. Third, can a person be harmed by their own death? Feinberg develops the claim that death can be harmful to a person who dies in the respect of their interests which are defeated by their death. Yet, what if the person had no interest in continuing to live? It is not difficult to imagine a dying person who does not want his family to spend resources: do we have a case if someone takes his life? If we believe that "over himself, over his own body and mind, the individual is sovereign" (Mill 1909, 19) and that the dying person offers their consent, we can conclude that suicide cannot be banned on the grounds of the Harm Principle.

It is also important to emphasise that the Harm Principle does not justify limiting A's liberty to harm B if B gives consent to be harmed. As Mill argues, our society has no right to intervene

in people's business conducted 'with their free, voluntary, and undeceived consent and participation' (1909, 22). Wertheimer's conclusion regarding Mill's argument deserves to be quoted at length:

> If B wants her physician to terminate her life, so be it. If A wants to purchase the use of B's womb, or sell an ineffective drug, or sell cocaine, or toss dwarfs against a padded wall, or sell tickets for an exorbitant price, or engage in sexual relations with his patient, or hire someone for $3.00 per hour, or have sexual relations with a woman who is severely intoxicated, or rent a rat-infested unheated apartment, or buy another's kidney, the Harm Principle does not justify interference by the state so long as B consents, as well she might for one reason or another (2002, 46).

At this junction, three further implications may come to mind. Can inaction harm? If inaction cannot harm then no one can claim that parents whose child dies because they refuse modern medicine (on religious grounds) actually harm their child. As a rebuttal to this point, Mill makes the following observation:

> There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform; such as, to give evidence in a court of justice; to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence, such as saving a fellow-creature's life, or interposing to protect the defenceless against ill-usage, things which whenever it is obviously a man's duty to do, he may rightfully be made responsible to society for not doing (1909, 21).

Instead of offering an answer, the previous quote opens another series of questions. If a person may cause evil to others not only by their actions but by their inaction, how do we decide which inactions cause harm to others? Mill's explanation that "it is obviously man's duty" when to act does not seem very appealing. Do we harm a beggar by not giving him spare change? Is it our obvious duty to help a man who hurts himself – does our inaction harm him?We are not as certain as Mill that harm is self-explanatory.

The second implication refers to the question – can we limit someone's liberty if his behavior does not harm but only increases the risk of harm? Mill here claims that if "there is a definite damage, or a definite risk of damage… the case is taken out of the province of liberty, and placed in that of morality of law"(1909, 139). This approach is rather risky sinceit opens the possibility that a wide range of behaviors can be considered under its umbrella. The final implication we would like to examine is collective or public harm. Public harm is identical to what some authors term the Collective Benefit Principle; thus, the principle will not be discussed separately. In previous cases, we have been concerned with direct harm, or in other words, whether A harms B. But what about cases where A does not harm B but if a number of citizens do the same as A, person B would be harmed? The most cited example is tax evasion: if only one citizen does not pay taxes, we doubt that any of his fellow compatriots would be harmed but if the entire region does not pay taxes to the state, that is harmful to their compatriots. Lord Patrick Devlin makes a thought-provoking point:

> You may argue that if a man's sins affect only himself it cannot be the concern of society. If he chooses to get drunk every night in the privacy of his own home, is any one except himself the worse for it? But suppose a quarter or a half of the population got drunk every night, what sort of society would it be? You cannot set a theoretical limit to the number of people who can get drunk before society is entitled to legislate against drunkenness (1975, 14).

We do not disagree with Devlin regarding drunkenness and tax evasion, but we feel that the Harm Principle can be stretched too far when it comes to public harm. Let us shift from tax evasion to homosexual acts. The logic remains the same: if only a few people engage in homosexual behavior there is no damage to society but imagine if the entire population engages in homosexual acts. A similar argument can be applied to compulsory voting. Does it mean that we should ban homosexual acts and promote compulsory voting? There is ample support for the claim that there is no reason to believe that many people would engage in homosexual activities and ignore their duty to vote even if they had a chance. Considering the previous cases, we need to be aware of limitations and misapplications of the public harm principle.

Although the Harm Principle is hardly a "very simple principle", it seems plausible to claim that the state can justifiably limit someone's liberty on the grounds of harm caused, of course with consideration of six implications previously discussed. Let us now explore whether the state can legitimately interfere with individual liberty when behavior cannot be viewed as direct or public harm to others.

## THE OFFENSE PRINCIPLE

The Offense Principle claims that state coercion should be implemented to prevent A from offending others even if they do not harm them.No doubt, there are many harmless but unpleasant human experiences where state protection is required. In certain cases, such as mental distress, it is difficult to decide whether the behavior is harmful or offensive.

However, the question here is not to make a distinction between harm and offense but rather to examine whether the state can justifiably interfere if a person is engaged in offensive but harmless behavior. The argument in favour of the Offense Principle runs as follows: person A has no right to engage in offending behavior even though they do not harm anyone. It seems that even Mills himself supports the Offensive Principle: "there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offenses against others, may rightfully be prohibited" (1909, 166-167). The main objection to the Offense principle is the claim that what is sacred for A is a mere joke for B, as Dudley Knowles states: "in multicultural society… offensiveness cannot be avoided" (2001, 121). It might be true that offensiveness cannot be avoided but does it mean that the state cannot limit A's liberty if B has been mentally abused by A? There is no magic formula for deciding whether some behavior is offensive or not but Wertheimer convincingly identifies six criteria our society might use:

> Avoidability. The easier it is for people to avoid being offended, the more difficult it is to justify prohibiting offensive behavior. If one doesn't want to see nudity, then don't go to a nudist beach.

Pervasiveness. The more widespread the tendency to be offended, the easier it is to justify interference. We should not restrict behavior that a minority or even a slight majority find offensive.

Magnitude. The more intense and durable the offense, the easier it is to justify intervention. We should not restrict behavior that gives rise to only mild or short-lived distress.

Legitimacy. The more legitimate the state of being offended, the easier it is to justify intervention. Although this criterion presents its own theoretical difficulties, it seems more legitimate to be offended by the flasher than, say, by the sight of a homosexual couple embracing.

Social Value. Some offensive behaviors have greater social value than others. Mill argued that the expression of false and offensive ideas has value: 'the clearer perception and livelier impression of truth produced by its collision with error.' By contrast, there is little value to indecent exposure.

Individual Integrity. Does prohibiting offensive behavior represent a threat to an individual's integrity? To ask someone not to expose themselves or make noise does not (I think) ask A to stop being who they are. To ask someone not to express their ideas or to wear different clothing represents a greater threat to individual integrity (2002, 49).

## LEGAL PATERNALISM

During our lives, we engage in various stupid things, though we might argue about what "stupid" means. We drink too much alcohol, do not fasten our seat belts, use drugs, smoke cigarettes, have unprotected sex with strangers, and so on. This chapter is meant to answer the question – is it justifiable to interfere in people's life in order to prevent them from doing foolish things? Before offering an answer, we would like to stress that context is crucial when we are determining whether a policy is paternalistic. If the idea of introducing seatbelts is to cut the cost of hospital treatments then this policy is not paternalistic.

As we have seen, Mill is not sympathetic to this principle: "Over himself, over his own body and mind, the individual is sovereign" (1909, 19). However, Mill's view on paternalism is not that simple: his doctrine is "meant to apply only to human beings in the maturity of their faculties" (1909, 19). In other words, he rejects the idea of interference in the life of an adult but children are another matter. Let me now paraphrase the question – is the state justified in limiting the liberty of adults for their own good?

The short answer is yes and no. Legal Paternalism has two components: hard and soft. Soft paternalism says that the state can restrict the liberty of adults whose decision-making capacity has been compromised. The best example is given by Mill himself:

> [if one saw] a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river (1909, 163-4)

Put simply, we do not compromise a person's autonomy by limiting their liberty if they lack the capacity to make a rational judgment about the situation. On the other hand, hard paternalism says that the state can limit someone's liberty when there is no reason to question their competence and rationality. The prohibition of smoking would be the case for hard paternalism A is rational and able to make a decision to smoke, yet it not only has significant negative health impact for A but also anyone physically close to A. Wertheimer expands Mill's bridge story with two additional possibilities:

> 1. The person knows that the bridge is unsafe and is attempting to commit suicide because he is severely depressed.
>
> 2. The person knows that the bridge is unsafe, but enjoys crossing rickety bridges (2002, 51).

Wertheimer develops a view that severe depression compromises a person's rational capacity, thus the first scenario represents a case of soft paternalism. Weare not convinced: saying that the state can limit A's liberty because A is severely depressed is sim-

ilar to suggesting that the state can limit A's liberty because A is addicted to cocaine. This is a case of hard paternalism.The person has autonomy so A knows what they need for a happy life and knows that cocaine is addictive. Putting it bluntly, we all experience weakness of will (for example, eating delicious but unhealthy food, skipping running sessions), but does it mean that the state should limit our freedom whenever we feel miserable? When it comes to the second scenario, things are straightforward. Unless, we are ready to claim dangerous hobbies as irrational, hard paternalism cannot be perceived as a legitimate liberty-limiting policy.

## LEGAL MORALISM

The principle says that the state is justified in limiting A's liberty in order to prevent A from engaging in immoral behavior even if A does not harm or offend others. "Even if" is essential: murder is immoral, but we consider it under the Harm Principle.

Legal Moralism has five versions. The traditional version holds that the state can justifiably limit someone's liberty if their behavior is "objectively" immoral. The main issue is defining what is immoral. One group of people may say that homosexual acts or premarital sex are immoral while others strongly disagree. Within these groups of people, there may be differing opinions as to whether the state should prohibit an activity if it is immoral. A second version comes in form of moral paternalism. It argues that "immoral things are bad for people". In other words, every immoral act a person does damages their well-being and ability to establish an upright moral character. But again, who is to say whether eating pork or engaging in homosexual acts are steps forward or backward on the path toward being upright moral characters? A third version is a child from the family of moral paternalism. It holds that the state is responsible for protecting its citizens from injuries. This is a rather weak case. We need to make a space for people to develop their lives even if they make bad choices: we cannot protect them from all miseries of this world. After all, not everyone prefers a long and healthy life to drugs, nor does everyone have the ability to choose between these options.

The next two versions are more challenging. A fourth version maintains that common morality is an important basis for social cohesion, it is legitimate to prohibit behavior seen as immoral regardless of whether that behavior is 'objectively' immoral. As Devlin argues:

> What makes a society of any sort is community of ideas, not only political but also ideas about the way its members should behave and govern their lives… Every society has a moral structure as well as a political one… society is not something that is kept together physically; it is held by invisible bonds of common thought (1975, 9-10).

Devlin takes an interesting position that legal moralism requires people not to do things even if they do not see those things as immoral: "A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price" (Devlin, 1975, 10). However, he does not argue that society should prohibit everything seen as immoral; those decisions society would make depending on the urge society feels. It is obvious that he does not see anything wrong in prohibiting homosexual acts or the sale of pork if a significant majority supports it. The question is – are we really ready to let society discriminate against minorities by their gender, race, religious affiliation, etc? The next question is – what happens in practice in a society such as Saudi Arabia that uses this principle where everyone agrees (at least officially)?

The final version of Legal Moralism goes as follows: prohibiting harmless but immoral activities will make it less likely that people will harm others in the future. In other words, if there is activity x that increases the chances that A will engage in prohibited activity y then activity x should be banned. Even though this claim has logical soundness, we are not sure that there is solid evidence that supports the idea that pornography increases men's violence towards women, or that people involved in dwarf tossing are more likely to commit violent acts. However, if there are strong indications that doing x means A will commit prohibited activity in the future then this version of Legal Moralism might be justified. The difficulty is determining what counts as strong evidence.

## THE JUSTICE PRINCIPLE

The Justice Principle says that the state can interfere in individual liberty on the grounds of justice. Let us explore four ways the Justice Principle might be justified.

The first one is non-discrimination. A liberty-limiting policy is just if A discriminates against B on the grounds of race, religion, ethnicity, gender, or sexual orientation. One might argue that non-discrimination can be linked with the Harm Principle but Wertheimer convincingly argues in favor of their separation:

> We are and should be free to make many decisions that have adverse effects on others. An employer can refuse to hire those she thinks are unqualified or obnoxious or ugly. A landlord can refuse to rent to a smoker, or someone with pets, or to undergraduate students because we think justice prohibits treating people differently on the basis of some criteria, but not on the basis of other criteria (2002, 56).

The art is to decide when justice requires the prohibition of certain discriminations and when it does not. We are free to choose our friends even if we discriminate on the basis of race, religion, gender, and so on but public schools do not have this "luxury". The second is – equality of opportunity. Equality of opportunity has roughly three different levels. First, if we say that all children should get an education we might support public schools. Second, if we claim all children should have similar educational opportunities we might limit the spending of some communities so all communities would have approximately similar educational opportunities. Third, if we say that people should not start their lives with grossly unequal resources and consequently opportunities, we might support high taxes on inheritance. We believe that equality of opportunity is a matter of the Sufficiency Principle which will be discussed later.

The third way considers economic transactions. We might think that the state should interfere in citizens' businesses if their transactions are not just. For example, ticket scalping might be prohibited on the ground that the price is unjust. Ticket scalping might be an appropriate example, but we are rather skeptical about

whether the argument will generally work and we are not alone in this view: "[if it does not work] it prevents the exploited person from advancing her own interests, but if it does work, then we have another justification for interfering with consensual transactions" (Wertheimer 2002, 57).

Finally, some argue that people should do their fair share in providing public benefits, even in cases when the benefit would be provided without their share, i.e. free ride on the contribution of others. Mill develops the view that one "may rightfully be compelled to perform… to bear his fair share in the common defense, or in any other common work" (1909, 21). There is no doubt that this behavior should be prohibited but the question which looms in the background here is whether the free-riding problem comes under the Harm Principle or the Justice Principle. As it is not the focus of this paper, let me only indicate the logic of the puzzle. Non-voters are free-riding on those who sacrifice their time to vote in a different way people who do not pay their taxes are free-riding on those who sacrifice their money to pay. The difference is that in the former case the benefit is provided without compulsion while paying taxes is mandatory for everyone.

## THE NEED PRINCIPLE

Wertheimer proposes the Need Principle as the last non-liberal principle. This principle justifies state intervention in A's liberty in order to provide for B's needs. Wertheimer is clear that this does not mean that we should always do what is necessary to meet people's needs: "[i]f B will die unless she receives A's kidney, it does not follow that we should coercively extract A's kidney" (2002, 57). The Need Principle says that the state is justified in interfering with people's business in order to provide for others' needs for medical care, food, education. Wertheimer gives a very convincing example:

> Suppose that we need much more blood than we can obtain through voluntary donations or for pay (say, because the quality of commercial blood may be too low), that people will die because there is insufficient blood available. If we can require people to provide money because other people need

> goods in order to live, I do not see why we cannot require people to provide a renewable resource such as blood. If we can require people to serve as witnesses or on juries, I do not see why we cannot require people to make easy rescues (2002, 57-58).

The Need Principle discussed by Wertheimer is something we will examine regarding the Sufficiency Principle. We have no objections to the given example but the problem here is the Need Principle does not draw a clear distinction between situations when we should or should not meet people's needs.

## THE SUFFICIENCY PRINCIPLE

The Sufficiency Principle says if the state can prevent B's suffering by sacrificing something of A's that has no comparable importance, the state can limit A's liberty. This principle takes as the point of departure the two assumptions from Peter Singer's famous article "Famine, Affluence, and Morality": (a) suffering and death from lack of food, shelter, and medical care are bad; (b) if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought to do it (1972, 3). What he has in mind goes as follows:

> If I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing (1972, 3).

However, we are not concerned here with the moral obligation of individuals but the justification of the state authority, thus let us translate the application of the argument. If the state can prevent people's suffering and death by sacrificing nothing of comparable importance then the state is justified to interfere in our liberty. Put it differently, the state should have the power to relocate resources from the richest people in society to those who are in need. But what we have in mind here is not mere survival (food, shelter, and medical care) but rather that everyone has enough to live with dignity. At this point, the Sufficiency Principle overlaps with the Need Principle but they have one big difference: A's need

might differ from B's need but for both A and B what remains in common is what they need to live a life worthy of a human being. Need is a slippery area for two reasons. First, all that matters is which need is stronger. Furthermore, how can we measure it? One might say it is easy to determine which need is stronger when we compare a person with twenty pairs of shoes and a person with none, but what happens when we compare a young girl with five pairs of shoes and an old man with one – can we really say that he needs a second pair more than she fifth? After all, one might argue that he needs a particular car more than a number of people need a third meal every day – can we compare their happiness? Second, as Onora O'Neill notices we do not need only "precise measurements of happiness, but precise prediction of which policies lead to which results" (1987, 144). On the other hand, the Sufficiency Principle overcomes these challenges by not comparing but by setting the same bar for everyone.

Along similar lines, the Sufficiency Principle might find the moral principle which can justify the state intervention. Previously we rejected the argument of the traditional version of Moral Legalism on the grounds that no one can determine what is "objective" moral. Similarly, one can argue that the Sufficiency Principle faces the same obstacle. It is my contention that there is a difference between agreeing on the prohibition of pork or homosexual activities and agreeing on the importance of human lives. We cannot simply say to A "you have the right to live" but then leave him without shelter, food, education, a basic income. What we referred to as "enough to live with dignity" is exactly that: people should be provided with the tools which enable them to live. What we need to avoid is to confuse those values with the practices that aim to realize those values. On one hand, the state can sacrifice x in order to prevent A from suffering because A *has a right* to something. On the other hand, human rights are inalienable rights that are exercised *against* the state.

## CONCLUSION

This paper has dealt with a distinctly modern question: why and when has the state the right to exercise coercive power over citizens? The immediate dilemma we face is that the individuals

have individual freedom while we still think that the state is justified in using political power. We have tried to answer this question by listing the principles which might be used to justify the state's coercion: Harm Principle, Offense Principle, Legal Moralism, Legal Paternalism, Collective Benefits Principle, Justice Principle, Need Principle, and Sufficiency Principle.

Mill notices that "there is, in fact, no recognized principle by which the propriety or impropriety of government interference is customarily tested" (1909, 17), but he believed he can find only one "very simple principle" to say when it is legitimate for the state to exploit policies that limit liberty. Wehave argued that his principle is neither simple nor sufficient to determine all the situations in which the state is justified to limit our liberty. Apart from the Harm Principle, Mill was sympathetic to the Offense Principle. However, there is no magic formula for defining whether a certain behavior is offensive or not and the use of each principle depends greatly on the context.

After the Harm and Offense Principles, we explored non-liberal principles. Legal Paternalism can be used only to restrict the liberty of adults whose decision-making capacity has been compromised, otherwise, people are free to choose. We present four versions of Legal Moralism and gave the reasons why the state generally has no business in prohibiting "objectively" or "non-objectively" immoral behaviors. However, we made a compromise when it comes to satisfying basic human needs in the section of the paper. The Collective Benefit Principle has been added to the Harm Principle as we do not see why one should discuss collective and individual harm separately. Further, we put the claim that the state may interfere in individual liberty on the grounds of justice in the four particular cases: non-discrimination, equality of opportunity, economic transaction, and public benefit. The Need Principle is slippery terrain as we cannot measure it and we cannot know which policies lead to which results;therefore, it is better to follow the Sufficiency Principle. The Sufficiency Principle would instead set the bar and avoid measurements of different kinds.In other words, this principle would introduce morality as justification for the state intervention but in a very narrow sense: the state can interfere in someone's life on moral grounds if that will ensure others have a life worthy of a human being.

## REFERENCES

Devlin, P. (1968). The Enforcement of Morals, Oxford: Oxford University Press.

Feinberg, J. (1984). Harm to Others, Oxford: Oxford University Press.

Feinberg, J. (1985). Offense to Others, Oxford: Oxford University Press.

Feinberg, J. (1987). Harm to Self, Oxford: Oxford University Press.

Feinberg, J. (1988). Harmless Wrong-Doing, Oxford: Oxford University Press.

Mill, J.S. (1909). On Liberty, The Floating Press [e-book].

O'Neill, Onora. 1987. "Rights, Obligations and World Hunger." in Poverty and Social Justice: Critical Perspective: A Pilgrimage Toward Our Own Humanity, eds. Francisco Jimenez, 86-100. Temple: Bilingual Press.

Singer, Peter. 1972. "Famine, Affluence, and Morality". *Philosophy and Public Affairs* 1(3): 229-43.

Wertheimer, Alan. 2002. "Liberty, Coercion and the Limits of the State." In The Blackwell Guide to Social and Political Philosophy, eds Robert L. Simon, Oxford: Blackwell.*

* Manuscript was received on August 18, 2021 and the paper was accepted for publishing on October 23, 2021.

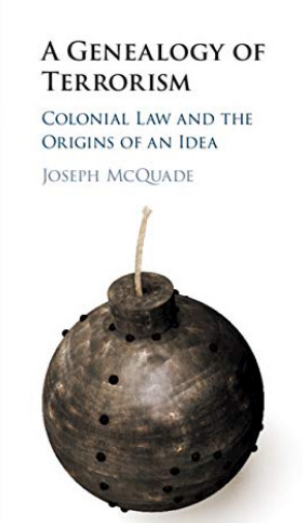
UDC: 323.28+327.88(043.9)
DOI: https://doi.org/10.22182/spm.7442021.13
Book review

Serbian Political Thought
No. 4/2021, Year XXVIII,
Vol. 74
pp. 305-310

***Ljiljana Kolarski****

*Institute for Political Studies, Belgrade*

# A GENEALOGY OF TERRORISM - COLONIAL LAW AND THE ORIGINS OF AN IDEA**




Joseph McQuade. 2021. *A Genealogy of Terrorism*: *Colonial law and the Origins of an Idea.* Canbridge: Cambridge University Press, p. 276.

The newly published book, "*A Genealogy of Terrorism: Colonial Law and the Origins of an Idea*," by author Joseph McQuade, brings a distinctive perspective on the appearance of the term "terrorist," used in late nineteenth and early twentieth-century colonial law. Categories of 'extraordinary' legal standing such as thugs, pirates, criminal tribes, fanatics, and terrorists demarcate the outer limits of this 'colonial difference' by providing oppositional figures, against whom colonialism could assert its legitimacy and expand its jurisdiction through the exercise of emergency sovereign power. As a result, the fundamental purpose of this book is to examine how official colonial policy inspired a wave of legislative measures that were employed as a potent means, and frequently as an excuse, to suppress any revolutionary effort in colonial India.

This book is divided into five segments that are ordered chronologically from the Anti-

* ljiljana.kolarski11@gmail.com

** The paper has been developed within the framework of research activities at the Institute for Political Studies, Belgrade, supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia.

Thug Campaigns that began in the 1830s to the international Convention for the Prevention and Punishment of Terrorism in 1937. While the current work is based on deep-sited archival research in and around colonial India, the relevance of its findings to a broader colonial genealogy of terrorism will be touched upon throughout. In some places, the book engages with texts produced or statements made by the various 'subversive figures' who found themselves targets of colonial laws of exception, but the primary object of inquiry is the colonial state itself, as well as the legal and discursive strategies it pursued in dealing with extraordinary categories of criminality. What draws these various categories of criminality together is instead the interconnected tropes or idioms deployed by colonial officials in seeking to justify the imposition of draconian new laws and emergency measures designed to assuage the anxieties of a colonial state that saw itself as vulnerable to secretive and 'unknowable' conspiracies lurking at the margins of Indian society. Whether in the clandestine Kali-worship of the 'thugs', the collective nature of dacoit gangs, the international nature of the pirate threat, or the unreasoning religiosity of Muslim 'fanatics', colonial assumptions regarding indigenous criminality would heavily inflect the genealogy of terrorism in ways that are still evident to these days.

From this perspective, attempts to capture or exterminate the thugs, dacoits, pirates, and fanatics of the nineteenth century highlight both the paranoia of colonial officials seeking to establish control over territories and peoples they poorly understood on the one hand, and the role of brute force in extending British control over the subcontinent through a coercive apparatus of legal and military control on the other.

For that reason, the author offers two perspectives on the emergence of terrorism: the origins of terrorism in primordial histories of religious or cultural difference, and the spread of 'propaganda by deed' following the rise of print capitalism and new communications technologies in eighteenth- and nineteenth-century Europe. In general, this second approach has provided a more productive framework for understanding the roots of modern "terrorism" as a tactic of political communication directly linked to the shifting global landscape of the modern period.

Many of the descriptions associated with modern terrorism such as its presumed apolitical nature, fanaticism, cowardice, and insanity, and the inherent danger it poses to international peace, were originally articulated and rehearsed most explicitly in colonial settings like British India. Indian revolutionary violence was a topic of grave concern for British metropolitan politicians in the early twentieth century. With the rise of anarchism in Europe and anticolonial radicalism abroad towards the end of the long nineteenth century, an international system previously defined by the relationships between sovereign states became increasingly concerned with the threat posed to state sovereignty itself by the existence of radical insurgents capable of subverting domestic authority. As a world of empires transformed into a world of nations following the global cataclysm of the First World War and the establishment of the new international society that achieved the expression through the League of Nations the spectre of "the terrorist"began to stalk the margins of international law.

The growing need emerged in the late 1930s to clarify the meaning of a term that, by this point in time, became ubiquitous in its usage by government officials. The word 'terrorism', alongside its physical personification in the figure of 'the terrorist', appears so frequently in the colonial police records of 1930s India that a reader could easily be misled into assuming that this term was the natural definition through which revolutionary activities were always described. The author indicates that none has yet provided a comprehensive genealogy of the term 'terrorism' within the context of colonial India throughout the height of British rule. Ruminating whether a historical or contemporary figure, or set of figures, should or should not be considered a terrorist versus a freedom fighter is often a political question not a historical one. Furthermore, although the term 'terrorism' did indeed exist in the latter half of the nineteenth century, it did not come to be used as the primary category for describing revolutionary violence in India until the 1920s. Hence, the first chapter demonstrated, the origins of colonial legislation targeting so-called extraordinary forms of violence in India have a deeper genealogy, stretching at least as far back as campaigns against dacoity, thuggee, and piracy from the late eighteenth century to the 1830s.

The second chapter explores the phenomenon of 'propaganda by bomb' in colonial Bengal, viewing the phenomenon distinct from the 'propaganda by deed' carried out by European anarchists during the late nineteenth and early twentieth centuries. By tracing the inner workings of Bengal's revolutionary participants, this chapter unpacks how colonial perceptions of these organizations shaped official fears and anxieties and contributed to the genealogy of a new target of political concern called 'terrorism'. The use of the bomb in political assassinations by Bengali revolutionaries marked a new phase in colonial understandings of political violence and sparked a wave of emergency legislation that sought to police the interrelated propaganda tools of bombs and newspapers. Analyzing the relationship between bombs and ideas, this chapter argues that revolutionaries in this period used bombs as vehicles for disseminating an anti-colonial message to a wider audience than could be achieved through the circulation of radical newspapers or pamphlets. This strategy of propaganda by bomb culminated in the highly publicized attack on India's viceroy in 1912, laying the groundwork for increasingly ambitious plots to overthrow British rule entirely following the outbreak of the First World War.

The third chapter demonstrates that the wartime expansion of emergency laws was not only a response to security concerns or to the threat of foreign German interference, as scholars have typically regarded them, but also served as the colonial state's opportunistic answer to the more long-term political challenge presented by anti-colonial nationalism. By erasing the longer anti-colonial pre-history of revolutionary organizations such as Ghadar, and instead portraying them as collaborators with the German enemy, imperial officials sought to legitimize the extension of extraordinary legislation that would otherwise have been much more difficult to justify. Despite their claim to be nothing more than war measures necessitated by a specific state of emergency, these laws retained a degree of flexibility that allowed them to strain the limits of executive authority under the expansive category of public security. Towards the end of the war, officials returned to earlier arguments regarding the supposed dangers posed by 'political criminals', but in the

increasingly politically charged context of the interwar period, these arguments were given far less assurance. The First World War marked an important bridge in sparking the expansion of both anti-colonial revolutionary networks and imperial laws of emergency, between the pre-war language of "political dacoity" and the construction of the new legal categories of "terrorism" and "the terrorist" that came to dominate interwar understandings of political violence.

The next chapter assesses the complex relationship between the Indian National Congress and revolutionary politics, demonstrating that although the Gandhi's strategy (*satyagraha*) ultimately won, it did so only by a narrow margin in the face of the more radical political aspirations of important figures. Following the rise of Gandhi's non-cooperation campaign in the early 1920s, British officials began to consciously adopt the term 'terrorism' in 1925 as part of an attempt to render the Bengal Criminal Law Amendment Act more palatable to the British Parliament. By the 1930s, the term "terrorism" became the standard label applied to revolutionary nationalists, despite the relatively infrequent usages of this term during the period before and during the First World War. The label of "terrorism" became a useful way of delegitimizing the tactics of revolutionaries while simultaneously justifying the creeping expansion of executive rule, during precisely the same period in which colonial authorities were ostensibly devolving a share of power to elected Indian legislatures. By carefully deploying the vocabulary of terrorism in criminalizing the politics of Indian revolutionaries, the colonial state demonstrated the core of executive sovereignty that lay beneath the thin surface of its legislative reforms. The close connections between revolutionary organizations and "mainstream" Indian nationalism forced colonial officials to develop new discursive strategies to justify the continued imposition of increasingly draconian "emergency" legislation. In this context, the category of "terrorism" became a useful rhetorical tool that was explicitly deployed with the goal of justifying controversial measures to the British Parliament on the one hand, and the Indian public on the other.

The fifth and also the final chapter of this book, situates the previously made conclusions within a truly global context

by exploring India's role at the League of Nations during the debates surrounding the Convention for the Prevention and Punishment of Terrorism in 1937, the first international law to target terrorism as a distinct category of global crime. A closer look at India's role in this convention provides new and important ways of understanding the larger context in which colonial officials framed their ideas about terrorism as a new and particularly dangerous form of global criminality, a 'world crime' that threatened not only the governing structures of an existing political regime, but rather the very notion of civilization itself.

Finally, the book provides significant ground for considering "terrorism" as the product of a specific set of historical circumstances and concerns, rather than a natural category of international criminality. The conclusion underlines the importance of culturally based explanations of the nature of terrorism today, arguing that comprehending terrorism and developing counterterrorism patterns requires a clear and simple description based on unbiased observations rather than cultural assumptions.

## AUTHOR GUIDELINES

Academic journal *Serbian Political Thought* welcomes articles reporting the latest results of both theoretical and empirical research in all fields of political science. Authors should refer mainly to the results of research published in academic journals, primarily in political science journals.

The papers are published in Serbian (Cyrillic), English, Russian or French in the Serbian issues, and in English in the English issue of the journal.

The journal is published four times a year. The first three issues are published in Serbian, and the fourth issue is published in English. The deadlines for submitting the manuscripts for the Serbian issues are: February 1st, May 1st and August 1st, and the deadline for the English issue is October 1st.

Two consecutive issues cannot contain articles written by the same author, whether single-authored or co-authored.

Authors are obliged to submit a signed and scanned Statement alongside with the manuscript, declaring their manuscript hadn't previously been published, i.e. it's not plagiarism or auto-plagiarism. The Statement form can be downloaded from the web page of the journal: http://www.ips.ac.rs/en/magazines/politicka-misao/authors_directions/.

Manuscripts for the Serbian issues of the journal should be sent to the following e-mail address: spm@ips.ac.rs.

Manuscripts for the English issue of the journal should be sent to the following e-mail address: spt@ips.ac.rs.

**Research article** can have up to 40,000 characters with spaces, including footnotes. When counting the characters leave out the reference list.

**Review** can have up to 15,000 characters with spaces.

**Book review** can have up to 10,000 characters with spaces.

When counting the characters, use the option Review/Word Count/Character (with spaces) and check the box Include textboxes, footnotes and endnotes.

## CITING AND REFERENCING

Academic journal *Serbian Political Thought* adopts a modified version of Chicago citation style (17th edition of the *Chicago Manual of Style*), the author–date system of in-text parenthetical citation, with the list of references with full bibliographic information being placed at the end of the paper.

The bibliographic data in both the parenthetical citation and reference list should be cited in the original language of the source. The English translation of the reference title should be enclosed in square brackets after the original title. The references originally written in Cyrillic script should be transliterated into Latin script.

Below are the rules and examples of citing the bibliographic information in the reference list and in the text. For each type of source, a citation rule is given first, followed by an example of citation in the reference list and bibliographic parenthesis.

The bibliographic parenthesis, as a rule, is set off at the end of the sentence, before the punctuation mark. It contains the author's surname, the year of publication and page numbers pointing to a specifically contextual page or range of pages, as in the following example: (Mearsheimer 2001, 15–17).

### Books

***Books with one author***

Surname, Name. Year of publication. *Title*. Place of publication: Publisher.

Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics.* New York: W. W. Norton & Company.

(Mearsheimer 2001)

***Books with two or three authors***

Surname, Name, and Name Surname. Year of publication. *Title*. Place of publication: Publisher.

Brady, Henry E., and David Collier. 2010. *Rethinking Social Inquiry: Diverse Tools, Shared Standards.* Lanham: Rowman & Littlefield Publishers.

(Brady and Collier 2010)

Pollitt, Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

(Pollitt, Birchal and Putman 1998)

***Books with four or more authors***

Surname, Name, Name and Surname, Name and Surname, and Name and Surname. Year of publication. *Title*. Place of publication: Publisher.

Pollitt, Christopher, Colin Talbot, Janice Caulfield, and Amanda Smullen. 2005. *Agencies: How Governments do Things Through Semi-Autonomous Organizations*. New York: Palgrave Macmillan.

(Pollitt et al. 2005)

***Editor(s) or translator(s) in place of the author(s)***

Surname, Name, Name and Surname, ed. Year of publication. *Title*. Place of publication: Publisher.

Kaltwasser, Cristobal Rovira, Paul Taggart, Paulina Ochoa Espejo, and Pierre Ostigoy, eds. 2017. *The Oxford Handbook of Populism.* New York: Oxford University Press.

(Kaltwasser et al. 2017)

## Chapter in an edited book

Surname, Name. Year of publication. "Title of the chapter." In *Title*, ed. Name Surname, pages range. Place of publication: Publisher.

Lošonc, Alpar. 2019. "Discursive dependence of politics with the confrontation between republicanism and neoliberalism." In *Discourse and Politics*, eds. Dejana M. Vukasović and Petar Matić, 23-46. Belgrade: Institute for Political Studies.

(Lošonc 2019)

## Journal Articles

***Regular issue***

Surname, Name. Year of publication. "Title of the article." *Journal* Volume, if available (issue): page range. DOI.

Ellwood, David W. 2018. "Will Brexit Make or Break Great Britain?" *Serbian Political Thought* 18 (2): 5-14. doi: 10.22182/spt.18212018.1.

(Ellwood 2018)

***Special issue***

Surname, Name. Year of publication. "Title of the article." In "Title of the special issue", ed. Name Surname, Special issue, *Journal*: page range. DOI.

Chin, Warren. 2019. "Technology, war and the state: past, present and future." In "Re-visioning war and the state in the twenty-first century." Special issue, *International Affairs* 95 (4): 765–783. doi: 10.1093/ia/iiz106.

(Chin 2019)

## Encyclopedias and dictionaries

***When the author/editor is known***

Surname, Name, Name Surname, ed. Year of publication. *Title*. Vol. Place of publication: Publisher.

Badie, Bertrand, Dirk Berg-Schlosser, and Leonardo Morlino, eds. 2011. *International Encyclopedia of Political Science*. Vol. 1. Los Angeles: Sage Publications.

(Badie, Berg-Schlosser and Morlino 2011)

***When the author/editor is unknown***

*Title*. Year of publication. Place of publication: Publisher.

*Webster's Dictionary of English Usage*. 1989. Springfield, Massachusetts: Merriam-Webster Inc.

(*Webster's Dictionary of English Usage* 1989)

## PhD dissertation

Surname, Name. Year of publication. "Title of the dissertation." PhD diss. University.

Munger, Frank J. 1955. "Two-Party Politics in the State of Indiana." PhD diss. Harvard University.

(Munger 1955, 17–19)

## Newspapers and magazines

***Signed articles***

Surname, Name. Year of publication. "Title of the article." *Newspaper/Magazine* Date: page range.

Clark, Phil. 2018. "Rwanda's Recovery: When Remembrance is Official Policy." *Foreign Affairs*, January/February 2018: 35–41.

(Clark 2018)

***Unsigned articles***

*Title of the newspaper/magazine*. Year of publication. "Title of the article." Date: page range.

*New York Times*. 2002. "In Texas, Ad Heats Up Race for Governor." July 30, 2002.

(*New York Times* 2002)

## Corporate author

Name of the corporate author [acronym if needed]. Year of publication. *Title of the publication*. Place of publication: Publisher.

International Organization for Standardization [ISO]. 2019. *Moving from ISO 9001:2008 to ISO 9001:2015*. Geneva: International Organization for Standardization.

(International Organization for Standardization [ISO] 2019) – *The first in-text citation*

(ISO 2019) – *Second and all subsequent citations*

## Special cases of referencing

***Citing edition other than the first***

Surname, Name. Year of publication. *Title*, edition number. Place of publication: Publisher.

Bull, Hedley. 2012. *The Anarchical Society: A Study of Order in World Politics*, 4th edition. New York: Columbia University Press.

(Bull 2012)

***Multiple sources of the same author***

1) *Multiple sources by the same author* should be arranged chronologically by year of publication in ascending order.

   Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics.* New York: W. W. Norton & Company.

   Mearsheimer, John J. 2010. "The Gathering Storm: China's Challenge to US Power in Asia." *The Chinese Journal of International Politics* 3 (4): 381–396. doi: 10.1093/cjip/poq016.

2) *Multiple sources by the same author from the same year* should be alphabetized by title, with lowercase letters attached to the year. Those letters should be used in parenthetical citation as well.

   Walt, Stephen M. 2018a. *The Hell of Good Intentions: America's Foreign Policy Elite and the Decline of U.S. Primacy*. New York: Farrar, Straus and Giroux.

   (Walt 2018a)

   Walt, Stephen M. 2018b. "Rising Powers and the Risk of War: A Realist View of Sino-American Relations." In *Will China's Rise be Peaceful: Security, Stability and Legitimacy*, ed. Asle Toje. 13–32. New York: Oxford University Press.

   (Walt 2018b)

3) *Single-authored sources precede multiauthored sources beginning with the same surname* or written by the same person.

   Pollitt, Christopher. 2001. "Clarifying convergence. Striking similarities and durable differences in public management reform." *Public Management Review* 3 (4): 471–492. doi: 10.1080/14616670110071847.

   Pollit Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

4) *Multiauthored sources with the same name and surname* of the first author should continue to be alphabetized by the second author's surname.

   Pollitt Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

Pollitt Christopher, Colin Talbot, Janice Caulfield, and Amanda Smullen. 2005. *Agencies: How Governments do Things Through Semi-Autonomous Organizations*. New York: Palgrave Macmillan.

## Special cases of parenthetical citation

***Exceptions to the rule of placing the parenthetical citation at the end of a sentence***

1) If the *author is mentioned in the text*, even if used in a possessive form, the year must follow in parenthesis, and page numbers should be put in the brackets at the end of the sentence.

   For the assessment, see Kaltwasser *et al*. (2017) ... (112).

   According to Ellwood (2018) … (7).

2) When *quoting directly*, if the name of the author precedes the quotation, the year and page numbers must follow in parenthesis.

   Mearsheimer (2001, 28) claims that: "..."

3) When *using the same source multiple times in one paragraph*, the parenthetical citation should be placed either after the last reference (or at the end of the paragraph, preceding the final period) if the same page (or page range) is cited more than once, or at the first reference, while the subsequent citations should only include page numbers.

Do not use *ibid* or *op. cit.* with repeated citations.

***Using brief phrases such as "see", "compare" etc.***

Those phrases should be enclosed within the parenthesis.

(see Ellwood 2018)

***Using secondary source***

When using a secondary source, the original source should be cited in parenthesis, followed by "quoted in" and the secondary source. The reference list should only include the secondary source.

"Its authority was greatly expanded by the constitutional revision of 1988, and the Court of Arbitration can now be regarded as a 'genuine constitutional court'" (De Winter and Dumont 2009, 109 cited in: Lijphart 2012, 39–40).

Lijphart, Arend. 2012. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, 2nd edition. New Haven & London: Yale University Press.

***Multiple sources within the same parentheses***

1) When *multiple sources* are cited, they should be separated by semicolons.

   (Mearsheimer 2001, 34; Ellwood 2018, 7)

2) When *multiple sources by the same author*, but published in different years are cited, the name of the author is cited only the first time. The different years are separated by commas or by semicolon where page numbers are cited.

   (Mearsheimer 2001, 2010) or (Mearsheimer 2001, 15–17; 2010, 390)

3) When *different authors share the same surname*, include the first initial in the parenthesis.

   (M. Chiti 2004, 40), (E. Chiti 2004, 223)

   Chiti, Edoardo. 2004. "Administrative Proceedings Involving European Agencies." *Law and Contemporary Problems* 68 (1): 219–236.

   Chiti, Mario. 2004. "Forms of European Administrative Action." *Law and Contemporary Problems* 68 (1): 37–57.

## Legal and Public Documents

Sections, articles or paragraphs can be cited in the parentheses. They should be appropriately abbreviated.

***Constitutions and laws***

The title of the legislative act [acronym if needed], "Official Gazette of the state" and the number of the official gazette, or the webpage and the date of last access.

The Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/06.

(The Constitution of the Republic of Serbia, Art. 33)

The Law on Foreign Affairs [LFA], "Official Gazette of the Republic of Serbia", No. 116/2007, 126/2007, and 41/2009.

(LFA 2009, Art. 17)

Succession Act [SA], "Official Gazette of the Republic of Croatia", No. 48/03, 163/03, 35/05, 127/13, and 33/15 and 14/19.

(SA 2019, Art. 3)

An Act to make provision for and in connection with offences relating to offensive weapons [Offensive Weapons Act], 16th May 2019, www.legislation.gov.uk/ukpga/2019/17/pdfs/ukpga_20190017_en.pdf, last accessed 20 December 2019.

(Offensive Weapons Act 2019)

## Government decisions and decisions of the institutions

The name of the government body or institution [acronym or abbreviation], the title and number of the decision, date of the decision passing, or the webpage and the date of the last access.

Protector of Citizens of the Republic of Serbia [Protector of Citizens], Opinion No. 19–3635/11, 11 January 2012, https://www.ombudsman.org.rs/attachments/064_2104_Opinion%20HJC.pdf, last accessed 20 December 2019.

(Protector of Citizens, 19–3635/11)

U.S. Department of the Treasury [USDT], Treasury Directive No. 13–02, July 20, 1988, https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/td13-02.aspx, last accessed 20 December 2019.

(USDT, 13–02)

## Legislative acts of the European Union

The title of the legislative act, the number of the official gazette, the publication date and the number of the page in the same format as on the *EUR-lex* website: https://eur-lex.europa.eu/homepage.html.

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18.

(Regulation 182/2011, Art. 3)

## Treaties

***European Union founding treaties***

Title of the treaty or title of the consolidated version of the treaty [acronym], information on the treaty retrieved from the official gazette in the same format as on the *EUR-lex* website: https://eur-lex.europa.eu/homepage.html.

Treaty on European Union [TEU], OJ C 191, 29.7.1992, p. 1–112.

(TEU 1992, Art. J.1)

Consolidated version of the Treaty on European Union [TEU], OJ C 115, 9.5.2008, p. 13–45.

(TEU 2008, Art. 11)

Consolidated version of the Treaty on the Functioning of the European Union [TFEU], OJ C 202, 7.6.2016, p. 1–388.

(TFEU 2016, Art. 144)

***Other treaties***

Title of the treaty [acronym or abbreviation], date of conclusion, UNTS volume number and registration number on the *United Nations Treaty Collection* website: https://treaties.un.org.

Marrakesh Agreement Establishing the World Trade Organization [Marrakesh Agreement], 15 April 1994, UNTS 1867, I-31874.

(Marrakesh Agreement 1994)

International Covenant on Civil and Political Rights [ICCPR], 19 December 1966, UNTS 999, I-14668.

(ICCPR 1966)

Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan [Israel Jordan Peace Treaty], 26 October 1994, UNTS 2042, I-35325.

(Israel Jordan Peace Treaty 1994)

## Decisions of international organizations

The name of the international organization and its body [acronym], the decision number, the title of the decision, the date of the decision passing.

United Nations Security Council [UNSC], S/RES/1244 (1999), Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999.

(UNSC, S/RES/1244)

Parliamentary Assembly of the Council of Europe [PACE], Doc. 14326, Observation of the presidential election in Serbia (2 April 2017), 29 May 2017.

(PACE, Doc. 14326, para. 12)

## Case law

***Case law of the courts in the Republic of Serbia***

The type of the act and the name of the court [acronym of the court], the case number with the date of the decision passing, the name and number of the official gazette where the decision is published – if available.

Decision of the Constitutional Court of the Republic of Serbia [CCRS], IUa-2/2009 of 13 June 2012, "Official gazette of the Republic of Serbia", No. 68/2012.

(Decision of CCRS, IUa-2/2009)

Decision of the Appellate Court in Novi Sad [ACNS], Rzr–1/16 of 27 April 2016.

(Decision of ACNS, Rzr–1/16)

***Case law of the International Court of Justice***

The name of the court [acronym], *the case title*, type of the decision with the date of the decision passing, the name and number of I.C.J. Reports issue where the decision is published, page number.

International Court of Justice [ICJ], *Application of the Interim Accord of 13 September 1995 (the Former Yugoslav Republic of Macedonia* v. *Greece)*, Judgment of 5 December 2011, I.C.J. Reports 2011, p. 644.

(ICJ Judgment 2011)

International Court of Justice [ICJ], *Accordance with the International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, I.C.J. Reports, p. 403.

(ICJ Advisory Opinion 2010)

***Case law of the Court of Justice of the European Union***

*The case title*, the case number, type of the case with the date of the decision passing, ECLI.

*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, Case C-270/12, Judgment of the Court (Grand Chamber) of 22 January 2014, ECLI:EU:C:2014:18.

(*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, C-270/12) or

(CJEU, C-270/12)

*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, Case C-270/12, Opinion of Advocate General Jääskinen delivered on 12 September 2013, ECLI:EU:C:2013:562.

(Opinion of AG Jääskinen, C-270/12)

***Case law of the European Court of Human Rights***

*The case title*, number of the application, type of the case with the date of the judgment passing, ECLI.

*Pronina v. Ukraine*, No. 63566/00, Judgment of the Court (Second Section) on Merits and Just Satisfaction of 18 July 2006, ECLI:CE:ECHR:2006:0718JUD006356600.

(*Pronina v. Ukraine* 63566/00, par. 20) or

(ECHR, 63566/00, par. 20)

***Case law of other international courts and tribunals***

The name of the court [acronym], the case number, *the case title*, type of the decision with the date passing.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [ICTY], Case No. IT-94-1-A-AR77, *Prosecutor v. Dusko Tadic*. Appeal Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin. Judgment of 27 February 2001.

(*Prosecutor v. Dusko Tadic*, IT-94-1-A-AR77) or

(ICTY, IT-94-1-A-AR77)

## Archive sources

Name of the repository [acronym], title or number of the fond [acronym], box number, folder number – if available, reference code, "title of the document" – or, if it is not available, provide a short description by answering the questions who? whom? what?, place and date – or n.d. if no date is provided.

Arhiv Srbije [AS], MID, K-T, f. 2, r93/1894, "Izveštaj Ministarstva inostranih dela o postavljanju konzula", Beograd, 19. april 1888.

(AS, MID, K-T, f. 2)

(AS, MID, f. 2) – *When the folder number is known only*

Dalhousie University Archives [DUA], Philip Girard fonds [PG], B-11, f. 3, MS-2-757.2006-024, "List of written judgements by Laskin," n.d.

(DUA, PG, B-11, f. 3)

## Web sources

Surname, Name or name of the corporate author [acronym]. Year of publication or n.d. – if the year of publication cannot be determined. "The name of the web page." *The name of the web site*. Date of creation, modification or the last access to the web page, if the date cannot be determined from the source. URL.

Bilefsky, Dan, and Ian Austen. 2019. "Trudeau Re-election Reveals Intensified Divisions in Canada." *The New York Times*. https://www.nytimes.com/2019/10/22/world/canada/trudeau-re-elected.html.

(Bilefsky and Austen 2019)

Institute for Political Studies [IPS]. n.d. "The 5th International Economic Forum on Reform, Transition and Growth." *Institute for Political Studies*. Last accessed 7 December 7 2019. http://www.ips.ac.rs/en/news/the-5th-international-economic-forum-on-reform-transition-and-growth/.

(Institute for Political Studies [IPS], n.d.) – *First in-text citation*

(IPS, n.d.) – *Second and every subsequent citation*

Associated Press [AP]. 2019. "AP to present VoteCast results at AAPOR pooling conference." May 14, 2019. https://www.ap.org/press-releases/2019/ap-to-present-votecast-results-at-aapor-polling-conference.

(AP 2019)

## TEXT FORMATTING

### General guidelines in writing the manuscript

**The manuscript** should be written in Word, in the following manner:

Paper size: A4;

Margins: Normal 2.54 cm;

Use roman font (plain letters) to write the text, unless specified otherwise;

Line spacing: 1.5;

Footnote line spacing: 1;

Title font size: 14 pt;

Subtitles font size: 12 pt;

Text font size: 12 pt;

Footnote font size: 10 pt;

Tables, charts and figures font size: 10 pt;

Use Paragraph/Special/First line at 1.27 cm;

Text alignment: Justify;

Font color: Automatic;

Page numbering: Arabian numerals in lower right corner;

Do not break the words manually by inserting hyphens;

Save the manuscript in the .doc format.

## Research article manuscript preparation

The manuscript should be prepared in the following manner:

***Name and surname of the first author****

* In the footnote: E-mail address: The institutional e-mail address is strongly recommended.

*Affiliation*

***Name and surname of the second author***

*Affiliation*

# TITLE OF THE PAPER**

** In the footnote: Optionally, include one of the following (or similar) information: 1) name and number of the project on which the paper was written: 2) the previous presentation of the paper on a scientific conference as an oral presentation under the same or similar name; or 3) the research presented in the paper was conducted while writing the PhD dissertation of the author.


## Abstract

Abstract, within 100–250 words range, contains the subject, aim, theoretical and methodological approach, results and conclusions of the paper.



**Keywords:** Below the abstract, five to ten **key words** should be written. Key words should be written in roman font and separated by commas.


The paper can have maximum of three levels of subtitles. **Subtitles** should not be numbered. They should be used in the following manner:

**FIRST LEVEL SUBTITLE**

**Second level subtitle**

***Third level subtitle***

**Tables, charts and figures** should be inserted in the following manner:

- Above the table/chart/figure, center the name of Table, Chart or Figure, an Arabic numeral, and the title in roman font;

- Below the table/chart/figure, the source should be cited in the following manner: 1) if the table/chart/figure is taken from another source, write down *Source*: and include the parenthetical citation information of the source; or 2) if the table/chart/figure is not taken from another source, write down *Source*: Processed by the author.

**Use in-text references** according to Citing and referencing.

**Use the footnotes** solely to provide remarks or broader explanations.

## REFERENCES

**References** should be listed after the text of the paper, prior to the Resume in the following manner:

- the first line of each reference should be left intended, and the remaining lines should be placed as hanging by 1.27 cm using the option Paragraph/Special/Hanging;

- all the references should be listed together, without separating legal acts of archives;

- the references should not be numbered;

- list only the references used in the text.

After the reference list, write the name and surname of the author, the tile of the paper and resume in Serbian in the following manner:

**Име и презиме првог аутора***

* Фуснота: Имејл-адреса аутора: Препоручује се навођење институционалне имејл-адресе аутора.

**Име и презиме другог аутора**

**НАСЛОВ**

**Резиме**

**Resume** (Резиме) up to 1/10 length of the paper contains the results and conclusions of the paper which are presented in greater scope than in the abstract.

**Keywords (Кључне речи)**: Key words should be written in roman font and separated by commas.

Authors who are not native Serbian speakers should contact the Editorial staff for assistance in translating the manuscript elements into Serbian.

## Review preparation

A review should be prepared in the same manner as the research article, but leaving out abstract, keywords and resume.

## Book review preparation

Book review should be prepared in the following manner:

Split the text into **two columns**.

***Name and surname of the author****

* In the footnote: E-mail address: The institutional e-mail address is strongly recommended.

*Affiliation*

# TITLE OF THE BOOK REVIEW

Below the title **place the image of the front cover**;

Below the image of the front cover list the book details according to the following rule:

Name and surname of the author. Year of publication. *Title of the book*. Place of publication: Publisher, total number of pages.

**The text** of the book review should be prepared following the guidelines of the research article preparation.

# УПУТСТВО ЗА АУТОРЕ

У часопису *Српска политичка мисао* објављују се радови који представљају резултат најновијих теоријских и емпиријских научних истраживања у области политичких наука. Аутори би приликом писања радова требало да се позивају претежно на резултате научних истраживања који су објављени у научним часописима, првенствено у часописима политиколошке тематике.

Радови се објављују на српском језику и ћириличком писму или енглеском, руском и француском језику.

Часопис се објављује четири пута годишње. Прва три броја су на српском језику, а четврти на енглеском језику. Рокови за слање радова су: 1. фебруар, 1. мај и 1. август за издања на српском језику и 1. октобар за издање на енглеском језику.

Исти аутор не може да објави рад у два узастопна броја часописа, без обзира да ли је реч о самосталном или коауторском раду.

Аутори су у обавези да приликом слања радова доставе потписану и скенирану изјаву да рад није претходно објављен, односно да није реч о аутоплагијату или плагијату. Образац изјаве може се преузети са интернет странице часописа: http://www.ips.ac.rs/rs/magazines/srpska-politicka-misao/authors_directions/.

Радове за издања часописа на српском језику слати на имејл-адресу: spm@ips.ac.rs.

Радове за издање часописа на енглеском језику слати на имејл-адресу: spt@ips.ac.rs.

**Научни чланак** може имати највише 40.000 карактера са размацима, укључујући фусноте. Приликом бројања карактера изоставити списак референци. Изузетно, монографска студија може бити већег обима у складу са одредбама *Правилника о поступку, начину вредновања и квантитативном исказивању научноистраживачких резултата истраживања*.

**Осврт** може имати највише 15.000 карактера са размацима.

**Приказ** књиге може имати највише 10.000 карактера са размацима.

Приликом провере броја карактера користити опцију *Review/Word Count/Character (with spaces)* уз активирану опцију *Include textboxes, footnotes and endnotes*.

## НАЧИН ЦИТИРАЊА

Часопис *Српска политичка мисао* користи делимично модификовани Чикаго стил цитирања (17. издање приручника *Chicago Manual of Style*), што подразумева навођење библиографске парентезе (заграде) по систему аутор–датум у тексту, као и списак референци са пуним библиографским подацима након текста рада.

Податке у библиографској парентези и списку референци навести на језику и писму на коме је референца објављена.

У наставку се налазе правила и примери навођења библиографских података у списку референци и у тексту. За сваку врсту референце прво је дато правило навођења, а затим пример навођења у списку референци и библиографској парентези.

Библиографска парентеза се по правилу наводи на крају реченице, пре интерпункцијског знака, и садржи презиме аутора, годину објављивања и одговарајући број страна, према следећем примеру: (Суботић 2010, 15–17).

### Монографија

***Један аутор***

Презиме, име. Година издања. *Наслов*. Место издања: издавач.

Суботић, Момчило. 2010. *Политичка мисао србистике.* Београд: Институт за политичке студије.

(Суботић 2010)

Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics.* New York: W. W. Norton & Company.

(Mearsheimer 2001)

***Два или три аутора***

Презиме, име, и име презиме. Година издања. *Наслов*. Место издања: издавач.

Стојановић, Ђорђе, и Живојин Ђурић. 2012. *Анатомија савремене државе.* Београд: Институт за политичке студије.

(Стојановић и Ђурић 2012)

Pollitt Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

(Pollitt, Birchall, and Putman 1998)

***Четири и више аутора***

Презиме, име, име и презиме, име и презиме, и име презиме. Година издања. *Наслов*. Место издања: издавач.

Милисављевић, Бојан, Саша Варинац, Александра Литричин, Андријана Јовановић, и Бранимир Благојевић. 2017. *Коментар Закона о јавно-приватном партнерству и концесијама: према стању законодавства од 7. јануара 2017. године*. Београд: Службени гласник; Правни факултет.

(Милисављевић и др. 2017)

***Уредник/приређивач/преводилац уместо аутора***

Након навођења имена, ставити зарез, па након тога одговарајућу скраћеницу на језику и писму референце, нпр. „ур.", „прев." „prir.", „ed.", „eds."

Kaltwasser, Cristobal Rovira, Paul Taggart, Paulina Ochoa Espejo, and Pierre Ostigoy, eds. 2017. *The Oxford Handbook of Populism.* New York: Oxford University Press.

(Kaltwasser et al. 2017)

## Поглавље у зборнику

Презиме, име. Година издања. „Наслов поглавља." У *Наслов*, ур. име презиме, број страна на којима се налази поглавље. Место издања: издавач.

Степић, Миломир. 2015. „Позиција Србије пред почетак Великог рата са становишта Првог и Другог закона геополитике." У *Србија и геополитичке прилике у Европи 1914. године*, ур. Миломир Степић и Љубодраг П. Ристић, 55–78. Лајковац: Градска библиотека; Београд: Институт за политичке студије.

(Степић 2015)

Lošonc, Alpar. 2019. "Discursive dependence of politics with the confrontation between republicanism and neoliberalism." In *Discourse and Politics*, eds. Dejana M. Vukasović and Petar Matić, 23-46. Belgrade: Institute for Political Studies.

(Lošonc 2019)

## Чланак у научном часопису

***Чланак у редовном броју***

Презиме, име. Година издања. „Наслов чланка." *Наслов часописа* волумен (број): број страна на којима се налази чланак. DOI број.

Ђурић, Живојин, и Миша Стојадиновић. 2018. „Држава и неолиберални модели урушавања националних политичких институција." *Српска политичка мисао* 62 (4): 41–57. doi: 10.22182/spm.6242018.2.

(Ђурић и Стојадиновић 2018, 46–48)

Ellwood, David W. 2018. "Will Brexit Make or Break Great Britain?" *Serbian Political Thought* 18 (2): 5–14. doi: 10.22182/spt.18212018.1.

(Ellwood 2018, 11)

***Чланак у посебном броју***

Презиме, име. Година издања. „Наслов чланка." У „Наслов посебног броја", ур. име презиме уредника, напомена о посебном издању, *Наслов часописа*: број страна на којима се налази чланак. DOI број.

Стојановић, Ђорђе. 2016. „Постмодернизам у друштвеним наукама: стање парадигме." У „Постмодернизација српске науке: политика постмодерне / политика после постмодерне", ур. Ђорђе Стојановић и Мишко Шуваковић, посебно издање, *Српска политичка мисао*: 5–35. doi: 10.22182/spm.specijal2016.1.

(Стојановић 2016, 27)

## Енциклопедије и речници

***Наведен је аутор/уредник***

Презиме, име, име и презиме, ур. Година издања. *Наслов*. Том. Место издања: издавач.

Jerkov, Aleksandar, ur. 2010. *Velika opšta ilustrovana enciklopedija Larrouse: dopunjeno srpsko izdanje.* Tom V (S–Ž). Beograd:

Mono i Manjana.

(Jerkov 2010)

***Није наведен аутор/уредник***

*Наслов*. Година издања. Место издања: издавач.

*Webster's Dictionary of English Usage*. 1989. Springfield, Massachusetts: Merriam-Webster Inc.

(*Webster's Dictionary of English Usage* 1989)

## Докторска дисертација

Презиме, име. Година издања. „Наслов докторске дисертације." Докторска дисертација. Назив универзитета: назив факултета.

Бурсаћ, Дејан. 2019. „Утицај идеологије политичких партија на јавну потрошњу у бившим социјалистичким државама." Докторска дисертација. Универзитет у Београду: Факултет политичких наука.

(Бурсаћ 2019, 145–147)

Wallace, Desmond D. 2019. "The diffusion of representation." PhD diss. University of Iowa.

(Wallace 2019, 27, 81–83)

## Чланак у дневним новинама или периодичним часописима

***Наведен је аутор***

Презиме, име. Година издања. „Наслов чланка." *Назив новине или часописа* годиште: број стране на којој се налази чланак.

Авакумовић, Маријана. 2019. „Платни разреди – 2021. године." *Политика*, 8. децембар: 9.

(Авакумовић 2019)

***Није наведен аутор***

*Назив новине или часописа*. Година издања. „Наслов чланка." Годиште: број стране на којој се налази чланак.

*New York Times*. 2002. "In Texas, Ad Heats Up Race for Governor." July 30, 2002.

(*New York Times* 2002)

## Референца са корпоративним аутором

Назив аутора [акроним, по потреби]. Година издања. *Наслов издања*. Место издања: издавач.

Министарство за европске интеграције Републике Србије [МЕИРС]. 2018. *Водич за коришћење ЕУ фондова у Србији*. Београд: Министарство за европске интеграције Републике Србије.

(Министарство за европске интеграције Републике Србије [МЕИРС] 2018) – *прво навођење*

(МЕИРС 2018) – *свако следеће навођење*

International Organization for Standardization [ISO]. 2019. *Moving from ISO 9001:2008 to ISO 9001:2015*. Geneva: International Organization for Standardization.

(International Organization for Standardization [ISO] 2019) – *прво навођење*

(ISO 2019) – *свако следеће навођење*

## Репринт издања

Презиме, име. [Година првог издања] Година репринт издања. *Наслов*. Место првог издања: издавач првог издања. Напомена „Репринт“ на језику и писму референце, место издања репринт издања: издавач. Напомена одакле су цитати у тексту преузети.

Михаљић, Стеван. [1937] 1992. *Барања: од најстарији времена до данас*, треће издање. Нови Сад: Фототипско издање. Репринт, Београд: Библиотека града Београда. Цитати се односе на фототипско издање.

(Михаљић [1937] 1992)

## Посебни случајеви навођења референци

***Навођење другог и сваког следећег издања***

Презиме, име. Година издања. *Наслов*, напомена о издању. Место издања: издавач.

Гаћиновић, Радослав. 2018. *Млада Босна*, друго допуњено и измењено издање. Београд: Evro Book.

***Више референци истог аутора***

1) *Исти аутор, различите године* – Ређати према години издања, почевши од најраније.

   Степић, Миломир. 2012. „Србија као регионална држава: реинтеграциони геополитички приступ.” *Национални интерес* 14 (2): 9–39. doi: 10.22182/ni.1422012.1.

   Степић, Миломир. 2015. „Позиција Србије пред почетак Великог рата са становишта Првог и Другог закона геополитике.” У *Србија и геополитичке прилике у Европи 1914. године*, ур. Миломир Степић и Љубодраг П. Ристић, 55–78. Лајковац: Градска библиотека; Београд: Институт за политичке студије.

2) *Исти аутор, иста година* – Ређати према азбучном или абецедном редоследу почетног слова назива референце. Поред године објављивања ставити почетна слова азбуке или абецеде која се користе и у библиографској парентези.

   Гаћиновић, Радослав. 2018а. „Војна неутралност и будућност Србије.” *Политика националне безбедности* 14 (1): 23–38. doi: 10.22182/pnb.1412018.2.

   Гаћиновић, Радослав. 2018б. *Млада Босна*, друго допуњено и измењено издање. Београд: Evro Book.

   (Гаћиновић 2018а, 25), (Гаћиновић 2018б)

3) *Исти аутор као самостални аутор и као коаутор* – Прво навести референце у којима је самостални аутор, а затим оне у којима је коаутор.

   Стојановић, Ђорђе. 2016. „Постмодернизам у друштвеним наукама: стање парадигме.” У „Постмодернизација српске науке: политика постмодерне / политика после постмодерне”, ур. Ђорђе Стојановић и Мишко Шуваковић, посебно издање, *Српска политичка мисао*: 5–35. doi: 10.22182/spm.specijal2016.1.

   Стојановић, Ђорђе, и Живојин Ђурић. 2012. *Анатомија савремене државе.* Београд: Институт за политичке студије.

4) *Исти аутор као први коаутор у више различитих референци* – Ређати према азбучном или абецедном редоследу презимена другог коаутора.

   Pollitt Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

Pollitt Christopher, Colin Talbot, Janice Caulfield, and Amanda Smullen. 2005. *Agencies: How Governments do Things Through Semi-Autonomous Organizations*. New York: Palgrave Macmillan.

## Посебни случајеви навођења библиографске парентезе

***Изузеци од навођења библиографске парентезе на крају реченице***

1) *Навођење презимена аутора у оквиру реченице* – Годину издања ставити у заграду након навођења презимена, а број стране на крају реченице у заграду. За референцу на латиници или страном језику у загради навести и презиме аутора.

„Према мишљењу Суботића (2010), …" (30).

„Бокслер (Bochsler 2018) у својој књизи тврди…"

2) *Навођење презимена аутора у оквиру реченице пре цитата из референце* – Након навођења презимена, у библиографској парентези навести годину и број стране, а затим навести цитат.

Као што Суботић (2010, 45) наводи: „ … "

Миршајмер (Mearsheimer 2001, 57) изричито тврди: „ … "

3) *Навођење исте референце више пута у једном пасусу* – Ако се наводи иста страна или опсег страна, унети библиографску парентезу приликом последњег навођења или на крају пасуса пре интерпункцијског знака. Ако се наводе различите стране, референцу навести приликом првог позивања на одређену страну, а затим до краја пасуса у заграду стављати само различите бројеве страна.

Не користити „исто", „*ibid*", или „*op. cit.*" за вишеструко навођење референце.

***Навођење израза „видети", „упоредити" и сл.***

Изразе унети у библиографску парентезу.

(видети Кнежевић 2014, 153)

(Степић 2015; упоредити Кнежевић 2014)

***Секундарна референца***

У библиографској парентези прво навести презиме аутора, годину и број стране примарне референце, затим „цитирано у:" и презиме аутора, годину и број стране секундарне референце. У списку референци навести само секундарну референцу.

„Том приликом неолиберализам се од стране највећег броја његових протагониста најчешће одређује као политика слободног тржишта која охрабрује приватне фирме и побољшава избор потрошачима, разарајући при том 'неспособну, бирократску и паразитску владу која никада не може урадити ништа добро, без обзира на њене добре намере'" (Chomsky 1999, 7 цитирано у: Ђурић и Стојадиновић 2018, 47).

Ђурић, Живојин, и Миша Стојадиновић. 2018. „Држава и неолиберални модели урушавања националних политичких институција." *Српска политичка мисао* 62 (4): 41–57. doi:10.22182/spm.6242018.2.

***Иста библиографска парентеза, више референци***

1) *Различити аутори* – Референце одвојити тачком и зарезом.

(Степић 2015, 61; Кнежевић 2014, 158)

2) *Исти аутор, различите године* – Навести презиме аутора, а затим године издања различитих референци по редоследу од најраније до најновије и одвојити их зарезом, односно тачком и зарезом када се наводи број страна.

(Степић 2012, 2015) или (Степић 2012, 30; 2015, 69)

3) *Различити аутори, исто презиме* – Иницијал имена. Презиме аутора. Година издања.

(Д. Суботић 2010, 97), (М. Суботић 2010, 302)

Суботић, Драган. 2010. „Нови јавни менаџмент у политичком систему Србије." *Политичка ревија* 23 (1): 91–114. doi: 10.22182/pr.2312010.5.

Суботић, Момчило. 2010. „Војводина у политичком систему Србије." *Политичка ревија* 23 (1): 289–310. doi: 10.22182/pr.2312010.15.

## Правни акти

У библиографској парентези навести члан, став и тачку или параграф коришћењем скраћеница „чл.", „ст.", „тач.", „Art." „para." и сл.

***Устави и закони***

Назив акта [акроним, по потреби], „Назив службеног гласила" и број, или интернет адреса и датум последњег приступа.

Устав Републике Србије, „Службени гласник Републике Србије”, бр. 98/06.

(Устав Републике Србије 2006, чл. 33)

Закон о основама система образовања и васпитања [ЗОСОВ], „Службени гласник Републике Србије”, бр. 88/2017, 27/2018 – др. закон, 10/2019 и 27/2018 – др. закон.

(ЗОСОВ 2019, чл. 17, ст. 4)

Zakon o nasljeđivanju [ZN], „Narodne novine“, br. 48/03, 163/03, 35/05, 127/13, i 33/15 i 14/19.

(ZN 2019, čl. 3)

An Act to make provision for and in connection with offences relating to offensive weapons [Offensive Weapons Act], 16th May 2019, www.legislation.gov.uk/ukpga/2019/17/pdfs/ukpga_20190017_en.pdf, последњи приступ 20. децембра 2019.

(Offensive Weapons Act 2019)

***Одлуке државних органа и институција***

Назив органа [акроним или скраћени назив], Назив акта и број предмета, датум доношења акта, или интернет адреса и датум последњег приступа.

Заштитник грађана Републике Србије [Заштитник грађана], Мишљење бр. 15–3314/12, 22. октобар 2012, https://www.osobesainvaliditetom.rs/attachments/083_misljenje%20ZG%20DZ.pdf, последњи приступ 20. децембра 2019.

(Заштитник грађана, 15–3314/12)

U.S. Department of the Treasury [USDT], Treasury Directive No. 13–02, July 20, 1988, https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/td13-02.aspx, last accessed 20 December 2019.

(USDT, 13–02)

***Законодавни акти Европске уније***

Назив акта, подаци из службеног гласила у формату наведеном на сајту *EUR-lex*: https://eur-lex.europa.eu/homepage.html.

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States

of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18.

(Regulation 182/2011, Art. 3)

## Међународни уговори

***Оснивачки уговори Европске уније***

Назив уговора или консолидоване верзије [акроним], подаци о коришћеној верзији уговора из службеног гласила у формату наведеном на сајту *EUR-lex*: https://eur-lex.europa.eu/homepage.html.

Treaty on European Union [TEU], OJ C 191, 29.7.1992, p. 1–112.

(TEU 1992, Art. J.1)

Consolidated version of the Treaty on European Union [TEU], OJ C 115, 9.5.2008, p. 13–45.

(TEU 2008, Art. 11)

Consolidated version of the Treaty on the Functioning of the European Union [TFEU], OJ C 202, 7.6.2016, p. 1–388.

(TFEU 2016, Art. 144)

***Остали међународни уговори***

Назив уговора [акроним или скраћени назив], датум закључивања, регистрација у Уједињеним нацијама – UNTS број, регистрациони број са сајта *United Nations Treaty Collection*: https://treaties.un.org.

Marrakesh Agreement Establishing the World Trade Organization [Marrakesh Agreement], 15 April 1994, UNTS 1867, I-31874.

(Marrakesh Agreement 1994)

Convention on Cluster Munitions [CCM], 30 May 2008, UNTS 2688, I-47713.

(CCM 2008)

Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan [Israel Jordan Peace Treaty], 26 October 1994, UNTS 2042, I-35325.

(Israel Jordan Peace Treaty 1994)

## Одлуке међународних организација

Назив међународне организације и надлежног органа [акроним], број одлуке, Назив одлуке, датум усвајања.

United Nations Security Council [UNSC], S/RES/1244 (1999), Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999.

(UNSC, S/RES/1244)

Parliamentary Assembly of the Council of Europe [PACE], Doc. 14326, Observation of the presidential election in Serbia (2 April 2017), 29 May 2017.

(PACE, Doc. 14326, para. 12)

## Судска пракса

### *Судска пракса у Републици Србији*

Врста акта и назив суда [акроним суда], број предмета са датумом доношења, назив и број службеног гласника или друге публикације у коме је пресуда објављена – ако је доступно.

Одлука Уставног суда Републике Србије [УСРС], ИУа-2/2009 од 13. јуна 2012. године, „Службени гласник РС”, бр. 68/2012.

(Одлука УСРС, ИУа-2/2009)

Решење Апелационог суда у Новом Саду [АСНС], Ржр–1/16 од 27. априла 2016. године.

(Решење АСНС, Ржр–1/16)

### *Судска пракса Међународног суда правде*

Назив суда [акроним суда], *Назив случаја*, врста одлуке са датумом доношења, назив и број гласила у коме је пресуда објављена, број стране.

International Court of Justice [ICJ], *Application of the Interim Accord of 13 September 1995 (the Former Yugoslav Republic of Macedonia* v. *Greece)*, Judgment of 5 December 2011, I.C.J. Reports 2011, p. 644.

(ICJ Judgment, 2011)

International Court of Justice [ICJ], *Accordance with the International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, I.C.J. Reports, p. 403.

(ICJ Advisory Opinion, 2010)

***Судска пракса Суда правде Европске уније***

*Назив случаја,* број случаја, врста случаја са датумом доношења, Европска идентификациона ознака судске праксе (*ECLI*).

*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, Case C-270/12, Judgment of the Court (Grand Chamber) of 22 January 2014, ECLI:EU:C:2014:18.

(*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, C-270/12) или

(CJEU, C-270/12)

*United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, Case C-270/12, Opinion of Advocate General Jääskinen delivered on 12 September 2013, ECLI:EU:C:2013:562.

(Opinion of AG Jääskinen, C-270/12)

***Судска пракса Европског суда за људска права***

*Назив случаја*, број представке, врста случаја са датумом доношења, Европска идентификациона ознака судске праксе (*ECLI*).

*Pronina v. Ukraine*, No. 63566/00, Judgment of the Court (Second Section) on Merits and Just Satisfaction of 18 July 2006, ECLI:CE:ECHR:2006:0718JUD006356600.

(*Pronina v. Ukraine*, 63566/00, par. 20) или

(ECHR, 63566/00, par. 20)

***Судска пракса других међународних судова и трибунала***

Назив суда [акроним суда], *Назив случаја*, број случаја, врста случаја са датумом доношења.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [ICTY], *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A-AR77, Appeal Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, Judgment of 27 February 2001.

(*Prosecutor v. Dusko Tadic*, IT-94-1-A-AR77) или

(ICTY, IT-94-1-A-AR77)

## Архивски извори

Назив установе [акроним или скраћени назив], назив или број фонда [акроним или скраћени назив], кутија, фасцикла (уколико постоји), сигнатура, „Назив документа" (ако нема назива, дати кратак опис одговарањем на питања: ко? коме? шта?), место и датум документа или н.д. ако није наведен датум.

Архив Србије [АС], МИД, К-Т, ф. 2, r93/1894, „Извештај Министарства иностраних дела о постављању конзула", Београд, 19. април 1888.

(АС, МИД, К-Т, ф. 2)

(АС, МИД, ф. 2) – *ако је позната само фасцикла, а не и кутија*

Dalhousie University Archives [DUA], Philip Girard fonds [PG], B-11, f. 3, MS-2-757.2006-024, "List of written judgements by Laskin," n.d.

(DUA, PG, B-11, f. 3)

## Извори са интернета

Презиме, име или назив корпоративног аутора [акроним]. Година објављивања или н.д. – ако не може да се утврди година објављивања. „Наслов секције или стране унутар сајта." *Назив сајта*. Датум креирања, модификовања или последњег приступа страници, ако не може да се утврди на основу извора. Интернет адреса.

Bilefsky, Dan, and Ian Austen. 2019. "Trudeau Re-election Reveals Intensified Divisions in Canada." *The New York Times*. https://www.nytimes.com/2019/10/22/world/canada/trudeau-re-elected.html.

(Bilefsky and Austen 2019)

Институт за политичке студије [ИПС]. н.д. „Предавање др Фридриха Ромига." *Институт за политичке студије*. Последњи приступ 10. октобар 2018. http://www.ips.ac.rs/rs/news/predavanje-dr-fridriha-romiga/.

(Институт за политичке студије [ИПС], н.д.) – *прво навођење*

(ИПС, н.д.) – *свако следеће навођење*

*Танјуг*. 2019. „Европска свемирска агенција повећава фондове.” 28. новембар 2019. http://www.tanjug.rs/full-view1.aspx?izb=522182.

(Танјуг 2019)

## ФОРМАТИРАЊЕ ТЕКСТА

### Опште смернице о обради текста

**Текст рада** обрадити у програму *Word*, на следећи начин:

величина странице: А4;

маргине: *Normal* 2,54 cm;

текст писати курентом (обичним словима), осим ако није другачије предвиђено;

проред између редова у тексту: 1,5;

проред између редова у фуснотама: 1;

величина слова у наслову: 14 pt;

величина слова у поднасловима: 12 pt;

величина слова у тексту: 12 pt;

величина слова у фуснотама: 10 pt;

величина слова за табеле, графиконе и слике: 10 pt;

увлачење првог реда пасуса: 1,27 cm (опција: *Paragraph/Special/First line*);

поравнање текста: *Justify*;

боја текста: *Automatic*;

нумерација страна: арапски бројеви у доњем десном углу;

не преламати речи ручно уношењем цртица за наставак речи у наредном реду;

сачувати рад у формату .doc.

### Примена правописних правила

Радове ускладити са *Правописом српског језика* у издању Матице српске из 2010. године или из каснијих издања.

Посебну пажњу обратити на следеће:

Приликом првог навођења **транскрибованих страних имена и израза** у облој загради поред навести и њихове облике на изворном језику у курзиву (*italic*), нпр: Франкфуртер алгемајне цајтунг (*Frankfurter Allgemeine Zeitung*), Џон Ролс (*John Rawls*), Алексеј Тупољев (*Алексей Туполев*).

Поједине **општепознате стране изразе** писати само на изворном језику у курзиву, нпр. *de iure*, *de facto*, *a priori*, *a posteriori*, *sui generis* итд.

**Реченицу не почињати** акронимом, скраћеницом или бројем.

**Текст у фуснотама** увек завршавати тачком.

За навођење израза или **цитирања на српском језику** користити наводнике који су својствени српском језику према важећем правопису **(„ ”**), а за навођење или **цитирање на енглеском или другом страном језику** користити наводнике који су својствени том језику (**“ ”**, **« »**).

**Угластом заградом []** означавати: 1) сопствени текст који се умеће у туђи текст; или 2) текст који се умеће у текст који је већ омеђен облом заградом.

**Црту** писати са размаком пре и после или без размака, никако са размаком само пре или само после. Између бројева, укључујући бројеве страна, користити примакнуту црту **(–)**, а не цртицу **(-)**.

За **наглашавање појединих речи** не користити подебљана слова (**bold**), нити подвучена слова (underline) већ искључиво курзив (*italic*) или наводнике и полунаводнике (**’ ’** на српском језику или **‘ ’** на енглеском језику).

## Форматирање научног чланка

Научни чланак форматирати на следећи начин:

***Име и презиме првог аутора****

* Фуснота: Имејл-адреса аутора: Препоручује се навођење институционалне имејл-адресе аутора.

*Установа запослења*

***Име и презиме другог аутора***

*Установа запослења*

# НАСЛОВ РАДА**

** Фуснота: по потреби, навести један од следећих (или сличних) података: 1) назив и број пројекта у оквиру кога је чланак написан; 2) да је рад претходно изложен на научном скупу у виду усменог саопштења под истим или сличним називом; или 3) да је истраживање које је представљено у раду спроведено за потребе израде докторске дисертације аутора.

## Сажетак

Сажетак, обима од 100 до 250 речи, садржи предмет, циљ, коришћени теоријско-методолошки приступ, резултате и закључке рада.

**Кључне речи**: Испод текста сажетка навести од пет до десет **кључних речи**. Кључне речи писати курентом и једну од друге одвојити зарезом.

У тексту је могуће користити највише три нивоа поднаслова. **Поднаслове** навести без нумерације, на следећи начин:

### ПОДНАСЛОВ ПРВОГ НИВОА

### Поднаслов другог нивоа

### *Поднаслов трећег нивоа*

**Табеле, графиконе и слике** уносити на следећи начин:

- изнад табеле/графикона/слике центрирано написати: Табела/Графикон/Слика, редни број и назив;

- испод табеле/графикона/слике навести извор на следећи начин: 1) уколико су табела/графикон/слика преузети,

написати *Извор*: и навести референцу на исти начин као што се наводи у библиографској парентези; 2) уколико нису преузети, написати *Извор*: Обрада аутора.

**Референце наводити у тексту** према Начину цитирања.

**Фусноте** користити искључиво за давање напомена или ширих објашњења.

## РЕФЕРЕНЦЕ

**Списак референци** навести након текста рада, а пре резимеа, на следећи начин:

- прво навести референце на ћирилици по азбучном реду;
- затим навести референце на латиници и страним језицима по абецедном реду;
- прву линију сваке референце поравнати на левој маргини, а остале увући за 1,27 cm, користећи опцију *Paragraph/Special/Hanging*;
- све референце наводити заједно, без издвојених делова за правне акте или архивску грађу;
- референце не нумерисати;
- наводити искључиво оне референце које су коришћене у тексту.

Након списка референци навести име и презиме аутора, наслов рада и резиме на енглеском језику на следећи начин:

**First Author***

* In the footnote: E-mail address: The institutional e-mail address is strongly recommended.

*Affiliation*

**Second Author**

*Affiliation*

**TITLE**

**Resume**

**Резиме**, обима до 1/10 дужине чланка, садржи резултате и закључке рада који су образложени опширније него у сажетку.

**Keywords**: Кључне речи писати курентом и једну од друге одвојити зарезом.

Уколико је **рад написан на страном језику,** након списка референци, име и презиме аутора, наслов, резиме и кључне речи навести на српском језику.

### Форматирање осврта

Осврт форматирати на исти начин као научни чланак, без навођења сажетка, кључних речи и резимеа.

### Форматирање приказа

Приказ књиге форматирати на следећи начин:

Текст поделити у **две колоне**.

***Име и презиме аутора****

* Фуснота: Имејл-адреса аутора: Препоручује се навођење институционалне имејл-адресе аутора.

*Установа запослења*

# НАСЛОВ ПРИКАЗА

Испод наслова **поставити слику предње корице**;

Испод слике предње корице навести податке о књизи према следећем правилу:

Име и презиме. Година издања. *Наслов*.
Место издања: издавач, број страна.

**Текст** приказа обрадити у складу са општим смерницама о обради текста.

CIP - Каталогизација у публикацији

Народна библиотека Србије, Београд

32

**СРПСКА политичка мисао** = Serbian Political Thought / главни и одговорни уредник Живојин Ђурић. - [Штампано изд.]. - Vol. 1, бр. 1/4 (1994)- . - Београд : Институт за политичке студије, 1994- (Житиште : Ситопринт). - 23 cm

Тромесечно. - Од 2019. прва три броја излазе на срп., а сваки четврти на енгл. језику. - Преузео је: Serbian Political Thought = ISSN 1450-5460. – Друго издање на другом медијуму: Српска политичка мисао (CD-ROM) = ISSN 1452-3108

ISSN 0354-5989 = Српска политичка мисао

COBISS.SR-ID 102782215