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- CONTENT -

Petio Valkov, POLICY OF RUSSIA AND THE „ALBANIAN FACTOR” IN THE REPUBLIC OF MACEDONIA ............................................................................................................................................................................. 5

Kire Babanoski, Ice Ilievski, Zlate Dimovski, BALKAN ROUTE, ORGANIZED CRIME AND TERRORISM ............................................................................................................................................................................. 12

Aguš Demirovski, TRANSNATIONAL ORGANIZED CRIME AS A DANGEROUS THREAT TO THE NATIONAL SECURITY IN TODAY’S WORLD ............................................................................................................. 21

Željka Burić, THE APPLICATION OF THE DOCTRINE OF COMMAND RESPONSIBILITY FOR CIVILIANS ............................................................................................................................................................................. 28

Maida Bečirović-Alić, THE RIGHT TO A FAIR TRIAL AS A PART OF THE BASIC HUMAN RIGHTS AND FREEDOMS ............................................................................................................................................................................. 38

Vase Rusumanov, Aleksandar Gjurčeski, Biljana Bogdanova-Smilevska, NEW SECURITY CHALLENGES AND THE APPEARANCE OF THE COMPUTER AS A TOOL AND AN OBJECT OF CRIMINAL ATTACK ............................................................................................................................................................................. 53

Marijana Jakovleska, FINANCIAL ENTITIES IN THE SYSTEM FOR PREVENTION OF MONEY LAUNDERING ............................................................................................................................................................................. 62

Kristine Nikoghosyan, SOCIAL PARTNERSHIP AS A TOOL TO OVERCOME SOCIAL - ECONOMIC PROBLEMS ............................................................................................................................................................................. 71
As editor-in-chief of *Journal of European and Balkan Perspectives*, I am delighted by the challenge of creating a journal that encourages research and interdisciplinary approach to the contemporary European and Balkan challenges and perspectives. The journal is published twice a year (spring issue and autumn issue) and it contains papers, articles and book reviews in areas such as Balkan and European politics, Economics, Security Issues, Cultural and Ethnic Studies and Environmental Policies. The *Journal of European and Balkan Perspectives* is also open to interdisciplinary and other research papers that explore innovative approaches and provide a critical contribution in the scientific fields which besides the Balkans are related to the Caucasus region.

Prof. Mitko Kotovchevski PhD,
Editor-in-chief of the
*Journal of European & Balkan Perspectives*

As President of the Center for International and Development Studies in Skopje I am excited for the issue of the very first number of the *Journal of European and Balkan Perspectives*. The focus of this special publication is the security as a main issue in the contemporary world. Namely, the security as such is a part not only from the international relations, but also is a huge factor in every state’s domestic policies. Besides the security the topics of the articles in this issue are related to the human rights and the rule of law. I hope that this first number of the Journal will become a new perspective for the young generation of researchers and academia members.

Ass. Prof. Blagoj Conev PhD,
President of the
*Center for International & Development Studies in Skopje*
POLICY OF RUSSIA AND THE „ALBANIAN FACTOR” IN THE REPUBLIC OF MACEDONIA

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Russia is the country with the largest territory in the world (17.098.242 sq km).¹ This fact alone manifests its potential capabilities and objectively existing abilities. According to Sir Halford Mackinder's theory, it is located at the heart of the Eurasian geographic space, the Heartland. „Who rules East Europe commands the Heartland; who rules the Heartland commands the World-Island; who rules the World-Island commands the world."²

It can be said that the stabilization and consolidation of Russia began in the new millennium under the rule of Vladimir Putin. His name is also associated with the concept of „sovereign democracy“.³

The economy of Russia has grown by an average of around 7% in the last decade following the Russian financial crisis of 1998. Thus, it has doubled its real disposable income⁴ and such growth catalyzed the emergence of a middle class. It should be noted that the Russian economy has the structural weakness of being predominantly oriented towards the export of raw energy materials. There are two main reasons that predetermine the relevant substantial reliance of Moscow on its foreign energy policy:

- it is the main source of foreign revenues;
- it is a powerful means of regaining the influence of the country in its traditional sphere of interest, and even worldwide, in the conditions of increasing demand for energy resources.⁵

The „energy trump” is the strongest card in the hand of Russia that is based upon its real capacities and which Moscow does not hesitate to use, especially in disputes with its neighbors in the post-Soviet space or the so-called „near abroad” (an indicative example in this respect, affecting also the Republic of Bulgaria, is the energy crisis of January 2009).⁶

In recent years there have been a number of allegations that Russia has been attempting to increase its real capabilities in the military field. There are certain doubts that Moscow has taken some initial steps for undeclared counterbalancing of USA. Furthermore, along with its ambitions to transform the system of international relations into a multipolar one, it has decided to increase the guarantees of its own security in a world where competition between countries is growing. This process needs further research and follow-up for the purpose of verifying such a conclusion on whether such a

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⁴ Disposable income is the amount of money that households have available for spending and saving after income taxes have been accounted for.
⁵ Ibid, pp.148-149.
⁶ Ibid, p.149.
process is a result of the continual bargaining between the separate components of power for recognizing the status of Russia as one of the leading “power centers”, though it is not recognized as a “superpower”.7

Nowadays Russia is focused more on the development of its “hard” than its “soft power”. Nevertheless, from a realist perspective a state does not rise to the level of becoming a center of power in the system of international relations just for its military supremacy neither even for its economic status. It becomes a “center of power” depending on whether and in what direction it could change the world. Thus, from constructivist and even liberalist perspective the Great states usually rely on large-scale ideas and role-play that “small countries” tend to accept and strive to follow in international relations, not only because of the expected economic revenues, but simply because of the underlying benefits of promoting the ideas.8 In addition, the “small states” make their choice to gravitate around a “center of power” also because they are convinced of receiving benefits in exchange, that are above all strategic for them.

The ruling elite in the Republic of Macedonia do not accept Russia as a “center of power” that promotes a large scale global attractive idea. Here we can agree with Fyodor Lukyanov’s opinion that Moscow “has used up the Soviet model and is looking for an alternative but has so far formulated only traditional ideas based on conservative values, which by definition are incapable of driving forward progress”.9

As for Russia’s ability to win international partners, the country enjoys some attractiveness and even a sense of nostalgia among some actors10 of the post-Soviet space, but as a whole, the shadow of the historical burden still lags over its relations with neighbors from the “near abroad”. To a great extent, the reason for the strengthening of such a negative sentiment in a number of Southeast European countries towards the Russian state is the fast-growing process of globalization, in some aspects uncontrollable, the more acceptable and attractive conditions in Western Europe, the dominant foreign relations, economic opportunities and the projected military power of the USA.

In regard to Kremlin’s policy, it should be noted that it is lies on the border between “hard and soft power” while enhanced by the traditionally good Russian intelligence. Recently, the developing concept of “smart power” seems to have introduced the tendency for including intelligence as integral part of the state “soft power”.11

The Foreign Relations Concept of the Russian Federation adopted on February 12, 2013, presented Moscow’s vision of the structure of the system of international relations and the place of the country in it. Traditional anti-Western rhetoric has not been avoided. The Black Sea and Caspian regions are referred to as traditional areas of interest for Moscow, which also determines the relatively high priority placed on them.12

Based on the above, we can conclude that Russia can be referred to as a “center of power” in international relations on the basis of its vast territory, impressive nuclear power, a wide range of large quantities of natural resources and good current economic indicators, even though its economy is

7 Ibid, p.153.
10 Actors are entities that participate in or promote international relations. The two types of actors involved in international relations include State and non-state actors.
12 Ibid, pp. 159-161.
highly dependent on raw energy materials export. From a subjective point of view it can be regarded as a “center of power” because of the existing consensus in the international community that it be accepted as such. However, it can rather be characterized as a center of „hard“, not a multidimensional force, because the „soft power“ it uses is not only below the level of the US and the EU, it is also below its previous level of power projection, and hence - of its potential.13

Regarding the region of the Western Balkans, and the Southeast Europe as a whole, it should be noted that Russia has continually maintained its long-standing interests. They are mainly based on increasing Russian influence through the realization of energy projects in line with the Foreign Relations Concept.14 According to the latter founding document the Balkans has been identified as having strategic importance for Moscow.

Considering the dynamically developing domestic politics in the states of the Western Balkans, Russia's strategic goal in the region can be defined as blocking the Euro-Atlantic integration of some of the countries of the former Yugoslavia. Supportive of the Russian strategy is the statement made by the Russian Ambassador to Macedonia, Oleg Shcherbak that Moscow aims to create a zone of military neutrality on the Balkan Peninsula. It would cover Bosnia and Herzegovina, Montenegro, Serbia and the Republic of Macedonia.15

The opinion of a former MFA official of the Republic of Macedonia is that Russia's main goal in the country could be to generate a domestic confrontation between the main political figures and the civil society regarding the strategic priorities of Skopje foreign policy led. Thus, the most commonly used is the method of demonizing the „Albanian factor“, which is qualified as the main threat to the identity of the Slavic nation (Macedonians) in the region. At the forefront, the Russian diplomacy is focused on impeding the process of achieving a public consensus on the integration of Macedonia in NATO and the EU. At the same time, considerable measures are being taken to strengthen Moscow's economic and political interests in the country. Not least is the formation of a positive public opinion about Russia and its presence in the country.

It can be estimated that the change in the ruling coalition in Macedonia in 2017 has led to a reduction of the political influence of Russia in the country. As a result of the current level of Russian possibilities for intervention in the country's political course, it is mainly determined by the enhanced Euro-Atlantic orientation of the ruling coalition, for which the Albanian parties play an important role.16

It can be assumed that Moscow's so-defined goals in the Republic of Macedonia will preserve their character and can be described as part of the major trend in the Russian policy towards the country.

Evident for the resurgence of Russian foreign policy specifically towards Macedonia is the fact that for a decade Moscow maintained a relative neutrality towards the developing domestic political

14 Item 66 of the Foreign Relations Concept: „Russia aims to develop pragmatic and equal cooperation with the countries of Southeast Europe. The Balkan region is of strategic importance for Russia, including as the largest transport and infrastructure junction through which oil and gas is supplied to European countries”
15 Shcherbak, Oleg, interview for TV „Nasha TV“, e-portal „Infomax.mk“, 01.04.2017, available on: https://infomax.mk/wp/%D0%BC%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0% B0%D0%BA%D0%B0%D0%BA%D0%BE%D0%B4%D0%B5%D0%BB%D0%BD%D0%B0%D0%BD%D0%B0%D0%BB%D0% B8%D1%98%D0%B0%D0%BD%D1%81%D0%B0%D0%BD%D0%B0%D0%BD%D0%B0%BD%05%0D%01%83, last review 23.07.2018.
16 O., V., Ethnic Albanian, interviewed on 14.06.2018 in Skopje.
processes in the country, especially during the first years of Nikola Gruevski's governance. This was mainly due to the financial commitments of the circles close to the former Macedonian Prime Minister made to oligarchic structures in Russia. Indicative for this period was the stagnation in Euro-Atlantic integration process, which fully met Russian interests. After the first severe turmoil in Macedonia's governance in 2015 due to the massive opposition campaign by the Social Democratic Union of Macedonia (SDSM), not without the support of the international community, Russia has increasingly followed a position in support of VMRO-DPMNE (the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity) and Gruevski. Moscow has repeatedly blamed the international factor in the face of the EU and the USA for the worsened domestic political situation in the Republic of Macedonia, and specifically the Albanian community in the country, as a conductor of the interests of the West.\(^{17}\)

In this context, the media coverage (October 6, 2016) in Macedonia of the comments of the Russian Foreign Minister Sergey Lavrov during a hearing in the Federation Council (the upper house of the Federal Assembly in Russia) should be noted, which provoked a wide public interest. Regarding the situation in the Republic of Macedonia, he stated that the so-called Color Revolution was led by outside forces, and Nikola Gruevski was forced to resign as Prime Minister for his refusal to join the sanctions against Russia and the shown interest in joining the „South Stream“ project. According to Lavrov, the main danger is that the „Albanian factor“ is also included in the attempts to subvert the Republic of Macedonia. Ideas to federalize the country, and even to make it a confederation, are in progress. He stressed that, without mentioning specifically the Republic of Macedonia, the Albanian Prime Minister Edi Rama often talked about the so-called „Natural Albania“.\(^{18}\)

In an official statement (March 2, 2017), the Russian Foreign Ministry responded with extreme acuteness to EU and NATO representatives who demanded that President Ivanov observe democratic standards and give a mandate to form a majority government. „The outside intervention in the internal affairs of the Republic of Macedonia continues and reaches a shameless form. ….. high-ranking individuals from Europe, who represent themselves as guardians of democratic norms, continue to make unprecedented pressure on President Ivanov to give a mandate to the opposition that has adopted the ultimate Albanian platform. It is precisely the formulated in Tirana points that mean federalization of the Republic of Macedonia, audit of the power architecture, even of the state symbols. All this leads to the undermining of the constitutional order and the disintegration of the state. The statement of Kosovo's President Hashim Thaci to Albanians to take their rights in their own hands should be interpreted as calling for Greater Albania.“\(^{19}\)

Particular attention should also be paid to the official position of the Russian MFA on the Kumanovo case in the Spring of 2015: „we call for the avoidance of a tension escalation, which requires appropriate measures by the competent institutions .....opposition movements and NGOs in the Republic of Macedonia are inspired by the West and work in favor of a scenario called the Color

\(^{17}\) Ibid

\(^{18}\) Macedonian Information Agency (MIA), 06.10.2016.

\(^{19}\) „Russia condemns the „shameless“ pressure on Ivanov“, e-portal „Deutsche Welle“, 03.03.2017, available on: http://www.dw.com/mk/%D1%80%D1%83%D1%81%D0%B8%D1%98%D0%B0%D0%B3%D0%BE% D0%BE%D1%81%D1%83%D0%B4%D1%83%D0%B2%D0%B0%D0%B1% D0%B5%D1%81%D1%80%D0%B0%D0%BC% D0%BD% D0%B8%D0%BE%D1%82%D0%BE%D1%80% D0%B8%D1%82%D0%B8%D1%81%D0%BE% D0%BA% D0%B2%D1% 80%D0%B7%D0%B8%D0%B2%D0%B0%D0%BD% D0%BE% D0%B2/a37802421?maca=maz-rss-maz-p ol_makedonija_timemk-4727-xml-mrss, last review 23.07.2018.
Indirect accusations made against the opposition in the country led by the SDSM (Social Democratic Union of Macedonia), the NGOs (mostly external funding) and the journalists, countering the policy led by the then ruling VMRO-DPMNE (the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity) can be qualified as part of the build-up of the negative attitude towards the West and supportive of the ruling Slavic-Macedonian Party. Concurrently, it is important to take into consideration the more and more deepening interplay at the highest state level between the Republic of Macedonia and Russia at that time, which is also substantiated by President Ivanov's visit to Moscow for the May 9th celebrations.

A number of official negative reactions from Russia to the Euro-Atlantic aspirations of the Republic of Macedonia were symptomatic during the period of the active negotiation process between Skopje and Athens on the issue of the name dispute, as well as immediately after receiving the invitation for NATO membership (June 11, 2018). All of them are in the context of growing signs of deepening division in the country's society and in Europe.

In order to implement the measures of the Russian public diplomacy, Moscow has used a wide range of instruments in the Republic of Macedonia, such as economy (investment), religion, civil sector, education and media.

Their practical use to a certain extent is favored by the long-standing historical, cultural and political connections that serve as a basis for the development of specific spheres of influence. Traditionally, in the Republic of Macedonia, as in the other Western Balkan countries, the ideological focus has been placed on the „hybrid“ connection of Orthodoxy with Pan-Slavism and the common ethno-religious roots. On the other hand, particular attention has been paid to the impact of the energy sector on the national economy and hence on the public attitudes and sentiments. These tendencies are supported by targeted information campaigns and the use of locally established political levers.

The multiethnic character of the local population has been used purposefully and actively, exploiting the relations between the two leading ethnic groups (Slavic Macedonians and Albanians). Periodically and on convenient occasions, the thesis that the Slavic-Macedonian population is threatened by the realization of the concept of „Great Albania“ has been developed. In the light of the ongoing negotiations to resolve the long-standing name dispute between Skopje and Athens, which provides a „green light“ for the Euro-Atlantic future of the Republic of Macedonia, the Russian state has adopted a strategy to focus its efforts on implementing an approach aimed at exploiting the issue of the eventual loss of the national identity of the Macedonian people. Questions such as the voting on the Language Use Act have been cleverly used in this respect. According to a number of Macedonian analysts, indicative of Russia's interference is that during the organized protests with a pronounced domestic political nature such as the adoption of the Law in question, the propagation of negative rhetoric on NATO and the EU was initiated by certain circles within the ranks of the organizers. Such a public expression of dissatisfaction was initiated and to a certain extent organized by extreme nationalist and nationalist-orthodox organizations such as „Christian Brotherhood“, „Tvrdokorni“, „All-Macedonian association Macedonium“ and some smaller political actors such as „United Macedonia“ who have a pronounced pro-Russian orientation.

A new point in the Russian strategy for the region and for the Republic of Macedonia is the option presented by Moscow during the Eurasian Economic Union (EAEU) i.e. as an alternative to EU and NATO membership. In support of this, the positions taken by Alexander Dugin and Leonid Savin,

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advisers to President Putin, upon their visit to Skopje in March 2018, are to be considered. They underlined the idea of reorienting the Republic of Macedonia to EAEU by pointing to the benefits of such a strategic engagement. The suggestions and speculations made by Russian „experts“ encountered a unanimous sharp disapproval by all Albanian political subjects in the Republic of Macedonia. Negative reactions also came from leading parties in Kosovo and Albania. This can be seen as a testimony to the exacerbation of Russia's opposition to the EU, and as part of Moscow's policy of creating a public division on the issue of Euro-Atlantic integration of Macedonia.

According to the respondent, regardless of this aspect of Russian politics in the Republic of Macedonia, the traditional levers and instruments of influence remain in the following sectors: energy, education and NGOs.

Relatively often, in social networks, mainly in Facebook, there are sponsored profiles, that purposefully exploit topical issues of the domestic and foreign political situation in Macedonia by giving them a greatly Albanian character, presenting them as a threat to the national identity of the Macedonian nation.

By the middle of 2018, in the Republic of Macedonia the party „United Macedonia“ with President Janko Bachev is positioned as a political subject, clearly supporting the pro-Russian ideology. He often advocates extremely nationalistic stances that generate hatred and xenophobia towards the Albanian ethnos.

It can be appreciated that the character of the Russian policy pursued in the Republic of Macedonia has a strong focus against the Euro-Atlantic integration of the country and on the preservation of Moscow's influence in it. The „Albanian factor“ is often used as a tool for promoting nationalist attitudes serving Russian geostrategic interests in the region. It is precisely the subject of periodic negative statements and stances expressed by Russian politicians.

When assessing the magnitude of the impact of Russian policy, the focus of Russian diplomacy in the country should be taken. As a target audience for direct impact, the Slav-Macedonian population should be mentioned, excluding the other ethnic groups in the Republic of Macedonia as Albanians, Turks, Bosniaks and Roma, who are only used to initiate interethnic tensions in line with the Russian interests. On the agenda there are topics related to national identity, language and history that create certain conditions for a broad public support. These topics are subject to underlined exploitation mainly among extreme right, nationalist and radical structures. These structures are providing a fertile ground for one of the leading pillars of Russian propaganda in the region i.e. Pan-Slavism, which, however, has been counterbalanced in the Republic of Macedonia by the idea of the ancient origins of the Macedonian nation. This leads to the natural weakening of Russian ideological influence in the Republic of Macedonia and requires the necessary concentration of the propaganda rhetoric on Orthodoxy as a leading factor in the country. In view of the relatively low influence of religion on Slavo-Macedonians, it can be concluded that the level of ideological influence of Russia in the country is not high. However, there are clear indications that Moscow is making substantial efforts to increase the pro-Russian attitudes in the Republic of Macedonia through the use of different public spheres and sectors.

23 Ibid
24 Ibid
As a basic tool for social-public pressure and a sustainable influence on the political environment not only in the Republic of Macedonia, but also in the region can be considered the economic levers exercised by the Russia.

With particular emphasis and importance, the purposeful negative foreign policy of Russia towards the Euro-Atlantic integration processes stands out, despite the limited results achieved.

Taking into account the involvement of the international factor and, more importantly, the „centers of power“ in international relations such as the USA, NATO and the EU in solving the integration issues of the Republic of Macedonia, it can be concluded that Russia's attempts to promote pro-Russian attitudes in the society and to destabilize the country and the region of the Western Balkans in order to delay foreign policy processes can be assessed as insufficiently effective. At the same time, the dynamic development of the domestic political environment and the complex problems of interethnic nature, due to the continuous systematic requests from the Albanians in the country, especially in the context of their rights augmentation (The Language Use Law, budget allocation, the process of changing the name of the state, etc.), contributes to the intensification of public dissatisfaction and the ethnic divisions. This creates prerequisites for the use of interethnic relations to generate events by Moscow that slow down the implementation of reforms and hamper the implementation of initiatives related to Euro-Atlantic integration processes. In this regard, the strong message in the Russian position voiced on March 20, 2018 before the Macedonian Ambassador to Moscow Goce Karajanov should be noted, i.e. that a threat to regional security might arise after a possible accession of the country to NATO. However, it is highly improbable that Russia would take extremely radical measures (similar to those taken in Ukraine) to destabilize the domestic political situation in the Republic of Macedonia in order to hinder the country's membership in NATO. The argument for this is the expected low geostrategic weight of the Republic of Macedonia in the context of its relevant influence on the military balance in the region after its accession to the Alliance.

Moscow's high sensitivity to the Euro-Atlantic integration of Skopje is defined by Russia’s stance on opposing the enlargement of NATO and the fear that after the Balkan integration, the process will continue on the territory of the former post-Soviet space. The gradual integration of the Western Balkan countries in NATO and the EU deprives Russia of its levers of influence on the region and limits it only to its immediate environment. In order to counteract this process, one can expect that Moscow will gradually rely more on hybrid modes of „soft power“. They will mainly involve the gradual increase of economic pressure in the Republic of Macedonia. At the same time, asymmetric approaches will be applied. They are expected to focus mainly on expressing hidden support for nationalist groups in the country by molding them towards extreme anti-NATO-oriented activism, on generating domestic political controversy over geopolitical orientation and on using the „Albanian factor“ to create interethnic tensions, defining this factor as the main threat to the identity of the Macedonian nation.

BALKAN ROUTE, ORGANIZED CRIME AND TERRORISM

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Abstract

The paper gives a theoretical explanation and empirical overview of the criminal activities in the Balkan countries within the "Balkan Route" as a passage along which illegal goods and immigrants are smuggled into Western Europe. Organized groups and other criminal organizations find suitable ground for performing their activities in post-conflict areas; particularly in recent times, taking off in the Balkans.

The main part of the paper will talk about the types of criminal activities which take place in this corridor (especially organized crime and terrorist activities), their causes and explanation of their harmful consequences to the security and stability of the Balkan countries. The negative consequences arising from the security-political situation, complemented by the refugee crisis in the Balkans, which highly depend on the geo-strategic position of the Balkan countries, often referred to as a destroyer of the equilibrium factor for security in this region.

The practical aim of the paper is to enable the way of eradicating crime by international security cooperation among all transit countries in the "Balkan Route". The conclusions that would arise should contribute to creating and updating the national strategies and optimal measures in identifying and detecting the activities related to illegal trafficking, organized crime and terrorism by the law enforcement agencies.

Key words: Balkan Route, organized crime, criminal activities, illegal trafficking, terrorism

Introduction

The Balkans has always been an attractive region for organized crime groups. Criminal gangs coming from mutually hostile ethnic populations cooperate without regard to officially declared animosity and ethnic origin. The idea of Yugoslavian unity and cooperation embodied in the motto Brotherhood and Unity, was paradoxically only maintained in organized crime activities. The breakup of the former Yugoslavia and ensuing regional conflicts there has led to a sharp rise in criminal activity

in the region. Previous Serbian, Croatian, and Bosnian Governments all used criminal networks as a means to evade international sanctions and acquire material necessary for the war effort. The collusion between governments and local criminal gangs weakened law enforcement and provided an environment ripe for corruption.

The so called ‘Balkan Route’ is very often used by criminals as a way for different types of illegal trafficking. It has been used for illicit trafficking since the seventh century as it is the shortest road from the East to Western Europe. The route starts in Afghanistan via Turkey, Greece, Macedonia, Bulgaria, Kosovo, Serbia and Bosnia and Herzegovina. Once it reaches Croatia and Slovenia, it leads further to Western European countries. The Balkan Route has long been infamous as a passage along which illegal goods and immigrants are smuggled into Western Europe. It has been known mainly for the drug trafficking that occurs along this passage, most notably the smuggling of heroin from the largest producer – Afghanistan – to its’ greatest market; Western Europe. This has been and still is a conduit for trafficking in arms and smuggling of goods and illegal immigrants. More recently there has been another kind of trafficking taking place here; the trafficking in human beings. Smuggling immigrants, or so called illegal migration, is immigration across national borders in such a way that threatens the immigration laws of the destination country. According to this definition, illegal immigrants are foreigners who illegally crossed the border of the target country by land, water or air, or foreigners who legally entered the territory of the country, but stayed longer than the residence specified in their visa for staying and/or work in that country. On the other hand, human trafficking is a modern phenomenon that threatens a range of human rights and freedoms, and can be realized by different motives: trafficking for prostitution, forced labour, trafficking in human organs or trafficking of children.

The original Route passes from Afghanistan through Pakistan/Iran, Turkey, Bulgaria, the Republic of Macedonia or Serbia, Bosnia and Herzegovina, Croatia, Slovenia, and into Italy and Western Europe. This has long been known as a transit zone for the transport of many illegal products, the most recognizable of which being the transport of drugs, but also including trafficking in weapons, motor vehicles and the smuggling of legal goods such as cigarettes, alcohol and oil products in order to avoid taxation, and the transport of humans in the form of smuggling illegal immigrants and the transport of victims of human trafficking. The transit towards the Western European market is advantageous as the border patrolling capacities are weak, the borders are yet to be reinforced and international and regional police cooperation is poor. The Balkan route is divided into three sub-

29 Foster, K., Croatia: Corruption, organised crime and the Balkan Route, Adriatic Institute for Public Policy. 2012, retrieved from http://www.adriaticinstitute.org/?action=article&id=32
routes: The southern route runs through Turkey, Greece, Albania and Italy; the central route runs through Turkey, Bulgaria, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, Croatia, Slovenia, and into either Italy or Austria; and the northern route runs from Turkey, Bulgaria and Romania to Austria, Hungary, the Czech Republic, Poland or Germany.

All different types of commodities travel through the Balkan regions. The Europol OCTA report defines as the ‘Balkan Axis’ the area constituted by the Western Balkans and the South East Criminal Hub. According to the Europol, the role of the Balkan Axis will intensify in the trafficking of illegal goods and the Western Balkans could increase its role as a logistical hub. These are just some of the worries expressed by the Europol, which further states that ‘in light of the continued prominence throughout the EU of Albanian speaking criminal groups, strategic and operational partnerships with authorities in the Western Balkans will be increasingly important’. In conclusion, the Europol OCTA report states that, regarding the Balkan Axis, primary importance has to be dedicated to the strategic and operational partnership with the Western Balkans.

Illegal trafficking in the Balkans

The perennial issue of the existence of strong organized crime structures in the Balkan region is of great concern for the whole of Europe, due to the importance of this region as a main geo-economic hub between the European Union, Turkey and the Middle East, and Russia. Organized crime is changing and becoming increasingly diverse in its methods, group structures, and impact on society. A new criminal landscape is emerging, marked increasingly by highly mobile and flexible groups operating in multiple jurisdictions and criminal sectors, and aided, in particular, by widespread, illicit use of the Internet. The three main sectors of organized crime activities – trafficking in drugs, human beings, and weapons – are intertwined, and all three are deeply embedded in the pervasive culture of corruption in the Balkan region. Unhindered by ethnic prejudices, political differences, and lengthily bureaucratic procedures, organized crime groups cooperate on the regional and international level much more efficiently than the governments and international organizations which are trying to suppress them. And although organized crime in the Western Balkans is by now widely recognized as the main threat against stability in the region and in Europe, there is no comprehensive strategy to address the problem, neither locally, nor in the EU.

Moreover, a much worrying trend is the formation of ethnically mixed gangs in the Balkans that tends to recruit people from various states and conduct their operations by adapting fully to the local environment. For the moment there seems to be a combination of Bulgarian and Romanian gangs and of Croatian and Montenegrins ones. The Albanians often join Greek gangs in Greece and the Turks are well placed within gangs in Macedonia, Kosovo and Bulgaria. Yugoslavian gangs encompassing citizens from most ex-federation countries are active as well as networks including Middle Eastern and Western Europeans. Thus the work of the security services becomes more complicated; the criminals can use the outreaches of their individual members to penetrate each country, acquiring much-needed information and local resources.

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33 Anastasijevic, D., Organized crime in the Western Balkans, First annual conference on human security, Terrorism and Organised crime in the Western Balkan Region, HUMSEC project: Ljubljana, 2006, pp. 23–25
According to Interpol\textsuperscript{35}, people-smuggling networks change their methods in response to legislative and law enforcement activities, this flexibility being necessary for their survival. Flexibility is thus one of the main characteristics of transportation and the choice of transport routes. This means that the routes used by people-smugglers may sometimes be simple and direct, at other times circuitous. The time between departure and arrival may vary from some days to several months or even years. Smuggling is carried out by land, air or sea. Some examples of routes frequently used for people smuggling include migrants from the Asian region mainly using the route via Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan to Russia and from there, via Ukraine, Slovakia and the Czech Republic, to Western European countries or even further to the United States and Canada. At the same time, the Balkan Route from Asian countries via Iran and Turkey and from there, via the Balkan states, to Western Europe is used for the smuggling of migrants as well as other kinds of illegal goods such as drugs, and firearms.

Though human trafficking has been taking place for many years now, it is only recently that the issue has come into the forefront as one of the greatest crimes against humanity that we face today. We are only just beginning to understand the sheer magnitude of this crime in the number of lives that it affects and the multi-layered criminal hierarchy involved that makes human trafficking possible. This can be seen especially along the Balkan Route as much of the corruption among all levels of society that has long allowed the passage of illegal goods and the smuggling of immigrants also enables traffickers to bring their victims into Western Europe. This also makes those countries along the route vulnerable to becoming source countries; being a main area targeted by traffickers as a source of victims to be forced into this form of slavery. The war against human trafficking has sparked many initiatives to treat the victims and prevent this crime, but the only way these initiatives can ever be effective in a specific region is if they are implemented properly by those in power and throughout the levels of society untouched by the rampant corruption that has long allowed this and other crimes to prosper along the Balkan Route.

Drug trafficking has been the greatest problem and primary source of income for organized crime along the Balkan Route for years. The majority of Afghan heroin trafficked into Western and Central Europe comes through the Balkan Route\textsuperscript{36}. Of the 75-80 tons of heroin trafficked to Western and Central Europe in 2009, some 60 tons were estimated to have been originated from countries of South Eastern Europe (via the Balkan Route). Heroin is trafficked into Western and Central Europe by land, sea and air. The Balkan Route dominates land and sea shipments. Once heroin enters Turkey, most of it is trafficked to Istanbul and then onwards to the borders with Bulgaria and Greece. Heroin is often stretched and cut with adulterants, then re-packaged in the Balkan region and then sent to the West and Central Europe\textsuperscript{37}.

The drug trafficking Balkan Route still plays a central role in Europe\textsuperscript{38}. There is the Balkan Route of heroin transit from Afghanistan, via Turkey, the Balkans, Italy and Austria to Western Europe, but another route is also gaining in importance. South American cocaine is being transported from Dutch and Belgian ports to Southeast Europe via the Balkan Route. The EU project on combating drug trafficking in the Balkans and the bilateral cooperation between Austria and Serbia, as well as those between other countries, should hinder drug traffic in the Balkan region, as vulnerable ground,

\textsuperscript{35} Interpol, People smuggling, smuggling routes and trends, 2012, retrieved from \url{https://www.interpol.int/Public/THB/PeopleSmuggling/Default.asp}
\textsuperscript{36} United Nations Office for Drugs and Crime, Drug situation analysis report: South Eastern Europe, report, 2011
\textsuperscript{37} United Nations, Balkan insight, „Balkan route“ addressed in UN drug report, 2010
\textsuperscript{38} Balkan security agenda, The drug trafficking Balkan route still has a central role in Europe, 2012
because of the many conflicts that occurred in the recent past, so Balkan countries have still under-built capacity to combat illegal trade. Only transnational cooperation with full trust, the fast exchange of information and decisive action can lead to success.

The conflicts in the Balkans created a large market for the traffic in weapons, though this market had dwindled in more recent years. During the cold war, Bulgaria was a main source for firearms and was used extensively to traffic arms during this period, as were many of the other countries in the Balkan region. In the years following several countries of the region were involved in supplying firearms for the surrounding conflict – Croatia is considered to have been the main source of weapons for the IRA – and even today some of this activity continues. This reflects the trend found throughout the Balkans – trafficking in firearms has continued to diminish in recent years, though still maintains a presence among organized crime in the region.

Various other goods are trafficked frequently through the Balkans in the interest of avoiding taxation and customs. The trade in cigarettes is another black market that flourished during the times of conflict – being a common method of funding war efforts in Croatia and several other Balkan countries – and continues to maintain a large presence in the region. This form of smuggling is often done through crime groups or with the consent of a legal manufacturer, as seen in the plan undertaken by the Rovinj tobacco industry in which they attempted the ‘recycle’ cigarettes by legally exporting them to Bosnia and Herzegovina and bringing them back to Croatia for resale as thought they originated from Bosnia and Herzegovina. Illegal imports of other commodities are also to be found within this region; according to the last mentioned UNODC report, “Croatia is believed to be the source of more than US$ 700 million in illegal exports annually”39.

Terrorism in the Balkans

It should be noted that terrorist groups are usually organized in a similar way as military organizations. Many terrorist groups, especially those who are led or supported by foreign governments are highly disciplined, and tasks are organized and carried out in a clean, functional and authoritative manner. Leaders of terrorist groups and many of terrorists are largely politically motivated and well trained in combat, often with military training in the area of tactics and planning. They are also trained in the field of Intelligence gathering data and analyzing them, then observe and monitor, apply crypto in mutual communication and have modern weapons, equipment, vehicles. Moreover, they apply to all measures of counterintelligence.

Terrorist organizations adopt various forms of violence in order to achieve publicity and lead to the intimidation to which they have directed their activities to achieve their political goals. Current activities include arson bombs, bombing of working facilities or residences, conducting sabotage. Also, terrorists use other applicable methods, such as assassinations, murders, kidnappings, selling drugs or weapons to provide cash and perform other activities for destruction of objects. Terrorism, as a concept which means rule by intimidation or violence, is one of the worst forms of crime. The application of funds for threat or intimidation of individuals or groups, terrorists seek to achieve any material benefit or to achieve a political goal. In order to successfully respond to threats and dangers posed by

39 Foster, K., Croatia: Corruption, organised crime and the Balkan Route, Adriatic Institute for Public Policy. 2012, retrieved from http://www.adriaticinstitute.org/?action=article&id=32
terrorism, and to take precautionary and safety measures, it is necessary to discover, find and destroy terrorists and their organizations before they can commit violence.\textsuperscript{40}

Security has significantly expanded in other directions within international organizations, governments and the public since the end of the Cold War in order to accept the views of international order, justice and humanity. As the armed forces, national intelligence is increasingly concerned with the safety of other people, not only with their own state. Coalition forces deployed in peace support operations require nearly the entire spectrum of military intelligence. The concepts of graduated force, surgical strikes, few casualties and minimal collateral damage are all dependent on intelligence. Operation Allied force against the Federal Republic of Yugoslavia in 1999 showed the paradox of a very public international operations that were most dependent of the secret intelligence service. However, the increased need for the intelligence to contribute to the international security extends beyond the conflict prevention, crisis management, crisis response, peacekeeping operations, operational information and negotiating peace, the other groups around the world and long-term security issues. The fight against terrorism, where intelligence is the most critical resource, is one such case; limiting weapons of mass destruction and their proliferation is another such case. The third category is the support of many agreements that exist for arms control and other confidence-building measures. International sanctions are the fourth category of broad-based, intelligence-driven cooperation. The fifth category is aid in the law enforcement in the fight against drug trafficking, money laundering and other forms of international organized crime. The sixth category is a violation of human rights. Interventions or other natural disasters and humanitarian assistance represent the seventh category. Also, there is a growing need for international intelligence cooperation in order to protect critical infrastructure and national defense against cyber attacks.\textsuperscript{41}

Terrorist organizations, in general, as a suitable ground for the spread of their ideology seek post-conflict regions, where it is easier for their stationing and mobilization. In the Balkans, after years of warfare, there were new threats and dangers of infiltration of terrorist groups from the Middle East. Such threats were not timely detected and terrorist organizations successfully install and customize the territories of the former Yugoslav states. Also in Turkey, Bulgaria, Macedonia, Albania, Kosovo, Bosnia countries where terrorism find support and cooperation of Islamic fundamentalist movements.

The “Balkan route”\textsuperscript{42} serves the illegal activities of the Islamic terrorist cells and organized groups. It is also well known that organized crime and terrorism usually develop links and interdependencies that increase the level of asymmetric threat. The interests of the organized crime may be connected with the aims of terrorists.

Since the Balkans is one of the main import points and staging grounds for the expansion of organized criminal activities in the European Union, a pan-European anti-crime policy is expected to be centered in that region.\textsuperscript{43} Moreover the security authorities should be aware of the flexibility and the

\textsuperscript{40} Dimovski, Z., Ilijevska, I., Babanoski, K., Inteligence as a key link in the fight against terrorism. International scientific conference: Security in the post conflict (Western) Balkans: Transition and challenges faced by the Republic of Macedonia (Security Studies and the Science of Security), Faculty of security – Skopje, Ohrid, 27-28.05.2011
\textsuperscript{41} Geneva Centre for the democratic control of armed forces (DCAF) Occasional paper No. 3, Intelligence practice and democratic oversight – a practitioner’s view, DCAF Intelligence Working Group, Geneva, 2003, p. 12
adaptability of the criminal groups that seek to maximize their returns at any given moment, and in many instances they tend to create an illegal market as soon as they realize that a need has to be met by non-legal means. For example, it is quite likely to expect a shift from the traditional trafficking operations that transfer immigrants from Asia and Africa to Europe, towards an inter-European trafficking movement of illegal immigrants who have been stuck into countries with low or even negative economic growth.

Smooth implementation of terrorism through the territories of Southeast Europe, and in that context and the Balkans, as an open port of the Middle East to Europe (Central and Western), was largely made possible by newly geopolitical picture after breakup of Yugoslavia. With the dissolution of Yugoslavia and the creation of "new states" create a new geographical setting communication links between the new territorial states populated by a significant percentage of Muslim population. Through a well organized routes that over an extended period of time was working on the Balkan area can be smoothly carried out with transfer of persons without traveling documents, terrorists - individuals or groups, "transfer" of smaller or larger armed groups all across the major armed formations.44

The Balkan region as part of the European continent has always played an important role in the events that had historical significance as the region and its surroundings, and the world as a whole. The stormy history of the peoples living in these areas was initiated to myriad conflicts that often began on political grounds, and ended by military conflicts and huge casualties. Also, it is evident that most of the crisis ended with the mediation of the major world powers in the form of negotiation or through direct intervention with the use of various military and diplomatic relations. Over time and after the Second World War, the distribution of nations within the borders of the Balkans remains disproportionate in relation to the situation that prevailed before and during the war. Many people who were previously inhabited on a particular territory, following the schedule of the new limits were fragmented, and the adjustment processes have been misdirected, so that some degree of dissatisfaction appear anywhere on the territory of the Balkans. Over the last few decades, the international policy established sufficient influence on the Balkan region in order to prevent a possible change of borders through military conventional methods, so all those factors that had or have some ideas, ideas and impulses had to adjust and to choose new ways of acting. Republic of Macedonia as an ethnic and living space of the Macedonian people throughout its history has been and still is exposed to various political games and other content geopolitical manipulation, which had in the past, and today has a significant impact on the viability and safety of the Macedonian people.

DCAF45 noted that international terrorism has not yet taken roots in the Western Balkans. However, this threat cannot and must not be ignored. Based on the preliminary estimates, there are already visible attempts by terrorist groups to infiltrate slowly into the region to establish a foundation for future use. This process is reinforced by the existence of a fairly strong community of criminals who, apart from security and intelligence services in the region are able to maintain a high level of cooperation among themselves.

44 Котовчевски, М., Маѓепсаниот круг на вооружените конфликти и тероризмот на Балканот, Филозофски факултет, Институт за одбранбени и мировни студии, Скопје, 2008, p. 8
Conclusion

Today's world is characterized by rapid and dynamic changes that carry new and often unpredictable risks and hazards to the security of states. Although the danger of classical military threat in the long run is not expected, non-military threats were not only of diversity but rose after intensity, space and time. The trend of globalization of the world, despite the advantages brought threats, caused mostly by widening the gap between rich and poor and the internationalization of certain hazards, the most extreme of which are international terrorism and organized crime. In addition, there is an expansion of the illegal migration and trafficking in drugs, weapons, people and strategic materials. Also, the increased threat is coming from the use of weapons of mass destruction which is prohibited under international law.

The stability of a country is of particular importance for the strengthening of individual and collective consciousness of the existence and importance of the state and its ability to improve the quality of life of citizens in every respect. The achievement of stability in a society provides legal and democratic functioning of state and other institutions in society with fully respect the national and international law in order to successfully achieve the shaping and functioning of civil society, rule of law and actually operating in the legal state. The state is obliged to facilitate the smooth operation of all institutions in society, through the defense establishment and preservation of security, because only thus can effectively avoid the consequences of destructive activity that would have happened if they would not be functioned.

With the disintegration of the former socialist bloc countries and regions emerged in present social destruction and unstable democratic structures and institutions. These are, above all, extreme nationalism, ethnic, racial and other prejudices and xenophobia, which are manifested to the limits of hatred and use of violence, and as a consequence have wrecked infrastructure and many casualties.

In the Balkans there still are ideal conditions for the existence of terrorist organizations and their activities and expand to Western Europe and USA. Intelligence agencies in the region must demonstrate full commitment and a satisfactory level of productivity in relation to the collection and analysis of intelligence information and in coordination with the Western European security services have to give a successful response and to counter terrorist threats.

Transnational organized crime is considered as one of the major threats to human security, impeding the social, economic, political and cultural development of societies worldwide. It is a multifaceted phenomenon and has manifested itself in different activities, among others, drug trafficking, trafficking in human beings; trafficking in firearms; smuggling of migrants; money laundering; etc. In particular drug trafficking is one of the main activities of organized crime groups, generating enormous profits.

Today when the world through the United States and its allies, is heavily involved in anti-terrorist struggle and when the consequences are devastating terrorism, security, stability and peace in Europe, this directly influences the security of the Balkans. To stop this evil, Europe must cut off all channels of terrorism leading to the Balkans and all the channels and networks that lead to terrorism in the Balkans. The fight against terrorism must be taken at global, regional and national level and to take concrete measures and activities with a high degree of efficiency in order to eliminate the consequences and offset.

In order of establishing good security policies and strategies for fighting against terrorism, illegal trafficking and other organized forms of crime, Balkans countries have to introduce and respect
the rule of law, harmonize the laws in security area and establish and strengthen the international cooperation.

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TRANSNATIONAL ORGANIZED CRIME AS A DANGEROUS THREAT
TO THE NATIONAL SECURITY IN TODAY’S WORLD

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Abstract

Transnational organized crime is one of the most controversial concepts in the social sciences, the notion about which is knitting a secret mystique since its appearance. Organized crime, among other essential - key elements, is characterized by its transnational nature, that is, its ability to cross its borders.

The main subject of the paper is theoretical presentation and analysis of transnational organized crime, through its terminological and conceptual definition and determination, delineation with other related and similar types of criminality, as well as indicating its danger and the consequences on the security of states and peoples around the world.

Transnational organized crime is increasingly internationalized and interconnected without choosing a nation, state, religion, race, gender, etc. Its main goal is to make a significant impact on the economic and political life, primarily using its financial power. In the “weaker states” its intention is to exercise dominant influence in all spheres of social life, incorporating itself legally and illegally in the economic and political life, by achieving total criminalization of these societies.

Transnational organized crime means commission of punishable offenses by a criminal association for the purpose of making profit or power by using violence or using a special position in society by reducing the risk by engaging in legal economic, political and other activities and with advanced created system for protection against prosecution.

Key words: transnational organized crime, organized group, security, national security

Introduction

Transnational organized crime in contemporary international relations is one of the primary security threats at national, regional and global level, disrupting the fundamental social, economic, political and human values. In a globalized and open environment, criminals are increasingly networking and becoming actors without sovereignty, adapting themselves and using the disadvantages of national and supranational security systems. This means that all countries that are exposed to this threat, especially post-conflict and post-war states, are in the process of political and social transformation and do not infrequently fight for traditional security instruments.

Today, there is no uniqueness in theory (theoretical definitions), between the national legislations of individual countries (official definitions), nor among the definitions of international organizations and bodies (international definitions) of what constitutes organized crime as the only, generic concept on an international scale. This is so, because the reasons, factors and conditions for the emergence and development of organized crime are not the same from country to country. They are not
the same among neighboring, transitional countries, which are very similar in culture, mentality and tradition, not to mention the differences that exist between the poor, transitional and highly developed countries of the Western world. If the causes are not the same, not even similar, then it is logical that neither the types nor the emerging forms of organized crime will be the same among countries. If neither the types and forms of organized crime are not the same among countries, then the normative-institutional solutions, measures, methods and tools for preventing and combating organized crime can not be the same among countries. This requires the need for a more extensive explication of the special etiology of organized crime and presents a particular challenge to science.

Transnational organized crime, which is the main subject of this paper, exists when organized criminal groups commit crimes that are transnational in nature, if they are committed in: several countries; or in one country, but most of the preparation, planning, management or control is carried out in the territory of another country; or in one country, but it includes an organized criminal group that deals with criminal activities in several countries; or in one country, but the significant consequences have occurred in other countries.

**Terminological and conceptual determination and definition of transnational organized crime**

Organized crime is a very old phenomenon. It exists in almost all countries and shows a tendency to increase. In this regard, the countries in which it is most important everyday face the need for prevention and suppression. Organized crime is an object for analyzing by the criminologists, experts in criminal law, as well as experts of various scientific disciplines.

It is present and has a great influence on almost all forms of social and public life. In addition, organized crime, as a socially negative phenomenon, has an exceptional ability to use favorable conditions for its infiltration into legal social structures and skillfully adapt to the specific social and political situation not only within a country, but also internationally.

The fact that organized crime does not appear in all countries in the same form has contributed to the absence of a generally accepted definition of the term organized crime, either in a political, criminal or criminological sense. Instead, there are many definitions, similar and varied, pointing to non-concurring views on what is covered by the content of the notion of organized crime.

The basic problem is related to the precision of the content of the concept “organized”, which can have more meanings. In this sense, often under the same term, an organized criminal group, an organized criminal organization or association, and a type of classical mafia.

Transnational organized crime is manifested through various forms of criminal activity, constantly searching for favorable conditions for its existence, survival, expansion and even greater presence on a global and planetary level. Also, transnational organized crime is in an eternal search for appropriate forms necessary for its protection, multiplication of its privileges and enormous increase in its profits that are equivalent to the joint profits of the ten largest multinational companies in the world, with a tendency of their further enormous increase.

According to the United Nations Convention against Transnational Organized Crime, an offence is transnational in nature if: (a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another

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State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State.

“Organized criminal group” according to it\(^{47}\), shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

The Neapolitan Political Declaration and the Global Plan of Action against Organized Crime, later adopted by the UN General Assembly, reaffirmed in the documents of the Ninth United Nations Congress on Crime Prevention, Cairo 1995, highlighted the dramatic increase in organized crime and urge countries to follow the experiences of other countries in developing appropriate legislation, practice and international cooperation. The Global Plan of Action, recognizing that there is no legal definition of organized crime, highlights the following features:

- Organization of a group for the commission of a criminal offense,
- Hierarchical relationships in the group that allow its leader to control,
- Violence, intimidation and corruption as a means of exercising profit or controlling territories or markets,
- Laundering of illegally acquired benefits and inflation in the legal economy,
- Ability to expand in any new activity and beyond national borders,
- Co-operation with other organized transnational groups.

The Council of Europe (2002) defines organized crime as an illegal activity by a structured group of three or more persons that exists for an extended period of time in order to commit serious crime through joint activities by using intimidation, violence, corruption, and other means in order to directly or indirectly obtain financial or other material benefit. I did not accidentally choose this definition because it does not originate from a country's law, but many may point out that it does not accurately explain what constitutes organized crime. This is because organized crime has its own specifics in each country separately, so the definitions are different in national laws, and definitions have changed over the years as it has changed and evolved this type of criminality.

According to the criterion of the criminal field of action of organized criminal groups, forms of organized crime can be talked about\(^{48}\). Organized crime refers to the criminal field of action of organized criminal groups, gangs, associations (criminal organizations), that is, to which criminal acts or groups of criminal acts are directed their criminal activity. According to the criterion of territorial representation, that is, the territory where the organized crime acts\(^{49}\), one can talk about sub-types of organized crime. According to this criterion, organized crime can be divided into:

- transnational organized crime,
- national organized crime,
- regional organized crime,
- local organized crime.


\(^{48}\) More about types and forms of organized crime in: Лабовиќ, М., Николовски, М., Организиран криминал и корупција, Факултет за безбедност, Скопје, 2010

\(^{49}\) More of this in: Камбовски, В., Организиран криминал, 2-ри август С, Штип, 2005
Transnational and organized crime

The term transnational crime has been used in criminological literature for more than three decades. It was first defined by the United Nations at the Fifth Crime Prevention and Treatment Conference in Geneva in 1975 with the intention of providing an appropriate notion of a crime that crosses borders and threatens the legal system of many countries.

Modern crime does not show borders, and criminal groups from one country easily connect with similar groups or organizations of other countries, so it also gets a new dimension in the criminal world. This relationship is not limited to a local level, but it takes place in neighboring or remote countries, which gives it an intercontinental character.

While there is still no full agreement on how to call individual forms of criminality that characterize close co-operation of criminal groups or gangs from different countries, the term transnational organized crime is most often used, although there are other names such as multinational organized crime, international organized crime and the like.

The term transnational crime did not have, and still does not have legal significance, but it is a criminological term under which everything that is different and otherwise defined in the penal laws of the countries can be guided, but with a common attribute of an occurrence that overrides the competence of any country.

The International Convention Against Transnational Crime adopted in Palermo in 2000, under that term, involves a crime committed in several countries, either in a relationship or in the aftermath of consequences in many countries. Over the last twenty years, there has been preoccupation with transnational crime, which initially paid attention to criminologists, and today, world public opinion very seriously points to its seriousness.

So, the most commonly used term is transnational organized crime, and in that connection, the former Interpol General Secretary Bossard50 in his famous book Transnational Crime and Criminal Law, published in 1990 in Chicago, considers that a crime, legally speaking, is international only if such an anti-social activity is prohibited by laws in the dictated country.

An international character of a crime gives:
- The fact that the offender had to cross at least one national border to perform the crime,
- The nature of the work (such as international drug trafficking), their consequences or the transnational character of certain activities is determined by the perpetrator himself (a thief, in order to commit a crime, moves from one country to another),

Constitutional elements of transnational crime are:
- Crossing the country border from individuals (criminal or victim), items (weapons, money intended for laundering), or criminal intent (computer fraud in which the perpetrator has ordered an order in one country to make a money transaction in another); and
- International recognition that it is a crime. On a national level, some anti-social behavior can be considered a crime if it is as provided in the penal code. Internationally, it is necessary that the offense be considered criminal in at least two countries. This situation occurs if the two countries adopt norms of a particular international convention (the Geneva Convention for the Suppression of Counterfeiting Money of 1929, the Convention for the Suppression of Trafficking in Human Beings and the

Exploitation of 1949 and the Special Convention on Narcotics of 1961), or if by other reasons there is compliance with the provisions of national legislation.

**Transnational organized crime and security**

Transnational organized crime is one of the most complex and deeply contradictory concepts in its inner being. Its deep contradiction is reflected in the transcendental character of organized crime. Namely, the most lucidly speaking, any crime can be, relatively speaking, in the area of organized crime if it meets the elements of the legal definitions of organized crime in a national law.

Transnational organized crime is at the same time a multidimensional term. Its multidimensionality is reflected above all in its sociological, political, cultural, psychological, legal, criminological and criminalistic dimension. With all the mentioned dimensions in the operation of organized crime on a national and international scale, such enormous harmful consequences are made of material and especially non-material nature, undermining the economic, political and legal systems, until the complete decay of certain countries.

Transnational organized crime is determined by a number of features where an important place takes up its international dimension. Transnational organized crime today poses a serious threat to a country's national security and democratic order.

Organized crime\(^{51}\) is a special form of professional crime, which is a real threat to the further development of democratic relations, because it threatens to engage all spheres of society and to manage with it as well as with its development.

International organized crime is manifested through various forms of criminal activity, constantly searching for favorable conditions for its existence, survival, development and even greater presence on a global level.

If the term of organized crime, the most precisely defined, signifies the joint execution of punishable offenses by several persons, and if those persons and the execution of the offenses are guided from abroad, and are directed to the country, then there is a serious connection between the actions of the intelligence, the security institutions and the law enforcement agencies to prevent the impact of organized crime from abroad in the country.

Organized crime is not a new phenomenon. Its origin, it can be said, was traced back to the seventeenth century. In Europe, Japan and China, social inequalities, economic hardships and foreign rules have led to the formation of groups with different goals, but with a similar structure (secret communities). These are hierarchically organized clans or secret societies in which members swear by the oath of the community and their boss. These groups develop their own rules of sanction and in some cases their own sense of justice. Social justice was the target of some of the groups until the nineteenth century, and some were criminal organizations. Later, their goals are aimed at accumulating capital and power beyond the boundaries of the country in which they were created.

The development of transnational organized crime is associated with changes in the political system, emphasizing that it can act at any time, if there is support in parts of the state apparatus, from politicians and legal entities.

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Organized criminal groups such as the mafia intimidates its members on the basis of a commitment to a community that depends on the obligation to keep silent, committing crimes, directly or indirectly managing or controlling economic activities, public concessions, licenses, contracts and services, or gain illegal profit and other advantages for themselves and others.

Transnational organized crime is a very complex phenomenon that includes a wide and diverse range of activities such as drug trafficking (one of the dominant criminal activities where there is a close connection with state authorities, especially with those who issue licenses for importing goods with customs authorities, with transport and freight forwarding organizations, as well as a developed trade network for placing and dispersing smuggled drugs); smuggling with weapons, an activity that carries extraordinarily high earnings, prostitution and illegal trafficking; money laundering and illegal money transfers related to terrorist activities.

The objective limits for the comprehensive definition of organized crime are:
- The complex aetiological and different historical genesis of the phenomenon,
- The widespread range of criminal and legal activities (of everything that brings high profits),
- The solidarity of the membership (above all, we are talking about the mafia type of organized crime),
- Specifics in the internal organization,
- Differences in methodological and teleological sense,
- The connection with representatives from various levels of state and political structures,
- The characteristics of its local, national, regional and transcontinental character,
- Subtle connections with terrorist organizations through their funding and other forms of support,
- Various other perfidious forms of influence in international political and economic relations.

**Conclusion**

In essence, organized crime is a specific form of modern types of professional criminality, which in many ways differs from traditional types of criminal association, as well as from classical forms of criminality, both national and international.

Problems of defining the occurrence of organized crime create a dilemma between various related terms, which in some cases act as synonyms, in others as completely separate phenomena, and in third as terminological patterns that emerge from each other as separate species.

Transnational crime is closely linked to the motive for profit and property gain arising from unlawful acts that are a real threat to free economic and financial crime.

Organized crime is a dynamic concept that continues to adapt to persistent environmental change and to new opportunities for crime. Organized crime is one of the biggest and most serious threats to every country, its stability and development. The existence of organized crime weakens the mechanisms of the state government responsible for its control and suppression and significantly undermines the authority and capacity of the institutions. In this way, the efficiency in the realization of human rights, security, the rule of law and democracy as a whole is aggravated.

From a security point of view, at national (state), but also supra-national (regional and global) levels, new emergent forms of organized criminal groups can not be identified. It is attributed to the global processes of internationalization and disintegration. The functioning of the structures of international organized crime is becoming more intense and acts very negatively on the endangerment of the national security of the countries. The consequence of such a situation is the stagnation or
slowing down of the process of development of the country society, reduction of the quality of life and endangering of human rights and freedoms, as well as destabilization and corruption influence on the foundations of society, economy and political institutions.

As the crime market matures, organized criminal groups are trying to consolidate existing activities, expand them with others, and make legitimate their earnings and positions in society. Corruption, at a low and high level, is proving to be the main means of influencing and penetrating into political and business structures. The inadequate and slow transformation of the judiciary, the prosecution and the police greatly influences the intensification and increase of the forms of organized crime.

The adoption of appropriate legal regulations, establishment of special bodies, realization of certain forms of regional and international cooperation, as well as taking special actions for suppression of the activities of organized criminal groups should usually result in the prevention and detection of such activities. But despite all the efforts of the state to minimize the conditions that contribute to the creation and development of organized criminal groups, in modern conditions they receive new forms and contents, and have negative consequences for national security.

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THE APPLICATION OF THE DOCTRINE OF COMMAND RESPONSIBILITY FOR CIVILIANS

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Abstract

Command responsibility is an institution of the general part of criminal law. It regulates the personal responsibility of individuals. This institution only came into the centre of interest with the foundation of ad hoc courts for the former Yugoslavia and Rwanda, and especially the foundation of the permanent International Criminal Tribunal for the Former Yugoslavia. The rules of international criminal law, the statutes of these ad hoc courts, and the Statute of Rome\(^{52}\) in an effort to align with the acquis communautaire, demanded changes to national legislation, and thereby had a significant influence on the law of the Republic of Croatia. In its efforts relating to the process of joining the European Union, the Republic of Croatia adjusted its legislation to the acquis communautaire. Amongst other things, and with that aim, in the Act on Amendments and Supplements to the Criminal Code of the Republic of Croatia of 2004\(^{53}\) command responsibility was formally introduced to the Croatian criminal law system. Customary humanitarian international law also contains rules on the responsibility of superiors for the offences of their subordinates. Commanders and other superiors are criminally liable for war crimes committed by their subordinates if they knew or had reason to know that their subordinates would commit or were committing these crimes, and they did not take all the necessary and reasonable measures within the limits of their power to prevent their commission or, if those crimes were committed to punish those responsible\(^{54}\).

Key words: civilian, commander, responsibility

Introduction

This rule as a standard in customary international law was established by the case law of states, but also most international permanent or ad hoc courts. It was applied in the First Additional Protocol to the Geneva Convention in Article 86, paragraph 2, and in Article 28 of the Statute of the International Criminal Court, in Article 7, paragraph 3 of the International Criminal Tribunal for the former Yugoslavia, and in Article 6, paragraph 3 of the Statute of the International Tribunal for Rwanda. In the second paragraph of Article 28 of the Rome Statute, command responsibility is also designated as the responsibility of non-military (civilian) commanders. This category includes the

\(^{52}\) The Act to Ratify the Rome Statute of the International Criminal Court, Official Gazette, International Agreements, no, 5/01

\(^{53}\) Act on Amendments and Supplements to the Criminal Code, Official Gazette, 105/04

\(^{54}\) Henckaerts J. M. and Doswald – Beck L (2005), Customary international humanitarian law, International Organization of the Red Cross, pages 560 to 577
leaders of political parties, state officials, and business people, and for example, the commanders of concentration camps or factories where forced labour was used.55

The case law of the courts, regardless whether they are national or international, permanent or ad hoc, refers to, applies and points out this rule. It was interpreted for the first time in case law after the Second World War and the interpretation included the following important components: civilian command authority, the relationship of subordinates and superiors, commanders/superiors who knew or had reason to know, investigation of crimes and reporting them and the use of necessary and reasonable measures. During the time of the former SFRY, command responsibility was part of the military rules of all six Republics, more precisely “The Regulations on Application of the Rules of the International Law of War in Armed Conflicts of the SFRY”, which was adopted in 1988. Pursuant to Article 20 of these regulations, “Every individual, military or civilian person, shall be personally responsible for violations of the rules of the law of war – the one who commits a violation or who orders it to be committed. Ignorance of the provisions of the rules of the law of war does not exclude the responsibility of those who violate those rules.”

Main part

Further support for the interpretation of command responsibility of civilians comes from the decision of the Trial Chamber in the case of Kordić/Čerkez of 26 February 2001, which states that only those persons in a superior position, whether de iure or de facto, military or civilian, who are without doubt part of the chain of command, whether directly or indirectly, with effective power to control or punish the acts of their subordinates, may be subject to criminal liability.

The opinion of theoreticians regarding the problem of the title of this liability vary.56 So for example, it is considered that: the “…term “command” is limited to a military context, whilst the term “superior” allows a wider understanding of the principle and extends its application to civilians”.57

Furthermore, in the descriptions of all the criminal offences from Title XIII of the Criminal Code of the Republic of Croatia, which bear the title “Criminal Offences against Values protected by International Law” the perpetrator is given as “whoever”, which means that he/she is not necessarily a military commander, but it is sufficient for the person to be someone with actual authority and therefore the possibility of “commanding” something.58

Following on from this, the “Legal (guarantee) obligation of military commanders to prevent crimes by their subordinates is based on the obligation to supervise the sources of risk… This obligation is expressly prescribed in Article 87, paragraph 3 of Additional Protocol I to the Geneva Convention, according to which a military commander is obliged to “initiate such steps as are necessary to prevent such violations of the Conventions or the Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof”. This obligation may also be extended as an analogue to non-military commanders; since they do not however always have the same possibility

56 Evidence for this statement is found below.
57 See Kai Ambos in his article entitled “Some problematic aspects of the doctrine of command responsibility from a criminal law perspective. Round table 'Command Responsibility'. Croatian Helsinki Committee Zagreb, 2003, page 44 (hereinafter Command responsibility, HHO)
to suppress that risk and they do not have the possibility of punishing their subordinates, their legal obligation to prevent crimes by subordinates should be limited to situations when their authority is similar to that of military commanders.59

In the same way, the very title of Article 28 of the Rome Statute is Responsibility of Commanders and other Superiors.

Apart from what has been mentioned, when speaking about command responsibility, as regulated by Article 7, paragraph 3 of the Statute of the ICTY, it is pointed out60 that it would be “more appropriate to speak of the responsibility of commanders than command responsibility”

The case law of the International Criminal Tribunal for the former Yugoslavia gave its opinion regarding which civilians may be considered to be responsible. So an employee of a body vested with public authority may be considered liable61 on the basis of the doctrine of command responsibility if he was part of the superior-subordinate relationship, even if that relationship was indirect. For example:

“An employee of a body vested with public authority who knows that

Civilians will be used for forced labour or as human shields, may be considered liable only if it is proved that he had effective control of the persons who subject the civilians to such treatment. It will not be sufficient to merely prove that that employee was in general a person of influence” 62

Therefore, not only military commanders have command responsibility but civilians are also considered to be liable. Of these, the most prominent are state presidents, who are at the same time the commanders in chief of the armed forces in most countries, but also members of the government, who have influence as representatives of executive power.

That is to say, these are people who, judging by the position they held tempore criminis, had the possibility of commanding, but also of preventing the perpetration of crimes or who consciously did not punish the perpetrators.

But, what is the difference between military and civilian commanders? Is there any difference?

The opinion exists that there is a difference63. According to it, “whilst a military commander is responsible for the acts of his subordinates if he knew about them or should have known, a civilian commander is liable if “he knew or consciously neglected information which clearly indicated that a subordinate had committed or was preparing to commit that form of criminal offence”. Whilst the guilt of a military commander is conceived more widely and it therefore easier to prove, the guilt of a civilian superior is narrow and harder to prove. It is sufficient to prove unconscious negligence for military commanders, whilst for civilian superiors it is necessary to prove that they consciously neglected undertaking the necessary measures to discover that a criminal offence had been committed or that preparations were being made to commit it.64

The most frequent case of participation by civilians in a chain of command is the example of the president of a state who is also the commander in chief of the army.

60 See Ivan Padjen in his text The International Constitutional Dimension of Command Responsibility, in Command Responsibility HHO, page 83
61 See: judgment of Trial Chamber in the Prosecutor v. Dario Kordić and Mario Čerkez (IT-95-14/2) of 26 February 2001.
62 See: Trial Chamber judgment in case of Prosecutor v. Dario Kordić and Mario Čerkez (IT-95-14/2) of 26 February 2001
64 See: Novoselec, P.: Command responsibility in international and Croatian Criminal law, The Croatian Academy of Arts and Sciences, vol. 498 (2007), page 239
It is precisely its perfect hierarchy and organization that are considered to be the characteristics of the army.\(^{65}\) The reason why the army exists in any state is to prepare soldiers for possible war operations serving to defend that state. In the same way it is also preparation for participation in peace missions in other countries in the world if that state decides to send its army to that other country.

“In performing their main task in the army people come into specific inter-personal relationships... Here it is vital to point out that coordination of individual and social groups as well as the entire system of subordination, is nowhere so explicitly expressed as in the army.

Without this subordination in a vertical sense and coordination on a horizontal level, the army would be so ineffective that we could not even call it an organized army”\(^{66}\)

Looking at all aspects of the structure of military hierarchy, the most important role is that of the commanding officer.

“Success in carrying out orders depends both on the place and role of the commander from a formal point of view, and on the actual response to the command on the personal level of the group. If the commander is well accepted as a leader and person, then his command will also be carried out appropriately. Direct effort is therefore necessary by the military unit as a group and by its members to carry out orders in the proper manner.”

From this the scope of responsibility may be clearly seen of the president of a state as the commander in chief of the armed forces.

According to Article 99 of the Constitution of the Republic of Croatia\(^{67}\): “the President of the Republic is the Commander in Chief of the armed forces of the Republic of Croatia. The President of the Republic shall appoint and relieve of duty military commanders, in conformity with law.”

Command of the armed forces in peace time is performed by the commander in chief through the minister of defence, in accordance with the Constitution and the law. The minister of defence is responsible to the commander in chief for the implementation of commands, and reports to him on their implementation. The chief of staff is responsible to the minister of defence for the implementation of commands, and reports to him on their implementation.

Trying civilians on the basis of the institution of command responsibility came to the fore in the indictment of Milan Martić\(^{68}\) where it was considered that the Court had jurisdiction over persons who, in terms of their position in political or military authority, had the possibility of commanding individual crimes which are within the jurisdiction of the Court \textit{ratione materiae} and also over persons who knowingly (consciously) did not prevent or punish the perpetrators of these crimes.\(^{69}\)

According to the first instance judgment in the Kordić/Čerkez case, of 26 February 2001:

“Each official from a organ of authority, may be deemed liable on the basis of the doctrine of command responsibility if he was part of a subordinate-superior relationship, even if that relation was indirect”

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\(^{65}\) See amongst others: Ravlić, T.: Sociološki temelji militarizma (Sociological foundation of militarism – Part II) (II. dio), Journal: Hrvatski vojnik, no 82, 2006. hereinafter: Ravlić

\(^{66}\) See: Ravlić

\(^{67}\) See: Constitution of RoC, Official Gazette, no. 124/00, 28/01 and 41/01

\(^{68}\) Milan Martić was up to 1990 senior inspector in the Minister of the Interior of the Republic of Croatia. From 4 January 1991 to August 1995 he was in leading positions in the SAO Krajina, or as count 9 of the Prosecutor’s indictment says: “positions with superior authority”. – See: Indictment of 25 July 1995, and amended indictment of 18 December 2005 (IT-95-11)

\(^{69}\) See: Derenčinović D.: Kritički o institutu zapovjedne kaznene odgovornosti u međunarodnom kaznenom pravu, Zbornik Pravnog fakulteta u Zagrebu, (Critique of the institute of command responsibility in international criminal law, Law Faculty, Zagreb)no.51, 2001 (pages 23-45), page 32 (here in after: Derenčinović: Command Responsibility)
Case law considers the subject of the liability of civilians with special interest, and therefore the Appeals Chamber in the Aleksovski case also stated that Article 7(3) is applicable to both military and civilian superiors, regardless whether they were elected or they proclaimed themselves to be superior:

“Article 7(3) provides the legal criteria for command responsibility, thus giving the word "commander" a juridical meaning (...)The Appeals Chamber takes the view that it does not matter whether he was a civilian or military superior.”

Precisely the “full knowledge” of the superior who is not a military person is dealt with in the following part of the judgment of the Trial Chamber in the judgements of Čerkez and Kordić:

“Depending on the position of authority (...) evidence that is needed to demonstrate full knowledge may vary (...) In the case of (...)civilian leaders who de facto are in a position of authority, the standard of proof must be higher.”

In order to understand this sentence, it is necessary to say the Dario Kordić was an active member of HDZ Bosnia and Herzegovina and advanced to a position of increasing power, authority and influence in leading the Croats. He belonged to the highest circle of political and military leadership in HDZ Bosnia and Herzegovina, HZ H-B, HR H-B and the Croatian Defence Council. In 1991 he was appointed as president of HDZ Bosnia and Herzegovina in the municipality of Busovač, and president of the Travnik regional community. As president of the Travnik regional community he was co-president of the meeting of HDZ Bosnia and Herzegovina on 12 November 1991, when it was announced that the “Croatian people of Bosnia and Herzegovina must finally conduct decisive, active politics, which must lead to the realization of the eternal dream – a joint Croatian state”. Some days later, on 18 November 1991, he was one of the leaders who signed the Decision to found the HZ H-B and became one of its two vice presidents. He held this position right up to August 1993. On the basis of his role as vice president, he was a member of the presidency of HZ H-B, which also functioned as the legislative body of HZ H-B. When HR H-B was proclaimed in August 1993 he was appointed as vice president and remained in that position throughout the time the indictment relates to. On 10 July 1994 or about that time, he became president of HDZ B&H. At the time to which the indictment relates he was, and others saw him as, a high official of the HVO, and as a high official of the HVO he signed commands and documents. In these roles and in these positions he discharged the function of authority, commander and influence, within, over and through the HVO and its actions and operations.

On the basis of his various functions, positions and authorities, his connections with key persons in Croatian leadership and the leadership of the Bosnian Croats, and his political and military power in the HZ H-B/HR H-B, he undoubtedly exercised power, influence and control over the political and military goals and activities of HDZ-B&H, HZ H-B, HR H-B and HVO.

'...(he)demonstrated power, influence, authority and control on numerous occasions and in numerous ways including, by example, making policy and strategic decisions, negotiating cease-fire agreements on behalf of the HVO, issuing orders that were directly or indirectly of a military nature or consequence, representing himself as a HVO Colonel, Vice President or other senior HVO official, dressing in military attire, having a military operations room in his office at the PTT building in Busovaca, countermanding cease-fire agreements when the terms were not suitable to him, appointing and dismissing persons to or from various offices, jobs and positions, issuing orders for the arrest or

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70 See: Appeals Chamber judgment in Prosecutor v. Aleksovski (IT-95-14/1) of 24 March 2000.
71 See: Trial Chamber judgment in case of Prosecutor v. Dario Kordić and Maria Čerkez (IT-95-14/2) of 26 February 2001 and Zlatko Aleksovski (IT-95-14/1) of 25 June 1999
72 Data taken from indictment in Prosecutor of ICTY v. Dario Kordić and Mario Čerkez (IT-95-14/2) of 30 September 1998
release of influential Muslims detained by the HVO, authorizing travel and freedom of movement through various HVO-controlled territories, obtaining the release of stolen or seized vehicles or property, and negotiating the passage of relief convoys or United Nations vehicles through various checkpoints”.73

Mario Čerkez became commander of the HVO brigade allocated in or around the municipality of Vitez (“Viteška brigada HVO-a”) in 1992, and he remained in that position throughout the time relevant to the indictment. His position within the HVO meant that he was under the command of Tihomir Blaškić, who at that time was commander of the HVO for the Operational Zone of Central Bosnia. His authority and duties as a commander are set forth in the Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, dated 17 October 1992, which provides that a commander in his position was responsible for the combat readiness of the troops under his command and the mobilisation of armed forces and police units, and he had the authority to appoint and dismiss commanders.

At all times relevant to the charges in this indictment, Mario Čerkez, by virtue of the positions and authority described above, demonstrated or exercised his control in military matters in a variety of ways including, by example, negotiating cease-fire agreements with opposing civil and military figures from within the Muslim community, negotiating with United Nations officials, issuing orders to deploy troops and other units under his command and controlling the detention and treatment of detained civilians74.

The best response to determination of ability and authority, when they are not easy to define, was given in the opinion of the Trial Chamber in the Kordić and Čerkez cases, when the Trial Chamber proposed that the starting point should be the official position occupied by the accused.

True authority however cannot be established only by consideration of official positions. The existence of a superior position, whether it is de iure or de facto military or civilian, must be founded on an assessment of the true authority of the accused. An official position of authority may be established by the existence of an official appointment, or the formal granting of authority. At the top of this chain, political leaders are able to define political goals.

However, if we look at the judgment by the Appeals Chamber from the other side in the Čelebići case, we will find the quite interesting but also undefined standpoint that:

“Civilian superiors undoubtedly bear responsibility for subordinate offences under certain conditions, but whether their responsibility contains identical elements to that of military commanders is not clear in customary law.”75

Dealing with the same subject, the Trial Chamber in the Krnojelac case76 considers that:

The same status of knowledge is needed for both civilian and military commanders.77

The possibility of learning about crimes commits is also discussed by the Trial Chamber in the Aleksovski case, where it is said that the authority to punish, which a civilian has, should be interpreted in the broader sense of the word, that is, that the doctrine of the hierarchical superior person initially

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73 From indictment by Prosecution of ICTY – v. Dario Kordić and Mario Čerkez (IT-95-14/2) of 30 September 1998
74 Data on Mario Čerkez and Dario Kordić as mentioned in the previous Note, are taken from the official web site of the ICTY.
76 Milorad Krnojelac was from April 1992 to August 1993 warden of the KP Dom and was in a superior position in relation to everything that took place in the camp. As manager of the KP Dom, he was seen to be responsible for the functioning of Foca KP Dom as a prison camp.
related exclusively to military authority. Although it may be said that in the military hierarchical structure authority to punish is inseparable from the authority to command, the same cannot be said of civilian authority.

It cannot be expected of civilian authorities that they have the same disciplinary authority as military authorities would have in an analogous command position. If it was insisted that civilian authorities have similar authority to sanction as military authorities, the field of application of the doctrine of the responsibility of the superior would be so limited that it would become practically inapplicable to representatives of civilian authority. Therefore, the Trial Chamber considers that:

“The superior’s ability de jure or de facto to impose sanctions is not essential. The possibility of transmitting reports to the appropriate authorities suffices once the civilian authority, through its position in the hierarchy, is expected to report whenever crimes are committed, and that, in the light of this position, the likelihood that those reports will trigger an investigation or initiate disciplinary or even criminal measures is extant”.78

The same judgment found its foundation in the judgment of the military tribunal for the Far East, where after World War II the Japanese foreign minister Koko Hirota was found guilty on the basis of the principle of neglect of duty.79

The decision by the Trial Chamber in the Akayeshu case was more cautious, where it mentions certain limitations, and in which the Chamber considers that it is necessary to assess case by case the power of authority which the accused actually had, in order to determine whether he had the power to undertake all the necessary and reasonable measures to prevent the commission of criminal offences from the indictment or to punish their perpetrators.

One of the cases which has certainly caused the most interest during the work of the Court is the case of Milošević.

The international tribunal for war crimes committed in the territory of the former Yugoslavia charged the former Yugoslav President Slobodan Milošević with crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war in Kosovo, Croatia and Bosnia and Herzegovina.80 All these charges accused him of the crimes of his subordinates, of which he knew or did nothing to prevent or punish them. Thereby he violated Article 7(3) of the Statute.

The liability of Slobodan Milošević should however be considered through the functions he held. These were mainly the highest positions. In 1984, he became Chairman of the City Committee of the League of Communists of Belgrade. Only two years later he was elected Chairman of the Presidium of the Central Committee of the League of Communists of Serbia and was re-elected in 1988. At the 8th Session of the CC of the LC of Serbia in September 1987 he became president of the Communist Party of Serbia, and he became president of the presidium of Serbia on 8 May 1989.

In the same year, in December, he was re-elected to the same function, and one year later he was elected to the newly created function of president of Serbia. When on 16 July 1990, the League of Communists of Serbia and the Socialist Alliance of Working People of Serbia united, forming a new party named the Socialist Party of Serbia ("SPS"), he took up the leadership. In 1992 he was again

79 More about this case in the historical overview.
elected as president of Serbia, and five years later president of the SRY. He held this function all the time relevant to the indictment by the ICTY.

The international tribunal for war crimes committed in the territory of the former Yugoslavia (International Criminal Tribunal for the Former Yugoslavia – ICTY) charged the former Yugoslav president Slobodan Milošević with crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war in Croatia and for genocide in Bosnia and Herzegovina.

According to the Hague indictment, the crimes in Croatia were committed by implementation of a plan of forced expulsion of most Croatian and other non-Serb populations from about one third of the territory of the Republic of Croatia during 1991 and 1992, with the aim of joining these territories to a new state under Serbian domination.

The command responsibility of Slobodan Milošević for the crimes committed in Croatia stems from the effective control he had over four members of the presidium of the former Yugoslavia, and thereby over the armed forces under their control.

Through agents of KOS, MUP and SDB, as well as control of finances, Milošević controlled the moves of local leaders of Croatian Serbs, the local police and security forces. The Prosecution deemed that from 8 October 1991 there was an international armed conflict in the Republic of Croatia and partial occupation.

The indictment for Bosnia and Herzegovina charged the former Yugoslav president with crimes committed by Serb forces during the war in B&H in the period from 1992 to 1995 against the Muslim and Croat populations. Alongside genocide, Milošević was charged with crimes against humanity, including persecution and extermination, grave breaches of the Geneva Conventions committed in that state, and violations of the laws and customs of war.

Milošević was charged with participation in a “joint criminal enterprise” whose aim was the forcible and permanent removal of the majority of non-Serbs… from large areas of the Republic of Bosnia and Herzegovina“.

In the indictment it states that during the take-over of territory in B&H thousands of Bosnian Muslims and Croats were murdered and thousands of others detained in more than 50 camps in inhumane conditions. Many more were transferred and deported from their homes. The total number of people who were deported or detained during that period is estimated to be more than 250 thousand people. The indictment also charges Milošević with the execution of several thousand Muslim men and boys after the fall of Srebrenica in July 1995. Furthermore, it stated that he controlled and manipulated the public with the help of the media through which he spread messages of fear and hatred.

Apart from these functions the indictment also emphasized the differences between his de facto and de iure powers, that is, the control he had over institutions which took part in carrying out the criminal offences cited in the indictment. Precisely all the functions he held clearly show that the accused had de facto control over federal, republic and regional and other institutions.

The indictment for offences in Croatia charged Milošević with having de facto control over the JNA and over units of territorial defence, as, at least from March 1991 to the final break-up of the SFRY, he controlled the federal presidium. He was also charged with having control over the leading people in the counter-intelligence services of the JNA. Moreover, as president of Serbia, he had control over the key high-ranking officials in the Ministry of the Interior (MUP) and the Serbian security services. The JNA and the MUP of Serbia, including para-military units such as the Red Berets, are cited in the indictment as perpetrators of many war crimes and crimes against humanity.
to expel non-Serbs from one third of the territory of Croatia which was meant to become ethnically pure.

Regarding Bosnia and Herzegovina, apart from alleged control of the JNA and over the presidium of the SFRY, after the break-up of the federal state, Milošević, according to the indictment, had a key influence over members of the Supreme Defence Council, which included presidents of the SRY and its republics, Serbia and Montenegro. Moreover, Milošević had effective control over the JNA and the Yugoslav army through his de facto control over its high-ranking officers. Finally, he was charged on the basis of his de iure control of the MUP of Serbia, through which he had command control over the special units and para-military units who committed crimes in Bosnia and Herzegovina.

Since Slobodan Milošević died, the proceedings were stayed\(^1\). Therefore the framework of consideration of the command responsibility of Slobodan Milošević is the hypotheses of “what would have been”.

In order to prove de facto (effective) control, the Prosecutor would have to prove that the accused directed events and people even when he did not have legal power over them. For example, in order to prove that the presidium of Yugoslavia obeyed his commands, it would not be important that he was only the president of the Republic, without formal authority over the federal presidium.

In order to prove that someone is criminally liable on the basis of the theory command responsibility, the Prosecution had to prove that that person knew that the subordinate committed or intended to commit a crime.

If the circumstances were such that a reasonable person would pose questions, a commander cannot make use of the defence that he did not know about the crime – he was obliged to investigate. In other words, if the accused was told that his Ministry of the Interior was involved in crimes, his duty was to investigate. If he did not do this, and the accusation is found to be true, he could be found criminally liable for the crimes committed by special units.

**Conclusion**

Issuing commands is the foundation of every hierarchical structure -but not only them. It is the basis without which that structure could not carry out its function properly. It is expected of a commander that, in line with the laws established in the national legislation as well in international law, he has complete supervision of his subordinates. The only question we may ask here is the question of the limitations of that supervision. That is, does it extend to all the activities of the lowest-ranking soldiers, or does it end somewhere before that? In the same way, a commander is expected to be constantly informed about the actions taken by his subordinates, especially when there is a state of war and activities are undertaken in an area where battles are taking place.

Finally, a commander is expected by his guaranteed duty to “prevent the consequences foreseen by the essences of the criminal offence”\(^2\).

Theory and practice have agreed on one thing. That is the fact that: “There are four levels of command: policy command, which involves heads of state or Heads of government, and any person who formulate the policy to go to war. Next is strategic command, where a body similar to the War Cabinet decides on the plans, this is usually comprised of chiefs-of-staff and senior government

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\(^1\) Proceedings were stayed on 14 March 2006.
\(^2\) See: Dictionary of Criminal Law, page 94
officials. Next is operational command, which involves people outside the office and on the battlefield, those who implement the directives and plans of strategic command. The orders of operational command are further carried down to tactical command, which may be anyone on the battlefield-heading medium to small-size units.”

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83 This is part of the speech by Ilias Bandekas from the conference entitled “Command Responsibility in international and domestic law” held from 23 to 24 May 2003 in Belgrade by the Humanitarian Law Centre of Belgrade, the Croatian Association for Criminal Science and practice and the Outreach Program of the ICTY. The opinion that theory and practice share the same standpoint regarding the problems presented arises from the thesis that this conference brought together important theoreticians and practitioners in the field of international humanitarian law (for example Ilias Bandekas, head of the Department for international law of the Law Faculty in Westminster; Andrew Cayley, senior representation of the prosecution of the ICTY; the attorney Anto Nobilo, prof. dr. sc. Ivo Josipović…) who remained in agreement in relation to that question and the part given here is to be found on page 36 of the transcript of the conference published by the Humanitarian Law Centre.
THE RIGHT TO A FAIR TRIAL AS A PART OF THE
BASIC HUMAN RIGHTS AND FREEDOMS

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Abstract

Human rights as basic human rights and freedoms are the emergence of a long process of the
development and materialization of great thoughts and ideas that have been legitimized through
improper rules and rights. These rights are all interrelated, interdependent and indivisible. In this paper,
the author tries to present the importance of the right to a fair trial, putting it in the context of basic
human rights and freedoms of a person protected by all important international documents, as well as
by national regulations. The paper also emphasizes the importance of the right to a trial within a
reasonable time as one of the most important segments of the right to a fair trial.

Key words: human rights, basic freedoms, fair trial, trial within a reasonable time

Introduction

Human dignity is inviolable, the task of each state is to respect and protect this fundamental
right. The cornerstone of the human community, peace, and dignified work and life are the democratic,
nonviolent and inalienable rights of man who are realized directly in accordance with the constitution.
The manner of this realization is regulated by law. Today, it is considered the best, and not ideal, rule
of law as a sort of Aristotle's policy, which ensures respect for human freedoms and rights. According
to that, "Free man listens and does not serve. He has bosses, but no masters. He hears only the laws. Thanks to the laws, he obeys people." ⁸⁴

When it comes to the foundation of the emergence of basic human rights, there are two opinions
that relate to two theories - a positive law and a natural law theory. The distinction between these two
types of rights originates from the Sophists as well as the natural law of Greece and Rome, which in
essence conferred the right to what man creates and what God created. In the first positive law,
Justinian's codification reveals the characteristics of natural law, in Plato it is characterized as an
unchangeable right, in Aristotle, the right that has the same force and influence at all times, and in
Cicero, natural law is unique, unchanging and eternal, and valid for all nations. The aim of presenting
these facts is to point out the connection between natural law and justice, bearing in mind that natural
law has been created in order to achieve justice, that is, the emphasis on the fact that the positive
human rights right was derived from the theory of natural law.

In order to protect human rights and fundamental freedoms, there must be an effective national
regulation of this area based on the international protection mechanism. The national law of every
modern state regulates the rights and freedoms of a person, the constitution as the highest legal act
contains the framework provisions that are more closely regulated by the laws. These acts provide the
highest ranking of the national protection mechanism. According to a fictional theory, guaranteeing

basic rights is ensured and secured through democratic, legal and political processes. In this regard, the basic rights are not guaranteed to the individual as such, but his capacity as a member of the community and the main subject of the system, which is ultimately the public interest of the state as a whole. The traditionally liberal understanding of rights and freedoms is linked to modern theory of the rule of law, and it is embedded in the theory and practice of European law. According to the understanding of modern theorists of the European state, they were created in different ways and they developed in the direction of protecting the economic interests and rights of the bourgeoisie, or in order to protect the monarchy, the great aristocracy and the administrative elite. In these situations, the real free citizens were under the dominance of privileged classes. In addition, these freedoms were guaranteed and protected by the "monopoly of the lawful application of physical force" by the state. The notion of national constitutional and legal regulation of basic human rights and freedoms in today's time is efficient and achievable only if they are a guarantee and protection of a global character.

The idea of justice occurs in parallel with three meanings: the idea of equality, the social value criterion and as part of every legal system. On this basis, it can be concluded that justice is a multifaceted and complex phenomenon, and is the subject of research in the field of law, as well as philosophy and sociology. When fairness is viewed from the point of view of philosophy, it is already explained through the aforementioned principles of identity and formal equality, where as such justice is considered one of the most important principles for the realization of formal justice. Observed from the sociological side, justice is a free criterion of material justice, a social evaluation of values. However, for us, the most important interpretation of justice from the corner of the law is presented through a legal order, where justice is defined as a synthetic opening of formal and material justice.

The right to a trial within a reasonable time is a legal standard, as part of the right to a fair trial guaranteed by Article 6, paragraph 1, of the European Convention. The principle of a fair trial should be presented as a protection of the search for the truth, although there is no precise definition of a fair trial.

**Concept and development of basic human rights and freedoms**

Some theorists believe that the 18th century can be considered as the moment of proclaiming human rights, but there are those with a much earlier period. Argumentation speaks in the interest of those who believe that the beginning of the emergence of human rights links to the 18th century, because only in that period human rights were proclaimed in the true meaning.

Already in the 7th century, the Charter of Medina contains documents that talk about human rights and their protection. The Charter was created in the first organized Muslim community in Medina (city-state) and is considered to be the first written state constitution in the history of mankind. Later in 1215, in England, for the first time, certain rights to the freedom of citizens were pronounced against the king in the *Magna Carta Liberatum*. The next document regulating this area was also created in England, in 1668 under the title *Bill of Rights*, which declares new rights: the right to petition the king and the right against excessive penalties and levies. These documents, although considered to be the forerunners of the first constitutions, do not protect the rights of all individuals, but only confirm the privileges of certain groups of subjects. The bourgeois revolutions (France and the United States) have resulted in the enrichment of the content of basic human rights and freedoms. In 1789, The

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Declaration of the Rights of the Man and of the Citizen was adopted in France, which is part of the Constitution of France today. In America in 1776, ten amendments were made concerning the rights and freedoms of man. Similar documents began to appear in Poland, Hungary, Sweden, Germany, Portugal, but also in Serbia as a Code of Dusan. It should be emphasized again that these commands did not apply to all people because they were not based on human nature and in essence these are not documents proclaiming the natural rights of man in the right sense.

In the 17th and 19th centuries, thought and practice of fundamental rights and freedoms was developing, and the first written constitutions, in France in 1791 and in America in 1776, were also adopted. These first written documents are the legal basis and the orientation of the movement towards the enrichment of the essence of fundamental rights and in this context the rule of law. Kant states that the rule of law is a guarantor of fundamental rights and unlimited freedom of man, while freedom is an integral concept that includes the whole of man's natural rights. As a consequence of the theory and practice of French Revolution and the French Declaration, in the period between the 17th and 20th centuries, the importance of natural law is reduced. The idea of the equality of all people was revolutionary at that time, but it had a tendency to be discredited after the terror that took place with the Revolution. At that time, many theorists and philosophers, like Hume and Bentham, called the idea of equality a "fiction and nonsense." In the literature there is a view that certain rights will be normatively effective or ineffective depending on whether the society created the rights or they were created independently of it. One of the conditions for the existence of human rights is their moral justification, but this is only a prerequisite for their existence, functionality is reflected in the fact whether they are politically recognized and realized. If these conditions were not there, people would not be obliged to comply with it or know the extent of these rights.

Human rights seen as an idea have no legal value until they are recognized by the state that will control and protect their consistent implementation. Through the guaranteed and protected rights, they are legitimized and bound with the modern state. On the other hand, human rights can be limited by the inalienable exercise of power, interfering with the freedom of personal development of each individual. After the creation of the first documents that regulated human rights, there was a need for them to be incorporated into state legal systems, where they would have the necessary protection mechanism, so the theory of social contract emerges as a method by which the theoreticians of the 18th century managed to incorporate natural law into the state framework. For Hobs, Lock and Russo, the social contract is condicio sine qua non for the existence of a legal and political obligation, they tend to shift the focus from the objective to the subjective meaning of natural law. Noting the fact that natural law obliges people to respect basic human rights, Lock lists ways of protecting them. In addition to being able to associate with communities and in that way delegate their natural rights to a certain political body for more effective protection, there is the possibility that their violation is sanctioned independently.

The largest number of human rights is realized through the state, because it is the one that has obligations and the responsibility lies with ensuring that the titles of guaranteed human rights provide security and protection against their violation. When it comes to the fact that human rights are original it means that they belong to every human being. In addition, they are universal because they belong to

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everyone regardless of gender, race, religion, ethnicity, wealth, etc. Human rights are also inalienable because they can not give up or transfer their basic human rights to another.\textsuperscript{90}

According to the teaching of German legal theory, basic rights are primarily the subjective rights of an individual. In French law, the title is not accepted as a basic right but public freedom - libertes publique.\textsuperscript{91} These freedoms are not defined by the Constitution, they are not exhaustively listed and guaranteed rights that are protected. The dominant understanding that the Constitution of known public freedoms is primarily legal norms of objective law or objective legal principles that are shaped by law.

Most of the fundamental rights and freedoms are considered to be an integral part of international law where there are many legal documents governing this field. In accordance with a number of international acts with the United Nations, a human rights commission has been formed, which has the right to consider gross violations of human rights. In 1977 a Human Rights Committee was established, which had the right to consider complaints of natural persons in cases of civil and political violations rights. The most important international agreements that provide for review mechanisms for individual complaints are the European Convention on Human Rights, which refers to European countries and the International Convention on Human Rights, which relate to the countries of Latin America.

The basic characteristics of modern understanding of the concept of human rights can be emphasized:

- Human rights are guaranteed by the highest legal act of each state.
- Human rights are not only a matter within the internal jurisdiction of states.
- The basic human rights are guaranteed by international law so they are valid even when they are not explicitly defined by domestic legislation.
- Human rights are original, universal, inalienable, and different.\textsuperscript{92}

According to these facts the legal system can not be imagined without justice, the tendency to regulate human rights at the universal level was manifested through the adoption of the Universal Declaration of Human Rights in 1948, which proclaims the inviolability of individuality, the economic, political, social and cultural rights of man. The goal of making the declaration is to point out the rights that must be protected by international law, it is important to mention that it did not have a legally binding character. Numerous constitutions adopted after the Second World The European Union, with a formal legal aspect, has no catalog of fundamental rights that would apply at the level of European countries; the European Union's civil rights and freedoms policy as well as internal security cover four spheres of major freedoms:

Free movement of people in accordance with the policy of open borders. This right is found in the Rome Agreement, the Schengen Agreement, the Amsterdam Agreement. They define the rights of EU citizens, starting from the right to work and residence until the removal of border barriers and controls between member states.

The citizens of each EU member state have equal political and civil rights at the level of the level: in their own country and in the European Union. In addition to the Rome Treaty on Free Movement, other economic rights of EU citizens are also determined. The Treaty prohibits economic

discrimination on grounds of nationality and sex. Kanji by applying a single act at the beginning of 1948, the idea of a "European nation" emerged, which included cultural and educational policies as well as identity politics. At the end of the 1990s of the overwhelming Rome treaty, the EU’s essence "Citizenship of the Union" is defined as follows:

- EU citizens have the right to live freely everywhere in the EU;
- Citizens have the right to vote or to be candidates in local elections and in the elections for the European Parliament, regardless of their place of residence in the EU;
- EU citizens in third countries have the right to consular protection of embassies of EU Member States;
- EU citizens have the right to submit petitions to the European Parliament and to file complaints to the EU Ombudsman, as well as to communicate in the EU in the official languages.
- The European Union is leading an emigration policy by easing the refugee and asylum policy and general policies in relation to "third-country nationals".

The European Union is concerned about cooperation between the police and the judiciary. European law has a set of fundamental rights accepted within the larger Europe, and with similar formulations, is protected by the constitutions of many European countries. In the foreground, the European Convention for the Protection of Human Rights and Fundamental Freedoms should be mentioned. Citizens of all the signatory countries of this Convention have gained the right to invite directly to this Convention, as well as the right, to exhaust all remedies in their own country so that they can directly contact the European Institutions for the Protection of Human Rights - the European Commission and the European Court of Justice in Strasbourg human rights.

By this right, a person as an individual becomes a subject of international law. by this Convention, States Parties have undertaken to sanction the norms of the Convention by their domestic legal acts, and to enable their citizens to contact European institutions with the protection of fundamental rights, and to ensure the implementation of their decisions. The Convention prohibits in Article 14 any form of discrimination. Neither the state nor the group nor the individual can do anything that would be aimed at limiting or endangering the rights and freedoms guaranteed by the convention. They guarantee the earliest right - the right to life, prohibits every form of torture or degrading treatment and punishment, prohibits any form of slavery, guarantees every right to freedom and security, guarantees the right to a fair trial before an independent and impartial tribunal, guarantees everyone the right to privacy, respect family life and correspondence, the right to freedom of thought, conscience and religion, public opinion and peaceful assembly, etc.93

The European Convention on Human Rights is primarily an integral part of international treaties. The primacy of European law has led to the elimination of the differences between citizens of the Member States of the European Union, in the sense that they must not be discriminated on the basis of citizenship. Human rights include basic rights that apply to all natural persons, regardless of their nationality. However, there are certain rights that are valid only for citizens of a particular EU member state. In the Republic of Serbia, the primary source of human and fundamental rights is the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been implemented in a constitution that stipulates that basic rights are binding on legislation, administration and the judiciary.

Respect for basic human rights and freedoms is an expression of democracy that governs a certain society. The application of the minimum standard of human rights protection regulated by

numerous international acts enhances national security, economic interest, but also ensure the prevention of criminal, civil and political offenses.

**Principle of rule of law and efficiency**

One of the most important components of a democratic society is the rule of law which, as an instrument, has the role of providing the protection of any person who considers that his / her civil subjective right is disputed, endangered or injured. "The No-Law State exists where autocracy, the unity of power is embodied in the personality of the rulers and the all-powerful state with irresponsible bureaucracy; Lawful State where the government is divided and the administration is subordinated, although not fully bound by the laws; and the state of law (the Rechtsstaat) and the rule of law where democracy, the division of power and the rational state with functional bureaucracy and the political responsibility of the holders of public authority."94 "As a product of liberal ideology, the idea of the rule of law emerges, but this notion is defined only in the 19th century. There is also the opinion that the beginnings of learning about the rule of law originate from the legal doctrine of the old age, and the argument for this statement is the elements of the ancient Athenian state order: the principle of the division of power, the independence of the judiciary, the principle of legality and the guaranteeing of certain rights and freedoms of citizens a certain extent. The idea of the necessity of restricting state power appears even in Plato's Law, which later becomes the essence of the formal concept of the rule of law.95 Like Plato, Aristotle considered that the state must be governed by laws, but he was aware that because of his generality, he could not rule out the rule of the people entirely.96 In the Middle Ages, historical circumstances imposed different attitudes on this topic because the political and legal thought was based on the foundations of Christian dogmas. The thoughts of Aristotle and Plato remained attractive even in this period with a different interpretation. The theory of the rule of law in literature is most often related to Germany in the 19th century, it consisted of liberal demands such as freedom, security, the restriction of state power, all in the pursuit of German theory to make the state government rational, predictable and, most importantly. There is also the opinion that the foundations of the rule of law came into being in 1789 with the adoption of the Declaration on the Rights of Man and the citizen because it is its basic idea of the will of the people expressed through a legal state that is at the same time a democratic state.97 It can be concluded that already in the period of the creation of the idea of a state of law, there are several different concepts in the formal and material sense. With the entry into force of the German Constitution in 1949, human rights came to the center of German society's interest, in that period insisted on the unity of material and formal eliminates of a state governed by law, while Anglo-Saxon thinkers specifically debunked the formal and especially material concept of the rule of law. In addition to these liberal-democratic notions of the notion of the rule of law, on the other side of the world there was an attempt to create a state-socialist rule of law. Namely, the attempt to establish a state system that is different from the previous one in the Soviet Union was one of the most important steps towards democratization and realization of the principles of the rule of law.

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law in this region. G.H. Manov in attempts to define the notion of the rule of law states: "Each of the variants of the rule of law must ultimately fulfill three basic criteria:

- the rule of law;
- distinction of legislative, administrative functions and functions of protection of rights (judicial functions);
- bondage of the state and citizens with mutual rights and obligations.

In the last two centuries, the rule of law has undergone major changes because it has constantly faced new challenges, but the basis of this idea has not changed, in modern law the rule of law is defined as a legal and political system in which civil servants and citizens are restricted by law and behave in accordance with the law. When it comes to civil servants, it can be said that they are limited in two directions. The obligation to behave in accordance with positive law is an indispensable element that is protected by a sanction for disrespect, which implies that persons in the civil service are not above the law. When it comes to another element, it is the ability of state officials to change laws only in the manner prescribed by law, not arbitrarily. In modern societies, a widely accepted list of human rights is a key limitation of legislative power. What is important to mention is that in order to establish a state of law, it is necessary to fulfill certain institutional, social and cultural preconditions. An independent judiciary is the most important institutional precondition, which we will especially reflect on because of its relevance to the topic of work. A list of factors contributing to the fulfillment of this prerequisite are:

- selection of judges according to their qualifications;
- appointment of long-term judges;
- procedural and essential barriers to the removal of judges;
- reasonably high salaries and sufficient resources for the functioning of the entire judicial system.

In addition to an independent judiciary, there are laws that guarantee property rights and freedom of contracting as the most important institutional mechanisms. From this it can be concluded that the rule of law should be viewed as an idea of self-regulation and self-regulation of the state authorities in providing legal and property security for individuals and groups that are not in power by individuals and groups in power that limit the content and the power to use the resources that arise from the position in power.

In contemporary science there are two basic teachings about the rule of law. The first learning was created in the European continental system and is known as the state of law (Rechtsstaat), and the second learning trains the coronas from the Anglo-Saxon system and is known as the rule of law. The foundations of European continental learning are based on the works of the greatest representatives of Roman jurisprudence, and the main ideas are systematically exposed in the Justinian Code, and for the first time the idea of a state of law is emphasized in a positive law. Since then, the rule of law has been

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brought up to the latest normative theories in connection with the old idea that laws change while lawfulness is constant, in that regard, many authors consider the principle of legality as the basic principle from which the rule of law is implemented.\textsuperscript{103} Anglo-Saxon teaching argues that the only rule of law expresses the true meaning of legality, while the lawfulness in the formal sense given by lawyers in the Continent is "too narrowly understood" and burdened with "positivism", "formalism" and "dogmatism"\textsuperscript{104}. For the existence of the rule of law, it is important that the appropriate social (stability, homogeneity, order and peace, developed legal awareness and ideology, active public opinion and various interest groups), state-organizational (democracy and division of power), and legal-technical conditions the lawfulness of the work of the administration and the judicial control of administrative acts, the constitutionality of the work of the legislature, the constitutional judiciary and other means of institutional-legal and extra-judicial control, a good technique for the creation and implementation of the law).\textsuperscript{105}

The principle of the rule of law stems from the right to effective judicial protection that applies to the court, which is exercised in every single branch of the judicial civil proceedings. Normative regulation of this area also requires the necessary practical application, which in many legal systems represents one of the great problems of the judiciary that causes damage to two levels, the judicial system and then to every individual who seeks protection of certain rights and obligations. In order to achieve the rule of law and to protect certain legal interests, the court must act legally, fairly and fairly in every specific legal matter. The rule of law is based on this principle, so the mandatory elements that must be characterized by such procedural legal systems are legality, fairness, economy and efficiency.

"The rule of law contains the constitutional and convention principle of a fair trial by which everyone has the right to publicly discuss and decide on his rights and obligations in an independent, impartial and legally established court, justly and within a reasonable time. Human rights as individual goods that enjoy respect and protection include: life, freedom, health and property.

"The European Convention for the Protection of Human Rights and Fundamental Freedoms has established and guaranteed the right to a fair trial, as a particular human right, based on the ideas of natural (fundamental) justice, the realization of which is essential for the development of democracy and the rule of law. The right to a fair trial is a special and autonomous human right, but it also manifests as a medium of the protection of all other individual rights and freedoms"\textsuperscript{106}.

The practice of the European Court of Human Rights, in which the right to a trial within the reasonable time as one of the fundamental functional human rights is specifically apportioned, promoted efficiency in court proceedings as one of the prerequisites for the realization of the rule of law, and emphasized equality before the law and the court, the availability and effectiveness of legal protection, justice, legal certainty and legal certainty depend on the efficiency of the judiciary."\textsuperscript{107} The legal and political objective of any reform is an efficient, cost-effective and simple legal system that will provide legal protection to any subject who has a need for it. In order to achieve this objective, it is

\textsuperscript{104} Quolloquium on The Rule of Law asa Understood in The West: Chicago, 1957
\textsuperscript{105} Lukić, R. (1966) Ustavnost i zakonitost:Savez udruženja pravnika Jugoslavije, pp. 56-77
necessary above all to have normative conditions that would provide legal protection. The most dif
cult part of the work in these reforms is finding the balance between legality and efficiency as the
basic principles of the quality of legal protection. The lengthy length of the court proceedings equals
the European Court of Human Rights with a bad and dysfunctional judicial system in a particular
country, and the primary objective of the procedure is to enable the right to trial within a reasonable
time of efficiency in the treatment of process entities.

The position of the European Court of Human Rights is that States in which there is a violation
of the right to a trial within a reasonable time must provide legal remedies for preventing and stopping
the lengthy duration of court proceedings, as well as the anticipation of the right to compensation for
damage resulting from violation of this right. The task of the national legal systems is to provide
effective remedies before national courts, which will aim to invite a party to a violation of the right to
trial within a reasonable time, even during the course of the proceedings if unnecessary delay occurs.

In order to achieve the principles of the rule of law, as well as the lawful and effective judicial
protection, it is necessary to carry out the effective and reasonable duration of civil litigation. In
addition to effective and precise legal norms, the role of the court is crucial to the implementation of
these principles. By providing legal, regular and fair judicial protection, the court directly affects the
conduct of court proceedings in accordance with international human rights instruments. Although the
legislator tried to apply the principle of efficiency based on the practice of the European Court of
Human Rights, by adopting new laws, but also by amending existing ones, but also the Constitutional
Court's practices, it is possible to conclude that these provisions have triggered a wave of positive
changes, but the problem persists. The overcrowding of courts, the procedures that run unreasonably
for a long time are still the reality with which the government must confront and act on this issue. A
principle that should not be neglected in any way is throwing justice into another plan in the way of
solving these problems. The balance that must exist between equity and efficiency is very difficult to
establish, however, each particular case deserves special attention, and detailed analysis of the
problems that arise can also lead to a solution if it is carefully approached from all aspects to this
problem. The protection of the individual must be in the foreground, with the analysis of the conduct of
state bodies in addition to the analysis of the behavior of the parties in the procedure, and in this way
the cause of the shortcomings in the judicial system.

The right to a trial within a reasonable time as part of the right to a fair trial

The right to a trial within a reasonable time is a legal standard, as part of the right to a fair trial
guaranteed by Article 6, paragraph 1, of the European Convention. The right to a fair trial would lose
its meaning if the procedure was defective if the decision was not passed within a reasonable time. The
whole concept of a fair trial will collapse if one guarantee of the right to a fair trial is not met.

Justice and fairness are close and related concepts, so the question of the relation between these
two terms is extremely important because in essence they have the same meaning, but there is an
understanding that justice is primarily used to express an abstract and objective idea of justice as a
philosophical category, and that fairness is mainly used when it is about exercising justice in practice
and in specific cases.\textsuperscript{108} The relation of justice and equity needs to be explained because they are close
and related concepts. In essence, these words have the same meaning, however, the term of justice is

\textsuperscript{108} Marković, B. (1996) Suđenje po pravičnosti u opštem arbitražnom pravu: Analii pravnog fakulteta u Beogradu, Vol. 2-3,
pp. 100-106
first used in expressing an abstract and objective idea of justice as a philosophical category, and justice is mainly used when it comes to opening up justice in practice and concrete cases. The idea of justice is derived from the natural law, from the logical and mathematical principle of identity. This identity is a categorical and imperative by which, regardless of the various situations, a certain matter is settled on the principle of formal justice. However, formal justice does not provide an answer to the essential question of justice, what is equal, when it should be the same, and when it is necessary to act differently. Aristotle said that inequality should be treated unequally, in proportion to that inequality. Equity is the principle of material justice that determines the social perceptions of a particular society in a given time and space.\textsuperscript{109}

A court decision terminating a procedure should be correct, in accordance with the norms of procedural and substantive law. Only in this case will it be legitimate because it is in conformity with the rules formulated in the laws. The legislator has laid down general legal principles to ensure the achievement of legal certainty, the rule of law and the social order, applicable to a large number of similar cases, but a general rule, whether procedural or substantive, in practical application can become unfair precisely because of the general definition, where as such he can not treat all the peculiarities of the concrete case. The principle of legalness has the role to improve and supplement the positive rules. Provisions that prescribe the conduct of a court in the process of judicial function can be formulated in two ways: strictly and / or elastic.\textsuperscript{110} It should be emphasized that equity is not a specific method of trial, because there can not be simultaneously two comparative methods of trial in one legal order, one of which would be "by law" and the other "in fairness". Justice can not be applied against the law, as well as the free and clear expression of the will of the parties, but its role is subsidiary. There is a lot of criticism addressed at the expense of the application of justice, one part of the legal advocates argues that equity allows arbitrariness of the judge in treatment, subjectivity, and a trial conducted by the instinct rather than by reason. The assessment of the degree of equity in each particular case must be carried out according to certain criteria taken by the judge from the general consciousness of the legal community, according to certain objective, rational social criteria such as the idea of equality and equal treatment, and not arbitrarily, on the basis of their personal perceptions of values.

The Nigerian court has established a statement that constitutes the essence of this story in Okoroike v. Igbokwe, (2000) 14 NWLR Pt. 688, 498, 500: "A fair trial is not just a constitutional issue, it is the principle of both English and customary law. A fair trial is essential for any kind of decision-making both in English and in customary law. Fair hearing means hearing in a court where all people are present, and those who are out of court units who observe or listen to proceedings before a court may admit that both parties are allowed to agitate and present cases and that their cases be taken into account in an equal and that the court has benefited from the arguments of both parties in dispute before him."

The significance of this definition is reflected in universality, where, regardless of the diversity of legal-theoretical approaches, the diversity of legal systems, the court gives an argument against relativism, or culturally conceived concept. This attitude of the court in Nigeria has a legal basis in the African Charter on Human and Peoples' Liberties which gives each person the "right to hear her reason".\textsuperscript{112}

\textsuperscript{111} Stanković, G. (1994): 29
\textsuperscript{112} African Charter on Human and Peoples Rights, article 7

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47
Justice must be understood as Božidar Marković as a multiple network through which the legal rule must pass before it is applied, therefore it is important to mention three of its properties:

- The idea that inspired legislators and law in general;
- An element that secundum lege is recognized from the order;
- A legal source that practices praeter legem.\(^\text{113}\)

Based on this understanding of B. Markovic, four basic roles of the principles of justice as a source of law can be underlined:

1. The most important role of justice as a source of rights is the technical role, in that capacity, justice serves as an instrument in the hands of a judge to remedy the technical shortcomings of legal norms. In this way, the legislator seeks to achieve formal justice, however, in reality there is a need for concrete justice. In this regard, the acting judge in the concrete case must expand the factual matter at the expense of the legal issue, in this way taking into account all the circumstances neglected by the legislator by prescribing the general provision.

2. The second role of justice refers to the segment of the moralization of law, since the term right is a moral value, since it is based on the principle of formal equality as a principle. On the basis of this, the content of legal regulations can not deviate from moral principles, because through the application of law the judicial system obtains the possibility that strict and general legal rules must be moralized and concretized with moral content.

3. The third role of this phenomenon is reflected in economic reality, because the economy is one of the basic components of the notion of justice. In forming material justice, the economy is one of the crucial criteria, which is especially evident in the application of the institute of liability for damages.

4. The last but not the least important role of justice is its impact on the content of the law, where this term represents a formal and methodological element in the legal process. The evolution of law is achieved by this principle, because when the norms of a single legal system become anachronous and are inconsistent with economic reality and moral values, justice becomes the carrier of the new legal system.\(^\text{114}\)

The role of the right to a fair trial is also illustrated by a great deal of international documents governing this right. The European Convention on Human Rights found its foundations in the Charter on Human Rights, as well as the 6th Amendment to the US Constitution of the 18th century. \(^\text{115}\) The provisions protecting the right to justice in the sixth amendment of the American Constitution are the right to a trial within a reasonable time, the public of the trial, the independence of the competent body, the right to a defense counsel. This article specifically refers to criminal proceedings, however guarantees to protect justice are the same.

The right to a fair trial in the right way is guaranteed by the Universal Declaration of Human Rights of 1948, in Article 10 as follows: "Everyone has the equal right to a fair and public trial by an independent and impartial tribunal, in deciding on his rights and obligations and any criminal proceedings against him. "The International Covenant on Civil and Political Rights also states in its text that each person will be equal before the courts and tribunals, and that everyone has the right to a fair and public trial by a professional, independent and impartial tribunal established in a lawful


manner. The American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms similarly regulate the right to a fair trial, however, in addition to an independent and impartial trial, these two documents also state the observance of a reasonable time, the right to free legal aid, a two-step procedure, Emphasize that these provisions apply to both civil and criminal proceedings.

The common element of all these international documents is the recognition of the universality of the right to a fair trial, or the formulation of this right by allowing everyone to make a fair decision on his rights and obligations. The differences in the terminology in these documents are minimal, for, for example, the Universal Declaration provides for the explicit right to a fair trial in criminal proceedings, but it also mentions the rights and obligations that need to be fairly decided, therefore it is assumed that in that statement on civil rights and obligations, similar provisions are also defined in the African Charter, which also focuses on criminal proceedings. The American Convention, however, extends guarantees of a fair trial in civil disputes by defining the rights and obligations of civil, labor, fiscal and other types. The right to a trial within a reasonable time is an integral part of the right to a fair trial proclaimed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The largest number of proceedings before the European Court of Human Rights had as a matter of course a compensation for damages for the right to a trial within a reasonable time.116

The right to a fair hearing constitutes the essence of the fair trial concept, this right is governed by international standards for the conduct of proceedings, which at the same time constitute minimum guarantees which each contracting party is obligated to provide to an individual whose rights or obligations are decided before a court. Fair hearing includes many aspects of the proceedings such as: the right to access to the court, the equality of “weapons”, the right to contradict the hearing, the right to a justified judgment, the right of a person to attend the proceedings.117

The right to access to the court constitutes the right of a sine qua non to achieve a fair hearing, it is not explicitly provided for in Article 6 of the ECHR, but is an aspect of the right to a court. In order to achieve this right, it is not enough to just proclaim the right of access to a court, it is necessary to create realistic opportunities for every individual to really use that right. Facts that hinder the exercise of this right are numerous, an individual sometimes needs professional legal assistance, where, if he is unable to pass the obligation to provide such assistance, this is especially important in civil matters where in most cases the domestic legislation of the states in the world does not stipulate an obligation for the state in this direction, which in the next period must be regulated. The aggravating facts in exercising this right are often high taxes that the individual is not in economic condition. In addition to these cases, the right to access to the court may also be violated in the case of immunity of a person but also with the arbitrariness of courts and judges in terms of determining the termination of proceedings.

The right to access to the court is not an absolute right, but the state does not have the absolute freedom to regulate this area, but it must be guided by the criteria stipulated by the ECHR. This right may be denied to a person due to a particular characteristic if it were a minor, a mentally ill person or in the case of immunity.

The principle of equality of parties in the proceedings is one of the basic criteria for ensuring a fair trial. The equal position of the parties, as well as giving equal opportunities for presenting attitudes

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and presenting the case under appropriate conditions are the two most important ideas that need to be realized in order to say that this principle is to some extent respected.

The right to the contradictory nature of the hearing is one of the very important guarantees for the right to a fair trial that constitutes the right of the party to become acquainted with all the evidence that is attached to the case and the right of the party to comment on the evidence. In civil proceedings, it is the right of the party to declare all claims and allegations of the opposite party, the possibility of cross-examination of witnesses, but there are also some exceptions provided for by this law.

The presence of a party in civil proceedings is not an absolute right; it would become mandatory in the case in which it would appreciate some of its behavior or personal property. Fulfilled by this right is not necessary if only legal issues are discussed, however, if the facts are discussed, the presence is presumed.

The right to justify the judgment falls into absolute rights because the court is obliged to explain to each judgment its decision and unreliable evidence on which that decision is based regardless of the procedure in which it was brought. A fair hearing guarantees the reasoning of the judgment to the participants in the proceedings.

In addition to all of the above segments whose fulfillment is one of the prerequisites for respecting the right to a fair trial, it is also very important to mention the right to a public hearing that guarantees to every person that the decision on his civil rights and obligations will be made after the publicly conducted procedure. As such, the right to a public hearing constitutes an essential feature of a fair trial and ensures the protection of parties in the dispute from the sharing of justice in secrecy. This right usually implies an oral hearing, however, there is an exception to this rule in some proceedings before the first-instance court, but this can also be corrected in the appeal proceedings. Our legislation foresees the norms by which the main trial is always public and it can be attended by adults, but this rule is not absolute, as there are cases where there is a deviation, so "the press and the public may be excluded during the whole or part of the process that is being conducted in the interests of national security, morality or public order in a democratic society, or when the interests of the minor are required by the court to the violator or private life of the parties in the proceedings or the measure which, in the opinion of the court, is necessary in particular circumstances where the public could damages the interests of justice. "The right to a public hearing consists of three cumulatively related rights:

1. the right of the party to be present in the proceedings;
2. the right of a party to participate actively in the proceedings;
3. the right of the party to allow the public to be present in the proceedings.

The right to a trial within a reasonable time constitutes a part of the right to a fair trial, from this fact a conclusion can be drawn on the fundamental difference between these two rights. Namely, the right to a fair trial is a much broader right that includes many different segments or elements that must be respected in order to say that the trial was fair. Just one of the segments of this right is the right to complete the trial within a reasonable time, that is, that the decision on civil rights and obligations be made in a shorter period of time, which will fulfill the principles of justice and fairness. The aim of both rights is the same, which is the protection of every individual in the judicial process with mechanisms of national as well as international character.
Conclusion

We can conclude that the right to a fair trial and within the framework of it the right to trial within a reasonable time constitute a part of an overall human rights code established by international declarations and conventions and should be regarded as legally recognized basic human rights, among which the right to life, freedom movement and other. Considering the manner of determining and defining this right, both in international acts and in domestic legal documents, we can conclude that the right to a fair trial does not contain any substantive law, but only norms the procedure of any kind in which it decides on subjective rights and obligations, for example. This right was derived from the principle of law practice, because the fundamental rights of man are always considered to be the most important element of the rule of law and the rule of law, which extends far-reaching democratic order.

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NEW SECURITY CHALLENGES AND THE APPEARANCE OF THE
COMPUTER AS A TOOL AND AN OBJECT OF CRIMINAL ATTACK

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Abstract

Each epoch of humanity has been accompanied by some inventions that have marked, changed and differed completely from the previous ones, so with all audacity we can say that the machine who marked this epoch, especially the last few decades and that fully changed the method of carrying out some works is the computer.

Thanks to its enormous power in memorizing and fast processing of large amounts of data, the computer entered in all spheres of society and has become an irreplaceable part, segment of all spheres of social life, production, trade, services, to the highest security systems in each state. Computer as a tool that characterizes modern life did not miss the criminalistics, as a science that studies, finds and improves scientific and practically experience based methods and means that are most suitable for detection and explanation of the crimes and their perpetrators. Criminalistics as trichotomic science that examines the tactics, techniques and methods will never be the same as before the advent of the computer and its wider use as a device of committing a variety of crimes.

The computer from its appearance affect criminalistics because on one hand appears as a means for committing a crime, on the other hand as the object of a criminal attack and eventually found its application in detection of crimes and their perpetrators. So today can not be conducted any serious investigation without the help of computers and various computer systems and programs, but on the other hand we are witnesses of attacks committed with it and we constantly hear about computer viruses, computer fraud, computer sabotage, cyber terrorism etc.

Realizing the enormous influence of the computer it has on criminalistics in recent years, we decided the theme of our paper to be the study of the computer as a device of committing crimes, object on which the crime is committed, and as a means of conducting special investigations and take operational and tactical measures and procedural actions by using it, in order to provide evidence and its presentation before the Courts in order sanctioning the perpetrators of computer crimes.

Key words: criminalistics, security challenges, committing crimes, cyber threats, cyber crime

Introduction

Since the beginning of humanity and the first living shapes on the Earth, every period of development was accompanied by certain inventions which marked that period, left footsteps and
pushed humanity towards new period of development, so the invention of computer created new period in the development of world in general. The first computer, which was called ENIAC, run in an experimental operation in February 1944 and it was completely finished in 1946. Its fundamental function was to calculate the track of artillery grenades for the needs of the American Army.\textsuperscript{118}

Today, we are all aware of the great significance of computer use in modern societies and of the fact that there is not a single field that has not found use of the computer yet. What brought to massive use of the computer, even use in committing criminal acts, was the invention of the Internet and computer networks. The invention of the Internet, in spite of the increased use of the computer, the activities the computer performed had an international character and the danger of the caused consequences was increased.

Another more important characteristic arises from the massive use of the computer, and that is the fact that apart from acting like means for committing criminal acts, the computer is a subject to attack, as well as means for using in the modern security services for discovering criminal acts.

\textbf{Definition of computer crime}

The increased malpractice of computer prompted scientific and professional public to deal with this form criminal. It is impossible to define computer crime in a unique and precise way. However, basic definition of computer crime was that it is illegal act that requires previous knowledge of computer technology.\textsuperscript{119}

The problem around definition of computer crime is considered in many institutions. So, according to FBI National Computer Crime Squad’s (NCCS), computer crime is also all illegal entrances into the networks of mobile network operators, threatening the privacy, industrial espionage, pirate computer software and any other criminal activity where computer is the main element of criminal act,\textsuperscript{120} while definition of computer crime at the tenth congress of the United Nations points out that computer crime is general term that covers criminal acts performed with mediation of computer systems or networks, in computer systems or networks, or against computer systems or networks. Basically, it includes any criminal act performed in electronic setting.\textsuperscript{121}

Computer crime is a special type of criminal behavior which includes computer system as means for committing or object of criminal act, if the act cannot be performed on any other object at all, or would have other character,\textsuperscript{122} in other words, it is defined as being every use of computer technology by which the victim suffers of could suffer, and the doer acts intending to take advantage or could take an advantage.\textsuperscript{123}

Kaizer represents the definition of computer crime depending on the shapes of criminal behavior, which differ three types of computer malpractice such as: computer damage of the right of a person, especially private sphere of the citizen, computer crime over individual or social legal goods

\textsuperscript{118}Gjorgievikj, D., “Informatics”, Ministry of Science and Education of the Republic of Macedonia, Skopje, p.7
\textsuperscript{119}Nikoloska S., “Computer criminal acts against freedom and rights of human and citizens of the Republic of Macedonia”, Horizons No.6, Bitola, p.243
\textsuperscript{121}www.un.org/events/10thcongress/2088h.htm; Accessed on 25.09.2014
\textsuperscript{123}Parker D., (1973) „Computer Abuse“, Springfield, p.70
and computer crime on property. 124 Similarly to this, the professor Sulejmanov points out the existence of more incrimination which serves as protection of computer crime, such as: Access in computer system, computer fraud, computer forgery, computer espionage and sabotage.125

Considering the precious definitions of the term computer crime, especially the different access of separate authors, we conclude that it is necessary to have a wide access in definition of this type of criminal behavior. So, one thorough definition has to incorporate the three important elements in its structure: way of performing means of performing and consequences of the criminal behavior.

**Computer as a tool for committing a crime**

When we talk about computer as a tool for performing particular criminal act, we think of using the computer system and its programs for committing particular criminal act. Computer can be the basic tool of committing particular criminal act, but also it can serve as a means of planning, organizing and covering the evidence and proves of the committed criminal acts.126 In particular cases, a computer may help particular criminal acts to be committed in a faster way and more efficiently, but it is hard to provide information about the same acts. So, there are cases when the criminals use crypto programs and design folders, so that they can be deleted by themselves, if they are accessed in a different way from the one set by the creators, in other words, the ones who created the crypto protection.

**Computer as an object of criminal attack**

A computer is an object of a criminal attack when computer networks and data contained are the final aim of the criminal attack, in other words they are the aim or target of the doers. The aim of the criminal attack is damaging the computer system or network, or partial or complete damage of the data stored in the computer system.

The criminal attack might be directed towards getting information from particular computer system from various reasons, such as political, economic, etc. Most often cyber criminals gather data and information from physical and legal entities in order to commit criminal acts and realization of particular illegal financial gain, then an aim of criminal attack may be certain computer systems of strategic authorities and institutions, such as security services, so that they can use or “sell” these data or information to foreign seeking services127 or to be used for planning and committing terroristic act.

The computer is an object of criminal attack when particular preparations or criminal actions have already been committed by using the computer as a means of committing criminal act. However, in order to design and launch a computer virus, first that virus has to be “produced” and it requires a computer, then the virus is directed towards the object of criminal attack through the same or another computer.

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127 Banovic B., “Providing evidence in criminal processing of criminal acts of economic crime”, Belgrade, p. 139
Types of computer crime

Different documents classify the types of computer crime in different ways. At the tenth congress of the UN\textsuperscript{128} it has been established that there is a computer crime in broad and short sense. Computer crime in short sense is considered as every illegal behavior directed towards electronic operations and security of computer systems and data that has already been elaborated inside. In the broad sense, every illegal behavior related to or in a computer system or network, including such a crime such as illegal ownership, offer and distribution of information through computer systems and networks, is considered a computer crime.

In the Republic of Macedonia, material provisions on criminal acts, in the field of computer crime refer to: threatening security (article 144), damage of secrecy of letters or other deliveries (article 147), malpractice of personal data (article 149), prevention of access towards public informatics system (article 149-a), damage of copyrights and other related rights (article 157), damage of right of dispatcher of technical especially protective satellite signal (article 157-a), pirate acts of audio and visual work(article 157-b), pirate act of phonogram (article 157-v), showing porn material to a child (article 193), production and delivery of children pornography (article 193-a), forcing infidelity or other sexual act over an underage child who is less than 14 years old (article 193-b), damage and unauthorized entrance in a computer system (article 251), creating and spreading computer viruses (article 251-a), computer fraud (article 251-b), creating, supplying or estranging means about forgery (article 271), creation and use of fake credit card (article 274-b), computer forgery (article 279-a), damage of right of registered or protected invention and topography of integral circuits (article 286), spreading race and xenophobic material through computer system (article 394-g).\textsuperscript{129}

Depending on the type of committed acts, computer crime is:\textsuperscript{130}

**Political:** Cyber espionage and cyber sabotage, hacking, cyber terrorism, cyber war;

**Economic:** Cyber frauds, thefts of the time of the Internet and thefts of Internet services;

**Production and delivery of illegal and forbidden content:** child pornography, pedophilia, religious groups, spreading race, national and similar ideas and sites;

**Damage of cyber privacy:** forbidden following of electronic mail, spam, interception and recording.

Computers and computer technology can be misused in different ways, and the criminal itself which is realized by computer’s help can be in the shape of any type of traditional crime, such as thefts, frauds, while data which are supplied in an unauthorized way with misuse of information systems, can be used to acquire illegal use.

**Computer thefts** – Thefts take high place in the field of computer crime, and in the already considered context, the theft of identity is of particular importance, and is created to steal personal data. Identity theft is a crime in which someone uses personal information of other person, which is usually acquired through the Internet.\textsuperscript{131} Identity theft appears in several shapes:

- **Spoofing** - using fake or unreal version of something, such as particular web location or address of electronic mail. User logs up with his user name and password, so that his personal data “go

\textsuperscript{128}www.un.org/events/10thcongress/2088h.htm; Accessed on 25.09.2014


\textsuperscript{130}Matijasevic J., Ignatijevic S. (2010) “Computer crime in legal theory, the concept, characteristics, consequences", Novi Sad, p. 855

in the hands” of criminals, so that they misuse the data to access the real web location\(^{132}\) (for example particular electronic bank account).

- **Phishing** - a try to get sensitive information, such as user accounts, passwords and data of credit cards by hidden, fake users, presented as credible identity in electronic communication. \(^{133}\)

- **Skimming** - identity theft to an owner of bank account, which is performed in such a way with integrating skimmer into the cash machine it, is a reader which copies data from the magnetic record of the card and mini camera which records the pin entrance.

**Computer fraud** - is a specific shape of classic shape of fraud where the victim is led into delusion by the doer who has direct or indirect contact with the victim, led into delusion presenting fake facts or a condition in order to pull out particular material use. Computer fraud is characteristic the fact that the doer and the victim do not get in direct physical touch, their contact is direct, but electronic. Delusion in computer frauds refers to the fact that wrong data are entered, or the correct data are missed to be entered or on any other way computer is used to achieve fraud in legal sense.

**Unauthorized attack in a computer system (hacking)** - it is breaking into the computer system and unauthorized entrance in other computer systems in order to make damage or unauthorized data and information gathering from another computer system. Unauthorized attack in a computer system can be achieved by physical access to the doer and using a computer system (when in the lack of attention some users forget to sign out from a place, and that will be used by another person to commit particular crime) or through unauthorized attack from any other place, by using various methods to come to certain passwords for access. Most often the doers of these crime acts use terminals from other people, only not to be discovered.

**Computer forgery** - this includes two types of manipulation: when a computer is used in forging other already existing documents in digital form, and when a computer is used in the creation of such documents and a forgery is committed (money, documents, shares, etc.). Forgery is committed by forging new documents with change of the already existing data or copying new documents, which includes use of malicious programs, scanners and programs for changing their content or shape.

**Computer sabotage** - is destroying or damaging a computer or other devices for data processing within the frames of computer systems, or deleting, changing, in other words prevention the use of information stored in the memory of informatics devices. Computer sabotage is physical – with criminal acts directed towards physical damage of the equipment (pouring liquid over electronic elements, causing electricity, power outage, bringing strong magnets near systems) and logical sabotage, which means deleting, damaging or modification of data, programs or parts from an operative system (by using standard service programs, self-adjusted programs, “logical bombs” or virus). \(^{134}\) Most often, the doers commit these crimes out of cupidity, revenge, political reason, etc.

**Computer espionage** – it is manipulation where the aim is unauthorized supply of secret data and information, stored or transferred through communication canals. Usually these data are sold to other organizations, services or states for financial use or particular service. The most usual modus operandi is using the most modern means for espionage, interception, as well as compromising authorized users.


\(^{134}\) Petrovic S. (2007) “Police informatics”, Academy of criminalistics and police studies, Belgrade, p. 105
Cyber terrorism – in secure and legal sense, cyber terrorism is intentional misuse of digital information systems, networks or parts that cover or complete terroristic war and activities.135 The more modern the terrorists become, the more the leave guns and grenades, and use high technology to accomplish their aims. When it comes to cyber terrorism today, there is a real danger informatics resource, especially global informatics networks to become effective means in the hands of terrorists, enabling ways to act, for which they could only dream about in the past. Their aims could be banks for data, computer resources, government communication systems, electro centrals which are controlled by computers, oil refineries, airports, etc.

Spreading race and xenophobic material through computer system – this incrimination covers spreading race materials in the shape of picture, video or other content published or placed as information on computer networks and it is available for public, especially for public that accepts and connects towards the groups which favor race and religious discrimination. Regarding the previous said, we have to emphasize that one of the huge problems today is hate speech. According to professor Kambovski136 hate speech is most of all social and cultural problem, and by defining the term hate speech we take the Recommendation 97(20) of the Committee Europe Council of Ministers, as a direction, which fortifies that hate speech covers all shapes of expression that spread, encourage, promote or justify race hate, xenophobia, anti-Semitism or other forms of hate, based on impatience, including impatience showed through aggressive nationalism and ethnocentrism, discrimination and enemy towards minorities, migrants and people of migrant descent.137

The authors of this paper, founders and managers in the Research Center for Security, Defense and Peace, conducted a research about hate speech on the Internet within the frames of the project “Protection of Social Media Abuse”. There were 1016 respondents; the aim was to research the reason of hate speech on the internet. Results showed that hate speech on social media happens based on religion (120), ethnic differences (512), political differences (344), social decent (16), and other (24).138

![Hate speech online](image)

**Fig 1: Hate Speech on the Internet**

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Usage of computer in Criminalistics

Using computer systems is irreplaceable part of our functioning; therefore it is part of the everyday work of secret services all over the world. Computer systems are used for secret observation (electronic observation)\(^{139}\), setting technical and electronic traps\(^{140}\), keeping track of electronic criminal records\(^{141}\), keeping political records with DNK, biometrical methods for face identification, especially using the AFIS (automated fingerprint identification system)\(^{142}\), tracks on electronic media, raster search\(^{143}\), profiling through ViCLAS system, geographical profiling by applying geographical information system – gis technology\(^{144}\), TOC-search.\(^{145}\)

The computer as a means is used in criminal research, in other words in forensics, for systematic research in a criminal act, so that it is used for application of procedures for collecting data from social sciences, analytical methods and statistical techniques, to ensure evidence for the committed crime. Professor Vodinelic says that criminal research of the computer case should be the answer of all gold criminal questions.\(^{146}\) Evidence doesn’t have to be created from a computer, but from something else which we always connect to a computer, for example printer, router and telephone.\(^{147}\) So that, IT expert evidence investigation is investigation of informatics technology including: investigation of computers, investigation in the Internet, investigation if mobile phones, investigation of credit cards, etc.\(^{148}\)

**TOC search (Terrorist and Organized Criminal Search Data Base)\(^{149}\)**

The TOC-search (Terrorist and Organized Criminal Search) is a dynamic data base which offers comprehensive information on global terrorist network and help researchers, analysts, students and others working to prevent terrorism. It is result of a common project realized by the Faculty of Security and Faculty of mathematics in Belgrade. The scope of the TOC-search data base is to provide in-depth research and analysis on terrorist incidents, terrorist groups, organizations, their members, leaders and also links and relations between the individuals and groups. The idea is to integrate data from variety of sources, including foreign and domestic news, professional security journals, reports and databases, academic works.

The data in the base are classified in seven entities: individuals, groups, organizations, supporter, actions, links and GMC reports. The information in the TOC-s database has been constantly updated from the GMC reports and other publicly available, open-source materials. These include electronic news archives, existing data sets, secondary source materials such as books and journals, and

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\(^{140}\) See more: Simic R. “Technical protection of the object “, Belgrade, p. 58-59  
\(^{143}\) See more: Jovchevski J. (2013) “Technical means for tracking and recording communication between people as a research measure in prevention and control of criminal”, Skopje;  
\(^{144}\) See more: Dzukleski G. (2009)“Introduction in Criminalistics”, Skopje, p. 178-186  
\(^{145}\) [www.tocsearch.com](http://www.tocsearch.com)  
\(^{146}\) Vodinelic V. (1984) “Criminalistics”, Belgrade, p. 84  
\(^{149}\) Vase Rusumanov is one of the Blue key moderator of TOC search ([www.tocsearch.com](http://www.tocsearch.com))
legal documents. TOCs team performs constant verification of the data by comparing it with other sources and by internal checking of the data and related records.

It is also important to provide the protection of data stored in the base. In this scope, two levels of data access are implemented in the TOC-s. The first level is named “blue key” and it is available for students and researchers in academic institutions and research centers. One of the authors of this paper, Vase Rusumanov is one of the blue key moderators of TOC search. The “blue key” enables the access to all open-source data stored in the base. The second level of data access, named “red key” is reserved for legal authorities, state institutions, and state government. The “red key” opens the part of the TOC-s with confidential data. The owner of the “red key” also has access to the open source data, as the “blue key” owner. Only state institutions and agencies which have a contract with TOC-s have an access to the red key data and they are red key members.

In the future phase of the TOC-search project, we also plan to implement the image search feature. This tool will enable to search the image data base for related photographs of individuals or terrorist attacks by using keywords (individual’s name, group/organization name, or the part of the name, specific terrorist incident etc.). Although the TOC-s is still in its construction phase, it has already been used in the purpose of Security of the Olympic Games in Beijing 2008, World Championship in Football 2010 and World Expo in China 2010.150

Conclusion

From the abovementioned, we can conclude that in the last few decades, usage of computer has been continually enforced in everyday fields of people’s lives, as well as in working and functioning of authorities and state services. This same fashion enforced the computer to be one of the main tools for committing crimes, as well as a means of discovering the same acts. Having the computer as a means of committing crimes in the field of criminology and criminal law, despite of the fact that new shape of criminal activities has appeared, criminal activities that already existed before received a new shape and became more and more prevailing and more dangerous for society. The increase of the damage of attacks committed by a computer, dragged down in Criminalistic, a development of new models and ways of discovering and preventing this type of criminal. Therefore, “thanks to” the computer usage as a means of criminal attack, criminology today has new shapes of investigation which are more efficient from the previous ones, and enable faster exchange of information between subjects included in an investigation, which results in increased efficiency in the work of the same.

Another very important conclusion we can conclude from this paper is that due to the fact that underage children use a computer and the Internet and they are everyday in danger to become victims of this type of crime, it is necessary to indicate to underage children in educational institutions and homes, to the dangers present in cyber space and to advise them how to use the computer and the Internet, in order to avoid any possibilities to be victims of computer crime.

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FINANCIAL ENTITIES IN THE SYSTEM FOR PREVENTION OF MONEY LAUNDERING

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Abstract

Legalization of criminal proceeds is the success of criminals, especially of the perpetrators of organized crime where they turn huge financial amounts. The tendency of criminals is legalization of criminal proceeds, and in the interest of States and their financial systems is the protection from unexpected financial assets in financial systems that cause serious consequences. In this direction, and reform of the legal system and the introduction of new organs and institutions and the establishment of a system of cooperation and information exchange in order to prevent infiltration of illegal or "black" money in the legal financial systems. System to prevent money laundering is complex and it includes financial and non-financial institutions as the first pillar in the system, a special body of financial intelligence as the second pillar and law enforcement agencies as the third pillar. Especially important is the role of financial institutions as entities in the system because of their role in controlling the entrance and throughout the funds through financial institutions in nation-states and abroad. This paper examines the manner of operation of financial entities and the methods, techniques and tactics of their actions in order to control illegal funds, identification, tracking, security and enabling law enforcement to successfully tackle criminal cases with elements of money laundering.

Key words: financial entities, money laundering, criminal cases, proceeds of crime, law enforcement authorities.

Introduction

Money laundering is a phenomenon which threatens the financial system of one country and wider global financial system is a problem that becomes more popular and are considered a new phenomenon, but if you study the historical this problem emerged in the thirties of the last century in United states and had not only financial information, but also criminal.

In fact, persons who are illegally acquired with illegal proceeds found ways and methods to involve them in the formal financial system by showing such legal operations through proper financial documentation and those revenues were taxed. Taxation is accepted work with the legalization of funds from illicit, criminal activity. Money laundering is a complex problem that negatively affects not only the individual but society as a whole. The seriousness of this problem is seen in negative impacts caused by money laundering, such as bringing instability to the financial system, due to uncontrolled entry of "dirty" money in the country.

About the size and seriousness of money laundering indicate statistical data. Drug trafficking and organized crime are not only international phenomena in nature, they are also extremely profitable. And while the difficulties about the precise determination of the amounts generated by such activities
are known, all data indicate that these sums are enormously high. World experts Vito Tanzi (1996) and Peter Quirk (1996) estimated that the amount of money laundered in the world could range between 2 and 5 percent of world gross domestic product, from 790 billion to 1.5 trillion dollars. This figure certainly demonstrates the seriousness of this problem, which every democratic country take appropriate steps and measures to resolve.

**Term and definition of money laundering**

Today's modern society, together with high achievement in all fields of human life, more seriously is threatened by crime that is constantly on the upswing. Special emphasis shall be placed on the organized crime that is socially - negative phenomenon, able to infiltrate in the social - economic and political conditions in the country.

The geographical position, the long period of transition, the great turmoil in the economy, the rapid development of the private sector, market economy, like and a many others occasions aspects, represented suitable conditions for the development of organized crime in our country, who illegally spread in other countries and gain international (transnational) character. Such as organized crime generates huge profits, which are laundered through illegal businesses or hide the so-called certain accounts.

Although the term is derived long ago, the money laundering is considered as one of the "new forms" of organized crime. Money laundering is incrimination that is among the so-called sophisticated crime, and at the front are mostly criminals - leaders with a relatively high intellectual capacity with available modern means of work, lots of information, often insider and well organized hierarchical structure that many earnestly carry out its tasks.\footnote{http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=8530&mid=710&tabId=96&tabindex=0}

Money moves the world, and considering the profitability of certain criminal activities their holders don't give up easy from them, in the contrary finding more sophisticated ways of legalization i.e. money laundering, which is one of the main ways of penetration of criminal organizations in the legal economy. How appropriate would respond to this phenomenon, law enforcement agencies should be constantly updated with the new ways that criminal organizations find, so anyone not is allowed to profit through crime.

The legalization of criminal proceeds, and it is usually money, constitutes a danger to national economy and the financial system due to the possibility of more money in circulation than planned, and this often leads to destabilization of the market and the depreciation of the national currency. Money laundering is the name given to the process by which illegally obtained funds given views that were legally obtained.\footnote{http://www.austrac.gov.au/elearning/pdf/intro_amlctf_money_laundering.pdf}

Money laundering such criminal phenomenon sets a huge blow to any economy, directly interfering with the monetary system and adversely affects economic development. Therefore negatively affect on the confidence in the political and economic system by the citizens and directly impoverish the population.

Most widespread definitions which claim that money laundering is simply turning the "black money" in the "green" do not cover all dimensions. The definition offered by the Customs Service of the United States in their material to the Group G - 7 is more complex and it incorporated several important dimensions in the process. Money laundering is the process by which the gains that

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\footnote{http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=8530&mid=710&tabId=96&tabindex=0}
reasonable thought to originate from criminal activity are transported, transferred, transformed, converted or built into legal funds in order to conceal their origin, plowed, movement or ownership in order illegal origin display such as legal or legitimate. While this definition includes the wish to conceal the ownership of the money due to the provisions for taxes and because ownership can cause questions about the origin, it is not explicit in terms of the most basic component of money laundering, and that is: profits that were acquired through criminal activity be placed beyond the reach of the low enforcement agencies. However in good part the importance of money laundering can be understood simply as a movement of money away from the place where it is vulnerable to seizure in areas where secure.153

As the most comprehensive definition of money laundering that is accepted in the Republic of Macedonia is Taseva's that money laundering defines as "the process by which the gains that reasonable thought to originate from criminal activity are transported, transferred, transformed, converted or incorporated into the legal financial flows in order to conceal their origin, source, movement or ownership, to enable these resources to appear as legitimate, and persons involved in criminal activities to avoid the legal consequences of such action."154

The transfer of money to the "safe places" and today and earlier is intention or commitment of money launderers who are not afraid of sanctions like prison sentences, fear of confiscation of criminal proceeds, because from prison they can get out, but the money stays for "continuation of life in another safe place, or waiting a moment, suitable political situation for a refund such foreign investment." Priority for sheltering money is known as a method or process of Meyer Lansky, who is known as the godfather of modern money laundering which was interested in protecting the money "matching with some basic procedures for overflying the capital."

The idea of switching the money through the sea was represented then, and today practiced are increasingly. Criminals are not as interested in the legalization of criminal money, they are more interested in money transfer in etc. "banking havens" where's not investigated the origin of the money and not report their putting bank accounts, just put on the accounts and "wait - what next?". The mere moving and putting money accounts in such areas is money laundering, but the confiscation is not possible because these countries do not cooperate with law enforcement agencies and it is not possible to detect and investigate amount of cash.

Money laundering such accompaniment of criminal activity is a presence in countries around the world, running on a variety of ways and is manifested through different forms. Operation of money laundering "launder" money derived from criminal activity and the same because of his origin "dirty" in order to display that have been acquired legally as "clean" to be used in legal economic and financial flows. The activities of the acquisition of "dirty" money mainly implicated in specific crimes which, if not detected and proven criminal responsibility of the offender or not confiscate illegally obtained property benefit, leading to a situation that certain entities be in a situation where they money through the process of "washing" legalize through banking, financial and other transactions.155

The globalization of the phenomenon of "money laundering" "is expressed through the activities of organized criminal groups, which cover the origin and ownership of the proceeds and to avoid control, use the present shortcomings in national legislations regulatory schemes, flexibility and

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153 Вилијамс Ф. ,,Транснационалниот и националниот организиран криминал и меѓународната безбедност“, Безбедност бр. 3, Скопје 1997, стр. 371
154 Тасева. С., Перење пари, Дата Понс, Скопје 2003, стр. 36.
opportunities for rapid transfers of profits across national borders, inequality regulation on management of national systems, particularly the numerous banking, insurance and other branches in different countries. The problem of money laundering in particular gets its meaning and dimension in circumstances where it is known that the new global financial infrastructure that connects countries and financial institutions such as banks, brokerage houses, stock exchanges, investment funds and other financial institutions in the global mechanism exchanges are increasingly out of control of the states. Also, the professionalism of the activities of transnational criminal groups, as well as the sophistication of criminal schemes that are used to launder the proceeds of various kinds offenses, increasingly allocate money laundering as an independent criminal service, but also an inevitable constituent element of every major and profitable criminal operation.

Today money laundering is one of the most important links between the criminal world and legal society, by what criminals on a very easy way interfere in the legal economy and according to some estimates are considered to be laundered about 1.5 trillion dollars per year worldwide. In this process are often involved and officials, responsible persons or entities that perform activities of public interest such as bankers, lawyers, notaries, accountants and others which considers that money laundering will upset the confidence and efficiency of financial and non-financial institutions in general, and is a serious threat to public confidence, reduces the credibility of the markets and causing enormous damage to the national economy. It would be good if these people respect the laws for reporting suspicious transactions, but corruption of government officials and law enforcement agencies is an important and integral factor for the existence of money laundering, so these people are a key link in the prevention, detection, clarification and proof of this crime. For example employees of banks daily in contact with various payments from various customers and they should has identified suspicious behavior and apply indicators for suspicious transactions provided by the Law on Money Laundering and Financing of Terrorism.

System of prevention of money laundering

The system of prevention of money laundering is one of the latest subsystems within the integrated security system (public and national) and covers a range of measures within the organization of physical and technical protection and security protection (active and passive) for preventing various criminal and other forms of endangering national security in the field of money laundering and fight against terrorism at national, regional and international level, in order to detect its perpetrators, as well as effective protection of the extension of the mechanism of money laundering as central to the security of the state and citizens.

The system of prevention of money laundering in Republic of Macedonia countries is in a development, the contours are set based on the recommendations of the most ratified international conventions in the country, enacted many laws and established specialized state authorities to monitor the financial transactions for which there are grounds for doubt that originate from criminal or other illegal actions and preventive action for their involvement in the legal financial system.

156 Камбовски В. и Наумоски П., Корупцијата- најголемо општествено зло и закана за правната држава, Скопје, 2002, стр. 53
157 Служben вестник на РМ, бр. 04/08
158 Đurđević D., “Pranje novca i zloupotreba informacionih tehnologija”, doktorant - Fakultet civilne odbrane Beograd, str. 3
The system is set for the identification of suspicious transactions through the use of indicators that are indicators that should be applied by the entities in the system that are first to "blow" to the entry of criminal money into the legal financial system, and then in that system is financial intelligence or state agency that monitors suspicious transactions and last in the system are law enforcement agencies that need to detect and prosecute the perpetrators of the crimes of which had high criminal proceeds and they either entered or "Trying" to involve in the legal financial system. ”159

System to prevent money laundering is composed of three pillars:
1. The first pillar consists of entities that are legally obliged to take measures and actions to prevent money laundering and terrorist financing.
2. The second pillar is the Financial Intelligence Unit is the administrative authority for financial intelligence which acts as an intermediary between entities on the one hand and the investigating authorities on the other.
3. The third pillar consists of law enforcements agencies- Public Prosecutor's Office (Department for Organized Crime and Corruption), Ministry of Interior (Department for Organized Crime and all organizational units to combat organized crime) and the Ministry of Finance (the Financial Police and the Customs Administration ), but it cooperates with the Public revenue, though she is a body which is directly involved in investigating crime, but indirectly participates in many cases to identify the reported and Application us or taxable yields, money and property of suspected legal and physical persons.

Subjects in the system for prevention of money laundering in the Republic of Macedonia

In the Law on Prevention of Money Laundering and Terrorist Financing are listed the entities that are covered in system to prevent money laundering and financing terrorism, which are as follows:
• Financial institutions and representative offices, subsidiaries, affiliates and business units of foreign financial institutions in accordance with the law perform activities in the country Republic of Macedonia.

As financial institutions are provided: banks, in accordance with the Banking Law; exchange in accordance with the Foreign Exchange Law; brokerage houses, according to the Law on Securities; sensor service for money transfer in accordance with the fast money transfer and post offices or other legal entities that carry out financial transactions, wire transfers of money or delivery of valuable items; insurance companies, insurance brokerage companies, insurance agencies insurance, insurance brokers and insurance agents in accordance with the Law on Insurance Supervision; investment funds and management companies of investment funds in accordance with the Law on Investment Funds; voluntary pension funds and companies for managing of voluntary pension funds in accordance with the Law on Voluntary Fully Funded Pension Insurance and other legal entities and physical entities that in accordance with the law perform one or more activities related to granting loans, issuing electronic money issuance and administration of credit cards, economic - financial consulting, leasing, factoring, forfeiting, provision of investment adviser and other financial activities.

• Non-financial institutions or legal and physical entities that perform the following services:
  1. The real estate transfer,

159 Николоска С., Перено пари, (криминолошки, криминалистички и кривично-правни аспекти ), Ван Гог, Скопје 2015, стр. 130
2. Audit and accounting services,
3. notary, lawyers and other legal services related to: sale of movable property, real estate, equitab or shares, trading and money management and securities, opening and managing bank accounts, safes and other financial products, establishing or participating in the management or operations of legal entities, representing clients in financial transactions, etc.,
4. Giving advice in the tax area,
5. Providing consultancy,
6. Provision of services of an investment advisor:
   - Organizers of lotteries by law,
   - Associations of citizens and foundations (domestic and foreign)
   - Financial consulting companies,
   - Providers of services for legal entities
   - Stock Exchange,
   - Credit bureaus,
   - Legal entities receiving pledged movables and real estate and others.

The meaning of the subjects to the functioning of an efficient system for prevention of money laundering and terrorism financing is great because of that the professionalism, expertise of staff in subjects is upgraded via training in the field of combating money laundering and financing of terrorism with a view to their identification of products, customers and activities like and source of identifying ways and methods to carry out criminal activities. In particular it should be pointed out that the employees of the entities are best acquainted with their customers, their intentions and legitimacy of the activities they perform, i.e. knowing the profile of its client can easily identify the activity that deviates from the normal activities of the client, activity which is illogical in terms of the whole of that business relationship. The list of subjects under analysis expands and the need to protect the economy from the harmful negative consequences resulting from the placement and integration of impure income as legal (clean). "The International Monetary Fund estimates that money laundering as drug traffickers use to introduce their funds to legitimate financial market is between 2 and 5 percent of world gross domestic product, or about $ 600 billion a year."\(^{160}\)

**Data for reports of banks**

In the following table will be a review of entities responsible for the law to take measures and actions to prevent money laundering and terrorist financing for the period 2013-2017.\(^{161}\)

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\(^{160}\) Маякл Д. Лајман, Гари В. Портер, Организиран криминал, Магор, Скопје 2009, стр. 211.
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Table no.2

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As can be seen from the table, in 2013 most entities are associations and foundations, while in 2014 the highest number is of Company accounting, and behind them are Lawyers. From 2015 to 2017 there is a reverse situation, in the first place are the Lawyers, and behind them are Company accounting. Subjects in the system to prevent money laundering in the country daily report to the Financial Intelligence in order to inform about their activities regarding the implementation of legal measures and activities especially for completed analysis of suspicious customers and analysis of suspicious transactions, as well as control legal transactions provided over 15 000 Euros or related transactions. Reports are submitted electronically to the previously prepared form which is internationally accepted STR. Based on the annual reports of the Financial Intelligence Unit the following table shows data for reports submitted by all entities in the country. The analysis was made for a period of 5 years or for the period 2013-2017 year.

According to annual reports from 2013 to 2017 of the Financial Intelligence Unit of the Republic Macedonia, as a part of The Ministry of Finance of the Republic of Macedonia, under Law on Prevention of Money Laundering and Other Proceeds from Crime and Terrorist Financing, were submitted a total of 955 reports for suspicious transactions. From them, banks have made up a total of 673 or that is 70.47%. This confirms the active role of banks in the system to prevent money laundering in the country, compared to other subjects.
Conclusion

Money laundering as a criminal activity becomes increasingly prevalent in society. Just the fact that this criminal activity is particularly serious and its consequences are so serious that it can lead to economic instability to the state, affects the overall situation in society. The seriousness and complexity of this problem, as well as the consequences it causes, are the main reason why states should be active in the fight against it. Many countries have taken a number of measures to deal with this problem, but there are still many that can be done.

Money laundering is a complex process in which illegally obtained money obtained from criminal activity, through a number of procedures are inserted into the legal financial system. Precisely because of the complexity of money laundering for his prevention, requires involvement of many organs and their mutual cooperation through the exchange of information and data and give mutual assistance. Financial institutions are the first organs which has touch with money laundering, exactly they are the they which has obligations to detect and prevent money laundering, through inter-institutional cooperation and submitting reports to Financial Intelligenge Unit Apart from inter-institutional, it is necessary to strengthen international cooperation between states, since money laundering is such a occurrence that in most cases crosses the boundaries of one country, and rarely remains within a state.

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SOCIAL PARTNERSHIP AS A TOOL TO OVERCOME
SOCIAL - ECONOMIC PROBLEMS

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Abstract

The article is concerned with the social partnership, as the system of relations that is shaped between hired workers and employers within the framework of state mediation. The guarantee to this goal is the effective cooperation of the state and private sector. Considering the situation it should be mentioned that tools of Social Partnership can be used not only in a sphere of social and labor relations but also in the area of professional education and labor market. The problem/article is that a large number of people with higher education work not by their profession, doing jobs requiring a lower qualification than their professional qualifications, actually occupying colleges’ graduates in the labor market. It becomes obvious that the tools of social partnership can be used not only in the sphere of employers and hired workers, but also employers and potential workers (alumni of universities and colleges).

Key words: Collective bargaining, trade unions, employers' associations, labor law, public-private partnership

Introduction

Social partnership, acting on trilateral basis, today acts as a format or tool for labor market subjects- employers and hired workers for effective discussions, optimal solutions, compromise, collaboration and collective bargaining. The role of the state is to provide the necessary legal, economic, organizational, financial and other resources for the subjects of social partnership. The guarantee of access to all these goals is the effective cooperation of the state and private sector, the harmonious development of the trilateral social partnership in Armenia, as well as the structural and functional radical change of the trade unions and employers' unions. Today, the role of Social Partnership is viewed both in social and labor relations, as well as in the area of professional education and labor market issues and management. Social partnership has been viewed as a platform for students / alumni / potential hired workers and labor market, which aims to exclude the practice in Armenia when a large number of higher education employees work not in their profession by performing jobs requiring a lower qualification than their professional qualifications, actually occupying VET graduates in the labor market.

New phenomena in the social sphere radically transformed the nature of public relations in post-Soviet countries. Social stratification, as a result of transforming of the living standards of society, made it necessary to use such an instrument as a social partnership. In other words, the social partnership was viewed as a mechanism for social stability or consensus and as a basis for sustainable development.
Social partnership is a system of relationships between workers and employers within the framework of state mediation. It includes a set of institutes, mechanisms, and processes that are aimed to ensure balance in negotiation processes during which the parties are discussing issues related to employment, wage-system, employment relationships, and principles. The negotiation process will essentially lead to a compromise decision for achieving the realization of corporate and public interests. (Khokhlova, Bachurin, 2010, p. 100)

Agapova (2003, p. 86) states that the tools of the social partnership would solve the problems within the community in future. In addition, it is aimed to form new connections, new coalitions, which will concentrate the local community governance in their hands.

On the other hand, Volgin (2003, p. 596) indicates that the social partnership is a system of relations that is shaped between hired workers and employers within the framework of state mediation, which aims to coordinate economic interests in the social-labor field and to regulate social-labor conflicts.

These definitions make it obvious that social partnership is aimed to normalize working relationships and resolve conflicts and problems in this sphere. In other words, the importance and the operation of labor, the right of work are emphasized as a basis of any democratic state. Rights of Labor and labor laws are not only observed as a social-economic phenomenon but also the core of human rights. In the end, the significant basis of every society is a work of people.

It’s very important to observe the emergency circumstances of social partnership. First of all, we must consider the situation for understanding why it’s important to implement the social partnership in real life. By this way, we can understand priority and significant influence of social partnership in any sphere of social policy.

So, as a result of capitalist development, emerged a new category of a commercial and industrial class. It was the bourgeoisie, which was a result of a long process of development, the revolution of producing and exchanging methods. But the bourgeoisie cannot live without workers (Vardapetyan, 1970, p. 3)

So, it is a widespread opinion that the bourgeoisie creates his opposite part as the proletariat. Thus, the concentration of capital on the hands of the bourgeoisie has transformed the relationships types between proletariat and bourgeoisie. At the initial stage of the development of capitalism, the interaction of the two classes led to the non-matching interests of those classes. From the very beginning of this relationship, capitalists forced their workers to work in harmless conditions without any restriction related to working time.

Under such conditions, it is clear there was no not only the use of the term of labor protection but also the creation of appropriate safeguards for its insurance in practice. So, it is imperative to create a mechanism within the framework of two classes acting, which would help to overcome the dispute or conflict. Such a mechanism was created quietly. There were made some new changes, for example reducing working hours and increasing wages. In such a situation, the hired workers had less power and opportunity than the capitalist. Although in the early stages of the development of capitalism, the state supported them, the role of state only concentrated on the legislative stage.

In this period, was been a widespread opinion that the state took the role as a "night watchman" and followed that no one and nothing could not disturb the arrangements of the set items. In this situation, the workers could not rely on state policy, inasmuch as only was announced about neutral policy by the state. (Myslyayeva, 1998, p. 3)
And in order to protect themselves for implementing their interests and reaching of adaptation laws, workers started the unification process. This explains in some ways why the creating of trade unions was banned in many countries.

The first small trade unions have emerged in the late of the 18th century in the UK. In other words, the history of trade unions is inevitably related to Europe. England was one of the firsts and this was due to the fact that capitalist relations in England developed faster than in other European countries. The emergence and development of trade unions are related to Industrial revolution, and in this sense, it is quite clear that the development and the emergence of trade unions are linked to such an industrially developed country as England. (Laybourn, 1997, p.256)

Initially, the activities of trade unions were banned in the UK. Additionally, has been set criminal responsibility for membership. However, such restrictions were eliminated in 1871 (Docherty, Velden 2012, p. 6-8).

The freedom to create associations is fixed in such a universal document as the Universal Declaration of Human Rights (UDHR). The Declaration (Article 20.1, 1948) specifies that everyone has the right to freedom of peaceful assembly and association. The Declaration (Article 20.2, 1948) states that no one may be compelled to belong to an association. Related to the coordination of trade unions, the declaration (Article 23.4, 1948) states that everyone has the right to form and to join trade unions for the protection of his interests.

Following the UDHR, two Covenants were adopted - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The International Covenant on Civil and Political Rights, states (Part 2, Article 22.1, 1996) that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. On the other hand, the Document (Part 2, Article 22.2, 1996) mentions that cannot be restrictions on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order the protection of public health or morals or the protection of the rights and freedoms of others.

The International Covenant on Economic, Social and Cultural Rights states (Part 8, Article 1 /a,b,c,d, 1966) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; This Covenant specifies some spheres of Trade unions operations: the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations; In addition, the Article introduces the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. The state must take positive steps to introduce domestic legal order to protect freedom of trade unions.

The Convention for the Protection of Human Rights and Fundamental Freedoms is one of the most important documents regulating the right of freedom of association. The Convention states (Section 1, Article 11, 1950) that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
The European Social Charter also has a basic importance to European countries, in particular the Charter defines (Part 2, Article 6, 1961) the right of collective bargaining which aimed to promote joint consultation between workers and employers; to encourage negotiations between employers or employers’ organizations and workers’ organizations, to ensure the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Within the EU operates the Community Charter of the Fundamental Social Rights of Workers. The Charter states (Title 1, Article 11, 1989) that employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defense of their economic and social interests.

By the end of the 19th century, however, they legitimized their activities. After that, was coordinating changes related to the amendment of Labor codes and the establishment of trade unions. Thus, activities of Labor Unions were laid. In 1919 has created the International Labor Organization, but the social partnership hasn't worked yet. (Volgin, 2003, p. 597)

It’s important in the frame of this right introduce Universal declarations and resolutions adopted by the International Labor Organization (ILO).

- Constitution of International Labor Organization, (Preamble of Constitution,1919) for ensuring social stability, collective and permanent peace are introduced such tools as the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply and demand, the prevention of unemployment, the protection of the young and old workers against sickness, disease and injury arising out of his employment. The Preamble also states the most important point about recognition of the principle of freedom of association.

- The Declaration of Philadelphia (Cohen & Barr, 1944, p. 12), which is the essential part of the Constitution of the ILO, states that freedom of expression and of association are basic to continuous progress and emphasizes that they are among the “fundamental principles on which the Organization is based”.

- The ILO Declaration on Fundamental Principles and Rights at Work (Gernigon, Odero and Guido 1998 p. 5) which states that all Members, even if they have not ratified Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions. These principles include freedom of association and the effective recognition of the right to collective bargaining.

- ILO Convention Freedom of Association and Protection of the Right to Organize (No. 87,1948,), which emphasizes the freedom of Association, and the article 2, states that employees and employers, without any restriction, shall have the right to establish Unions, shall have an opportunity to join organizations of their own choosing without any prohibition.

- Right to Organize and Collective Bargaining Convention, (No. 98, 1949) this convention is also considered one of the fundamental principles of the freedom of association in the field of labor unions.

- Workers' Representatives Convention, (No. 135, 1971),Tripartite Consultation Convention, (No. 144,1976)

From the 20th century was needed half a century, for having a theoretical and practical understanding of social partnership. Nevertheless, during this period, there had occurred some socioeconomic changes, which resulted in the emergence of social partnership.
During this period, the capitalism entered a new stage of development, the scale of production expanded, the production was internationally developed. The competition both inside and an outside of the countries was noticeable. Strikes in this period led to the temporary decreasing of the production which was organized by trade unions. Furthermore, this situation led to more serious consequences and results for owners than it was 20-30 years ago. Internationalization of production and entry to the outside market made the situation more complicated by strikes.

The internationalization of production and access to the outside market strikes made the situation more complicated. As a result of the strikes, owners led to a reduction in profits. So, owners did not have anything else to do instead to start to cooperate with trade unions.

In such a situation, after the Second World War, trade unions have already had a considerable force. This changed the nature of social-labor relations and led to the formation of relations between employees and employers. The role of the state has also changed.

In the first part of the 20th century, the state made a transformation related to its role. It means, that the role of ‘night watchman’ transformed. The state role led to being active in the economics. The intervention was viewed not only in economic but also in social spheres. After the end of the Second World War, a new conception was developed: Welfare State- the state of universal prosperity. The welfare state is the principal mechanism by which social citizenship is conferred, whereby "social rights" are elevated in importance. (Pacek, Freeman, 2015, p.8)

The rise of the welfare state is perhaps the most significant structural transformation in postwar capitalist democracies. The welfare state, the concept of government in which the state or a well-established network of social institutions plays a key role in the protection and promotion of the economic and social well-being of citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization. (Encyclopaedia Britannica)

The emergence of welfare states is then a necessary change that balances the “system” because industrialization undermines the traditional social support mechanisms and causes new social needs, while economic growth provides the material basis for social policy expansion to meet these needs. (Hwang, 2010, p.3)

Thus, in the process of public administration, the role of democratic procedures and mechanisms have begun to strengthen. In 1919, within the framework of the International Labor Organization, by means of collective bargaining, was laid down new mechanism such as the social partnership.

The ideology of social partnerships is based on the principle of compromise, cooperation, mutual responsibility. The transition started from radical labor disputes to legal, consensual and conciliatory procedures. (Sorokin, 2006, p. 4)

Vitko (2008, p. 72) states that social partnership is not only a goal, but also means to ensure successful development of the economy and more fair distribution of material and spiritual goods.

Volgin (2003, p. 596) calls the social partnership system as tripartism, (Figure 1) considering the inclusion of the three sides in it.

1. Organizations representing the interests of employees;
2. Employers, employers' unions
3. State.
Collective bargaining

Smolkov (2002, p. 19) also considers the SP system in the context of a trilateral agreement, to try to find trilateral solutions in the sphere of labor and socioeconomic relations. Such a definition emphasizes only one side of the SP: that is only a good practice regulating social-labor relations. In other words, it has become part of the public relations. And today, the strengthening, development, and improvement of this mechanism, is a priority in any democratic state.

Thus, by presenting the role of social partnership, we consider it as the actions of its subject aimed to implement the social policy, change the population and its separate parts status by solving existing problems in the social sphere.

This definition considers social partnership as a means of solving existing social problems by changing or maintaining the social status of the population and its separate groups. From this definition, we can conclude, that social partnership is viewed in a wider sense as a means of representing the interests of the social group. (Holostova, 2000 p. 269)

Social partnership as an internationally recognized concept has been adopted by both developed and developing countries. Social partnership is considered one of the basic aspects of the establishment of the market economy and democratic institutions. The effectiveness will ensure the flexibility of social and business development.

To conclude must be mentioned the objective circumstances of the development of social partnership
- The concentration of capital in the hands of a particular class of society. This phenomenon influenced the transformation of relations between workers and employers.
- The activation of Trade Unions’ activities, coupled with an active social policy regulated by the government
- The strengthening of the democratic form of public management.

As a unique type and mechanism of public relations, its conceptual framework has been expanded today. The origin of social partnership is primarily associated with the regulation of social-labor relations only. However, it is necessary to make use of the Social Partnerships’ tools available in other areas as well.

Economic Sphere: Turning first to the economic sphere, it should be noted that the use of social partnerships’ instruments in this sphere are primarily aimed to provide the co-operative and reciprocal environment in the business sector.
Following thesis shows, that employers and their representative bodies are also the fundamentals of SP regulator mechanism. It is also necessary to mention the fact that the businessman, as an employer, is one of the parties of SP and as a result of such actions are formed the relationship between employer-employee, whose balance is only the basis for realizing the state's business and economic policies.

The importance of the SP role in the field of environmental protection should be linked to business development. And for explaining this point will be used a term of corporate social responsibility. The basis of this definition is “CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families, as well as of the local community and society at large”. (Fontaine, 2013, p.3)

An important attempt to bridge the gap between economics and other expectations was offered by Archie Carroll. His efforts culminated in the following proposed definition of corporate social responsibility. The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time. (Schwartz, Carroll p.1)

Corporate Social Responsibility (CSR) is a duty of every corporate body to protect the interest of the society at large. Even though the main motive of business’s is to earn the profit. So, the advantage for business’s being socially responsible shows the fact that business direction and public expectations are the same.

Companies being as economic systems are obliged to take care of the effective use of their resources. By implementing the aforementioned obligation, companies produce products or services, create jobs, and pay dividends to shareholders.

On the other hand, companies are more than just economic systems. In this case, companies are the part of the environment, and the success of their actions is depended on the nature of this relationship. (Soundarya, p.2)

In conclusion, companies should be responsible in such areas as environmental protection, development of local communities, public safety, etc. (Fugure 2)

![Fig. 2 Corporate Social Responsibility](image_url)

Through CSR can be achieved by economic development, social sustainability, and environmental security.

The next area of SP is education. The main goal of cooperation in this area is to provide an offer to the educational system in the frame of cooperation between labor market-economy and social
infrastructures. As a result, the relationship between qualified personnel and labor market is a very important and necessary format for any developed country.

By this way, social partnership can be used in the system of Colleges and universities. One of the most important issues in the Colleges are to improve the quality of education, the effective functioning of the system, and the equal access to education for citizens and their competitiveness in the labor market.

The problem is that a large number of people with higher education work not by their profession, doing jobs requiring a lower qualification than their professional qualifications, actually occupying colleges graduates in the labor market. The education system should be reorganized, transformed, being more productive and dynamic, and this type of offer can only give a knowledge-based economy.

Today it is necessary to develop knowledge circulation between the professional education system and business, which will become a basis for improving the quality of professional education and creating favorable conditions for business development, on the one hand, and for the development of the labor force. Knowledge circulation can also make clear advantages to business through the introduction of innovative initiatives. This principle is appropriate if education and business work together.

In a sphere of colleges, it is possible to expect tangible results from the social partnership only through long-term, consistent and effective work of social partners.

However, it is important to analyze social partner’s role separately. First, the state must take into account the knowledge of the citizens and the role of a citizen with professional capabilities. It means that the state is responsible for ensuring active participation of social partners.

Regarding to the establishment of partnerships with employers, vocational and secondary vocational institutions develop and approve the curricula and specializations in accordance to the proposals offered by employers, which guarantee students' learning at different stages of education.

The state, taking into account the structure and structure of the labor market, provides competitive basis guarantees for citizens in vocational and secondary vocational colleges at the expense of state budget funds. The main idea of social partnership is to take into account the offer and demand of employers, which helps to avoid of abundance or deficit of labor force.

Actually, the law provides employers the opportunity to personally participate in the development and design of professional curricula. By this way, the employer has an opportunity to formulate his or her own specialists and create for them workplace in future. This type of cooperation helps employers to find the workers easy. Its also method to overcome poverty and unemployment.

**Conclusion**

Observing the key development perspective of social partnership, we find it necessary to state that SP is not only the core of the partnership in the social-labor and socioeconomic sphere, but also in a sphere of the professional education system and employment management. For ensuring the relaxation of this aim, now is always used the term PPP public-privete partnership.

If we summarize the role of social partnership in a social policy, it is aimed to regulate the variety of working processes from potential employee and hired employee relationships, to the regulation of the emergence of a new environment, which will give an opportunity to solve problems of employment-education relationship and to resolve the socioeconomic issues of strategic significance.
Observing the key development perspective of social partnership, we find it necessary to state that SP is not only the core of the partnership in social-labor and socioeconomic sphere, but also in a sphere of the professional education system and employment management.

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