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POLITICAL MYTH OF NATIONALISM AND ANTINATIONALISM – A CHALLENGE AND A CONTEMPORARY THREAT TO SECURITY

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Summary: The issues of nationalism, ethnic affiliation and political myths related to them continue to represent an inexhaustible sociological, political science and security issue in the 21st century in the same way as in the previous century. In their complex nature these issues appear as topics of many debates and interpretations, but these debates are often ideological in their contents. This is also confirmed by the interpretations of the events at the end of 20th century when the Balkan part of Europe became an area of the collapse of law and order, the creation of new states and alliances, national and religious extremism, ethnic conflicts and ethnic cleansing, as well as the incapability of the UN to solve the bloody local conflicts.
This paper attempts to show the roots of nationalism and national conflicts in the Western Balkan political area in the course of the last decade of the last century. At the same time the field of analysis is directed towards the functional dimension of political myths and stereotypes in the subsequent political consolidation of newly created national identities explained at the examples of nationalism and antinationalism within the context of origination of synthetic nations at the territory of the former Yugoslavia.
Key words: conflicts, nationalism, antinationalism, political myths, stereotypes, Serbia, Croatia.

1. Introduction – about Nationalism and National Conflicts, Stereotypes

Integration and disintegration are dominant processes that mark the development of human civilization and the future at the intersection of two millennia. While the integration involves processes of globalisation and democratisation, the disintegration refers to the collapse of sovereign states, the

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emergence of parochialism and as a consequence tribalism mythomania and stereotypes related to the growing ethnic nationalism[1]. Therefore, nationalism emerges as the most powerful movement in today's world, a movement that exceeds the boundaries of many social systems. (Gardels, 1991)

That nationalism is a potential security threat, there is the fact that after World War II, the multi-ethnic states often fought civil wars caused by ethnic and racial hatred in which millions of people were killed, to confirm it (Kegl, Wittkof, 2002). 90% of all the killed were not combatants, they were mostly unarmed civilians, women and children which shows the extremism in these conflicts. (Sivard, 1999).

The danger of national extremism, ethnic conflict and violence in the twenty-first century, and assess Kegl and Vitkof, stood over the whole world. Mankind lives in fear of terrorist aggression against neighbouring states, and even aggression against their own government that is prone to discrimination against its citizens because of their nationality or religion. National and international security will not be easy to reach even in the XXI century. Millions of people are victims of aggression, and even millions of them have been forced to go into exile.[2]

Hence, the most important national conflicts in recent history are social conflicts whether the interstate or internal conflicts are in question. In its devastating force, present violence and consequences, they represent the most serious forms of confrontation between social groups. Their dynamics and outcome often culminate in war confrontations, mass casualties, and crimes committed in the name of national goals and interests. National conflicts are directly related to nationalism as an ideology, policy and doctrine to prepare and justify them. However, one should mention that nations and national issue, besides their historical, structural and social rootedness can also produce as a kind of important "strategic and political goods and currency in the struggle for planetary dominance and the redistribution of world power" (Vidojević, 1993). Therefore, national conflicts are far from their extinction, as seen in the planetary scale and scope of multinational companies taken separately. After 1989, for which some assume that means "the end of history" there was a sort of "re-birth of geography" according to which it was claimed that the world relations are much more influenced by deep ethnic and cultural differences clearly divided by regions than under the influence of powerful political or ideological factors. (Bracewell, Durres, 1999).

National conflicts have their conceptual, ideological and political preparation that creates an authoritarian government, populist leaders, the circle of extreme right-wing intellectuals close to the authorities and parts of the clergy. Wider social

[1] Nye, JSJr., Believes that these processes converge to transnationalism and nationalism – two competing forces in the world after the Cold War. Understanding International Conflicts Affairs, Longman, New York, 2002.

[2] Between 1945 and 1981, there were 258 cases of ethnic wars. In early 2002, the world's 35 civil wars were raging with ethnic background, either due to the efforts of minority ethnic groups to establish an independent state or because of failed states policy of national government collapsed and produced a conflict of rival ethnic militias and paramilitary. It is estimated that approximately 26,759.000 refugees fled from 50 ethnonational conflicts that have been led in 1993–1994 to each of them there was an average of 80,000 killed. Kegley, CW Jr., Raymond, GA: Exorcising the Ghost of Westphalia: Building World Order in the New Millennium, New Jersey: Prentice Hall, 2002, p.575.

basis of national conflicts are serious economic and social crisis, and sharp political conflict among classes and within classes, mass poverty, social and state disintegration. However, such a surface is not always sufficient for the development of inter-ethnic conflicts. Their occurrence in a society requires certain social and psychological background. So, national conflicts arise largely from a state of "collective spirit of a nation that is produced and marked by defeat or destruction of the traditional humanistic values as well as the loss of detailed marks of its own identity and morality. From such a spiritual climate, the authoritarian social consciousness is arisen, social majority, psychology of nihilism and all the permissions where force is replaced by the right" (Vidojević, 2006). And the authoritarian conscience becomes not only the base, solid base and a companion, but a necessary factor in national conflicts, nationalism and national chauvinism. Such a spiritual and social climate in particular are characterized by "people and 'not before hot' nations" of the Balkan cultural and political circles, who have in the last decade of the twentieth century, as well as half a century earlier, set up their principles through a national, "blood and soil" ethnic cleansing .

2. Nationalism and political myths

Research (from political science and general security point of view) of mythological areas of social consciousness and cultural patterns soaked with myth content has always presented an interesting scientific engagement and effort of penetration of the tough and resistant tissue of mythological plays and patterns. This effort is especially difficult when political mythology is researched, because it is for its vital and existential capacity eternal "living" and active play about selves, our collective destiny, a place on the stage world history identity, historical task and religious mission to be processed, the "sanctity" of the space to be saved, about a dangerous enemy who threatens us and many other more or less commonplace in the political mythology of every nation (the nation).

Unlike theogony myths, or myths of cosmogony or of anthropological character, which thematise divine, cosmological or anthropological dimensions of human existence, political myths tend to shape the value system and beliefs of people, their perception of the political system, social relations that govern it, the character of state, political authority, hierarchy of power, the nature of political power, membership of national identity and the like. Political myths play a particularly important role in creating a political base, the basis of creation and the establishment of a political community. These so-called founding myths become such an indispensable part of any awareness of the constitution of every national political system regardless of its size and character. In layered structure of political culture and culture in general myths are the main base and prototype of political myths are so-called founding myths, that is, myths of origin and the rise of certain state and political community. Without the founding myths no political culture is completed, nor can the state itself be more firmly established by an ideological point of view and beliefs of its members (Matic, 1998).

Scientific research of political mythology must come from the need to investigate and to present the position of the political ideology behind political myths (in particular it is important today in modern times when the importance of political ideology has become so large and the consequences of their practical activities in many cases devastating), its need to build a perception of political reality and enrich mythological plays and their own ideological messages to make accessible for a number of political consumers, creating a false consciousness that their new ideological content is already known and accepted. There is often religious phenomenon hidden behind ideological content, which at first glance seems benign and distant from the ideological sphere calculation. "If we look at the matter from the historical perspective of the twentieth century as a century of ideological wars, we can say that "the miracle" in Medjugorje encouraged both Croatian nationalism and anti-Communist struggle. It appeared soon after Tito's death, on the territory which was the stronghold of anti-communist and ethno-nationalist, the Axis supporters from the time of the Second World War" (Peric, 2006).

Our study of political myths in the former Yugoslavia, especially those related to the Serbian political mythologisation, will try to point out one dimension of political myths, which in its (manipulative) basis wants to distort more than to hide some important facts from the political reality and especially the political history of Serbs. But the function of political myths that was observed by Ernst Kasirer and that is about their pragmatic role to strengthen social solidarity, make a community stable, particularly to establish its cracked and historical continuity which was politically difficult and continuous task of several generations back for the Serbs. Also, "Kasirer (Cassirer) in his analysis of the techniques of modern political myths clearly pointed out the fact that political myths are the fruits of imagination to grow freely." These are artificial products created by very skilled and cunning craftsmen… (Matic, 1998).

We will point out the political dimension of the seductive mythology, which can easily establish a personal relationship over bribery and consumer, for its emotional dimension, which makes imaginative mythological thinking and drinking as opposed to the strict forms of discipline and dry rational thinking. For all of dramaturgy, which brings the mythical stories, the simplified representation of the conflict of good (to me) and evil (the other), order (order) and chaos (opposition) divine (own religious-confessional form), and demonic forces (other religious and confessional form), friends and enemies (opponents). "That's what is best evidenced by the fact that the use of myth in ideological and political sphere is still showing as a means of most existence funds of functionalism and instrumentation of human behavior. Myth here can constantly change, transform and adapt and that just because it remains the same, eternal" (Tripković 2006).

For sociologists, historians, political scientists, anthropologists, myth is almost always the story of the past. Insufficiently precise and accurate but consistent with the needs of today by interpreters, designs, builds and is sympathetic. Myth is the story of how this reality was created, why it is so important to our lives, and why you should accept it as your own. Political myth is all listed, but even more than

that, it imagined an upgrade, biased and inaccurate observation of reality and history. The myth is paraphrase F. Fire, contamination of the past needs of our reality, but also the vision of today's polished image of the "heroic" past. "As religious myths, political myths also have a characteristic fluidity – impermanence, the changing, flexibility, limit, their content is vague and subject to change. What is a relatively stable characteristics of the functional incorporated, is the ability to maintain their usefulness and timeliness. Neither the internal contradiction of meaning and incoherent can harm their credibility. Even the issue of conspiracy is not only negative: for a counterweight to the holy of cabal to devils plot. If there are threatening powers of darkness, there is darkness that is protective: the sons of night lights often choose to lead their fight. It seems that a response to a conspiracy can be another conspiracy" (Girard, 2000).

Knowledge on the use and abuse of religious myths for the regime of nationalism in the former Yugoslavia has almost become commonplace in social science. We should, however, point out the connection (the fact) because it is widely used for daily political purposes, often at the symbolic level as a part of the propaganda war in the field of arts and culture (film, music, painting, etc.). "After winning the elections in 1990, the nationalist regime in Croatia exploited the popularity of the Medjugorje cult. In 1995 a movie titled Our Lady was recorded in the Croatian-American co-production directed by Jakov Sedlar, the official propagandist of the regime in Croatia. (...) The Croats were presented in the film as devoted Catholics and peaceful people, eager to join the western democratic world, but that was prevented by the Orthodox Serbs and communists" (Peric, 2006).

The collective anxiety of the community for its existence is in deep mythic structures of each performance. Myths thrive in turbulent times, when historical events accelerate, when the collapse is not only in political and economic framework of the life of a political community but also the ideology that held it together and was often represented only by connective tissue that permeated the structure of the entire national community enlarged with its own contradictions. The area of the former Yugoslavia was a fertile ground for the development and being of various myths. The former Yugoslavia was a complex and contradictory structure – historical, cultural, religious, confessional, national, state, legal, economic, political, linguistic, etc. – this fact made it possible for mythologization to never stop, if there is something in the region that had its continuity it is certainly that of pacifism (of mithology) a practice that has fed the political and cultural differences maintaining a small community "awake and together". And during the breakup of Yugoslavia, and after it, this area has still been burdened with the mythical vision of reality; it is in direct proportion to the amount of the deficit which burdened the newly formed small communities. This is the deficit of civic political personality, continuity of legal and political sovereignty, economic development, civil political culture, democratic pluralism, rule of law, individual perspectives of identity, religious and confessional tolerance, ethnic tolerance and cultural, linguistic-language construction and the like.

So this is probably why the rare attempts to demystify one's own political reality that come with the elementary stage of calm or volatile political ground in this region, infamously ended without any tangible results. As to any attempt of rational demystification of the current political reality and the past, there is fierce resistance and even some new mythical processes. To any such attempt descends the avalanche of new myths as if it never reached the end. And successes need myths, and just as good nice for defeat, and neutralize the collective feelings of guilt.

3. Nationalism and Antinationalism – Serbia and Croatia as a paradigm

In retrospective representation of their own history (and historiography), the Serbs often show themselves as victims of history. "However, the concept of martyrdom nation is not resorted only by the Serbs but also by the Croats and the Bosnian Muslims"(Perica, 2006). How this myth is widespread among the Serbs is contributed by the fact that it did not let the roots only among the people and folk epic tradition, but in scientific circles as well. One part of the Serbian social sciences and the Serbian academics was inclined to reproduce this myth, and feeds it to new examples of Serbian suffering both in historical perspective as well as current events of that period (1990s). To illustrate just one short clip from the prevailing attitudes of Serbian academics at the time: "The trouble in which the Serbian people is today is a deeply upsetting confirmation of our repeated and useless sufferings for freedom in this century. The only difference is that our present calamity is much more ominous and much more hopeless than all the previous ones, since the sky above us has never before been emptier than it is today. The world in which we live has long been caught by frantic devastation, so it is a real wonder that there is still any life left in it. This is why this suffering should not affect us that much so that we fail to see much greater and worse trouble in which all nowadays wretched Europe is, which would like to punish us savagely under the knout of America because of our courage to oppose it." (Djuric, 2003). Such examples were particularly characteristic of the period of the former Yugoslavia, but then it was the play of the Serbs as victims of Bolshevik-Communist ideology, of personification form the Tito regime in power.

There is a similar performance in Croatia of a modern version of the 20th century history. This image is often adjusted to the needs of the current government both as a justification for breaking the then state-political community and for the legitimization of political regime and the emerging emphasis on national peculiarities of new synthetic identity. "View from the Balkans shows that they are not new, they are also, or perhaps above all 'most modern' and that the modernist project of creating national states still plays an important role in the word" (Dejzing, 2005). Although delayed, and according to the Western models (national state in the West were formed back in the nineteenth century), the newly-formed state in the former Yugoslavia expressed a high degree of political enthusiasm in order to establish a new national identities and give them a clear state and institutional support.

Dominant myths – stereotypes, which were used by the Serbian political regime of 1990s at the height of war conflicts and the civil war in the territory of former Yugoslavia, had been theses about the Serbs as historically and politically scattered people looking for their gathering and the place that belongs them as the most numerous people in this area. There was also the thesis highlighted of the so-called political and economic inequality of the Serbian people in the former Yugoslavia (Memorandum of the Serbian Academy of Arts and Sciences). There was then the stand of political ingratitude and incorrectness of other former Yugoslav nations for the victims which Serbia and the Serbian people suffered in both wars (I and II world war) for the creation of the Yugoslav state. "Ever since the beginning of the Yugoslav state, the historical farce was played the scenario of which was perfectly described by the old Slovenian clericalist Korošec in his words testifying about thoughts of the creation of the 'common state for specific purposes': We got on a good horse, and we'll return them a worn-out horse." (Matic, 1998).

Political myth of the so-called Greater Serbia and a number of political mystification and ugly, ugly interpretation of "Načertanije" as the Greater Serbia's national program, which expanded and promoted both one part of the extremely right-wing political parties in Serbia, and the political propaganda of the opposing sides, even one part of the media in the West, in order to get the media war in this region. Here are two typical examples: 1) "Negative connotations related to the myth of a Greater Serbia was decisively contributed by the Habsburg monarchy, Vatican and Germany, giving explicitly aggressive dimension to the expression (Great Serbian), colored by the symbols of force and militant seizures (Great Serbian hegemony). (Jevtovic, 2008) 2) "New Croatian historiography portrayed the Serbs as a belligerent nation whose leaders forged a secret plan of genocide against the neighboring nations back in 1840s" (Perica, 2006). The thesis of deliberate Serbian national and state disintegration should be added to that series of unrealistic political mystification on the Serbian side (the existence of two autonomous provinces within Serbia, and in particular the problem of Kosovo and Metohija), as well as the projected plot of Tito's regime for state-legal chaos in Serbia.

On the list of political regime-constructed myths the myth of the Serbs as heavenly people takes the most prominent place. In those pre-war and war times the Kosovo myth was also encouraged. This myth is – as a part of the cultural, historical and ethical identity of the Serbian people – was roughly displaced from its epic and religious-historical context, and moved into the field of the darkest propaganda abuse. This myth was so misused that not only some newly created war commanders and politicians compared themselves with the Kosovo heroes but also the people from the underworld who had rather an obscure past.

"Like their counterparts in Serbia the Croatian nationalists of various colours resorted to religious, Catholic and rural romantic motifs, although the latter were not exaggerated, because the Croats at the same time wanted to be modern, the real Europeans. Tuđman's government developed a discourse within which the Croatian was constituted in opposition to others, primarily to the Serbs/Yugoslavs who hinder the true development of the Croatian people." (Jansen, 2005) "Adhering

to the political amnesia, which was already perfected by the nationalists in other post-socialist countries, the Croatian nationalists interpreted the previous communist system as something imposed to the Croats from the outside – by the Serbs, in this particular case, not by the Russians. Thus, the collective nationalism freed the Croats from all traces of collaboration and conformity in their everyday life: innocent since the birth, the Croats were forced to enter into Tito's Yugoslavia, which was an impossible combination of clashing cultures, where it was awful for them the entire time. Then the war, which is officially called the war for the homeland, in fact, was not only a necessary evil, which was imposed by the Serbs, and it will eventually lead to independence, but it was also the culmination of a thousand-year-long dream that was dreamt by the entire Croatian nation – dream of their own country. Indeed, the breakup with the Yugoslav past was radical: it was a specific combination of catharsis and exorcism." (Jansen, 2005: 26)

In the case of Serbia as well as in the case of Croatia, through political and historical amnesia (more precisely, a selective approach to historical facts, choosing those that are favourable and be silent on those which are not) the nation's past and present, and each individual members of the nation could be reformulated so that it is in harmony with the new political and nationalistic practices of the authoritarian regimes of both Milosevic and Tudjman. Like the system of communicating vessels both regimes fed their authoritarianism and autocracy by new-old political myths and stereotypes, helping one another to survive in power (new historiography of the period begins to reveal examples of active cooperation and help of the two regimes during the entire was conflict. Exactly the same pattern and methodology of political conduct in both cases was largely using the political myths and stereotypes, even with the same shape/content, changing only the national sign. "The Balkan wars of the 1990s were fought among the several united ethno-nationalist fronts and each of them sought statehood and nationality and each challenged the limits, myths and identities of the opposing group." (Peric, 2006).

Political exodus of the Serbs in Croatia was also linked with the political myth of the rectification of the so-called historical injustice on both sides. Under the neologism "constitutional nationalism" (or constitutional patriotism), which was supposed to be a founded call to dominant national groups on both sides to square their national and political accounts in relation to the members of minorities on their respective territories, the process of ethnic cleansing went on. The researchers noted that "after winning the elections, the HDZ went to work to correct what was considered a historical disorder. By the series of overtly or covertly discriminatory measures, the constitutional guarantees given to the Serbian minority soon became nothing but a form in the general atmosphere of retaliation, and then in violent conflicts, further inflamed by the propaganda of both sides. Thus, almost all the inhabitants of Croatian nationality were first expelled from the Serbian Krajina, a para-state which separated from Croatia in 1991. Then in return the Croatian army expelled almost all the Serbs in 1995. Neither in Serbia or in Croatia, nationalist discourses have remained unchanged during the war years, but the logic that existed in the foundation of the Croatian nationalism was to correct historical errors. War

operations and discriminatory measures went on together with countless examples of symbolic confirmations of the Croatian nation." (Jansen 2005).

In the report which an independent research team – led by the leaders of the project a historian from Belgrade, M. Bjelajac and a sociologist from Zagreb O. Žunec – published concerning the causes and nature of the war in Croatia 1991–1995, on page twenty, the above thesis is confirmed that one of the main reasons for the revolt of the Serbs, among other reasons, was overemphasized constitutional nationalism of the Croatian regime. The new Constitution of the Republic of Croatia was fully deconstitutionalized Serbs, and turned them from an equal and constituent nation (legal and political status from the Constitution of the Republic of Croatia) into a minority, with plenty of threatening messages and symbols of nationalist-chauvinistic characters which aroused fears and unpleasant memories of the Serbs of the terrible bloodshed from the time of the Cyril NDH regime. "The war has often been the engine of nation-building, and it appears that the Balkans is no exception. In short, the war that was fought in the former Yugoslavia, and the processes of national homogenization and "ethnic cleansing" that followed it were, as it seems, primarily motivated by the need to create a simple and unambiguous identity of the population that is very mixed and diverse in origin, and to delete a mixture of elements, "pollution" and uncertainties that have hindered the newly created national government. It seems that violence in the former Yugoslavia at the end not only resulted from the opposite and incompatible identities, but to even greater extent, it was the means to produce them." (Dejzings, 2005)

If it can be argued that the raw nationalism of the regime was at the core of all political regimes (referring to the territory of former Yugoslavia) and their political programs of separation, then it can be vouched for the anti-nationalist movements and practices in both Serbia and Croatia that culture – urban culture was put into the foundations of their "political alternatives" nationalism regime ("culture" was collectively sanctioned construction contrary to "non-culture" of primitive natio–nalism). Political alternatives were built on the attitude of opposing and conflicting of rural and urban principles, while according to their understanding the rural should be recognized as primitive, oriental, behindhand, violent, and urban as cultural, progressive, modern, and non-violent. Therefore, the same mechanism of political mystification and the use of stereotypes were hiding in both theory and practice of anti-nationalist movements or more precisely, of civil initiatives of this type, as well as in the methodology of the nationalism of the regime. The statement of the anti-nationalists that the regime of nationalism had the largest number of supporters in rural and suburban areas, with less educated population is true, but it is also true that a large part of urban population was filled with strong nationalist feelings and attitudes. To build the anti-nationalist alternative on urban – rural dichotomy, i.e. cultural – noncultural is not only politically wrong but also ethically unfair.

The Western analyst, Stef Jansen gives evidence of this political misconception and the inclination to mythologization and stereotypes of the Post Yugoslav anti-nationalists. "Irritated by the fact that people who are fighting against

discriminatory discourse which permeated their society also deal with stereotypes so openly, at first I tried to confront standard left-wing arguments about tolerance – without any success, so I had to get used slowly to the fact that some Orientalism directed against the farmers is an important determinant of a daily routine of many people who regard themselves as urban people, and that it also sometimes represents the main mechanism of anti-nationalism discourse. In fact, linking nationalism and rural backwardness was perhaps the most important item in an attempt of the Post Yugoslav anti-nationalists to maintain the "continuity of normality, especially in everyday life" (Jansen, 2005). "In accordance with the consensus that reigned among urban opposition, these people blamed nationalism primarily for the "situation". Such anti-nationalist interpretation has four main theses:

1. The wars that led to the breakup of Yugoslavia were the nationalist wars, in which
2. the politicians keen upon power used nationalism as a tool.
3. Nationalism, again, is primitive, rural discourse, and
4. massive support that the rural population gave to nationalism is a consequence of the peasant primitivism." (Jansen, 2005: 113).

In the anti-nationalist discourse a special place was taken by the criticism of war destruction of cities, which not only stressed its military component but rather the destruction of urban life and all that cities as symbols of urbanity symbolize. This, according to them, was an open attack on modernity and urban multiple nationality and multiculturalism. Belgrade anti-nationalists often pointed out that there was so-called urbicide, the killing and destruction of urbanity as such and not just the physical destruction of parts of the urban environment. "As far as the Croatian nationalism is concerned, it called upon rural somewhat vaguely, since it at the same time insisted on the integration of Croatia into modern Europe, but, on the other hand, rehabilitated the Catholic Church as well and its conservative-patriarchal views, which were closer to rural population than to the population in towns." (ibid., 113) "Therefore, in the cities of former Yugoslavia, the main criterion of social differentiation had oriental character of culture, urbanity, Europe, cosmopolitanism, the West, knowledge, manners and civility on the one – no culture, rurality, region, provincial, underdevelopment, backwardness, primitivism and the impoliteness on the other hand." (Ibid., 117) The anti-nationalist discourse in former Yugoslavia, the same stereotypes that have been heard in one part of the Western media and publicity war against the Milosevic regime in power were being repeated, and they related to the notions of Balkan, Oriental, Bolshevik-communist and the like.

How much the urban-rural dichotomy was exploited is also supported by the fact that despite the fury of the conflict and strong nationalist homogenization that has dominated the warring societies in those years, the members of anti-nationalist initiatives used the slogans that implied a higher degree of solidarity with the rival nation if before the war its members belonged to the urban part of the population, as opposed to rural population of their ethnic groups. In Zagreb, there appeared the slogan "Return us our Serbs, we are giving back your Herzegovinians." In this urban

segment, Zagreb and Belgrade were the cities which mafia of newly-come peasants held under the political and economic occupation and imposed their own primitive nationalism. Thus, we come to cultural factors in the idea of invasion: to the assault of primitive people on the "culture" of everyday urban life. (Ibid., 122nd)

In those years the Serbian antinationalists brought back in the memory of a town man the book written by R. Konstatinović "The Small-Town Philosophy" using it as a favorite reading for explaining how the character of the current government, as well as the nature of the petty-bourgeois mentality that dominated in small urban units (small towns) of Serbia according to them. "The Small-Town Philosophy" in their interpretations was the extension of the rule of Orientalism, traditionalism and authoritarianism that was characteristic of the Balkan man. Political myths and stereotypes of the Post Yugoslavian anti-nationalism were thus built on the belief in modernity and culture, the principle of urban citizenship that is in counter-position to rural and patriarchal which carry the mentality of a subject.

4. Post-Yugoslavian National Stereotypes and Myths

Political myths and stereotypes about the clash of urban and rural principles (pattern) were valid not only for the manifest part of the nationalist struggle and anti-nationalism within a nation – state. They were often used in real everyday conflicts of two nationalisms, Serbian and Croatian, in particular in the sphere of media and political propaganda war of the two authoritarian regimes. "Tudjman's nationalists represented Croatia as a bulwark of European modernity that was infested by the Serbian barbarians, but in addition, as we have seen, and the former Yugoslav state was also represented as a Balkan creation imposed to the Croats by the Serbs. The Orientalist definition of Croatianship as something that is opposite to the Balkans Serbian or to Yugoslav was a repeated story of Tudjman's regime. (...) The Balkans was made equal to Yugoslavia, with Serbia or just with all that was non-European, not modern, uncivilized. (...) The Balkans Cinema in Zagreb changed its name into Europe." (Ibid., 134) However, it is worthwhile to point out some differences that existed in the use of these stereotypes and political mythologisation. While this method was popular in Serbia within the circle of the anti-nationalists, in Croatia it worked equally well in both nationalist and anti-nationalist circles. The conflict of Balkan and European principles was brought to absurdity and enabled its heirs the supposed and desirable identification both before their own supporters and the foreign factors for the favor and patronage of whom they fought desperately and flatteringly both the nationalists and anti-nationalists, almost equally.

The stated nonsense of the stereotypes described is supplemented by another, and it is connected to the presumed poor educational structure of the rural popu–lation. In addition to all the bad characteristics they were attributed illiteracy and low educational level as dominant social characteristics. "Then the man really does not need to be imaginative in order to conclud that nationalism was so popular because it enjoyed the support of old, illiterate and uncultivated farmers." (Ibid.,

147) Therefore, Stef Jansen has the right when he makes a conclusion about the essence and character of anti-nationalism movement at the post-Yugoslavian territory with almost ironical tone: "Ultimately, it is not clear at all and does not matter much whether this town of self-aware, educated, European and civilized people has ever existed. It is important to comment on a painful "situation" in which everything turned upside down. That is how the man could partially maintain the sense of continuity of the story of himself. You could always say 'All right, it is true that my town is occupied by peasants, but I have remained urban' or 'Well, the world around us may be balkanized, but I am still a European', and then 'Well, it is true that primitivism is all around me, but I have remained cultured'." (Ibid., 166) The myth of one's own belonging to culture and civilization, as opposed to rural primitiveness of the nationalists, was as effective on their successors as their unfounded belief that they are the holders of progress and modernity. Fighting against one type of mythologization and misuse of myths for political purposes, the anti-nationalists have fallen into the trap of mythologization of their own position, using negative stereotypes on others (peasants) and idealisation of themselves as citizens.

Observed from the aspect of comparative analysis, post-Yugoslav nationalism – both Serbian and Croatian (and this also applies to the mythological matrix for the other state nationalisms at the territory of former Yugoslavia), used abundantly the same methodological but also mythical matrix for their political and national objectives. In all cases, their own nation was portrayed as an innocent victim and sufferer and the opposing party as a brutal criminal and executioner. Their own national objectives were presented as holy and justified (often as modern and European) and the objectives of the rival nations as oppressive, invasive, and unjust. Every nation and ethnic group in former Yugoslavia had its own list (often in the literal sense of the word) of casualties, atrocities, destruction and injustice suffered, but it seems that none is able to appeal because of injuries inflicted to others.

In his book dedicated to Kosovo, G. Duijzingz analyzes the role of political and religious myths observing them in their identity perspective. At the end of the book, Duijzingz also mentioned the mistakes of the West when the Balkan nations were in question and on the part of political myths and stereotypes that the West produced and used in the analysis of the Yugoslav transition and war drama. The first problematic view according to the author is the view of the West on former Yugoslav conflicts as exclusively ethno-national, while he believes that the problems of formation and change of identity were more complex and should not be reduced to this level only. But what Duijzingz especially criticized the West for is the fact that violence and war were viewed solely as a result, backward tribal and irrational perspectives ascribing to political actors senseless acts contrary to Western rationalism and democracy. He believes that the Yugoslav war drama actors expressed the same political rationality as on similar occasions expressed by their Western counterparts, because they certainly acted within a rational paradigm of the modern nation-state that is in the West in the phase of its expansion of manufacturing the same or similar consequences. "The third message that deserves attention is that the violence in the Balkans should not be viewed as something

irrational, tribal and archaic, as something that is rooted in the culture and psyche of the Balkan inhabitants; in my opinion, that violence has profound rational dimensions and it is primarily of "European" origin: the nation-state is European ideal, and it is the nation-stat that was the cause of all kinds of violence, "ethnic cleansing" and other forms of "ethno-demographic engineering" that were applied in all parts of former Yugoslavia." (Dejzing, 2005) In the opinion of this author, political myths do not have only a negative side and they are not characteristic for semi-peripheral and peripheral societies in order to compensate for the perspective of development, they exist in Western societies as well, even in stable and prosperous times creating ways and new horizons to the future developments. "Fertile ground for the creation of myths of nationalism should be sought in both European countries and the United States at the end of the 18th century, when the rebellious bourgeoisie that dominated the world economy, but not the government, needed the myth around which to gather broad masses and on which to establish a new faith in a new form of state." (Gavrilovic, 2006).

5. Instead of Conclusion

The end of the 20th century, as well as its beginning, confirms the warning experience that social crises transform national emotions, myths and stereotypes of nationalism that are easily transformed into national-chauvinism, terror, genocide and war. However, renewed topicality of the "national" is not just a phenomenon of underdeveloped European territories at the turn of epochs but it is possible under the conditions of a postmodern society. (Offe, 1999) This is supported by the fact that in the 21st century, although there are powerful trans-national integrations in the field of economy, the cultural and spiritual plane is maintained and emphasizes ethnic particularities. These states of social awareness, E. Smith today recognizes in the hectic ethno-nationalist "quest for a homeland", followed by "the most intense conflicts and terror", positioning them in the broader context of "global movement of ethnic mobilization" or reactivation of ethno-nationalism on the planetary scale (Smith, 1998).

The Balkans, in particular nation-states created on the ruins of the second Yugoslavia, as well as some former real socialist countries in southeastern Europe, starting from the fall of the Berlin Wall, were characterized by the social structure in which there was no entrepreneurial class or modern civil society as a dam to stereotypes, myths, nationalism, national chauvinism, political extremism and authoritarianism. From such a social structure and its properties emerges dominance of "culture of violence" and glorification of violence. Violence in the name of "general goals", primarily the creation of independent nation states, is spreading on the political psychology of all social classes and strata, as well as on rhetoric and political agendas of leading political parties and movements. Fascination with violence in the name of national historic goals or national "purity" overwhelmed also a circle of right-wing intellectuals who glorified it and made apology but also catharsis by crimes committed in the name of the nation. The crimes committed to

other nations or religions then get a halo of heroism and patriotism. This is where "nationalism in its euphoria, cruelty and militancy is transformed into chauvinism. This feeling can no longer be recognized at those "others" and "elsewhere", but at all and everywhere" (Bozovic, 1998). It is here exactly that the roots and supports of a significant social-psychological phenomenon of creating an authoritarian charismatic leader and "father" of the nation can be found. Along with the growth of crisis and growing social decay the pre-political mentality and idolatry to the leaders of the nation grow that over time get transcendent (divine) features in the collective consciousness.

Hence, the purpose of this paper is to present future and possible challenges, threats and dangers, since political myths and stereotypes associated with nationalism and national chauvinism are the culmination of a long-lasting process of the 19th century until today. From a general angle, the policy, obviously, has not completely disappeared even today, at least when it comes to Western-Balkan cultural and political circles. Those who survived the horrors and sacrifices of World War II and those who have survived the subsequent Serbia-Croatia, Bosnia-Herzegovina and Kosovo-Metohia conflicts all remember and do not have the right to be cheated again and to hold harmless what can end in terror, crimes and extermination[3]. Especially today, if we take into account the sharply polarized social structure (the ultra-rich, the poor and pauperised)[4], underdeveloped institutions of civil society and government control.

6. References

Barkan, E. (2007). *Krivica nacija.* Novi Sad: Stylos.

Bracewell,W., Drace, F. (1999). South-Eastern Europe: History, Concepts, Boundaries. *Balkanologie*, Vol. III, No. 2, p. 48.

Dejzings, G. (2005). *Religija i identitet na Kosovu*. Beograd: XX vek.

Despotović, Lj. (2008). *Srpska politička moderna*. Novi Sad: Stylos art.

Despotović, Lj., Drobac, M. (2008). *Geopolitika i terorizam*. Novi Sad: Stylos art.

Despotović, Lj., Gavrilović, D. (2007). *Rat i manjine.* Novi Sad: CHDR.

Gardels, N. (1991). Two Concepts of Nationalism. *New York Review of Books*, 38/91.

Jansen, S. (2005). *Antinacionalizam.* Beograd: XX vek.

Jevtović, Z. (2008). Mit o velikoj Srbiji – između političkih stavova, religije i nacionalizma. Zbornik *Mitovi i stereotipi nacionalizma i komunizma na prostoru bivše Jugoslavije*. Novi Sad: CHDR.

Jovanović, S. (1990). *Sabrana dela – tom 3*. Beograd: BIGZ, SKZ.

Kegli, C. W., Wittkof, E. R. (2002). *World Politics: Trend and Transformation, Wadsworth*. Thomson Learning, Inc. Ninth edition.

[3] After the conflicts of 1990s in the region where it once lived Serbian population in Croatia and in the southern Serbian province of Kosovo and Metohia there is a negligible number of returnees.

[4] In the Western Balkans, between 20% and 30% of the population lives in absolute poverty – less than 2 USA dollar a day, from 10% to 30% of the population is unemployed; GDP in the majority of them are still below the one from 1989. Source: CIA World Fact-www.worldfact.cia.com// 18/3/2006.

Matić, M. (1998). *Mit i politika*. Beograd: FPN.
Milašinović, S., Kešetović, Ž. (2009). Mogućnosti razrešavanja unutardržavnih konflikata – Iskustva Zapadnog balkana. *Review of International problems*, Vol. LXI, No.1–2/09.
Offe, C. (1999). *Varieties of Transition*. Cambridge, Massachusetts: The MIT Press.
Perica, V. (2006). *Balkanski idoli*, 1–2. Beograd: XX vek.
Radić, R. (2005) . *Srbi pre Adama i posle njega*. Beograd: Stubovi kulture.
Sivard, R. L. (1999). *Wold Military and Social Expenditures*. Washington, D. C.: World Priorities.
Slavujević, Z. (1986). *Savremeni politički mit*. Beograd: Radnička štampa.
Smit, E. (1998). *Nacionalni identitet*. Beograd: XX vek.
Stanković, Đ. (2004). *Istorijski stereotipi i naučno znanje*. Beograd: Plato.
Tripković, M. (2006). *Osnovi sociologije*. Novi Sad: Stylos.
Vidojević, Z. (1993). *Društveni sukobi od klasnih do ratnih*. Beograd: Institut za novinarstvo.
Vidojević, Z. (2006). *Kuda vodi globalizacija*. Beograd.
Žerarde, R. (2000). *Politički mitovi i mitologije*. Beograd: XX vek.
Čolović, I. (1997). *Politika simbola*. Beograd: B 92.
Šljukić, S. (2009). Društveni sukobi i njihove posledice: srpske izbeglice i mit o Krajini. Zbornik *The faith of refugees and emigrants from the territory of former Yugoslavia*. Novi Sad: CHDR.

POLITIČKI MIT NACIONALIZMA I ANTINACIONALIZAMA – IZAZOV I SAVREMENA PRETNJA BEZBEDNOSTI

Rezime

Pitanja nacionalizma, etničke pripadnosti i političkih mitova u vezi s njima, u XXI, kao i u prethodnom veku, predstavljaju neiscrpnu sociološko-politikološku i bezbednosnu temu. Zbog svoje kompleksne prirode, ta pitanja se javljaju kao predmet brojnih rasprava i tumačenja, no, te rasprave često imaju ideološki sadržaj. To potvrđuju i tumačenja događaja pred kraj prošlog veka, kada je balkanski deo Evrope postao prostor sloma zakona i poretka, nastanka novih država i saveza, nacionalnog i verskog ekstremizma, etničkih sukoba i „etničkog čišćenja", kao i nesposobnosti UN da reše krvave lokalne konflikte.
U radu se nastoji ukazati na korene nacionalizma i nacionalnih konflikata u zapadnobalkanskom političkom prostoru tokom poslednje decenije minulog veka. Istovremeno, polje analize se usmerava ka funkcionalnoj dimenziji političkih mitova i stereotipa u naknadnoj političkoj konsolidaciji novonastalih nacionalnih identiteta ekspliciranih na primerima nacionalizma i antinacionalizma u kontekstu nastajanja sintetičkih nacija na prostoru bivše Jugoslavije.

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MANDATORY CHARACTER OF COURT RULINGS AND THEIR EXECUTION ACCORDING TO NEW SERBIAN LAW ON ADMINISTRATIVE DISPUTES

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Summary: In this paper, attention has been given to the question of obligation and execution of effective court rulings in administrative proceedings in the way they are regulated in the new Law on Administrative Disputes of Serbia. In order to explore the quality of new solutions, it was necessary to make a comparison with the solutions provided in the previous Law on Administrative Disputes. It was the best way to show that there is continuity in terms of law of the institute and that there has been a qualitative step forward in their superstructure. This step forward is reflected in the introduction of rights to compensation and possibilities for punishing managers by fines. The practice of the competent authorities and time will be the best judges as to whether all this will be effective.
Key words: court ruling, decision, effectiveness, administrative organ.

1. Introduction

The mandatory character of court decisions made in administrative disputes represents a significant principle. Such decisions have the value of 'legal truth' with respect to the disputed legal relations which are thereby settled. The authority of the given ruling (*res judicata*), being its main characteristic, implies that it is relatively definitive, unchangeable, and reinforces the stability of the situation created or confirmed by it.

The principle related to the mandatory nature of effective court decisions in administrative disputes has a remarkable practical significance. It is a way to ensure the evaluation of lawfulness of administrative acts in administrative disputes, which is twofold: a) subjective, aimed at ensuring judicial protection of civil rights and rights of other subjects, and b) objective, aimed at securing lawfulness. If this

principle did not exist, then the administrative dispute would constitute "just an intellectual construction with no practical effects".[1]

As far as the implementation of the effective court decisions arising from administrative disputes is concerned, it involves both legal and factual operationalization of their mandatory character on the part of the suitor, the sued party and the interested parties, if any. Further course of their actions depends on the outcome of the administrative dispute in question (Tomić, 1995; 388).

Our attention in this paper is focused on the issue of the mandatory character and implementation of court decisions in keeping with the new Serbian Law on Administrative Disputes (LAD). In order to examine the quality of legal solutions, they have been compared with the provisions contained in the previous Law on Administrative Disputes. This, in fact, is the best way to check whether there is continuity with respect to these institutions and whether qualitatively new steps have been made towards their development.

2. Mandatory Character of Court Decisions According to the Previous LAD

When discussing the scope of obligatory court rulings given in administrative disputes, distinction should be made between:

- cases in which an administrative act was cancelled in the administrative dispute, and
- cases in which the administrative dispute ended in declaring the plea unfounded and keeping the administrative act in place.

In the cases in which the plea was recognized as founded and the administrative act was declared void, the decision has absolute effect, which means that it is effective *erga omnes*. It is binding for any third persons, whether it is beneficial or detrimental for them. However, if the plea is rejected as unfounded and the administrative act in question is confirmed, then such a decision has relative effect, which means that it is effective *inter partes*. Therefore a decision made upon a plea which was rejected in an administrative dispute does not bind any third persons not being a party to the dispute. In other words, this means that if any third party should be subject to the same administrative act, they can institute administrative proceedings within a legal timeframe, regardless of the fact that the dispute initiated by the plea of an earlier plaintiff has already resulted in an effective court decision.

The mandatory nature of decisions made in administrative disputes refers both to the parties involved (the plaintiff, the sued party, and the interested person) and to other state organs and third parties. We shall therefore discuss the said mandatory character with respect to all of the subjects mentioned.

In the case of the decision being rejected, the plaintiff is obliged to act in keeping with the administrative act which he unsuccessfully tried to cancel in the

[1] See: Денковић, Д. Ђ. (1964). Обавезност пресуда донетих у управним споровима. *Анали Правног факултета у Београду*, no. 2–3, p. 305.

administrative dispute. In the case of a decision which accepts the plea and cancels the act, the plaintiff has the right to demand that a new administrative act be produced, in keeping with the court decision.

The decision also has effect on the sued party. If a ruling is made that the plea is rejected as unfounded, the disputed administrative act becomes effective, which means that it should be enforced unless it has already been executed. The effect on the sued party – in cases in which the decision recognizing the plea as founded and canceling the disputed administrative act – depends on whether the court has given its ruling in the dispute of full or limited jurisdiction. If the court has made its decision in a dispute of full jurisdiction, the sued party is obliged to always act in keeping with this decision pertaining to the administrative issue. If the decision is made in the dispute of limited jurisdiction and if the nature of the dispute is such that it calls for passing a new administrative act in place of the one which is cancelled, the sued party is obliged to pass such an act without undue delay and within 30 days following the receipt of the decision at the latest, and in doing so, they are bound by the legal understanding of the court and its remarks pertaining to the procedure (section 61).

Since an interested party has a role as a party to the administrative dispute, the court ruling also bears effect on them. This means that an effective decision is binding for any interested parties to the administrative dispute.

The binding nature of court rulings taken in administrative disputes does not bear effect only on the parties to such disputes, but also on other state bodies and third parties. They cannot act contrary to such court rulings. When an administrative act is cancelled by a court ruling, they cannot act as if it were effective, that is, they are bound to regard it as unlawful (Marković, 2002; 559).

3. Execution of Court Rulings in Keeping with the Previous LAD

The execution of court rulings in administrative disputes is closely related to their binding scope and, in fact, represents the legal sanction arising from them. If a court ruling were not binding for the administrative authorities, the execution of such decisions would be left to their good will.

When speaking about execution of court decisions, distinction should be made between:

- cases in which the court ruling is to reject the plea as unfounded and keep the disputed administrative act in place, and
- cases in which the court decides to cancel the disputed administrative act.

In the situation where the court ruling is to reject the plea and keep the administrative act in place, the court decision is enforced by executing the said act, unless it has already been executed, since the examination of its lawfulness has been concluded.

On the other hand, if the court decision is to accept the plea and cancel the disputed administrative act, its execution involves restitution or return to the state of affairs existing before the cancelled act was passed. If the court ruling does not

envisage the obligation of the sued party to pass a new act, it will not be passed. However, if the nature of the matter subject to administrative dispute is such as to call for a new administrative act in place of the cancelled one, then the sued party is obliged to pass such an act without undue delay and within 30 days following the receipt of the decision at the latest, in doing which they are bound by the legal understanding of the court and its remarks pertaining to the procedure (section 61). There are two types of 'non-enforcement' possible in such situations:

- improper execution of the court ruling; and
- failure to execute the court ruling, i.e. 'silence of the administration' regarding the execution of the court ruling.

Improper execution of court decision is present if the authority in charge, following the cancellation of an administrative act, passes a new one, but contrary to the legal understanding of the court or its remarks with respect to the procedure. The plaintiff then has the right to lodge a new complaint, and if he does so, the court will cancel the disputed act and, as a rule, resolve the dispute in its own capacity by a new court decision. Such court decisions entirely replace acts by relevant organs and the court reports on such cases to the supervisory organs (section 62). The new decision does not only cancel the newly-passed administrative act, but also resolves the administrative issue. This means that the court is entitled the power to cancel the unlawful administrative act which resolves administrative matters in question in an unlawful way and to dispose of such matters independently. The court decision made in such a case becomes immediately effective.[2]

Another case of non-execution of court decisions made in administrative disputes is a complete failure to execute a decision or 'the silence of administration' with respect to execution. Such a case is present if, following the cancellation of an administrative act, no new administrative act is passed immediately or within 30 days from the receipt of the court decision or if no act is produced as a result of execution of the court decision in the administrative dispute related to 'silence of administration' (such a decision recognizes the plea against the silence of administration and rules that the authority in charge making the decision). In such cases, parties may submit separate documents asking the authority in charge to pass such acts. If the authority in charge fails to pass the administrative act within seven days of the first request, the party may demand that the first-instance court passes the said act (section 63, paragraph 1). Upon the receipt of such a request the court shall ask the authority in charge for an explanation of reasons for failing to pass the administrative act. The authority in charge is obliged to give this explanation immediately, or within seven days at the latest. If it fails to do so or if the court finds that the explanation provided does not justify failure to execute the court decision, the court shall make ruling which completely replaces the act by relevant authority and which takes effect immediately. Thus the court resolves the disputed administrative matter, not settled by relevant authorities, and in these cases the

[2] See: В. Иванчевић, М. Ивчић, А. Лалић, Закон о управним споровима са коментаром и судском праксом, Загреб, 1958, pgs. 282–283; Д. Ђ. Денковић, Обавезност пресуда донетих у управним споровима, Анали Правног факултета у Београду, no. 2–3, 1964, p. 312.

court ruling in the administrative dispute is called a decision. This is also an example of a dispute of full jurisdiction. The court will forward any such acts to the executive body, at the same time notifying the supervisory body. The body in charge of execution is bound to execute such an act without delay (sect. 63, par. 2).

In explaining both cases of 'non-execution' of court decisions made in administrative disputes, court documents issued in the execution of court decisions, whether they are referred to as 'court rulings' or 'decisions' completely replace administrative acts. Yet, in any case, they are judicial acts, not administrative acts. Such an act is a judicial act, with respect to both the agent and manner of its passing, and therefore it is subject to the legal regimen of court rulings made in administrative judicial disputes (Marković, 2002; 562).

4. Binding Scope and Execution of Court Decision in the New LAD

The new Law on Administrative Disputes in Serbia maintains the continuity of obligations arising from court decisions and the execution thereof, but also makes a further step forward with respect to certain solutions.

Effective court decisions made in administrative disputes are legally binding (section 7). This mandatory character of judicial decisions in administrative disputes implies that they must be executed in a legally valid way. This obligation does not apply only to those subjects whose matter was disputed (the sued party), but also to the very suitor and the interested party possibly involved in the dispute (*inter partes*), as well as to the third persons (*erga omnes*) (Popović, 1968; 342).

Such court decisions are, naturally, binding primarily for the sued party, i.e. for the body which has passed the document the lawfulness of which was subject to administrative dispute. Thus, when the court cancels the act because of which the administrative dispute has been launched, the matter is returned for repeated consideration on appeal or for repeated consideration on the request of the party in the first-instance procedure if the possibility of appeal is ruled out by the law (the state of affairs prior to the passing of the cancelled act) (section 63, paragraph 1). If the nature of the disputed matter is such that it calls for passing a new administrative act in place of the one which is cancelled, the competent authority is obliged to pass such an act without undue delay and within 30 days following the receipt of the court decision at the latest, in which the authority in charge is bound by the legal understanding of the court and its remarks pertaining to the procedure (section 69, paragraph 2). On the other hand, the authority is not always obliged to pass a new administrative act to replace the one cancelled in the administrative dispute, but only when it is necessary due to the nature of disputed matter.

This means that the binding character of an effective court decision made in an administrative act with respect to the authority whose act has been cancelled because of its unlawfulness is twofold. In one case, the authority is obliged to pass a new administrative act in keeping with the opinion and remarks of the court and in the other the authority is obliged to refrain from passing a new act.

However, if the authority is obliged to pass a new administrative act based on the court decision, but does so in a manner contrary to the court ruling or procedural remarks made by the court, and the suitor submits a new plea, the court will cancel the disputed act and resolve the matter in its own capacity by making a decision, unless the nature of disputed matter rules out such a possibility or the law rules out full jurisdiction (section 70, paragraph 1). Since the court decision in such a situation completely substitutes the act issued by competent authorities (section 70, paragraph 2), it is a dispute of full jurisdiction. Should such a situation arise, the court shall report it to the supervisory body in charge of the authority violating the court order (section 70, paragraph 4). If the court finds that, due to the nature of disputed matter, it cannot independently dispose of the administrative dispute, it shall provide an explanation (section 70, paragraph 3).[3]

However, if, following the cancelation of an administrative act, the authorities in charge fails to pass a new administrative act immediately and within 30 days at the latest, the suitor may ask for such an act to be passed by filing a special document (section 71, paragraph 1). If the competent authorities fail to pass the act within seven days from the party's plea, the party may address the court that made the decision, asking that the act be passed (section 72, paragraph 2). Upon the reception of the party's request, the court asks the relevant authorities for information about the reasons due to which the new administrative act has not been passed. The relevant authorities shall provide such information promptly and within seven days at the latest. In case of a failure to provide such information or in case that the court should find that the information provided cannot justify failure to execute the court decision, the court will pass a decision which will entirely replace the act issued by the relevant authorities, if the nature of the matter allows it (section 71, paragraph 4). The court shall forward its decision to the competent executive body, informing the supervisory body at the same time. The executive body shall enforce this decision without delay (section 71, paragraph 4). It is obvious that in the case of 'silence of administration' related to the obligation to execute court rulings the court decision presents a special form of the full jurisdiction dispute. The full jurisdiction dispute exists because the court decision resolves the disputed administrative matter.

The court decision made in an administrative dispute is also binding for the suitor. With respect to the suitor, obligation arises in the situation when his plea is rejected as unfounded. The rejection of the plea means that the act in question is lawful. When the plea is rejected, the suitor is obliged to act not on the court ruling, but on the decision of the administrative act which has remained in power. In other words, in case the plea is rejected in the administrative dispute, all obligations arising from the administrative act become effective.

The decision of the court made in the administrative dispute is binding for the interested person in the dispute, if any, as well. Since it is in the interest of any such persons to keep the disputed administrative act in place, that is, to prevent its

[3] See: Лука Драгојловић, Милован Михаиловић, Коментар закона о управним споровима, Београд, 1979, p. 180.

cancellation, it means that the interested person has no obligations if the plea is dismissed (and the act thereby remains in place). However, if the administrative act in which this party is interested is cancelled, the interested party is bound to suffer the damage resulting from such a decision.

The court decisions made in administrative disputes are mandatory and all other subjects not being parties to the dispute must abide by them. This means that the court decision, besides being binding *inter partes*, i.e. for to the parties directly involved in the dispute, also has a binding effect on all others or the so-called third persons (*erga omnes*).

It is evident that the new Law on Administrative Disputes retains almost identical solutions as the previous one as far as the mandatory character and execution of court decisions made in administrative disputes, which has been demonstrated by the above comparison. However, it should be emphasized that it also envisages some new solutions, which present a firmer guarantee of the binding effects and execution of court decisions. This is achieved by introducing two new institutions that did not exist in the previous LAD. These are the right to redress for the damage caused by failure to execute a court decision and a fine paid by the manager of the authority in charge.

Firstly, the new LAD provides for the right of the suitor to redress for the damage arising from failure to execute or promptly execute a court decision made in an administrative dispute. The redress is ensured in a dispute before the competent court and in keeping with the law (section 72). The procedure conducted by the competent court is subject to the Law on Civil Suits.[4]

The application for redress may be aimed at the competent body which failed to execute the court decision or failed to do so promptly, despite the fact that it was obliged to do so. Although the new LAD does not define obligations of the suitor and sued party in the procedure for redress for the damage arising from failure to execute or promptly execute a court decision, the burden of proof here undoubtedly lies on the suitor, who has to prove the facts on which his demand for redress in based. On the other hand, it is in the interest of the sued party to prove the facts supporting the claim that no damage occurred. In other words, the suitor is obliged to prove facts which form the basis of the redress application, whereas the sued party is obliged to prove the facts possibly denying the grounds for such an application. [5]

Secondly, the LAD envisages that the manager of the authority which, following the cancellation of an administrative act, passed a new administrative act contrary to the court ruling or contrary to the court's remarks on the procedure (section 70, paragraph 1) or which, following the cancellation of an administrative act, failed to pass a new one (section 71), shall be ordered to pay a fine (section 75, paragraph 2). The court can repeatedly fine the manager of the relevant body in case he fails to fulfill the obligation for which he was fined (section 75, paragraph 3). The fine collection is officially executed (section 76).

[4] Службени гласник РС, 125/2004.

[5] See: Кулић, Ж., Васиљевић, Д. (2009). *Радни односи у органима државне управе*. Београд: КПА, 81.

The institution of fine is aimed at coercing the body in charge and its manager to comply with court decisions made in administrative disputes. In fact, the manager, among other things, is responsible for the lawfulness of work in the body which he manages.

5. Conclusion

It is clear that control of administration by its internal organs was not sufficient guarantee for the lawfulness of its work. Besides, this form of control did not ensure complete protection of civil rights against illegal and improper moves of administration made in the sphere of civil rights and interests.

Hence the need to dislocate the final control of lawfulness from the system of administration and assign it to independent state organs, without rejecting administrative control of the administration. These independent bodies are courts, having judicial, and not administrative powers, which means that judicial control of the administration is the highest instance of legal control of the administration. Thus the principle of lawfulness of administration is institutionally guaranteed, since it is completely regulated by law, so that it can be said that judicial control of the administration is the roof of the building called a legal state.

An administrative dispute is a form of judicial control over the administration and primarily control of the lawfulness of administrative (individual, specific) acts, granting the court powers to cancel such an act if its unlawfulness is established. However, as we have seen, such control in certain cases outlined in the LAD empowers the court to resolve disputed administrative matters where unlawful administrative acts have been cancelled.

The issues of obligation and execution of court decisions made in administrative disputes present conditions *sine qua non*, and administrative disputes would be pointless without them.

Without the principle of obligation and execution of effective court decisions, administrative disputes would have no practical implications. The binding character of court decisions ensures evaluation of lawfulness of administrative acts subject to administrative disputes. Otherwise, an administrative dispute would have purely intellectual nature.

Administrative disputes have a long-lasting tradition in the legal system of Serbia (Vasiljević, 2009; 355–379). Judicial control of administrative authorities existed in the South Slav states even before they were united in the Kingdom of Serbs, Croats and Slovenians in 1918, then in the so-called New Yugoslavia, and it has remained in place even today in Serbia as an independent country. This fact implies that the principles of obligation and execution of court decisions have been long-established in our legal system and that the new LAD could not make radical moves with respect to it. Still, it has moved forward towards finding new solutions aimed at providing stronger guarantees for observing the obligations stemming from court decisions and their execution. These solutions include two judicial

institutions: a) the right to redress for the damage arising from non-execution, and b) fines for managerial staff.

The efficiency of these institutes should certainly be viewed in the context of the principle of division of power proclaimed by the Constitution of Serbia (section 4), which provides for the division on legislative, executive and judicial authorities, which are balanced and subject to mutual control, the judicial authorities being independent.

All in all, it is very significant that there is, finally, a firmer legal foundation for ensuring that court decisions are executed and that obligations stemming from them are observed. Thanks to it, additional mechanisms for the protection of this principle have been created as well as conditions for effectively curbing violations against it. Time and practice of competent authorities will be the best judges of their effectiveness.

6. References

Vasiljević, D. (2009). Upravno pravo. KPA. Beograd.
Denković, Đ. D. (1964). Obaveznost presuda donetih u upravnim sporovima. Anali Pravnog fakulteta u Beogradu br. 2–3. Beograd.
Dragojlović, L; Mihailović, M. (1979). Komentar Zakona o upravnim sporovima. Beograd.
Ivančević, V; Ivčić, M; Lalić, A. (1958). Zakon o upravnim sporovima sa komentarom i
sudskom praksom. Zagreb.
Kulić, Ž; Vasiljević, D. (2009). Radni odnosi u organima državne uprave. Beograd.
Marković, R. (2002). Upravno pravo. Beograd.
Popović, S. (1968). Upravni spor u teoriji i praksi. Beograd. Tomić, R. Z. (1995). Upravno pravo. Beograd.

OBAVEZNOST I IZVRŠENJE SUDSKIH PRESUDA PO NOVOM ZAKONU O UPRAVNIM SPOROVIMA SRBIJE

Rezime

U radu su predmet pažnje bila pitanja obaveznosti i izvršenja pravnosnažnih sudskih presuda u upravnom sporu prema novom Zakonu o upravnim sporovima Srbije. Da bismo se uverili u kvalitet tih rešenja, bilo je neophodno napraviti poređenje sa rešenjima koja je predviđao prethodni Zakon o upravnim sporovima. To je bio najbolji način da se vidi da postoji pravni kontinuitet u pogledu ovih instituta, ali i da je napravljen kvalitativan korak napred u njihovoj nadgradnji. Taj korak ogleda se u uvođenju prava na naknadu štete zbog neizvršenja presude i u novčanom kažnjavanju rukovodioca organa. Da li će sve ovo biti i delotvorno, pokazaće praksa nadležnih organa i vreme koje je najbolji sudija.

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SPECIFIC CHARACTERISTICS OF DECISION MAKING IN SECURITY MANAGEMENT

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Abstract: The quality of managing the security sector in most part is determined by the quality of decision making. If this is true, then the essential need of this effort is to answer the key issues related to decision making, focusing mainly on decision making in the security sector. While examining this issue, it is supposed to start from the specific markings in security decision making, but also emphasizing the reason that every decision making process is connected with man, which means it is impossible to avoid subjective reasons which may contribute more or less to make wrong decisions. Nevertheless, conducting the wrong decisions means distancing from the defined objective from one side, but on the other hand, bringing and picking the optimal variants of decisions is based on deep and detailed consideration, and marking the useful values of all available resources. Hence, coherent explanation which can be offered, that will be adjusted for scoping the complex structural, institutional, social and other changes which burdens every state, our view is that the best base for analysis is explorations connected with decision making in the state and the security community.
Key words: decision making, decisions, subjective factor, security sector, security management.

1. Introduction

In people's everyday life, decision making takes a significant place. Every person decides constantly in life. Some decisions are taken every day, some once in a while. Some of the decisions do not influence life significantly, but others can make serious influence on the choice of the life path. Also, some of the decisions have strictly individual dimension, and others have broader impact (Gjorgijovski, 2002).

While perceiving the essence in deciding, these questions are often asked: "What is decision making?", "What is a decision?", "Is decision synonym for

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decision making?", "Do decision making and decisions represent a designated activity?" etc.

There is a difference that is to be made between a decision and decision making. A decision is a result of decision making. The purpose of decision making is to reach a decision which will regard all (theoretical) or mostly (practical) relevant factors (Kralev, 2007).

Basically, decision making process is a hard process in which judging, valuing and choice of every day solutions for small or big problems is implemented. But, during the decision making the intuition is recognized. It is not rare to decide for a solution of a problem based on an "inspiration", "hunch", or "someone's strong intuition", without using the available information and comparing the possible alternative solutions. Therefore, it is not rare to reach wrong decisions. Mistakes made in life are a result of wrong decisions (Popovska, 2006). The hardest thing is that one wrong decision may cause another wrong decision.

When studying the practice in decision making, it is an amazing fact that most decision makers take inadequate and undefined ways of deciding, instead of applying the achievements of science in this area. Reliance on one's own experience is most widespread habit not only in reaching every day routine decisions, but in case where it is a matter of destined decisions for the organization. Instead of applying team work and serious scoping of problems, the decision makers only rely on their experience and make decisions relatively easy, and when consequences from bad decision making appear, they are sorry they did not take the task seriously, missed the opportunity they had in hand and made a bad choice (Gjorgijovski, 2002).

2. Decision Making Process

The decision making process is quite a complicated and complex activity of every institution/organization.

The decision making process can be formally represented as a process of determining many variants and choosing the most vantage point, from the realization of which it is expected to give the most vantage result. That result, actually, is the biggest difference between the most vantage and the most negative effect. The tendency is to increase the positive, and to minimize the negative effect. So, decision making as a choice is something necessary. It is necessary from a simple, but strong reason contented in the fact that the resources in use are limited. If they would not be limited, there will be no need for choosing (Cupara, 1989).

The decision making process starts with defining the questions for which it is supposed to make the decisions: First, a question should be answered "Is it necessary the decision to be made instantly in full or is it more worthy to be brought partially, so it will be decided for the previous questions first?" Second question which needs to be answered is the question related to the essence for what the decision should be reached and what the possible implications are. Third question is the question of influence that the decision will have on other questions important for the institution to function. The fourth question which should be answered is: "Is

the issue for what decision should be made right or not?" The fifth question is regarding the people or groups which are capable of helping the most in making good decisions. The sixth issue is "How much time and money is needed for the decision made to be implemented in practice?" (Dragišić, 2007).

Preparing decisions and making decisions is the key thing in the implementation of the decision making process.

Preparing decisions are inter-dependable processes and activities of experts, specialists in their field (analysts) that have at their disposal various methods, techniques and supplies related to the realization of the estimated stages in the process of decision making. By rule, it is an interdisciplinary team that works on modeling, analyzing, identification, estimation, testing, controlling or numerous activities in the frames of expert preparation for valuing and choosing the best alternative. All activities are in interactional relations. They start and flow based on an organized system of information (Popovska, 2006).

Essentially, the process of preparation has the purpose to help a decision maker in the choice of variant, or, "the methodology of preparation for decision making does not mean that the maker is doing something new, but doing something better" (Quade, 1970). It has to be known that in the process of preparing the decision everybody's participant involved in this process has a meaningful part. Very important for the process of preparing the decision is to consider all the indicators that contribute to making a good or bad decision. In some way, this will allow to the decision-maker to consider all the factors which will make the choice of the appropriate variant easier. Because of the complexity of the choice of the vantage variant very important assumption for concretizing of the designated decision is the help of experts from various specialties, who based on their knowledge and experience will contribute in forming the decision itself.

The difference in preparing the decisions, the process of *decision making* itself means a sum of designated interdependencies and activities where the final word is in the hands of the one that reaches the final decision or the final decision-makers. A decision-maker can be anyone who is in some way called and has the responsibility to make decisions.

So, decision making is a mental activity in which the decision maker, taking in mind the results of the stage of preparing the decision, chooses a concrete variant as most vantage. Also, this should be taken in count:

- Decision making is a continuous process;
- Every decision has to be "connected" with the previous and future decisions; and
- Every decision has to be compatible with the similar decisions made on a higher level and with the decisions that will be made on lower levels (Stojilković, 1975).

After every decision making, there is a certain amount of incertitude and insecurity occurs if the correct choice has been made, has the real decision been made, or what the possible consequences will be if a wrong decision has been made, if the decision will correspond or be a reflection of the total expectations, etc. Is it

easy to make a decision, can it be read from the faces of everyone when it is expected to make an important decision?

3. Approaches in Decision Making

Basically, there are more ways in decision making. Approaches in decision making are mostly complementary. It means that certain approaches in the decision making are not supposed to be eliminated. On the contrary, these approaches are often complementary. In the literature, these approaches in decision making differ:

- Decision making *based on facts*. For making decisions, it is necessary to gather information and different indicators. After the facts are collected and gathered, the decision is made almost automatically, or it will emerge and come up from the supplied information.
- Decision making *based on experience*. The knowledge in hand, the situations that happened, the determined judgments and formed opinions help a lot in similar situations of efficient and effective decision making. Problems occur when the range of unknowns, facts and subjects expands, which hardens the controlling of the potential options.
- Decision making *based on intuition*. This kind of decision making is based on an instant recognition, instinctive knowledge and capability of instant reaction without a thorough judgment, respecting the facts and the experience so far. Intuitive behavior is "a pile" of experiences, but it is more than that. It is a capability, in which many trust, but there are also plenty who question it and consider it should be minimized.
- Decision making based on *reason-consequence approach*. This kind of decision making is forming rational points of view on all the important elements in the process of decision making. Every element is valorized, the confidentiality of the sources is measured, selected, the degree of efficiency is estimated, efficiency and economic of all activities which may potentially occur, there is an effort to determine the rules and objective circumstances which do not leave space and possibility for subjective and volountaristic behavior.
- Decision making based on *use of systematic analysis*. It is one of the ways of so called quantitative decision making the objectivity of which (with use of computerized systems) should secure higher authority and emphasized efficiency of the formed decisions. Often the quantitative approaches are long and complicated, and they do not provide most appropriate outcomes. The value of these approaches comes to sight at routine decisions (Mitchel, 1987).

4. Ways of Decision Making

For choosing the right way of decision making, the decision makers should be more objective in their own view and if possible try to look at the situation neutrally. Looking for answers of the following questions helps in this way: "Is the nature of the problem situation known well enough, and especially which aspect or

dimension of the problem is most significant for the choice of the following decision?, Has the problem been already seen, felt before and solved previously?" If a similar situation can be found in the past, "Was the decision rightly made and problem solved in a satisfactory way?" and "Does the problem seek a creative approach?" If the answer is yes, then the need for the quantity and quality of the additional information that needs to be gathered should be considered. Regarding this, it is important, of course, if it is possible to determine the sources and areas of the information, the time dimension of their production in relation to the moment of decision making (Gorgijovski, 2002).

4.1. Individual Decision Making

If we look back in history, it can be concluded that the development of countries and nations is the product of making decisions. There are many examples that can be stated, how some people with their decisions left a stamp in their own time and made a positive influence on the flow of historical events, and the opposite, there are examples of people that made wrong decisions in some situations. It means that those people, who made correct decisions managed to estimate the facts objectively, see their capabilities impartially and of course, they had a completely serious approach and understood the essence of decision making. The second ones, which made bad decision, were not thorough in their decision making and they did not do it in an adequate way (Gorgijovski, 2002).

Differently from the past when in most situations the decisions were let made by a single person and the same based on a single point of view, today, team work is a priority, and in that context, on group decision making. It should be emphasized that individual decision making is not either old fashioned or overcome. Especially when it is correlated with the authorities and responsibilities of individuals in the organizational structure, it seems like an efficient way of decision making. Also, when it comes to word for certain situations when there is not enough time for exchange of information or that kind of exchange will deepen the crisis, experience comes in hand, the capability and determination of the individual, without doubt cut the problems and their negative tendencies and make a correct decision (Gorgijovski, 2002).

4.2. Group Decision Making

The connection and the mutual dependency of the circumstances and processes, both in the nature and in the society, have a need for various knowledge and common effort of experts from various profiles in solving the problems (Cupara, 1989). This means that during the solving of different issues there is a rational need for group and team work.[1]

[1] The term team work is to mean: "Simultaneous work of a number of people diverse in their professional qualifications from the same or different working environment for the execution of certain tasks".

Group (team) work most often is a result of standard opinions, integration of thoughts and criticism in deciding. The use of team work means nothing else than rather common synchronizing of thoughts of experts from different profiles to execute the task. Team work does not need be mixed up with collective deciding, although the role of the individual is expanded in decision making, there are more people involved in this process.

In terms of group decision making, the group situation forms the biggest part of the context of decision making. That context filtrates and modifies information for deciding, and at the same time is an actual source of the biggest part of that information. For example, the members of the group are responsible for gathering and canalizing information to the person that leads the process of decision making. In the way they approach the information, the way they collect it, process it and what they exchange, the main part from the situation in which the decision is made is formed (Gorgijovski, 2002).

Basically, team work has an advantage compared with individual work for certain reasons: it provides more thorough and more complex analysis of the problem; it provides the needed depth and width of knowledge and experience more rationally; it provides faster and more comprehensive knowledge for the character of the problem that needs to be solved; it creates objective conditions for broader use of contemporary methods and techniques; it provides more efficient coordinating of the work of the organs and functional structures from where members of the group come from, makes a more creative approach in work and better and more human relations between people; and it provides in the most convenient way to settle the opinions of the majority of experts for a certain problem (Cupara, 1989).

Besides advantages, group decision-making has certain disadvantages. The positive characteristic is that more people think about one issue, the issue "is highlighted" from different aspects, opinions and interests, knowledge, etc. That is why there are more chances to come up with a more quality decision. But, in group decision-making the responsibility for an eventual wrong decision is weakened. The responsibility for wrong decision is on the whole group, so the individual does not feel directly responsible. In that situation, some individuals will not "enter" with their maximum intellectual capacity, knowing that it will fade or loose in the group (Kralev, 2007).

5. The Place and the Part of an Individual in Decision Making

The only essentially important interpretation of societal nature of a man is the principle under which people are part of the social unity that has a common purpose built in hierarchy and demands absolute obedience from its own parts which make an idyllic treasure of mutual help, a perfect organic power, in what every one has what he deserved, equally to his rank, where harmonic acceptance connects all the differences in the parts.

The man is the most important active part of every system. Beside every other active element only he has to be present everywhere, no matter what kind of social work he does. The man is the one that not only is engaged, but is the only capable to activate himself and every other elements, because the other elements do not posses that capability to activate themselves. That is why the man's part in the process of decision making makes him the most important factor in making the decision, or, without man there is no decision, or the man is the one that decides, and for the man the decisions are made (Cupara, 1989).

So, man is the key determinant in the process of decision making and executing certain tasks. Beside man there are other elements which represent a basic assumption for accomplishing these goals. It is very important for these elements not to change, because under those circumstances if it comes to change, the way of executing some tasks changes essentially. It means that it is necessary to build a new approach and understanding for life and work that is radically different from the previous approach and understanding in which other values were important. Additional problems in human's act can cause also the use and appliance of the most modern techniques and technologies.

The use of the contemporary techniques allows conducting very complicated calculations within a very short period of time, making the time for preparing the decision much shorter. Because there is no decision making without a human, it is impossible to avoid subjective influence in the process of preparation and reaching the decision and that means that it is impossible to avoid wrong decisions also. The realization of wrong decisions means distraction from the defined goal or its inefficient accomplishment. Mistakes in the process of preparation and making of the decision not only means that it could not provide the needed relevant elements for their making, but it means also that the supplied elements are not scoped in details and their real value is not rightly marked, which depends on man, of course. It is the biggest reason for the increased human research from the aspect from various scientific disciplines, for providing as many objective relevant elements with which the subjective influence of the decision maker will decrease. If that is reachable, the subjective influence practically changes into objective or it comes to a more convenient decision (Cupara, 1989).

5.1. The Subjective Factor in Decision Making

The subjectivity is determined from the personal opinions, from the interests and the taste of the subject – man. The term subjectivism comes from the Latin word *subjectum* which means "lying under something" (Jovanoski, 2002). In the broad philosophical meaning, subjectivism means all of the theories which the subject considers as the only reality, and the personal experience of every individual, for the only criteria of knowledge. The subjectivist philosophy denies every commonness and objectiveness of acknowledgement. According to it, there are no objective truths just subjective truths of the subject itself (Bakreski, 2005).

The "human" factor is the key maker of the subjective activity. With his psychological, cultural, intellectual and motivational profile, the man is a real determinant of the policy treated as an active relation towards reality. That is why when actualizing the importance of this fact, we actually speak for his ethics, goal-motivated frame and the level and track of personal aspirations; for his perception of the surrounding; for the perception of his own political vision; for the knowledge, skills and experience that he has; for the intellectual and cultural level that he has; for the intelligence and ability for anticipating and/or for dynamical adaptation towards new situations; for the temperament and ability for self-control and for goal faced activity; for the character marks, including also the dimension of personal responsibility and capability to make a decision (Bakreski, 2005).

The subjectivity is acting destructively in the environment[2] because it destroys common progress, disorients it, paralyses it and slows up development. It brings anxiety among people, apathy towards the person. The persons that governs the personnel are awaken negative human characteristics and they are determined to rule by their own convenience, deception, cruelty, self-praising. In that kind of situation it is manipulating with people and fear is created mostly. People in anticipation and fear look insecure, unstable and undetermined. This brings to fatigue of the human potential that lives in insecurity what the next day will bring. Human personality is not endless plastic and passive. It does not obey fully to every new situation, but decorates it with own tone. In a specific situation usually the broad field of productive work narrows for the individual and as a result of the situation he reacts or stays silent. Instead of that, it should be provided to a person to emphasize his own creative virtues. Without a creative approach in work, it is not possible to impact on the personnel and itself to motivate to contribute for the professional development in work.[3]

It means that man has irreplaceable part in the process of decision making and that is why it is impossible to avoid the subjective influence which sometimes judgmentally influences the choice of the variant decision. We can justify and support the claim that man is necessary as a decision maker, and the fact that in that decisions he leaves a mark of subjectivism, generates many situations of hard disturbance in the system, and in the worst case comes to their falling apart. That is why the initiative for using scientific methods and objective point of view of situations is stronger. But, beside that, the subjective influence, especially of the decision maker is still important. The decision maker has its own goals, motives, wishes and affection, which can influence making a better and less rational decision. That is

[2] To a large extent it can be said that the environment has great influence on the personality of an individual, if we take into account societal situation, and a certain part of the overall environment of the individual which act in a certain moment.

The term society environment differs markedly from the term societal relationships, which represents the organization of the acting in a certain time. The situation is qualitatively very complex structure and in the same time non-durable, it is certain part of the whole system of relations that operate at a given moment.

[3] Coordination. Creativity to the personality of the interpreter as talent, and talent is the result of above-average intelligence and motivation. Creativity can be intrepeted as the ability of quick, flexible and rational thinking, analysis and conclusion.

why in the system of governance to be has paid more attention to study the reasons for human behavior in different conditions and in concrete situations. It seems that with use of the most modern technologies and techniques man can decrease the subjective interferences. With the use of contemporary techniques and technologies the decision maker gets explanations for the facts, and then seeks for a suggestion on a certain decision, checking if that decision is in collision with important elements of the present condition and objective terms that exist (Cupara, 1989).

In addition to this, relations of subordination dominate in the police and in the army as hierarchical organized systems, which mainly designate the place and the role of an individual in decision making, the human creative power is not decreased with that, which is necessary for every act.

6. Decision Making in the Security Sector

As in other sectors in the security sector also, there are numerous decisions made. Decisions which are made by persons with designated functions are the heart of the governance of the security systems. There are many decisions made daily. Of course, many of them have a routine character, without causing significant changes into the security policy of the institution. In the growing complexity of the security challenges, the problems of governance in security systems become more difficult. That is why decision making becomes an activity that demands great knowledge and adjusting to the changes, so it can be responded to the new challenges. There is a need for the decision makers in the security sector to change themselves through knowledge, to change their opinions, ideas, goals and what is most important – to increase their own creativity in more complex processes of decision making.

Decision making in the security sector differs from the decision making in other sectors not only because of the structure of the organization that is reflected through the degree of centralization of things, but also by the character of the decision that depends from the nature and size of the problems that are solved. Making a decision in these systems has to base on firm consultation, wisdom and participation. It is because military and police organizations are hierarchically set systems in which relations of subordination dominate and from there, the size and the way of patricians has to be acceptable with that kind of settlement and the conclusion that the way of engaging individuals is completely compatible with the hierarchical structure. Hence, at the lowest level the individual is easier to get in the process of decision making which basically is not very complicated and the responsibility is smaller and vice-versa, in case of higher levels there is bigger responsibility, and the process of deciding is quite difficult.

So, the internal affairs in governing the army and police are based on the principles of hierarchy, subordination, unity and unconditional execution of the decisions and orders of the superiors. This does not mean that in the process of preparing the decision there are not supposed to be certain numbers of experts and competent people involved. It is important to emphasize that making the decision involves not only specialists from different areas, but also people in charge from all

levels and sections of the organization. The successful implementation of the decision depends of the degree of acceptance by the subjects that are involved, and from the quality of the decision itself. That is why it is important for everyone involved in the whole process of execution to be engaged in preparation and making the decision. The level of rationality, subordination, logical presumption depends from all kinds of factors. Most important factors from which making a quality decision depend are: lack of information, lack of policy which will operate the processes in the organization, lack of consensus, lack of adaptation in strategic situations, etc.

Basically, several factors influence the way of an individual's engaging in the decision making within police and military systems and they are: authority, responsibility, consistency in deciding, expert and professional skills, motivation, competence, capability, discipline, trust, etc.

Authority comes from the top and basically the subordinates accept and execute the orders. In the police and the military structure equals with the rank and duty that the individual has. Based on that, it designates the place and role in deciding, and we often feel that as a status based on influence.

Responsibility is a duty that ties with certain thing and execution of certain work tasks. Some tasks demand bigger responsibility, and some smaller. Responsibility includes commitment for right execution of tasks, but it has no part in the process of decision making and should not demand any responsibility for that.

Consistency tends for clear horizontal and vertical separation of responsibilities and jurisdiction of the individual, dependable of time and parts of himself at hierarchical levels.

Expertise and professionalism provide the basic assumptions for the individual to be involved in the process of deciding, he has to be skilled and competent. The conclusion that only people that are skillful and competent, trained and properly educated, can respond to tasks that are assigned to them holds.

Motivation holds as a predisposition for forming and developing certain ways of reaction based on personal and social experience of the individual and by the motivational role which means igniting on the behavior toward certain responsibilities that come from every day engagements.

Discipline as a sober execution of tasks is reflected through holding on the natural and written process of decision making by the individual. Discipline mainly influences the increase of order and respect of rules and procedures with which the working relations are built.

Trust comes from the personal and social feeling for responsibility and it is the key base in building the relations between people.

7. Conclusion

Decision making is a complicated and responsible task and as the most important activity in governance has certain specifics on its own that are an important assumption in the work of the military and the police organization.

These specifics mainly determine the process of decision making, the final goal of which is to reach a quality decision and assumes knowledge for the practical conditions in which the decision is made, and also existence of a grade for the consequences that the decision making and the execution will cause. In the process of decision making there are many factors tied together that decision makers consider with a purpose to choose the most acceptable variant. During the choosing of the optimum variant there has to be a certain optimal and realistic approach because overrating or underestimating of any of the variants can lead to favoring a wrong determined variant.

Designated specifications of decision making in security sector that essentially determine the functioning of the security sector depend on few factors that are: a) the wrong military and police decisions bring to unpleasant consequences for human and material resources; b) the military and police decision making is limited by the need for secrecy, (which makes the communication harder); c) the quality of the decision in the security sphere depends on the experience and knowledge of the decision maker; d) the highest levels of deciding dominate in the military and police decision making.

Although in the military and in the police organizations relations of subordination dominate, which, mainly determine the place and the part of an individual in decision making, the human creative part and power is not neglected with that, which is necessary in every act. But, also, it means that his subjective influence is important that more or less can contribute for making the wrong decision.

8. References

Bakreski, O. (2005). Koordinacija na bezbednosnata zaednica na Republika Makedonija, Skopje: Filozofski fakultet.

Brian, R. J. (2004), Principles of Security Management, Pearson Prentice Hall.

Dragišić, Z. (2007). *Bezbednosni menadžment*. Beograd: Službeni glasnik i Fakultet bezbednosti.

Drucker, P. (1999). *Management Challenges for the 21st Centrury*. New York: Harper Business.

Gjorgijovski, B. (2002). Teorija na odlučuvanje. Skopje: Ekonomski fakultet.

Jovanovski, K. (2002). Filozofski recnik. Skopje: TNID Gjurga.

Guy, P. (1998). Managing Horizontal Government. The Politics of Coordination, Canadian Centre for Management Development.

Kralev, T. (2007). *Osnovi na menažmentot*. Skopje: Centar za internacionalen menažment.

Mitchel, T., Larson, J. (1987). *People in Organizations-An Introduction to Organizational Behavior*. Mc Graw-Hill International Editions.

Miner, B. J. (1971). *Management Theory*. New York: The Macmillan Company.

Popovska, Z. (2006). *Upravuvanje so sistemite*. Skopje: Ekonomski fakultet.

Stojilković, M. (1975). *Proces donošenja odluka*. Beograd: VIZ.

Quade, E. S. (1970). *Cost Effectiveness, some trends in Analysis*. California, S. Monica: RAND Corporation.
Cupara, M. (1989). *Ekonomski činilac u vojnom rukovođenje*. Beograd: Vojnoizdavački i novinski centar.

SPECIFIČNE KARAKTERISTIKE ODLUČIVANJA U BEZBEDNOSNOM MENADŽMENTU

Rezime

Kvalitet upravljanja bezbednosnim sektorom je većim delom određen kvalitetom procesa odlučivanja. Ako je to tačno, onda je osnovna potreba ovog napora da odgovori na ključna pitanja koja su u vezi s odlučivanjem, posvećujući naročitu pažnju procesu odlučivanja u bezbednosnom sektoru. Prilikom ispitivanja tog problema, pretpostavka je da se polazi od specifičnih obeležja u donošenju bezbednosnih odluka, ali se ističe i uviđanje da je svaki proces odlučivanja povezan s čovekom, što znači da je nemoguće izbeći subjektivne razloge koji mogu u manjoj ili većoj meri da doprinesu donošenju pogrešnih odluka. Ipak, s jedne strane, sprovođenje pogrešnih odluka znači distanciranje od definisanog cilja, dok se, s druge strane, donošenje i odabir optimalnih varijanti odluka zasniva na dubokom i detaljnom razmatranju i markiranju korisnih vrednosti svih raspoloživih resursa. Stoga, razumljivo objašnjenje koje se može ponuditi, koje će biti prilagođeno kako bi obuhvatilo kompleksne strukturne, institucionalne, društvene i ostale promene koje opterećuju svaku državu, jeste, prema našem mišljenju, da je najbolja osnova za analizu – istraživanje koje je povezano s donošenjem odluka u državi i bezbednosnoj zajednici.

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COMMON FOREIGN AND SECURITY POLICY AFTER THE LISBON TREATY

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Abstract: This paper focuses on the provisions on the European Union's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) in the Lisbon Reform Treaty. The significance of the field of foreign, security and defence policy is illustrated by the fact that almost fifty percent of the amendments to the Treaty on European Union (TEU), which are contained in the Reform Treaty, pertain to this field.
Various provisions in the Lisbon Treaty are aimed at addressing the lack of cohesion and effectiveness, with the establishment of various new institutional developments. The rationalisation of external competencies brought by the Lisbon Treaty may have a positive impact in the field of security and defence. For this reason, the most important developments in the field of CFSP/CSDP will be looked at in this paper particularly regarding the institutional structure (the President of the European Council, the upgraded post of the High Representative for Foreign Affairs and Security Policy renamed in the High Representative of the Union for Foreign Affairs and Security Policy, the establishment of the European External Action Service (EEAS), and flexible forms of integration (enhanced cooperation and Permanent Structured Cooperation).

1. Introduction

When the Member States of the EU (then European Communities – EC) – first agreed on consultation and coordination in foreign policy matters, they were eager to ensure that this did not involve legal obligations.[1] Although and especially by the Maastricht Treaty of 1991 foreign policy cooperation was formalised to some extent, CFSP was established as a 'second pillar' with individual provisions and in

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[1] After a failed attempt at establishing the European Defence Community (EDC) and the European Political Community (EPC) in the early 1950s, the idea of political cooperation was relaunched, and led to the establishment of the European Political Cooperation (EPC) in 1972.

which the roles of the European Commission, the European Parliament and the European Court of Justice are heavily circumscribed.

In the context of the negotiations on the constitutional framework of the European Union (EU), which started with the establishment of the European Convention in 2002, the need to substantially review the provisions for the EU's foreign, security and defence policy was highlighted. The aim was to offer better opportunities for strengthened policy coherence and collective action as well as greater visibility and effectiveness. Although finally not all ideas and elements which had been proposed by the European Convention became accepted in the Constitutional Treaty and later the Lisbon Treaty (LT)[2], it was possible to introduce some elements of reform, especially in institutional terms and with regard to flexible forms of integration. Most of the provisions relating to Common Foreign and Security Policy – CFSP and Common Security and Defence Policy – CSDP (previously called European Security and Defence Policy – ESDP) that were contained in the Constitutional Treaty are similarly reinserted into the LT that replaced it.

Whereas the Constitutional Treaty gather together the *acquis* and new provisions within a single document, the LT has conserved the treaty traditional dual structure[3]. The LT is not a substitute for the former treaties – Treaty on European Union[4] (TEU) and Treaty establishing the European Community[5] (TEC) but amends them. But, these two new treaties, TEU–L and TFEU, have the same legal value.

2. Consolidated Institutional Framework

Before entering of the LT into force, the EU's external action was exercised by a multiplicity of actors, which tended to dilute the establishment of common and coordinated practice. In an attempt to offer greater coherence and effectiveness, the LT has introduced some innovations aimed at rationalizing the EU institutional architecture.

2.1. President of the European Council

The new President of the European Council[6] is supposed to bring composure and continuity to the task of governing Europe. But how does the Treaty of Lisbon describe the role of the future President of the European Council?

The 'full-time' President of the European Council is elected by qualified majority for two and half years (renewable once). In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.[7]

[2] Full name of the LD is: Lisbon Treaty amending the treaty of the European Union and the Treaty establishing the European Community, *Official Journal of the European Union*, C 306, 2007. The abbreviation LT will be used in the text.

[3] The Mastriht Ttreaty consisted of two treaties. The Lisbon Treaty has the same structure.

[4] The Treaty on the European Union keeps its name. The abbreviation TEU–L will be used in the text.

[5] TEC is now called the Treaty on the Functioning of the European Union (TFEU).

[6] Herman Van Rompuy took the office as the European Council President on January 1, 2010.

[7] Art. 15 (5) TEU–L.

Article 15 of the new Treaty on European Union assigns four tasks to the President of the European Council. First, he "shall chair it (the European Council) and drive forward its work." [8] Secondly, it is his duty, especially in conjunction with the President of the Commission, and on the basis of the work of the General Affairs Council, to prepare for and ensure the continuity of the work of the European Council. Thirdly, it is his duty to endeavour to facilitate cohesion and consensus within the European Council. Fourthly, it is his duty to submit a report to the European Parliament. A separate clause states that it is a duty of the President of the European Council to ensure the external representation of the Union on issues concerning its common foreign and security policy.[9]

The tasks and functions of the President of the European Council are not very clear especially when compared to the catalogue of tasks assigned to the High Representative. On the one hand, he has to be able to promote consensus among the heads of state and government and on the other hand he has to be influential enough to 'steer' the Union and ensure member states' implementation of their political promises. This position thus moves between two extreme positions: on the one hand, a merely coordinating chairperson with representative functions, and on the other, a kind of strong 'President of Europe' or 'Mr. Europe', seen to represent the Union in its role in the international system.[10]

2.2. New High Representative

The High Representative of the Union for Foreign Affairs and Security Policy[11] (Art. 18 TEU–L) is – together with the full-time Presidency of the European Council – the central new institutional arrangement in the area of CFSP within the new treaty. The office is the latest of a range of suggestions and efforts to enhance the efficiency of the cooperation between the member states and to "ensure the consistency of the Union's external action"[12] in giving it a 'single voice' and 'face'. To fulfill these tasks the person is provided with a 'double hat' or even three functions, respectively. The office combines the former two posts of the High Representative Javier Solana and the Commissioner for external action (last one was Benita Ferrero-Waldner). Furthermore, as a 'third hat' the High Representative (HR) chairs the Foreign Affairs Council.

The job profile of the HR covers many central and differentiated functions which will probably absorb all of her attention. One of the functions of the HR is to "conduct the Union's common foreign and security policy"[13]. That means that this person has a major influence to shape the agenda and its priorities, as well as to structure the debate and broker a consensus. Thus this office raises high

[8] Art. 15 (6) (a) TEU–L.
[9] Art. 15 (6) second paragraph TEU–L.
[10] Wolfgang Wessels and Franziska Bopp, *The institutional architecture of CFSP after Lisbon Treaty-constitutional breakthrough or challenges ahead*, Research Paper, No. 10, 2008, p.18, available on http://www.ceps.eu
[11] Baroness Catherine Margaret Ashton was appointed for the new High Representative on December 1, 2009.
[12] Art. 18 (4) TEU–L.
[13] Art. 18 (2) TEU–L.

expectations relating to her ability to drive forward the CFSP and CSDP via proposals, suggestions and activities. At the same time the High Representative as chairperson of the Foreign Affairs Council has to promote consensus among its members while including different political interests of the member states as well as different resorts of the Commission and the respective networks behind.[14]

The HR shares the right to make proposals with the member states[15], a task she can also fulfill "with the Commission's support"[16] in matters of CFSP. Different to the Commission in major policy fields of the TFEU, she has no monopoly of initiative.

The High Representative shall ensure the implementation of the decisions taken in the field of CFSP.[17] In this regard another overlapping of competences exists, this time with the Political and Security Committee (PSC), which shall "monitor the implementation of agreed policies, without prejudice to the powers of the High Representative"[18]. This unclear division of competences could be partly outweighed due to the fact that it is planned to appoint a representative of the High Representative as chairperson of the PSC.

Within the CFSP the High Representative furthermore "represents the Union" and she "shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organizations and at international conferences"[19], including the right to represent the Union's position on a specific topic in the UN Security Council[20].

In CDSP the High Representative shares the right of proposal with the Member States, as in CFSP.[21] Furthermore, the HR "shall ensure coordination of the civilian and military aspects" of the tasks foreseen within CSDP, meanwhile "acting under the authority of the Council and in close and constant contact with the Political and Security Committee".[22] Nonetheless, the latter keeps its overall responsibility to "exercise, under the responsibility of the Council and the High Representative, the political control and strategic direction of the crisis management operations"[23]. This Committee may even be authorized to take decisions "for the purpose and for the duration of a crisis management operation"[24]. Facing this job profile the High Representative has only limited own resources compared to her colleagues in the Council and in the Commission and is basically dependent on her power of persuasion within both institutions. For the fulfillment of her tasks she will be supported by a new body, the "European External Action Service" (EEAS), in the broadest sense a kind of "foreign policy ministry", composed of officials from the Council Secretariat, the Commission and seconded from Member State Foreign

[14] Wolfgang Wessels and Franziska Bopp, op.cit.p.21.
[15] Art. 30 (1) and 42 (4) TEU–L.
[16] Art. 30 (1) TEU–L.
[17] Art. 27 (1) TEU–L.
[18] Art. 38 TEU–L.
[19] Art. 27 (2) TEU–L.
[20] Art. 34 TEU–L.
[21] Art. 42 (4) and 30 (1) TEU–L.
[22] Art. 43 TEU–L.
[23] Art. 38 TEU–L.
[24] Art. 38 TEU–L.

Ministries. Due to its mixed composition this institution will not have the same hierarchical relation to the High Representative as would be expected from national officials to their Foreign Minister. Substantial operative resources such as financial aid remain within the Commission – a political weight the High Representative could or should use for her position within the Council. Furthermore she cannot expect to be supported by her national "colleagues" in her aim at promoting the capacity of the Union to act in the international system. Thus the fulfillment of her tasks within the institutional architecture will very much depend on her capability to move and act within and in between the different 'hats'.

3. Limited New Decision-Making Opportunities

The special nature of CFSP is corroborated by the fact that the decision-making process in this area remains strongly intergovernmental. Decision-making by unanimity within the Council remains the point of departure[25] in spite of a Franco-German initiative during the preparatory work on the Constitution that proposed QMV as a general rule.[26] Moreover, the exceptions whereby the Council can decide by QMV are not fundamentally broadened. One circumstance is added, which was also present in the Constitution, namely: "…when adopting a decision defining a Union action or position, on a proposal which the High Representative (…) has presented following a specific request from the European Council, made on its own initiative or that of the High Representative"[27].

Clearly, the High Representative cannot independently open the door to decision-making by QMV in the Council. With the exception of European decisions concerning the appointment of a special representative[28], the starting point remains a decision by the European Council taken by unanimity.[29] The individual Member States thus preserve the possibility to block decision-making by QMV.

As a last option for protection of national interests, member states may – in cases where qualified majority is applied – use an 'emergency brake' if the issue touches "vital and stated reasons of national policy"[30], which follows the idea of the "Luxembourg Compromise". While this latter agreement still required "very important interests" to be concerned, in the Nice Treaty it was changed to "important"[31] and in the Lisbon Treaty to "vital". In these cases, the vote will be suspended and – another Treaty innovation – the High Representative has the task to act as a kind of "mediator" in order to find a solution. She shall "in close

[25] Art. 31 (1) TEU–L.

[26] See: Wolfgang Wessels, A saut constitutionnel out of an intergovernmental trap? The provisions of the Constitutional Treaty for the Common Foreign, Security and Defence Policy, in: Joseph H. H. Weiler / Christopher L. Eisgruber (eds.), Altneuland: The EU Constitution in a Contextual Perspective (=Jean Monnet Working Paper 5/04), New York, November 2004, p.15 (available at: http:// www.jeanmonnetprogram.org/ papers/04/040501-17.html).

[27] Art.31 (2) second indent TEU–L.

[28] Art.31 (2) fourth indent, TEU–L.

[29] Unanimity is the general rule for decision making by the European Council in the field of CFSP (Art. 31 (1) TEU–L).

[30] Art. 31 (2) TEU–L

[31] Art. 23 (2) TEU (Nice).

consultation with the Member State involved, search for a solution acceptable to it"[32]. If she fails the Council can by a qualified majority decision bring the issue to the European Council as arbitrator or "final instance".

The described ambiguities between consensus, qualified majority and national 'emergency brakes' document more than other provisions that the member states – when faced with the dilemma between efficiency of their body and the right to veto – have decided to guard their sovereignty. For the High Representative, this clearly limits her scope of action.

The Lisbon Treaty also maintains the possibility of *constructive abstention*: Member States can abstain from a vote and qualify this with a formal declaration. This Member State is then not obliged to application of the relevant decision which has to be respected by the other Member States. Should the relevant decision have financial implications the Member State is also exempted from financial contributions. In case when the number of Member States abstaining rises to at least one third of the Member States which represent at least one third of the population, the entire decision is not adopted.[33] In the Nice Treaty the threshold was one third of the weighted votes in the Council.[34]

A new aspect is that this list of exceptions from the unanimity rule can be extended by unanimous decision of the European Council. Like in the Constitution, there is a specific bridging clause (*passerelle*) that enables the European Council to extend, by unanimity, the scope of QMV in the field of CFSP. It is interesting to note that this provision *passarelle* clause[35] does not require the consent of the European Parliament and is not subject to control by national parliaments – in contrast to the provisions of the "general" *passarelle* clause[36]. In any case, this option for extension of QMV "shall not apply to decisions that have military or defence implications"[37]. Thus, the Lisbon Treaty preserves a dynamic element in the CFSP by which the unanimity rule can be gradually restricted without need to follow the procedure of treaty revision.

The possibility of *enhanced co-operation* between some Member States, now extended to the entire spectrum of CFSP (Art. 20 TEU–L),[38] also tempers the unanimity requirement and can have a dynamical effect. However, this extension is compensated for by the fact that the Council's authorisation will have to be given by unanimity, in contrast with the *ex* situation, which merely requires QMV.[39] Moreover, Member States that enter into enhanced co-operation can decide, by unanimity, to switch to decision-making by QMV.[40] This turn enhanced co-operation into a double instrument of flexibility: a group of Member States can

[32] Art.31 (2) TEU–L.
[33] Art. 31 (1) TEU–L.
[34] Art. 23 TEU (Nice).
[35] Art. 31 (3) TEU–L.
[36] Art. 48 (7) TEU–L.
[37] Art. 31 (4) TEU–L.
[38] Under the old TEU, this was merely possible for the implementation of a joint action or common position (ex Art. 27b TEU).
[39] Compare *ex* Article 27 TEU and Article 329 TFEU.
[40] This specific bridging clause can be found in Article 333TFEU.

strengthen co-operation and agree thereby to decide by QMV in their field of enhanced co-operation.

With regard to Common Security and Defence Policy/CSDP[41] the provisions of the Lisbon Treaty also mirror those of the Constitution. The Lisbon Treaty acknowledges that CSDP forms an integral part of CFSP.[42] If CFSP can be labeled intergovernmental, then CSDP forms the 'hyper intergovernmental' part of it.[43] The principle of unanimity in the Council applies without exception, and this cannot even be altered by the European Council because the aforementioned *passerelle* is not applicable in the field of CSDP.[44]

Apart from the principle of unanimity in the Council and European Council, the marginal role of other institutions also highlights the intergovernmental nature of the CFSP domain. The Commission has even lost its autonomous right of initiative in the Field of CFSP, since it is confined under the Lisbon Treaty to support proposals submitted by the High Representative.[45] Furthermore, as underlined by Declaration No. 14, the European Parliament's position in CFSP seems to have remained the status-quo[46], even though the Parliament itself reads a stronger role in the Treaty because it acquires a general right to be informed and consulted. In fact, this right to be regularly informed and consulted as well as the obligation to duly take its view into consideration was already inscribed in the Maastricht Treaty, with the exception that this task will now rest on the shoulders of the High Representative (instead of the Presidency and the Commission).[47] The Parliament also has the right to ask questions and make recommendations not only to the Council but also to the High Representative.[48] The Parliament's link to the CFSP therefore will be mainly through the High Representative and in this way it will be in its interest to have an influential High Representative. The limited role of the Parliament in the CFSP area is also visible in the Parliament's exclusion from the negotiating and concluding of international agreements exclusively related to CFSP.[49] Lastly, the ECJ's jurisdiction remains, in principle excluded.[50] Compared to some ambiguity in the Constitution, the Lisbon Treaty is clear that there are only two exceptions: the Court will have competence to monitor the delineation between CFSP and other fields of the Union's external action and to review the legality of decisions providing for restrictive measures against natural or legal persons. The Maastricht Treaty had introduced procedures for adopting sanctions involving both CFSP (the political decision) and the Community (the sanctions, often involved

[41] Title V, Chapter 2, Section 2 TEU–L.

[42] Article 42 (1) TEU–L.

[43] Jan Wouters/Dominic Coppens/bart De Meester, *External relations After the Lisbon Treaty,* in Giler, S., Zeller, J. (eds), The Lisbon Treaty, EU Constitutionalism without a Constitutional Treaty? SpringerWienNewYork, 2008, p.165.

[44] Art. 31 (4) TEU–L.

[45] Compare *ex* Article 22 (1) TEU and Article 30 TEU–L.

[46] Declaration 14 specifically mentions the Security Council of the United Nations and says that the CFSP provisions of the treaty "do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament."

[47] Compare *ex* Article 21 TEU and Article 36 (1) TEU–L.

[48] Art. 36 (2) TEU–L.

[49] Art. 218 (6) TFEU.

[50] Art. 24 TEU–L and 275 TFEU.

trade measures). These sanctions were aimed against states. This created a problem for sanctions against individuals, so-called 'smart sanctions' that the EU may want to use against terrorists.[51] The Lisbon Treaty has a new article that allows restrictive measures "against natural or legal persons and groups or non-State entities"[52]. Article 275 TFEU gives the ECJ jurisdiction to review the legality of such restrictive measures against natural or legal persons.

4. Flexibility Provisions in CFSP and CSDP

The Lisbon Treaty introduces more flexibility in CFSP, including CSDP. This is an important aspect of the treaty. Debates about possible mechanisms of flexibilisation inside and outside the EU framework are recurrent in European integration history and date back to the 1970s. In the framework of CFSP they are of special relevance in light of the requirement for unanimity and the latest enlargements of the EU in May 2004 and January 2007 which increased the Union's internal heterogeneity. Key terms in this debate are concepts of "avant-garde", "core Europe" or "centre of gravity".

After the first introduction of flexibility options in the primary law with the Maastricht Treaty (for EMU and the Social Charter), the Amsterdam Treaty introduced the concept of *enhanced cooperation* (then still called "closer cooperation"), which was subsequently extended to the policy field of CFSP in the Nice Treaty[53]. However, this option has not been used in the "living architecture" so far either in the EC or in the CFSP pillar. The Lisbon Treaty now reconfirms the option of "*enhanced cooperation*" and extends its range of application even to matters having military or defence implications, thus extending this flexibility option to CSDP. At the same time the requirements for such a flexible cooperation were reduced: the minimum number of member states which have to participate was changed from eight in the Nice Treaty to nine in the Lisbon Treaty[54], meaning a reduction from half of the member states to one third in an enlarged Union of 27. But in light of the experiences so far the use of this flexibility option remains doubtful.

The relevant procedures are slightly different for CFSP than for other policy areas, especially in the fact that the request to establish enhanced cooperation has to be made to the Council instead of to the Commission and that the High Representative is responsible for assessing the consistency with the other CFSP regulations while the Commission shall ensure consistency with the other policy areas of the Union. As the High Representative is part of the Commission and within it responsible for the coordination of all external relations aspects, the treaty provisions are not quite clear regarding the division of tasks between the High Representative and the rest of the Commission. Authorization to proceed with the enhanced cooperation within CFSP is granted by a unanimous decision of the Council whereas in policy areas of the TFEU the Commission makes a proposal and

[51] See Wouters et al., op. cit. p. 193.
[52] Art. 215(2) TFEU.
[53] Art. 27a TEU (Nice).
[54] Art. 20 (2) TEU–L.

the European Parliament has to give its consent and the Council decides with qualified majority.[55]

The Lisbon Treaty furthermore establishes another, interesting new form of flexible cooperation for CSDP called "permanent structured cooperation"[56] and the Protocol on permanent structured cooperation). It refers to member states "whose military capabilities fulfill higher criteria and which have made more binding commitments to one another in this area"[57]. The idea is that Member States with greater willingness and capacity in the area of defence 'shall' go together in some kind of closer cooperation of a more permanent kind. These member states would notify their intention to establish such cooperation to the Council and the High Representative. Within three months, the Council has to decide with qualified majority on the establishment of the permanent structured cooperation. Within this form of cooperation, decisions are taken with unanimity within the Council. Participating member states may also withdraw from the permanent structured cooperation and their participation may be suspended if they do not longer fulfill the necessary criteria.[58] However, although the arrangements for the functioning of permanent structured cooperation are specified in an additional treaty protocol, many of the provisions are still vague and questions remain open with regard to what entry criteria, what initial participants, and what ultimate goals such permanent structured cooperation would be implemented in practice.[59]

Constructive abstention mentioned above, and which is not new, can also be seen as a kind of flexibility, but more *ad hoc*.

As a further option for flexibility the Council may entrust a group of member states with the "execution of a task (…) in order to protect the Union's values and serve its interests"[60]. The Lisbon Treaty mentions the possibility of entrusting "the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task"[61]. Such a group is often referred to as a 'coalition of the able and willing'. These "tasks" so called Petersburg tasks[62], represent an existing political practice and are further specified in Article 43 of TEU–L: they shall include "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation" as well as combat of terrorism. The High Representative and the PSC have coordination tasks and the Council decides on objectives, scope

[55] Art. 329 TFEU.
[56] Art. 42 (6), 46 TEU–L.
[57] Art. 42 (6) TEU–L.
[58] Art. 46 TEU–L.
[59] Antonio Missiroli, The Impact of the Lisbon Treaty on ESDP, Briefing paper. European Parliament, Directorate General External Policies of the Union, Policy Department External Policies. Brussels, January 2008, p.3.
[60] Art. 42 (5) TEU–L.
[61] Art. 44 TEU–L
[62] The so-called Petersburg tasks, defined at a meeting of the Western European Union (WEU) in 1992, and included in the EU treaties by the Amsterdam Treaty, are extended to include joint disarmament operations, post-conflict stabilisation as well as "fight against terrorism, including by supporting third countries in combating terrorism in their territories." Both civilian and military means can be used.

and general conditions of implementation.[63] Member states can also establish multinational forces and make these available to the CFSP.[64] Finally, participation in the European Defence Agency is also voluntary but so far, all member states except Denmark, are participating.

The option of "constructive abstention" has already been elaborated but should also be mentioned here due to the fact that this option also allows for flexible cooperation for special groups of member states.

All in all, there are now a number of flexibility provisions which can be applied in the areas of CFSP and CSDP.

5. Conclusion

If 'institution matters', as claimed by many social scientists, the Lisbon Treaty should be expected to produce more efficiency and legitimacy in general and more coherence and effectiveness in the Union's external action. The new triple-hat HR should bring more coherence to external action. The EEAS and EDA are important new agencies that should help increase the capacity for external action, by providing information, analysis and increased capabilities.

But the Member States have ring-fenced CFSP in the Treaty. It remains intergovernmental. So the discrepancy between rhetoric and action will most likely remain considerable. Those who want increased capacity for international action of the EU can hope that there will be a convergence of interests among the Member States.

The Lisbon Treaty has also increased the possibility of some Member States going ahead without waiting for the laggards. Flexibility, multi-speed integration, in various forms (Schengen, EMU), have contributed to the integration process in the past, so why not in other areas, including CFSP?

On the whole, in the area of CFSP and ESDP/CSDP, despite visible progress, clear limits remain and the Treaty confirms hitherto valid principle that the parties to the treaty remain the 'masters' of their actions in the field of foreign, security and defence policy. Thus, at this stage it will still depend to a large extent on the political will of the Member States if the performance of the EU as a foreign policy and security and defence actor will be improved significantly.

6. References

Giler, S., Zeller, J. (eds) (2008). *The Lisbon Treaty, EU Constitutionalism without a Constitutional Treaty?* New York: Springer Wien.

Dagand, S., (2008). The impact of the Lisbon Treaty on CFSP and ESDP. *ISIS Europe – European Security Review, 37*.

Duke, S. (2008). The Lisbon Treaty and External Relations. *EIPASCOPE*, 2008/1.

Lisbon Treaty amending Treaty of European Union and the Treaty establishing the European community, OJ C306 2007.

[63] Art. 43 (2) TEU–L.
[64] Art. 42 (3) TEU–L.

Micossi, S., Tosato, G.L. (eds) (2009). *The European Union in the 21st Century, Perspective from the Lisbon Treaty*. Center for European Policy Studies.

Missiroli, A., The Impact of the Lisbon Treaty on ESDP, Briefing paper. European Parliament, Directorate General External Policies of the Union, Policy Department External Policies. Brussels, January 2008.

Никодиновска, С. (2005). Заедничката надворешна и безбедносна политика на Европската Унија. *Годишник на Факултетот за безбедност*, Скопје, (2005/6).

Radivojević, Z. (2009). Institucionalne novine u Lisabonskom ugovoru. *Pravni život*, 37.

Weiler, J. H. H., Eisgruber L. C, (eds.). (2004). *Altneuland: The EU Constitution in a Contextual Perspective*. New York.

Wessels, W., Franziska Bopp, F. (2008). The institutional architecture of CFSP after Lisbon Treaty – constitutional breakthrough or challenges ahead, *Research Paper*, 10.

ZAJEDNIČKA INOSTRANA I BEZBEDNOSNA POLITIKA PREMA LISABONSKOM UGOVORU

Rezime

Rad bavi se odredbama Zajedničke inostrane i bezbednosne politike Evropske unije (CFSP) i Zajedničkom politikom bezbednosti i odbrane (CSDP), koje su date u Lisabonskom (Reformskom) ugovoru. Značaj na polju inostrane, bezbednosne i odbrambene politike ilustruje se činjenicom da se skoro pedeset posto izmena i dopuna Ugovora o stvaranju Evropske unije, koje su sadržane u Reformskom ugovoru, odnosi na ovo polje.

Različite odredbe u Lisabonskom ugovoru imaju za cilj da reše pitanje nedostatka povezanosti i efikasnosti s uspostavljanjem različitih novih institucionalnih razvoja. Racionalizacija spoljnih kompetencija, koju donosi Lisabonski ugovor, može da ima pozitivan uticaj na polju bezbednosti i odbrane. Iz tog razloga, najvažniji razvoji na polju Zajedničke inostrane i bezbednosne politike Evropske unije i Zajedničke politike bezbednosti i odbrane razmatrani su u radu naročito uzimajući u obzir institucionalnu strukturu (predsednik Evropskog saveta, nadograđeni položaj visokog predstavnika za inostrane poslove i bezbednost preimenovan u visokog predstavnika Unije za inostrane poslove i bezbednost), uspostavljanje Evropske spoljne akcione službe (EEAS) i fleksibilnih oblika integracije (unapređena saradnja i stalna strukturalna saradnja).

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THE USE OF FORCE AND TERRORISM

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Abstract: The author explores the main features of international public law – the use of force and the right to self-defence in the light of terrorist acts. The main point is that terrorism itself is not the international public law notion. A huge number of treaties and norms regulating terrorism in terms of international public law regulate cooperation among states in suppression and sanctions of terrorist acts. If an armed attack occurs creating a terrorist attack, a state can apply its right to self-defence only if these acts can be attributed to a state, either as acts of states *de jure* or *de facto* organs.
Key words: the use of force, the right to self-defence, armed attack, terrorist act, state responsibility, attribution of acts to a state.

Contemporary international legal order is built on the norms prohibiting the use of force (Tams, 2009). These norms emerged from the classical *jus ad bellum*, changing its character in the essence (Condoreli, Naqvi, 2004; Schmitt, 2007; Pejic, 2007). While in the classical international law the use of force was the usual manner of communication between states, regulating just the pattern of commencing the war, nowadays the use of force is generally prohibited, allowing its use exceptionally.

The use of force is formulated as the principle, as the set of norms, both treaty and customary and as the unifying value of the international community (Cassese, 1986; Gray, 2008). The Charter of the United Nations embodies it in all its functions and presents general normative framework regulating the use of force[1]. The United Nations, as the subject of international law and international relations,

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[1] The Use of Force and the role of the UN in it has been under deliberation at the International Court of Justice on several occasions; in the case concerning Armed Activities on the Territory of Congo (the Democratic Republic of Congo v. Uganda) it is stated that the "prohibition against the use of force is a cornerstone of the United Nations Charter" and concluded that "Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down", all other cases are in the recourse to the Security Council, Judgment, par. 148; see also other cases instituted from the Democratic Republic of Congo against Burundi and Rwanda on armed activities, cases instituted from Yugoslavia/Serbia and Montenegro against the United States of America and other members of NATO on Legality of Use of Force, cases Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. the United States), Case concerning Oil Platforms (the Islamic Republic of Iran v. the United States of America)

was created with primary task to preserve international peace and security. The task, goal and aim of the UN are all created on the common value of liberty and freedom. Thus, the use of force and its exceptions should be understood in this manner.

Rules regulating the use of force, in the UN Charter as well as in the customary law[2], are addressing the states (Gazzini, 2005). The general presumption was that the use of force, either lawful or unlawful, would be only states' prerogative. Exceptionally, it could be manifested on behalf of non-state actors, for example in internal wars or revolutions, in liberation movements during state-creation process, occupying contemporary position of the subject of the international law. Nowadays, possibility to use force is not only in the hands of states or liberation movements, but also in the hands of some other non-state actors, promoting the issue of understanding and applying the norms on the use of force.

Terrorism is nowadays recognized by the international community as the prevailing threat to peace and security[3]. Yet, terrorism as a phenomenon is not new. Legal concept of terrorism is well known both within the international and national laws, with all of its following obstacles and issues on definition and elements (Bianchi, 2004; Maogoto, 2005). The new element is the magnitude of force that terrorists can achieve and use. And that is where we come to the subject of this paper – is it possible to use the force against terrorists? At the end, answer does come out as YES or NO. However, finding out which one is correct requires a great deal of deliberation.

At the beginning of the analysis it is useful to make an overview of the existing international law norms regulating the use of force. The principle of the use of force, when speaking of it in terms of character of norms, is created as the prohibition, i.e. obligation not to undertake an action. General prohibition of the use of force is articulated within the Article 2 of the UN Charter:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

As such, it presents treaty law norm, regardless of the character and significance of the treaty in question. Besides, it is prohibited by the norms of customary law[4]. In the hierarchy of international norms this prohibition is the integral part of *corpus* of *jus cogens* norms, giving it raise to the highest level of importance and leaving no possibilities of derogation. From this point of view it addresses only states, or members of the UN, imposing the obligation not to use the force against the other state. It is not addressing to non-state actors, since international law basically regulates relations among states.

[2] See Case Concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), Application 28 July 1986, par.27

[3] The most significant Security Council resolutions qualifying terrorism as a threat to peace and security are Resolutions 1368 of 12 . 9. 2001 and 1373 of 28. 9. 2001, following the attacks in New York, USA, 11. 9. 2001.

[4] Relation between customary law norms and treaty norms on the use of force has been under deliberation at the International Court of Justice in the Case Concerning Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, par. 392, 421,422, www.icj-cij.org

Still, force can be used lawfully, thus creating the exceptions to the general prohibition. In the UN system force can be used as the collective military enforcement action taken or authorized by the UN Security Council according to the concept of collective security regulated in Chapter VII of the Charter (Svarc D., 2008). States individually or collectively can also use force lawfully when defending themselves according to the right to self-defense.

For the force to be used lawfully there are certain conditions to be met. When used by the Security Council it should be conducted by the threat to peace, breach of peace or act of aggression, all of them titled as such by the Council itself (Santori V., 2006). When used by virtue of the right to self–defense, it is either according to the UN Charter or to the customary law norm regulating the principle of self-defense. In the UN Charter self–defense is defined in the Article 51 as the right. It proclaims:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

In corpus of the customary law, principle of self-defense is broader than Article 51 of the UN Charter (Gazzini T., 2005). In its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice stated:

"Furthermore, the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defense, in accordance with Article 51 of the Charter, when its survival is at stake" (par. 226)

Self-defense is thus recognized as the fundamental right, the inherent right and as such it certainly implies concept of jus naturale (Dinstein Y., 2004). Notwithstanding present understanding and significance of jus natural, it still reminds us that some concepts cannot be changed but formulated in different patterns of reaction. As an inherent right of every state, it relies on its main characteristic, element and principle – sovereignty (Dinstein Y. 2004). In that sense a state is the one and the only holder of the right to decide when its survival is under threat and to decide on response. Normative framework of the UN Charter defined within the cited Article 51 is narrower (Shaw M. 2003). That means that state has the right to use the force as self-defense only when armed attack occurs and until the Security Council takes over adequate measures. Still, there is no simple legal formula on the armed attack.

It is repeatedly stressed that Article 51 should be read in the conjunction with Article 2(4) (Dinstein Y., 2004; Gazzini T., 2005)[5]. Yet, there are some important discrepancies between them, leaving room to interpretation. The same can be

[5] Gazzini points that application of Article 51 should be understood as the failure of the Security Council and is denial of Article 2(4)

stressed for the right of self-defense and its relation with the collective measures applied by the Security Council. While, the Security Council is the authoritative body to decide whether there is threat to peace, breach of peace or act of aggression and according to that decision the Council decides on adequate measure, state applying right to self-defense can do that only when an armed attack occurs.

The other element, subject to which the rule addresses, is not unified. We can state that prohibition to use force as the principle addresses the states posing prohibition on them, regulating thus the relation between them. It is clear that prohibition is regulating inter-state relations. The principle of self-defense and the right of self-defense is not formulated (in clear and precise words) towards the attacking party. A state can be endangered and armed attacked by entities other than states, possessing the power to threat and attack.

Lack of the definition and a very important element in the construction of the right to self-defense can be misleading towards the conclusion that the right of self-defense is extensive, grounding it only on the attack character. On the contrary, the formula of the right of self-defense is restrictive. It is confined with the character of attack and it is only temporary right, applicable until overtaken by the Security Council, essentially framed with the prohibition on the use of force. The right of self-defence is additionally and indirectly framed with the role of the Security Council. It is not framed only in terms of *temporis*, but also in terms of *materiae* in words "the measures necessary to maintain international peace and security". Self-defence can be thus invoked only when a state is endangered in terms of international law and international relations.

If we agree on this interpretation, then the rules on the use of force and self-defence do form consistent unity.

An armed attack, the expression that is used when speaking of the right to self-defense, can also be named aggression. In fact, from the point of terminology it is legally better suited than the descriptive expression of armed attack.[6] Yet, there are essential differences between an armed attack and aggression that in the outcome may influence the right of self-defense.

Subsequently, we find ourselves posing the question – what is aggression? In terms of the right of self-defense it should not be treated according to the precise definition typical for criminal law. It should be circumscribed in a functional way building functional right of self-defense. This means, that if there is an act endangering existence of a state, as an entity, as a subject, the inherent right to survival is emerged and it invokes right to self-defense.

Obviously the previous does not present an operative legal formula. The definition of aggression exists, adopted by the UN General Assembly, in a form of resolution[7]. It is the formula that should be followed when reasoning whether an attack presents aggression or not. Still, it is not a binding definition, either for

[6] Analyzing the scope of an armed attack, Gazzini relies on the stand of the International Court of Justice stating "that the definition of armed attack can be found only in the customary law", Gazzini T., op. cit., p.119.

[7] UN General Assembly Resolution 3314-XXIX, from December 14, 1974.

Security Council or for the states, leaving the room to other acts to be titled as acts of aggression.

"The crux of the issue, therefore, is not who fired the first shot but who embarked upon an apparently irreversible course of action, thereby crossing the legal Rubicon" – let me use the wording of Professor Dinstein (Dinstein Y., 2004). Besides the use of force which is the evidence *prima facie* of aggression, aggression bears in itself meaning, *ratio* and purpose. The armed attack manifesting the aggression is undertaken on behalf of a state as a political entity towards the other state as a political entity (Rowling B.V.A, 1986). It is undertaken with a purpose of influencing either territorial integrity, provoking territorial reorganization – whether occupying it in whole or in part, or in provoking territorial reorganization such as secession – or in influencing the independence and sovereignty of a state. Aggression thus should be understood as a specific method of political manifestation of states goals, plans and interests towards the other state.

In summary, an armed attack or let us say aggression is the ground for invoking the right of self-defense. It should be understood as the manifestation of politics, interests and goals of the subject of international law in the sphere of international relations.

When reasoning on whether force, as the collective enforcement measure or the right to self-defense, can be used against terrorists the problems may arise following the understanding and definition of terrorism (Barrado C.M.D., 2008). Since this paper is not a study of terrorism itself, but of the issues on possibilities to use force i.e. self-defense against terrorists, there will be no analysis on definition, elements or other details following this phenomenon. However, from the operative side of analysis some key points on terrorism should be outlined.(Cryer R., 2008).

There is no doubt that phenomenon of terrorism has been legally circumscribed from many different angles, resulted in plethora of conventions dedicated to certain aspects of terrorism. Yet, none of them has come near enough to the unifying and overall definition of terrorism, except the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on December 9, 1999. (Stojanovic P.C., Palevic M , 2010). As for the subject of this Convention and the number of State-parties[8] this convention is marked as the "corner-stone of the struggle against terrorism".(Gioia A., 2005).

Article 2 of this Convention, in "two-steps approach" defines terrorism in terms of (1) treaties brought before this one (and "*listed in the annex*") and (2) as "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act".

Recognizing the need to regulate terrorism in the overall approach, the UN has been working on the draft of the Comprehensive Convention on International

[8] The Convention has 132 signatories, 171 parties; among Permanent Members of the United Nations Security Council only China is not the state-party.

Terrorism[9]. Overall approach presumes an overall definition. The definition that has been created follows the guiding line of the previously cited definition. It states:

"1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- Death or serious bodily injury to any person; or
- Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."

General approach and constitutive elements of both definitions thus would be in terms of a crime and criminal responsibility of an individual thereto. In other words, the definition as proposed does not cover the possible scenario of state`s involvement in terrorist acts. It also underlines *ratio* of terrorist act – influencing a state to do or abstain from doing an act by intimidating the population. Thus, it bears a political dimension, it has its impact on the main international subject, it is emerging as a unifying international issue and yet it is not, by definition, an institute of international law.

The reasons and prevailing factors for such an approach are described differently – from political deals to legal philosophy of criminal law which does not embrace criminal responsibility of a state. From the point of view of the author of this article and the theory followed, the proposed definition does cover the main elements of the phenomenon of terrorism, as we mainly recognized it. From the different angle, this statement brings us to the conclusion that terrorism should not be understood as a notion of international public law (Higgins R ., 1997). As such, it cannot be undertaken by states, but only by private persons and groups of persons, i.e. terrorist groups. As the outcome, responsibility and sanction should be found elsewhere, but not in the rules of international law.

The influence of states on terrorists, their role in terrorist's activities and the fact that states can be true organizers of terrorist acts are recognized and formulated in the expression – "state-sponsored terrorism". (Dupuy P.M., 2010). This expression is not rules-grounded or norm-governed expression, but rather theory grounded, politically motivated, underlining the potential role of a state in terrorist acts.(Becker T. 2006). From the legal point of view, there are no rules that would support such a combination of incompatible notions (Smith S.E., 2003).

At this point, for the sake of truth it must be stressed that there have been attempts to include state element in undertaking of terrorist acts. It can be traced in

[9] Work of the UN General Assembly on this issue has been conducted by the General Assembly`s Sixth (Legal) Committee and the General Assembly *Ad-hoc* committee on terrorism, established by the Resolution 51/210 of 17 December 1996. Current negotiations have reached a deadlock. Under the terms of the UN General Assembly Resolution 64/118 Measures to Eliminate International Terrorism adopted on December 16, 2009, the *Ad-hoc* Committee shall continue its work on the draft on the Comprehensive Convention on International Terrorism.

the General Assembly`s resolutions, where the involvement of states in terrorism, either indirect or direct, has been recognized. One of the most famous is the Declaration on Measures to Eliminate International Terrorism, within the Resolution 49/60 brought on December 9, 1994. In the paragraph II it is stated:

"4. States, guided by the purposes and principles of the Charter of the United Nations and other relevant rules of international law, must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts".

Continuing, the Declaration lists methods of cooperation between states in prevention, suppression and combating the terrorism. But, unlike the all sectoral conventions and customary law it also clearly addresses to states in words:

"5. States must…

– … refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and take appropriate practical measures to ensure that their respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens;"

The Declaration itself is not legally binding, but it is important as the evidence of joint conscience. Maybe even more important, it is also evidence of the joint failure to create rules that would regulate this aspect of terrorism.

If we recognize that the term "state-sponsored terrorism" is aimed to mark those situations, the examples when a state is indirectly taking part in terrorist acts, then the state should be included in the frame of notion, be recognized as an element of the definition (Smith, 2003). As mentioned earlier, terrorism is not the legal institute of international public law. Thus, there is no such institute as the terrorist act or terrorism supported, tolerated or organized by a state. Basically, the expression "state-sponsored terrorism" when titled in terms of international law should be adjusted either to aggression or to some other international crime as an *actus reus* (Cassese, 2006). If a state takes part in terrorist acts, these acts cannot be called terrorist acts anymore, as they are not terrorism, but aggression, crimes against humanity (Arnold, 2006) or probably some other international law institute.

The importance of this issue is not only theoretical. It is of essential importance to decide what is covered by the term terrorism (Cassese, 2001). This is not only the matter of precise legal definition, but of the general approach. The stand taken on this issue would lead us to the concept of responsibility and lawful reaction/sanction, to the possibility to invoke the right of self-defense and to use force against terrorists (Salcedo, 2009).

From the present point of view, there are two possible scenarios. If we preserve the concept of "state-sponsored terrorism" then the responsibility for terrorist acts would be applied on the state itself by means of rules of attribution. The concept of attribution itself is controversial, complicated and still not sufficiently profiled. As for the examples relating to terrorist acts with the attempts

to attribute them to the state, they are not encouraging at all. For an act undertaken by a formally non-state actor to be attributed to a state, we can rely on the Draft Convention of State Responsibility for Internationally Wrongful Acts.[10] However much more important and influential is the statement of the International Court of Justice in the Judgment of the famous Nicaragua Case, when rules on attribution have been crystallized. The Court has formulated concept of "effective control over military and paramilitary operations" that should be exercised by a state for a purpose of attribution. This example is not encouraging either from the point of attribution or from the point of importing the concept of terrorism into international law. It suggests also that at the moment there is no all-in-one formula covering all possible situations, but instead the issues of attribution should be assessed on a case-by-case basis.

Scenario no. 2 would keep us within the framework of existing norms, applying them on the same situation titled differently. If terrorist acts occur with the obvious indicators that state is conducting them, these acts should not be treated either as terrorism or state-sponsored terrorism, but (most probably) as an armed attack or aggression. In that case Article 51 of the UN Charter as well as the customary rule on self-defense would be fully applicable. This example assumes that the attack is of the character leading to "the crossing over the legal Rubicon". That means that state in question has by no means intent to suppress terrorists' activities and use of force conceives as the attack and not as the self-defence (Garcia, 2009). The shortcoming of this, from the point of view of the most favourable version of international law, is in its manifestation. Terrorism in its notion contains specific techniques, which other hostile military activities usually do not employ. In the manner of expression lies the difficulty of referring to that attack as the armed attack, giving the ground for application of the right of self-defence. Until now, state practices show that states are not willing to encourage employment of the right of self-defence to the terrorist acts qualified as military or armed attacks. The real need *to bring into accord* terrorist hit-and-run tactics with the support of state, has been addressed many times. It has also given birth to various theories, such as the theory of necessity and proportionality, theory of "functional argument" (Tams, 2009) or the theory of "accumulation of events" (Gazzini, 2005)[11] or accumulation doctrine. None of them became operative or legally accepted, leaving thus reaction of states to the terrorist acts/armed attacks on the case-by-case basis.

Scenario no. 3 is purely theoretical since there is no hint in reality that compromise and deal on these elements could be reached in foreseeable future. According to this scenario state`s involvement in terrorist acts, should be included as in the definition itself, with the position of constitutive element, giving it meaning and position of the international law institute, leading to the direct responsibility of

[10]After several decades of deliberation the ILC has formulated the last version of the Convention in 2001. This version is cited in this paper.

[11]This theory has been elaborated by Israel since 1950, and is used as the ground for the use of force in numerous occasions grounding it on Article 51 of the UN Charter.

a state and directly to applying the right to self-defense or other form of reaction/sanction towards the state conducting terrorist acts.

In order to legally justify armed activity undertaken by virtue of the right to self-defense, a state should not be defending itself from terrorist`s armed attack. The attacked state should rely on the fact that terrorist acts are undertaken on behalf of a state and as such invoke the right to self-defense. If a terrorist attack occurs, from the territory of another state, when that state does not organize or support terrorist group, the attacked state could not invoke its right to self-defense. Still, it can use force.

States can use "anti-terrorist force" (Tams, 2009) on the territory of the other state, with purpose to neutralize terrorist groups, with the consent of that state or in alliance with it. In this example though, it would not be self-defense in the sense of the right to self-defense when armed attacked, but cooperation between states in suppressing terrorism.

The real threat that is posed for states by terrorists and the level of gravity of terrorist attacks has influenced international community, but unfortunately not simultaneously. Today, we have plenty of norms treating terrorism, yet none comprehensively defining it on the international level nor creating the system of reactions to it or measures/sanctions that can be applied.

There is one important mark of international norms governing terrorism that has to be stressed. Plethora of norms concerning terrorism, huge majority of them contained in sectoral conventions, address to states and they are created among states giving them character of international law norms (Elagab, Elagab, 2007). *Meritum* of all of these norms, hence, is not in regulating inter-state relations, but in their mutual agreement on steps that are to be taken as on terrorism in order to prevent and suppress it (San Jose, 2009). Vast majority of the international law norms are thus creating duties on state parties for the convention to be fulfilled within their national law – criminal (concerning either readjustments in their criminal code, definitions of crimes, elements of crimes, or obligations concerning prevention and sanction of certain types of terrorist acts), banking law, production of weapons, explosions, security issues, etc.

Another important part of them is regulating cooperation among states in mutual efforts of suppressing terrorism within their borders. Cooperation among states in combating terrorism is generally in terms of exchanging information about terrorist groups and their activities, in cooperation on revealing them and exchanging of evidence, in cooperation in terms of extradition, etc. (Proulx, 2005). When it comes to the use of force against terrorists there are no rules, that field is not regulated. It thus brings the analysis into the sphere of general international law institutes.

In other words, states were not creating norms on terrorism *vis-à-vis* one another, which resulted in the previously drawn conclusion that terrorism itself is not the notion of international law.

In conclusion, as it was stipulated previously in the text, a clear positive or negative answer on the use of force and self-defence against terrorist attacks will be formulated. In simple formulas it would be structured as follows:

- A state can apply the right of self-defence against terrorist acts, amounting to arm attack, if those acts are committed on behalf of the state either according to the terms of the attribution or according to the shift of those acts to the international law institute;
- A state can use force against terrorists (either individuals or groups) on the territory of another state, with that states consent and as a part of assistance or mutual combat against terrorists. According to this scenario, a state using the "anti-terrorist force" would not be in the breach of the general prohibition on the use of force.

Besides these two formulas – simple and self-understanding, but yet very narrow and restrictive, there are some vague loopholes that cannot be covered by them. For example – can the Security Council directly use force against terrorists? What if a state from whose territory terrorist attacks occur does not want armed force cooperation with the other (attacked) state? Does it place "anti-terrorist force cooperation" into the breach of prohibition on the use of force?

As far as the first question is concerned, legally speaking the Security Council is equipped with broader rights as to the reaction on crisis in international community and wrongful attitude manifested by states. When a terrorist act occurs the Security Council is authorized to decide on the character of the act and its influence on the international peace and security (Laborde, DeFeo, 2006). Using its prerogatives the Security Council can, under Article 41 of the UN Charter, decide on measures and invite the UN Members to apply them. In the attitude towards the Security Council resolution, a state can manifest its attitude toward the terrorist act taken from its territory. As far as the use of force is under observation, a simple answer would also come out as positive, again with the same assumptions on state involvement in the terrorist attack (Carnero, 2009). Not only is the Security Council authorized to use force against terrorists, but it should hold the leading role in it, in the sense of collective security system and Article 24 of the Charter[12]. Also, in the pure logical sense of reasoning, if it is stated that a state can apply the right of self-defence to a terrorist attack, the right that is framed within the Security Council`s prerogatives, it is self-understanding that the SC holds the same rights (Fassbender, 2004). The ground for rethinking on the Security Council`s prerogatives thus does not lay on the black-lettered law, but on its practice. The Security Council has been very active in addressing the issues of terrorism and conclusions on urge to regulate this area in precise manner. On the other hand, it remained quite passive. So far, the Security Council has not authorized the use of force as a military sanction against terrorists. Yet, states have been active and force that has been used titled as the right of self-defence. The Security Council did not either follow them in their efforts of defending or apply a measure towards them as for the breach of a prohibition not to use force.

As for the other question, this is not a typical example of loophole or paralysis of law, but more a fact-dependent distribution of constitutive elements of a case

[12] Article 23: 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

(Bassiouni, 1988). The attitude of a state whose territory has been used for organizing and conducting terrorist acts can be one of the elements in the process of attribution. On the other hand, the principle of sovereignty does allow a state to refuse forceful cooperation from the other states, without referring to substantial involvement.

By this example, we do come to the end of the topic. The right of self-defence is restrictive and it does not come in straight forward application on the acts of terrorism.

In terms of comparison, the right of self-defence is weaker than the principle of sovereignty. If misused, it can be qualified as the breach of prohibition on the use of force. It would then lead to application of the right of self-defence *vice versa*. Thus, it can create a closed circle. Ban of force does not prohibit use of force against terrorists as such; it applies in international relations between states. However, the use of force against terrorists based in another country can be treated as an armed attack.

From the point of view of real needs and events in the contemporary world, this outcome of the analysis is not satisfactory. The lack of regulations is evident, as well as the inability of the international community to find an acceptable approach. In order to regulate a response of the international community and states unilaterally to acts of terrorism, either supported by a state or not, the priority is an agreement on definition, i.e. if it includes the state as a constitutive element, which would *ipso facto* conduct issues on responsibility of state, as well as the issue of sanctions.

Ratio of the International law requires the connection with substantive international law, with principles of international law and inclusion of terrorism into the system of international law. Terrorism guided only in criminal law terms and exclusively as the crime is not adequate for the international law system. It leaves a huge and very important area of contemporary relations legally uncovered, imprecise and thus easy for misuse. As for the final conclusion and also as a task *pro futuro* finalizing of comprehensive convention or creation of customary norms would be the best way to adjust the real needs to the legal framework.

References

Arnold, R. (2006). *Terrorism as a Crime against Humanity under the ICC Statute*, p. 121–140, in: Nessi, G. (ed.) (2006). *International Cooperation in Counter-terrorism: The United Nations and Regional Organizations in the Fight against Terrorism*. Ashgate.

Barrado, C. M. D. (2009), The Definition of Terrorism and International Law, p.27–42, Sanchez, P. A. F. (ed.), International Legal Dimension of Terrorism, Leiden-Boston.

Bassiouni, C. M.(1998), A Policy-Oriented Inquiry into the Different Forms and Manifestations of International Terrorism-Introduction, p. xv–liii, in: Legal Responses to International Terrorism. U.S. Procedural Aspects, M.C.Bassiouni (ed.), Martinus Nijhoff Publishers.

Becker, T. (2006), Terrorism and the State: Rethinking the Rules of State Responsibility, Oxford and Portland Publishing.

Brownlie I.(1963), *International Law and the Use of Force by States*, Oxford.

Carnero, R. G.(2009), Terrorist Acts as Threats to International Peace and Security, p. 55–72, in: Cassese A. (ed.) (1986), The Current Legal Regulation on the Use of Force, Martinus Nijhoff Publishers.

Cassese, A. (2006). Multifaceted Criminal Notion of Terrorism in International Law. *Journal of International Criminal Justice*, Vol.4, No.5, p. 933–958.

Cassese, A.(2001). Terrorism is also Disrupting some Crucial Legal Categories of International Law. *European Journal of International Law*. Vol.12, No.5, p. 993–1001.

Condoreli, L, Naqvi, Y. (2004). *The War against Terrorism and Jus in Bellum: Are Geneva Conventions Out of Date*, p. 25–38, Bianchi, A. (ed.) (2004). *Enforcing International Law Norms Against Terrorism*. Oxford and Portland Oregon.

Cryer R. (2008). *An Overview of the Law on Terrorism*, p.15–22, in: Legal Aspects of Combating Terrorism. *NATO Science for Peace and Security Series: Human and Social Dynamics*, Vol. 47, Ankara.

Dinstein Y. (2004). *War, Aggression and Self-defens.* Cambridge.

Dupuy, P. M. (2004). *State-Sponsors of Terrorism: Issues of International Responsibility*, p. 3–16. In: Bianchi A. (ed.). *Enforcing International Law Norms Against Terrorism*. Oxford and Portland Oregon.

Elagab, O., Elagab, J. (2007). *International Law Documents Relating to Terrorism*. London and New York.

Fassbender, B.(2004). *The UN Security Council and International Terrorism*, p. 83–102. In: Bianchi, A. (ed.) *Enforcing International Law Norms against Terrorism*, Oxford and Portland Oregon, 2004

Gazzini, T. (2005). *The changing rules on the use of force in international law*. Manchester University Press.

Garcia, R. B.(2009). *Preventive Self-Defence against International Terrorism*, p. 177–200. In: Sanchez P. A. F. (ed.). *International Legal Dimension of Terrorism*. Leiden-Boston.

Gioia, A. (2006). The UN Conventions on the Prevention and Suppression of International Terrorism, p.3–24, in: Nessi G., International Cooperation in Counter-terrorism: The United Nations and Regional Organizations in the Fight against Terrorism, Ashgate

Gray, C. D. (2008). *International Law and the Use of Force*. Oxford.

Higgins, R. (1997). *The general international law of terrorism*, p.13–29. In: Higgins R., Flory M. (ed.) *Terrorism and International Law*. London.

Laborde, J. P., DeFeo, M. (2006). Problems and Prospects of Implementing UN Action against Terrorism. *Journal of International Criminal Justice*, No.4, p. 1087–1103.

Malzahan, S. M. (2003). State Sponsorship and Support of International Terrorism: Customary Norms of State Responsibility. *Hastings International and Comparative Law Review*, Fall, p. 83–118.

Maogoto, J. N. (2005). *Battling terrorism: legal perspectives on the use of force and the war on terror*. Ashgate.

Pejic, J. (2007). *International Law and Armed Conflicts: Exploring the Faultlines: Essays in Honour of Yoram Dinstein*. Leiden, p. 157–195.
Proulx, V. J. (2005). Babysitting Terrorists: Should States bi Strictly Liable for Failing to Prevent Transborder Attacks? *Berkley Journal of International Law*. No.1, p. 615–668.
Rowling, B. V. A. (1986). *The 1974 UN Definition on Aggression*. In: Cassese A. (ed.) *The Current Legal Regulation on the Use of Force*. Martinus Nijhoff Publishers.
Salcedo, J. A. C. (2009). *Terrorism and General Principles of International Law*, p. 9–14. In: Sanchez P. A. F. (ed.), *International Legal Dimension of Terrorism*, Leiden-Boston.
Sanchez, P. A. F. (ed.) (2009). *International Legal Dimension of Terrorism*. Leiden-Boston.
San Jose, D. G. (2009). *The Legislative Dynamics of International Law in Combating Terrorism*, p. 131–146. In: Sanchez P. A. F. (ed.) *International Legal Dimension of Terrorism*, Leiden-Boston.
Santori, V. (2006). *The UN Security Council`s Broad Interpretation of the Notion of the Threat to Peace in Counter-terrorism*, p.89–112. In: Nessi G. (ed.) (2006). *International Cooperation in Counter-terrorism: The United Nations and Regional Organizations in the Fight against Terrorism*, Ashgate.
Schmitt, M. N. (2007). Responding to Transnational Terrorism under Jus ad Bellum: A Normative Framework, p. 157–196. In: Schmitt M. N., Pejic, J. *International Law and Armed Conflicts: Exploring the Faultlines: Essays in Honour of Yoram Dinstein*. Leiden.
Shaw, M. (2003). *International Law*. Cambridge.
Smith, S. E. (2003). International Law: Holding States Accountable for the Devastation of Terrorism. *Oklahoma Law Review*, Fall, p. 736–775.
Stojanovic, P. C., Palevic M. (2010). *Terorizam i finansiranje terorizma*. IX Tematski naucni skup – Terorizam i ljudske slobode, Tara, p.137–146.
Svarc, D. (2008). Military Response to Terrorism and International Law on the Use of Force, p. 131–150, In: Legal Aspects of Combating Terrorism, NATO Science for Peace and Security Series: Human and Social Dynamics, Ankara, Vol. 47., 2008.
Tams, C. J. (2009). The Use of Force against Terrorists. *European Journal of International Law*, Vol. 20., No.2, p. 359–397.

UPOTREBA SILE I TERORIZAM

Rezime

Članak je posvećen proučavanju mesta terorizma u sistemu međunarodnog javnog prava, s posebnim osvrtom na upotrebu sile i prava na samoodbranu. Autor konstrukciju gradi na stavu da terorizam nije institut međunarodnog javnog prava, tj. da su odnosi između subjekata međunarodnog javnog prava

povodom terorizma izgrađeni isključivo radi koordinacije i kooperacije, a ne uređenja ponašanja subjekata kao aktivnih činilaca u terorističkim aktima. Ovakav polazni stav ima duboke posledice na pravo da se upotrebi sila i pravo da se proklamuje pravo na samoodbranu. Autor gradi stav da upotreba sile i samoodbrana mogu doći u obzir i u slučaju terorističkih akata, pri čemu u takvoj situaciji teroristički akti menjaju svoju fizionomiju i postaju akti države, kvalifikovani u smislu nekog drugog instituta međunarodnog javnog prava, po opštim pravilima o odgovornosti kako direktne, tako i indirektne.

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A MATHEMATICAL *SIR* MODEL FOR EPIDEMIC EMERGENCY

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Abstract: Outbreaks of infectious diseases are one of the worst scourges in the history of mankind that have affected its flow. First they were tied to the supernatural beings, then they were used as a cause for wars and state internal showdowns, only then as a matter of medicine. For a long time, epidemics of infectious diseases have been considered only as a medical phenomenon, but by expanding the fields of security procedures, this phenomenon is classified in a group of emergency. It was found that in these situations there is certain mathematical regularity that can predict possible consequences. In order to be mathematically modeled performance of the epidemic in a large population need to be grouped into departments. Agreed standard labels for these units as *S* (for susceptible – exposed), *I* (infected) and *R* (recovered), so this model is called the *SIR* model. This is a simple model for many infectious diseases including measles, mumps and rubella. Number of persons in each department may vary in time, and it follows that the precise numbers must be calculated as a function of time *t: S (t), I (t)* and *R (t).*
Key words: outbreak, an emergency, *SIR* model, an infectious disease.

1. Introduction

Some threats to human race were known centuries ago, but they were not perceived as a security problem. Thus for centuries, also millennia, people feared infectious diseases. In ancient times, during the Peloponnesian War, Athens lost its primacy in the war with Lacedaemons precisely because its population was decimated by the plague. During this outbreak, Athens lost almost a quarter of its population, including their leader Pericles.

The first recorded plague pandemic occurred in Egypt in 541, expanded beyond the borders of the state and killed almost half of the population of North Africa, Europe and South and Central Asia. The second began in 1346 and killed a

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third of Europe's population by 130 years of its duration[1], while the third came in the sixties of the nineteenth century and caused the deaths of 12 million people (Jović, Savić, 2004: 145). During the twentieth century the pandemic infectious diseases occurred on several occasions. In the twilight of World War I, in 1918, there appeared influenza (Spanish fever – H1N1) in the American Midwest that spread with incredible speed, and soon engulfed Russia, China and the entire United States, where it was transmitted to pigs, and made its new mutations. This flu infected about one third of the world's population (500 million), according to some estimation about 40 million people died. Other flu pandemics occurred in the 1957, the so-called Asian flu (H2N2), where, according to the World Health Organization, about 24% of world population was affected. The next pandemic Hong Kong flu (H3N2) occurred in 1968 and according to some estimations between 1 and 4 million inhabitants died from its effects (Vučić-Janković, Knežević, Kanazir 2006: 19–26).

While many vaccines for infectious diseases are available, diseases continue to cause suffering and death worldwide, especially in developing countries. In the developed countries, chronic diseases such as cancer and cardiovascular disease are devoted more attention than infectious diseases, but infectious diseases are still common cause of death. For instance, HIV (AIDS) has become an important infectious disease in the industrialized and developing countries. So far, this disease killed around 30 million people, while, by comparison, during World War II approximately 28 million people were killed. The National Security Council of the U.S.A. in a special report from 2000 provided a review of the possible sequence of events in the world in terms of outbreaks of infectious diseases. According to the experts of the Council, infectious diseases represent one of the most common causes of death of people. The report noted that infectious diseases exceedingly slow socioeconomic development of developing countries and previous communist countries and regions. This will adversely affect the development of democracy in them and transition, and the humanitarian disaster and conflicts among the population. In this regard the following table lists the effects of globalization and technical and technological development of the movement and development of infectious diseases. Based on their study the factors that contribute to the return and consolidation of infectious diseases, as well as new forms of infectious diseases are (The National Intelligence Council, 2000: 33–65):

- demographic change and human behavior (Dengue/hemorrhagic fever, sexually transmitted diseases, giardiasis, for example),
- technology and industry (toxic shock syndrome, atypical infections, inflammation of the intestine followed by bleeding, hemolytic uremic syndrome),

[1] According to some research, its appeasement began in 1353, but with longer breaks and to a less extent continued until the end of the fifteenth century. It caused the death of 25 million Europeans. For the epidemic as the main culprits, the Christians proclaimed that Jews had ostensibly decided to poison all Christians. Thus many Jews were tried and they were often punished for their "misdeeds" by burning at the stake bonfires, they were forbidden for many years to appear in cities, etc. The starting point of a pandemic was in northern China and Mongolia, where the trade routes spread to Europe. (Djarmati, S., Aleksic, Dj. *Destructive forces*, Belgrade, 2004, 140–142.)

- economic development and impoverishment of arable land (Lyme disease, malaria, plague, rabies, yellow fever, Rift-Valley fever, schistosomiasis),
- world travel and international trade (malaria, cholera, Pneumococcal pneumonia),
- the ability of adaptation and mutation of microbes (influenza, HIV, malaria, infections caused by Staphylococcus Aureus),
- reducing the quality of public health measures (rabies, tuberculosis, "trench" fever, diphtheria, whooping cough, cholera), and
- climate change (malaria, dengue, cholera, yellow fever).

2. Epidemic Emergencies

Epidemics of infectious diseases is the appearance of disease in a place with more people, whose number is increasing day by day and has some specific features related to infectious diseases. "An epidemic of infectious disease is an increase in the number of patients suffering from infectious diseases that is higher than usual in a particular population and in a given time" (*Službeni glasnik RS*, 125/04). Patient is (or can be) a source of infection, indicating the anti-epidemic fighting strategy. The source of infection may not even be clinically ill. Finally, the level of collective immunity determines the occurrence and course of the epidemics, which leads to the conclusion that the inhabitants of certain areas may be resistant to the agents of the relevant infectious diseases, but such resistance cannot develop such resistance towards e.g. radiation (Radovanović 2000: 7).

In the framework of the World Health Organization the epidemic of infectious disease means "occurrence and transmission of disease from one person to another or from animals to humans in the community and simultaneously in a particular territory, and the occurrence of the disease spreading" (Infections and infectious diseases, 2001: 3). The World Health Organization has a special department that deals with outbreaks of infectious diseases. Special attention within that department focuses on the so-called Highly Infectious Diseases under what are considered "diseases that are transmissible from person to person, causing a high-risk disease on people's life and a great danger in places (quarantines) for health care in the communities, demanding special measures of control (Brouqui, Ippolitto: 2)."

In the document of the Prime Minister office of the United Kingdom "Dealing with accidents" epidemic of infectious disease may in some cases reach the level of so-called major emergencies. Such an emergency situation causes death and injury to people, breaking the normal functioning of society and so on. Upon the opinion of the creators of this act, epidemic disease may cause full societal disintegration of society and political community, since modern diseases are highly infectious and cause a high percentage of mortality. Upon the draft Law on Civil Protection in March 2008, compiled by the Ministry of Defense of the Republic of Serbia, outbreaks of infectious diseases are treated as a natural disaster. As an emergency situation, in terms of the draft, the epidemic disease becomes at the moment when "the risks and threats or the consequences of the epidemic on population, environment and material goods, such a scale and intensity to their

occurrence or consequences cannot be prevented or remedied by regular action by agencies and services, and mitigation and removal of special measures must be used". In the laws and legal acts of many countries and international organizations and professional associations, an outbreak of infectious disease is classified in a group of emergency situations, as for its suppression and recovery of the population from its effects the necessary emergency measures and the use of extraordinary means and forces are required. Epidemics of infectious diseases are an emergency situation and in all known forms have the most unpredictable onset, course and completion. It is because of the impossibility of observation with the naked eye and unknown to the people; it is one of the most insidious and has a deterrent effect. Several times during the history of outbreaks of infectious diseases revealed that it is deadlier than war, technical and technological disasters, earthquakes, floods, etc. It is a common "companion" of other emergencies, crises and disasters, natural or any other character. Because of this, it is necessary that the security experts show more interest in this problem.

3. Mathematical Modeling of Epidemic

Based on previous studies of outbreaks of infectious diseases, diseases result from the state of health and disease state, which is a product of constantly interacting forces and their mutual reactions in the frame of the ecological systems that are people as hosts with all elements of the animate and inanimate nature. As a basic principle, ecological approach to explaining the disease or pathological condition becomes necessary. Thus, the result is a construction of several epidemiological models.

First, mathematical models clarify the interaction between the factors responsible for the current incidence, and to assessment of possible epidemiological situation. These models are used for the prediction of the effects of some interventions, such as the effectiveness of alternative measures to prevent and repress the disease. This is a theoretical concept developed with remarkable practical benefits, but it is recommended that the epidemiologist with strong knowledge of mathematics with the assistance of mathematicians or biostatisticians use these model approaches (Christie, Gordon, Heller, 1997).

The structure of incidence and mortality in the developed world is gradually bifurcating to non-infectious diseases. This trend is reflected in the development of epidemiology. Hence, among epidemiologists there is a need for an acceptable way of making disease models. Such a model is an ecological (epidemiological) triad. This model requires excellent knowledge of all factors causing disease, characteristics of the host and the environment. Agents that cause disease, the body that suffers the consequences of their actions and the environment in which the agent and host face are in a constant strive for mutual respect and balancing, which is to be understood as a kind of dynamic reconciliation. This model has shown good results when the epidemiological studies included exceedingly victims of plague and when the causes, as agents, are separated from

other host factors and the environment. Wheel model with its core part represents the man, a host with genetic determinants in the center. It is surrounded by areas, schematically divided into biological, physical and socio-economic, which are tightly bound. Vogriklov chain is a model that relies on the knowledge of epidemiology of certain infectious diseases by directing practical measures against those factors by whose exclusion they achieve the easiest and most effective series breaking and prevention of further expansion of the disease. Wheel model and the network of causality are focused on steadily expanding the application of epidemiological methods in studying chronic non-infectious diseases, exceedingly unrelated to specific agents or they are considered as an integral part of the environment. Network model of causality is one of the modern approaches to elucidation of disease etiology. Basically this model is that disease does not depend only on one factor, but from a low of causal components linked into a chain in which each of them is preceded by a low, and so together they form a network of causality. The limits of the network are difficult to determine because the sequence of cause and effects is almost infinite, and their overall knowledge is impossible because it goes beyond human capabilities.

In many sciences experiments can be performed in order to gather information and establish appropriate hypotheses. However, experiments with the spread of infectious diseases among humans cannot be made. The data obtained from outbreaks that occur naturally are usually incomplete with regard to the need to obtain a complete picture about the epidemic. This absence of reliable data prevents the estimation of parameters of the epidemic so that it is only possible to estimate the range of values for some parameters. As repeatable experiments and true information are not available in epidemiology, mathematical models and computer simulation must be used to realize the necessary theoretical experiments. The necessary calculations can be easily carried out for different values of the parameters and data.

Replacement of the studied object by its image – mathematical model and its study is the essence of mathematical modeling. Research work that is not done on the very object (occurrence, process) but on its model provides the ability to painlessly and relatively quickly, without high expenses and, as a rule, in all imaginable situations, investigate the behavior of the very object. The dissemination of ideas and methods from one area to another activity is useful and contributes to the development of both activities. Analogies that are thereby established are undoubtedly useful and can accelerate development activities, but, of course, with one restriction – one must accurately determine the boundaries of the usage of analogy. Any excess of these limits could lead to large errors. Mathematical models have limitations and shortcomings which we need to be aware of, e.g. for the modeling of epidemics of infectious diseases we must know that the interaction of transmission in the population is very complex, and it is extremely difficult to cover the enormous scale of the dynamics of disease spreading. Spreading of infectious diseases involves not only factors based on disease like cause of disease and ways of transmission, but also social, cultural, demographic and economic factors. It is

known that the probability of getting the disease is not constant in time. The common experience is that some disorders are more frequent in winter, the other in summer that is, depending on weather conditions. Moreover, with the children's illnesses, there is a huge influence of school calendar, so during school vacations, the probability of getting these diseases are declining. So, for many groups of diseases one should consider the strength of infection depending on the periodic (seasonal) varying of the number of contacts. For these reasons we are forced to do modeling of many such simplifications, e.g. when we use an epidemiological model for the microscopic description (role of a single infection) and then we use it to predict macroscopic behavior of the spread of disease in the population.

4. Assumptions of the Model and Marking

The study of disease occurrence is called epidemiology. The epidemic is unusually large, short-term disease occurrence. Analysis of epidemic models can be deterministic and stochastic. They differ in that as the relationship

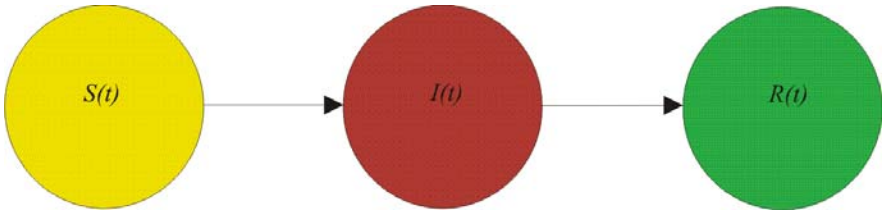

Figure 1: Schematic division into groups with SIR model

between the values that appear in the analysis of epidemics, at the deterministic model, they are expressed by differential equations, while the stochastic models are expressed by difference equation. In this paper we use the so-called deterministic *SIR* model. *SIR* model was first created by Kermack and McKendrick ("The contribution to the mathematical theory of epidemics.") and played a major role in mathematical epidemiology. In the model, the observed population is divided into three groups: the susceptible S, the infected with I, the recovered R and these groups are changing over time, i.e. functions from $t - S(t), I(t)$ and $R(t)$.

The sensitive are those who are not infected or immune, the infected are those who are infected and can transmit the disease, and the recovered are those who are infected, recovered and permanently immune. In this epidemiological model the following assumptions have been made:

The considered population has constant size that we mark with N large enough so that the size of each group can be considered as a continuous variable. It is assumed that the infection lasts a short time, so that all who belong to the group are born sensitive. We assume also that the number of deaths in the period is equal for members of all three groups; the number of births and deaths from natural

causes is equal and negligibly small for a given period of time so that the entire population is stationary.

The population is homogeneously mixed. The daily number of contacts α is the average number of adequate contacts per infected during the day. Adequate contact of infected is the interaction that results in a second infected individual if he is from the group of the susceptible. The average number of the susceptible infected from one infected per day is αS and the average number of the susceptible infected by one group per day is αSI . The daily number of contacts α does not vary during the season. The type of direct and indirect contacts adequate for transmission depends on the disease.

The number of individuals who have recovered and left the group of the infected is proportional to the number of the infected with a constant β ratio, and is called the daily number of shifts to recovery. The latent period is zero (the latent period is defined as the period between the time of exposure to infection and time of infection). Based on given assumptions, we can write the following relations (Murray, 2001; Brauer et al, 2008):

$$\frac{dS}{dt} = -\alpha SI; \frac{dI}{dt} = \alpha SI - \beta I; \frac{dR}{dt} = \beta I; S(0) > 0; I(0) > 0; R(0) \geq 0 \qquad (4.1)$$

This system is nonlinear and does not allow general analytical solution. However, significant results can be derived analytically [11–13]. First, it is noted that:

$$\frac{dS}{dt} + \frac{dI}{dt} + \frac{dR}{dt} = 0; S(t) + I(t) + R(t) = const = N \qquad (4.2)$$

Then, you can find links between the parameters that characterize α and β size groups in the population. Designation ∞ refers to the moment when the epidemic ends. t_{dur} refers to the time spread of the epidemic. R_0 is called the basic reproductive number. If $R_0 < 1$, there is an epidemic. If $R_0 > 1$, there are no conditions for the occurrence of epidemics. [13]

$$\beta = \frac{1}{t_{dur}}; \frac{\alpha}{\beta} = \frac{\ln S(0) - \ln S(\infty)}{K - S(\infty)}; K \approx S(0) + I(0); R_0 = \frac{\alpha N}{\beta} \qquad (4.3)$$

If we eliminate the dependence on time from the system of equations (4.1), we can show the dependence of *I* from *S* in the so-called phase plane and find a connection between the corresponding parameters.

As the system of equations (4.1) is nonlinear, the question of stability of the system that this equation describes is raised. The answer to the question of the stability of the system can be obtained by linearization of system of equations (4.1) (Edelstein-Keshet, 2005). However, stability is not really the primary issue of this model. Some typical questions are of interest (Hetcote, 2000: 599–653): (1) How many of the sensitive are infected? (2) What is the number of peaks in the infected? (3) When does the epidemic experience peak? (4) How does the maximum number of the infected depend on the initial number of the infected?

One of the interesting predictions of S-I-R model is that epidemic stops when the infected disappear and not the sensitive. To demonstrate the possibilities of this model, we analyzed an epidemic of enterocolitis that appeared in Topola, near Kragujevac in 2002 (Obaveštenje Ministarstva zdravlja RS). The data on the epidemic are given in Table 1.

Days	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
The number of the infected	7	48	102	90	67	38	35	18	15	7	14	26	17	8	16	7	2

Table 1

Since Topola, according to the statistics (*Podaci Republičkog zavoda za statistiku RS*), has 25,292 inhabitants and 31 settlements, the population to which the model applies has 816 inhabitants. Epidemic lasts for 17 days and 522 inhabitants were infected. Using Mathematica 7.0 appropriate numerical solutions of the system were found (4.1) in case of epidemics in Topola and given in the graphs.

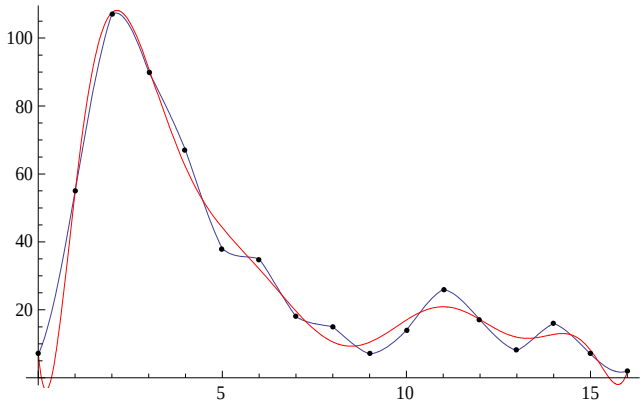

Figure 2: The number of the infected according to the data – blue colour.
In red colour the fitted curve is presented which gives the number
of the infected over time.

From Equation (4.3), we find parameters - $\alpha = 3.62 \cdot 10^{-3}$ and $\beta = 1.875$.

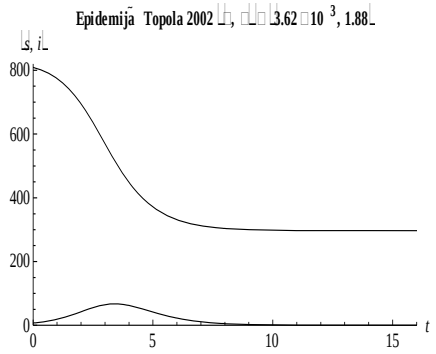

Figure 3: The dependence of the number of the infected I and number of the sensitive S on time

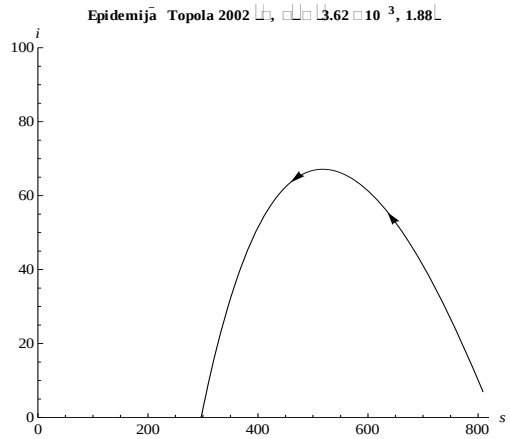

Figure 4: Dependence of I from S given in the phase plane

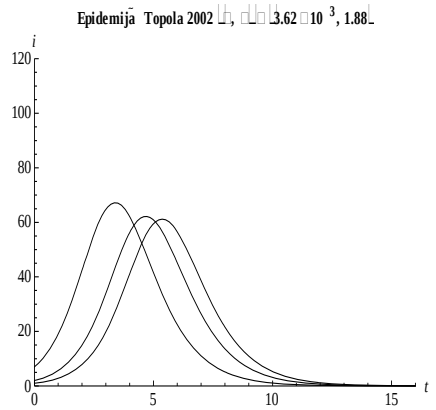

Figure 5: The dependence of the maximum of the epidemic from the initial number of the infected I (0) during time

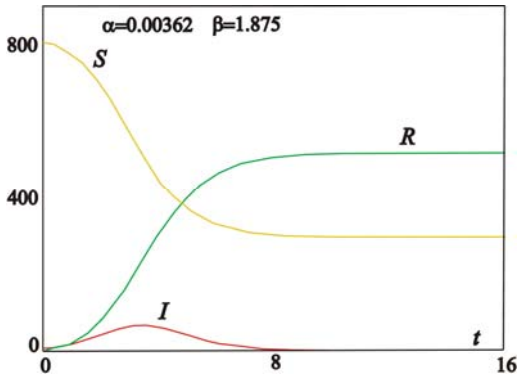

Figure 6: The dependence of S (t), I (t) and R (t)

From Figure 2, it can be found that the maximum of the epidemic is achieved on the second day and the maximum number of the infected is 108, which pretty well fits the actual facts. From Figure 3, one sees how a number of the sensitive S decreases with time up to certain values when it comes to saturation, i.e. no more affected. It also corresponds to annulling the number of the infected. On Figure 4, in the phase plane it can be observed as the number of the infected increases (arrows indicate the direction of development of the epidemic) and then decreases to zero when saturation is achieved with the Figure 3.

On Figure 5, the dependence of the maximum size from the initial number of the infected $I(0)$ is shown. It is obvious that the maximum $I(t)$ will be higher if $I(0)$ is higher. The Figure 6 shows, for comparison, change of all three groups considered in a function of time. The basic reproductive number is $R_0 = 1.5754 > 1$, and this indicates the existence of conditions for the occurrence of epidemic. To avoid further spread of the epidemic it is necessary that [4–5] $1 - 1/R_0 = 36.52\%$ of the total population *N* should be vaccinated. The essence of modeling is to find the relationships between the parameters of infectious diseases and that they are used for calculations of the effective mass vaccination program aimed at preventing the spread of epidemics.

5. Conclusion

Many challenges, risks and security threats in the modern history are multiplied and thus their number is steadily increasing. One such security issue is an epidemic of infectious disease for which the seventies of last century were considered that it is as a public health problem overcome and the triumph of primarily the World Health Organization confirmed that vaccination has managed to overcome this scourge forever. Then we have problems just because pathogens eventually managed to become resistant to the existing medical treatments. It became important to approach the problem in a new way.

One of the ways that may largely participate in fighting infectious diseases is a mathematical modeling of epidemic. Based on the epidemic that occurred, we can manufacture models of possible outbreaks at any territory, and therefore we can mitigate their effects. The replacement of the studied object by its image and its investigation is the essence of mathematical modeling. However, we must maintain awareness that these models have a lot of deficiencies, as in the case of outbreaks of infectious diseases when they have to take into account the relations in the society, but it is impossible to cover a wide scale dynamics of the infection spreading.

SIR mathematical model was first made by Kermack and McKendrick and played a core role in mathematical epidemiology. In the model, the observed population is divided into three groups: the susceptible S, the infected I and the recovered R and these groups are changing over time, i.e. functions of t – S (t), I (t) and R (t). The susceptible are those who are not infected or immune, the infected are those who are infected and can transmit the disease, and the recovered those who are infected, recovered and constantly immune. Based on the study of the epidemic of enterocolitis that appeared in Topola near Kragujevac in 2002, it was concluded that the epidemic modeling core of infectious diseases is to find relations between parameters of infection and that they are used for calculations of the effective mass vaccination program to prevent the expansion of the epidemic.

6. Acknowledgement

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7. References

Brauer, F. et al.,(2008). *Mathematical Epidemiology*. Springer.

Brouqui P., Ippolitto G. *Clinical Managementof Highly Infectious Diseases*, *ce. M.*

Christie, D., Gordon, I, Heller, F. R. (1997). *Epidemiology*, University of New South Wales, Second Edition, Sydney.

Dealing with disaster (2004). (Revised Third Edition). Cabinet Office.

Vučić-Janković, M., Knežević, T., Kanazir, M. (2006). Efikasnost mera javnog zdravlja u toku pandemije gripa, SARS-a i ptičjeg gripa. *Javno zdravlje i vanredne situacije*. Beograd: Glasnik Instituta za javno zdravlje.

Edelstein-Keshet, L. (2005). *Mathematical Models in Biology*. SIAM.

Hetcote, H. W. (2000). *SIAM review*, Vol.42, No. 4.

Zakon o zaštiti stanovništva od zaraznih bolesti. *Službeni glasnik RS*. 125/04.

Infections and infectious diseases. (2001). World Health Organization, International Federation of Red Cross and Red Crescent Societies.

Jović, R., Savić, A. (2004) *Bioterorizam – Biološki rat – Biološko oružje*. Beograd: Institut za političke studije, Centar za istraživanje bezbednosti i terorizma.

Murray, J. D. (2001). *Mathematical Biology 1*, Springer.

Nacrt Zakona o civilnoj zaštiti. (2008). Ministarstvo odbrane Republike Srbije. Beograd.
National Intelligence Council (2000). National Intelligence Estimate: The Global Infectious Disease Threat and Its Implications for the United States, *Enviromental Change & Security Project Report*, Issue 6.
Obaveštenje Ministarstva zdravlja RS. 01–1951, 8. 9. 2002.
Radovanović, Z. (2000). *Terenska epidemiologija*. Beograd: Medicinski fakultet.
Wikipedia. *Infectious Diseasses.*
Wikipedia. (2003). *Podaci Republičkog zavoda za statistiku RS.*

MATEMATIČKI *SIR* MODEL EPIDEMIJSKIH VANREDNIH SITUACIJA

Rezime

Mnogi izazovi, rizici i pretnje bezbednosti se u savremenoj istoriji multiplikuju i time se njihov broj neumitno povećava. Jedno od takvih bezbednosnih pitanja je epidemija infektivnih bolesti, za koje se sedamdesetih godina prošlog veka smatralo da su kao javnozdravstveni problem prevaziđene, te je od strane prevashodno Svetske zdravstvene organizacije trijumfalno potvrđeno da je imunizacija uspela da nadiđe tu pošast zauvek. Problemi su tek predstojali, jer su patogeni vremenom uspeli da postanu rezistentni na postojeće medicinske tretmane. Postalo je značajno kako pristupiti problemu na nov način.

Jedan od načina koji u velikoj meri mogu učestvovati u suzbijanju zaraznih bolesti jeste matematičko modelovanje epidemije. Na osnovu epidemija koje su se dogodile, mogu se izraditi modeli mogućih epidemija na bilo kojoj teritoriji, te se, stoga, mogu ublažiti njihove posledice. Zamena proučavanog objekta njegovim likom – matematičkim modelom i njegovim izučavanjem – jeste bit matematičkog modelovanja. Doduše, moramo se voditi svešću da ti modeli imaju mnogo nedostataka, kao u slučaju epidemije zaraznih bolesti, kada se moraju uzeti u obzir odnosi u društvu, što nije moguće obuhvatiti širokom skalom dinamike širenja infekcije.

Matematički *SIR* model je prvi sačinjen od strane Kermaka i Mekendrika i odigrao je ključnu ulogu u matematičkoj epidemiologiji. U modelu je posmatrana populacija podeljena na tri grupe: osetljive *S*, inficirane *I*, i oporavljene *R* i te grupe se menjaju tokom vremena tj. funkcije su od *t – S(t), I(t)* i *R(t).* Osetljivi su oni koji nisu inficirani ni imuni, inficirani su oni koji su inficirani i mogu preneti bolest, a oporavljeni su oni koji su inficirani, oporavili su se i konstantno su imuni. Ispitivanjem epidemije enterokolitisa koja se pojavila u Topoli kod Kragujevca 2002. godine, došlo se do zaključka da je srž modelovanja epidemija zaraznih bolesti pronalaženje odnosa između parametara infekcije i da oni služe za proračune o delotvornom programu masovne vakcinacije u cilju sprečavanja ekspanzije epidemija.

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VICTIMS OF DOMESTIC VIOLENCE IN SERBIA

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Abstract: In this paper**,** the results from researches and court practice on domestic violence in Serbia were presented, conducted in the period 1997–2006, by independent researches or non-government agencies for help and support for victims of crime.
The researches have shown that the majority of victims are women (80%), but also that children are present as direct or indirect, secondary victims of domestic violence, which confirms the correlation between violence against children and violence against women. Violence against children is one of the strategies of prolonged violence, that is, control over woman.
Studies of domestic violence in Serbia have identified the following factors of primary victimisation of victims: creation of identity of future victim in primary family, socialisation through learning of gender roles and male-female relations, being caught in gender trap and growing-up in environment burdened with violence that follows the pattern of patriarchal stereotypes on gender relations. The researches have also determined the profile of victims of violence regarding their age, education or employment, that is, economic (in)dependence.
Key words: domestic violence, victims, women, children.

1. Introductory notes

This paper presents the analysis of the results of the several researches carried out in the period from 1997 to 2006, which refer to the characteristics of victims of family violence in Serbia. The work is intended to introduce and present the main features of victimological of domestic violence and violence against women (socio-demographic, psychological, behavioral features of victims and others.), based on the analysis of the results of previous domestic studies.

According to research,[1] victims of domestic violence in Serbia, are, above all, women and children. Accordingly, the analysis of social, psychological and

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behavioral characteristics of victims and personal understanding of their position and role within the framework of domestic violence in Serbia will be based on the fundamental postulates of the feminist theory of domestic violence: the theory of learned helplessness, the theory being caught in gender trap, and the cycle theory.

The theory of learned helplessness, which was formulated Leonora Walker explains on the one hand, why battered women become victims, and on the other side, as they continue to keep the process of victimization trapped, resulting in the "psychological paralysis that prevents them to leave link. For the feeling of helplessness is not important if the possibility of control over events in our own lives really exists or not, it is important belief, expectation, or performed by a man (woman) has on it" (Walker, 1993).

The gender-entrapment theory which was formulated Richie 1996th year, is the basis for understanding and explanation of racial or ethnic affiliation and violence in intimate relation, and their association with crime indirectly conduct female victims. Their identity was destroyed traumatic experience of violence in intimate connection, which is contrary to the non-violent environment in which adults (Nikolic-Ristanović, 2000).

The cycle theory is a complementary theory of learned helplessness and it shows that the cycle of violence takes place in three phases, which alternate turns: stages of creating tension, which is characterized by less violence, abuse emergency, characterized by uncontrolled exercise of brutal violence, and end to violence , which is characterized by "love" and behavior of the abuser fine with requests for forgiveness. During this last phase aims to keep women on so they will convince it that the horror has passed, though, in fact, it just starts (Walker, 1993).

When it comes to theoretical constructs that explain domestic violence, please note that today there is a whole range of alternative explanations in this domain, from different social, psychological and biological perspectives, through the integration to the system, and ecological approaches.[2]

[1] – The research of violence inflicted on women and crimes committed by women in Serbia, carried out in Women's Department of the Pozarevac Correctional Facility by the female activists of the Group for Women's Rights and members of Victimology Society of Serbia with the financial aid of the Fund for Open Society in the period from 1997–1998.

– The research titled "The second is Family: Family Violence – the Violence in the Presence of the Authorities", carried out in the period from 1998 until the end of 2000 by the Group for Women's Human Rights of the European Movement in Serbia in cooperation with the Institute for Criminological and Sociological Research;

– The research of homicide in the family, which was carried out from the forensic-psychiatric and criminological aspect in the period from 1993 until the end of 2002 by the neuropsychiatrists of the Department for psychiatric expertise of Correctional Facility's hospital in Belgrade, professor Ratko Kovacevic, M.D. and Bojana Kecman.

– The research of the current judicial practice in Belgrade and Nis related to the crime of family violence, which was carried out by professor Slobodanka Konstantinovic-Vilic, PhD and professor Nevena Perusic, PhD, with the assistance of the female activists of the Autonomous Women's Center in Belgrade, Women's Research Center from Nis and the associates of the Institute for Criminological and Sociological Research in Belgrade in the period from January 2006 until May 2007, within the project titled "Family Violence – the Obstacle to the Development";

– The research of family violence in the following towns: Kragujevac, Arandjelovac, Topola, Jagodina and Pozarevac, the results of which are presented in: "Family Violence: Research Results", by Gordana Mitic, 2005.

[2] In this connection, in this paper to avoid controversy with the contemporary concepts which postulates that violence against women does not differ qualitatively from violence against men and that preclude misogyny, sexism and male domination as a critical generator of violence against women.

2. Profile of Family Violence Victims in Serbia

The analysis of judicial practice[3] in the field of family violence in Serbia and the results of the researches have suggested, or in other words confirmed, first of all that there is a majority of women (about 80%) among victims, i.e. the persons affected[4] by the crime of family violence. This particularization should only serve as a guide for understanding of victimological dimension of family violence in Serbia.

The residence of female victims in the majority of cases (about 65%) is a town, then a suburb – about 19% and then a country – about 6%. The town as a birthplace prevails at 50% of victims, the country at about 30% and the suburb at about 10%.

The victims belong to various age categories. There are about 12% of minors, about 32% belong to the category ranging from 18 to 40 years of age, about 16% belongs to the category between 41 and 50 years of age, about 22% belongs to the category between 50 and 65, and about 6% of the victims have been registered in the category over 65 years of age.

The majority of victims were married at the time the crime of family violence was committed (about 36%). There were about 13% of the divorced, 19% of widows/widowers, about 5% of persons involved in divorce proceedings and 7% in common-law marriage.

At the time the crime of family violence was committed, the majority of victims had two children – about 36%, about 23% of victims had one child, 20% were childless, and about 10% of victims had three or more children. As for the education, the majority of victims had secondary school education – almost 60%, 25% were with primary school, 11% with higher or university education and 2% were without any school education.

About 35% of victims were employed and about 11% were unemployed; there were 13% housewives, 10% students and about 12% retired persons of both genders. The analysis of court cases shows also that there are no records about the employment for one fifth of the victims, but also that the percentage of the employed persons and those who earn their own income shows that the economic dependence of victims did not have a decisive role in the etiology of family violence.

3. Factors of Victimization by Family Violence in Serbia Life in a Primary Family of Female Victims

The researches of family violence in Serbia have suggested also that the family in which the female respondents grew up, i.e. their primary family, had a key influence on their gender socialization, in other words the creation of their identity

[3] Research the current judicial practice in Belgrade and Nis in relation to the criminal offense of domestic violence, which, in the period from January 2006. year to May 2007. year, conducted by prof. Slobodanka Konstantinović-Vilic and prof. Dr. Nevena Petrusic;

[4] In the analysis of judicial practice the term "victim" was used to determine an affected person – the person whose personal or proprietary right of any kind was violated or endangered (Article 221, paragraph 6 of the Law of Criminal Proceedings).

in childhood was influenced mainly by the gender socialization, while for some female respondents the socialization related to their national or religious belonging was also important.

Regarding the structure of the family within which the female respondents lived in their childhood, the researches classified two groups of women: the women who lived with both parents, i.e. in complete families and the women who temporarily or permanently lived in incomplete or destroyed families, in other words without one or without both parents. The majority of women lived in incomplete or destroyed families for some time, most of their childhood or permanently without one or both parents (Nikolic-Ristanovic, 2000; 2002).

One of the important characteristics of the primary family of the victim-to-be was also violence, i.e. physical punishment of the female respondents during their childhood by either the father or mother or some other family members, whereas the violence was inflicted by both parents almost equally. In the majority of cases this involved battering of children as a manner of disciplining, i.e. physical punishing for disobedience or aberration from traditionally expected female behaviour. At the same time, the female respondents included in these researches did not consider love and physical violence mutually exclusive in their minds, which is however an important factor in early socialization of the future victim of violence (Nikolic-Ristanovic, 2000; Mitic, 2005). In other words, the majority of victims was taught that they deserved battering, i.e. that the problem was in them and not in a batterer (Gelles, 1997). This circumstance, as underlined by Gelles, that violence and love can exist simultaneously in a household, is perhaps the most perfidious aspect of family violence, considering that children grow up learning that it is acceptable to batter the people we love. Justifying the use of violence by the parents formed also the relationship of these women towards violence that they subsequently suffered in their lives and which was characterized by justification, i.e. finding the reasons for violence and self-accusation.

The data obtained in the course of researches of family violence in Serbia show that the violence against women in their childhood increased the threshold of their tolerance to violence later in their lives (in marriage, i.e. in their secondary family), while the violence in male-female relationship they were witnesses of influenced the decrease of the tolerance. At the same time, their acceptance of physical violence as a punishment for the behaviour which is not in accordance with parents' expectations turned out to be an important factor of creation of their attitude towards the limits of tolerance, i.e. the seriousness of violence in their secondary families (Nikolic-Ristanovic, 2000; 2002).

Early acceptance of different evaluation of men and women also influenced the creation of identity of a future victim and the level of self-esteem of the researched female respondents. Also, the presence of an adult female person contrary to the absence of a male person in childhood influenced the socialization of respondents in two ways: they primarily identified with the adult female members of the family and learned that women should remain at home and men should not. The presence of the father in childhood was also an important factor of creating their feeling of

helplessness and dependence, as well as difficulties in relationship with men. Generally speaking, the data from the researches of family violence in Serbia show that the female respondents identified with an adult person who is passive, non-aggressive, indecisive and dependent woman, in other words, with a woman who corresponds to patriarchal standards and stereotypes. Contrary to the model of a mild and yielding female figure, there are two father models, in other words two models of an adult man who are in accordance with the models of man-woman relationships related to violence. One is represented as a very strict person and in accordance with patriarchal stereotypes, and the other as a mild and yielding. Accordingly, the reaction of women to subsequent marriage violence, or in other words to the violence in their secondary families, depended to a large extent on the expected image of a man they created in their primary families. The women who had mild and yielding fathers found it harder to try to come to terms with a rude behaviour of their partners, and inherently nurtured greater hopes in their improvement and showed a higher level of tolerance to violence (Nikolic-Ristanovic, *ibidem*).

Creating the identity of the future victim was also greatly influenced by the expectations of their parents considering marriage, household obligations and going out, contacts and behaviour outside home and success in school. The relationship of the female respondents from the samples of the researches carried out according to these expectations reflects the development of their identity and the level of acquired independence in decision-making, which had great influence on their behaviour in a violent abusive relationship (Miletic-Stepanovic, 2004; Mitic, 2005). The respondents who, according to their own answers in the interview, did not behave in accordance with the expectations in the primary family, or opposed to it, chose on their own, and later left their abusive partners, which points to the fact that they managed to build their identity to some extent.

In the researches of family violence in Serbia, especially in the part referring to the childhood and interrelations in the primary family, the female respondents reported physical punishments by the father or other corresponding family members in almost ¾ cases, which leads to the conclusion that this form of violence is one of the important characteristics of primary families of the respondents. These data suggest deep inveteracy of use of physical force in upbringing of children, which has characterized Serbia from the old time.[5] Violence was almost equally used by both parents. In the majority of cases the battering was a way to discipline children, i.e. to physically punish them for disobedience or failure to follow the expected model of female conduct.[6] In this way, it may be concluded, their gender socialization was also sanctioned (Nikolic-Ristanovic, 2000). Some examples of physical punishment by parents were described by the respondents during the research:

[5] The confirmation of this fact is also found in the research of the family in Yugoslav villages, carried out by Erlich in 1964, which showed that battering as a means of disciplining the children in comparison with other parts of (former) Yugoslavia was mostly expressed in Serbia (Erlich, 1964: 52).

[6] Almost identical results were obtained by Browne in the research of women who killed their violent partners (Browne, 1987: 23).

"Once I returned home late and the next day was my birthday and she (the mother, note by D. S.) stripped me naked and battered me until there were bruises all over me, she was not right and that was why I ran away from home."

"They used to batter me much more than I deserved and once my mother battered me because I entered the room where she had a quarrel with her lover... I saw that he hit her... She was furious with me and she battered me. She used to batter me because of the romance novels I read. She used to batter me a lot and then I would have an epileptic seizure. She was not always right when she battered me... And my uncle often battered me with his belt (he also battered his own children)..." (Nikolic-Ristanovic, 2000: 44).

The discrimination among children in the primary family, which the female respondents also mentioned as a reason for physical punishment, did not mutually exclude love and violence in their minds, which was also an important factor in the early socialization of the future victim of violence.

"I also got beaten a lot of times by my father. He beat only me, not my brother or my sister. He did that because I was the eldest and I defended our mother. My brother and my sister were afraid of him and they never opposed to him when he abused our mother..." (Nikolic-Ristanovic, ibidem).

In some cases the female respondents reported that in their childhood the fathers who did not have sons discriminated between daughters giving the favoured position to the youngest daughter, who would be awarded a role of a son.

Favouring of the son over a daughter had also an important role in creation of the identity of the future victim of family, which was the most prominent in the relationship of the mother towards the children. This can be explained by the fact that the mother was much more often in a situation to deal with the complete early socialization of children, which gave her more opportunities to make more differences in requirements than the father.[7] One of the respondents told the following:

"Mother loved my brother the most since he was a boy. She adored him. She stood at his side more often that to the side of her daughters when they made a mistake. I think that she did it because he was a male; she knew that he would stay with her in the end. We, her daughters, left home afterwards, and he stayed there." (Nikolic-Ristanovic, ibidem).[8]

The traditional and early acceptance of different evaluation of male and female children influenced the shaping of identity and level of self-esteem of the female respondents in their later life, particularly the manner in which they responded to violence in their secondary family. From the point of view of influence of early socialization on the subsequent perception of violence by the female respondents in these researches, there is an important fact that the majority thought that the parents were right to punish them physically (Miletic-Stepanovic, 2004; Mitic, 2005). These data confirm the results of earlier researches in the world, which show that the women

[7] According to Johnson, all points to the fact that the mother and the father agree to some degree regarding the mutual cultural values based on which they determine the desirable characteristics of men and women and that mothers, as the first and the main agents of socialization make efforts to achieve these values. (Johnson, M. 1986, "Očevi, majke i usvajanje uloge vezane za pol", cited according to: Nikolic-Ristanovic, 2000: 46).

[8] The favouring of male children in Serbian families was also confirmed by Erlich, V. (1964: 69, 89–90).

accept violence they were exposed to in their childhood as a legitimate manner of disciplining (Browne, 1987: 23). Such an attitude towards physical punishment by the parents shaped also their relationship towards violence they suffered in secondary families, and which was characterized by justification, in other words finding the reasons for violence and self-accusation. At the same time, their acceptance of physical violence as a punishment for behaviour which did not correspond to the requirements and expectations of the parents was an important factor of creation of their attitude regarding the limits of tolerance, or the seriousness of violence in their secondary families. This attitude is confirmed by the results of some psychological researches, according to which the personality traits are mostly acquired when a child actively imitates the attitudes and behaviour of the parents (in this case the use of physical force), although the parents did not have any intentions to teach him/her that (Bandura, 1986; cited according to: Nikolic-Ristanovic, 2000: 49).

Some female respondents from the researches reported also that they were abused by the parents in ways other than physical in their primary families. They also reported the following forms of abuse: constant yelling and difficult financial situation caused by excessive spending of money on drink by either father or mother, discriminating between them and other children or insulting on nationality basis, if the parents were of different nationalities.

4. Learning the Model of Man-Woman Relationship and Sex/Gender Roles

The important factor of socialization by learning the gender roles, according to the results of the researches of certain factors of victimization on the position and role of the victim, is in any case the identification with a parent or other member of the family of the same sex and learning the model of male and female roles through observing their behaviour and mutual relationship (Nikolic-Ristanovic, 2000; 2002; Miletic-Stepanovic, 2004; Mitic, 2005).

Women from the research samples spent the majority of their childhood time with their mothers or with another adult member of the family who was replacing the mother. The majority of respondents (about 60%) spend the majority of time in their primary families with an adult female member of the family while the dominating figure in their childhood was mother or grandmother. The father was mainly physically absent from the family life, and even when he was present at home he did not deal with children. The presence of the adult female person as opposed to the absence of the man influenced the socialization of the respondents in the following manners:

- They primarily identified with their mothers and grandmothers;
- They learned that the woman's place is at home (in a private sphere), and the man's place is outside home (in a public sphere) (Nikolic-Ristanovic, 2000: 50).

The absence of the father can be an important factor of creation of the feeling of helplessness, dependence and difficulties in relationship with men, which was

pointed out by the results of the worldwide researches dealing with the influence of the father's absence on female children (Johnson, 1988; cited according to: Nikolic-Ristanovic, 2000: 50).

The female respondents in general evaluated the position of female and male family members taking into account that the role of a victim of violence is reserved for a woman, as well as being tied to the home and responsibilities in it, as opposed to man's freedom and obligations outside home. They accepted man's superior, or woman's inferior position within the family and the differences in economic independence. Related to this, the majority of female respondents (about 70%) considered that their life would have been better if they had been born as men.

"I think that my life would have been different if I had been a man, at least nobody would beat me."

"My life would have been better if I had been a man, because I could defend myself from violence and I would have been free."

"Of course I think that life is much easier to men than to women. If nothing else, they are at least stronger and not everyone can beat and abuse them."[9]

The examples quoted above lead to the conclusion that women mostly consider that they would have avoided being victims of violence, that they would not have been stigmatized when they divorced and that they would have managed to get economic independence if they had been born as men. In other words, they did not manage to avoid the model of gender roles and man-woman relationship characteristic for their primary families in their secondary families – or the gender trap, as Richie would say (Richie, 1996, cited according to: Nikolic-Ristanovic, 2000: 57). Their secondary families are a repeated model of the family in which they were growing up and, which is of particular importance, where they adopted that model as "natural" and inevitable model of man-woman relationship. Many of them see their identifying with submissive and yielding mothers as an important factor of staying married to an abusive husband, which in any case is a primary element of creation of their identity of a victim.

5. Violence in Primary Family of Female Victims

The researches of family violence in Serbia which, among other things, were aimed at gathering as many information and data as possible about the forms of violence which the female respondents either directly or indirectly suffered and endured in their primary families, i.e. in their childhood, until they started their secondary families or stable emotional relationships; these researches were indirectly aimed to gather the additional information on the extension of family violence, but also to synthesize the knowledge of long-term consequences the family violence has on children, both the witnesses and victims of it. The efforts of the

[9] The answers of the female respondents from the researches of violence over women and women's crime rate, conducted in women's department of Correction Facility in Pozarevac, 1997–1998. Research results published in: Nikolic-Ristanovic, V. (2000) From victims to prisoners – domestic violence and women's crime, Belgrade: Victimology Society in Serbia, Institute for Criminological and Sociological Research.

researchers were also directed to examine the assumptions about inter-generational transmission of violence and on the influence of early socialization by learning the role of a victim on the later exposure of women to family violence.

The data obtained by the researches suggested the considerable share of women who witnessed violence father inflicted on the mother in childhood (1/5 of the female respondents), but also even larger share of women who were direct victims of physical violence in childhood (over 26%). This fact suggests that the violence against women and children in the family is not a modern phenomenon, but the manifestation which has its own (pre)history in patriarchal stereotypes and family standards that have been nurtured for centuries.

The analysis of these data leads to the conclusion that during the last 15 to 20 years there has been an increase of violence in Serbian families, which is substantiated by the fact that the present rate of family violence in our country is above the average rate of family violence in contemporary European countries, or the neighbouring countries in the West Balkans. This thesis is also substantiated by the data from the researches of family violence in Macedonia, according to which about 7% respondents less than in our country were victims of physical violence (in Croatia, Bosnia and Herzegovina or Albania, however, this number is higher than in Serbia and it is up to 1/3 of respondents).[10]

The data from the researches of violence against mothers of the female respondents and against themselves when they were children suggest the existence of the important relationship between violence in childhood and subsequent violence they experience in family. Almost 40% of female respondents, victims of physical violence, as opposed to 16% of women who were not victims, answered that their fathers abused their mothers. Also, about 41% of victims, as opposed to about 20% of women who answered that they are not the victims of physical violence, were direct victims of physical violence in childhood (Nikolic-Ristanovic, 2002; Miletic-Stepanovic, 2004; Mitic, 2005).

6. Children as Victims of Family Violence

Due to the high degree of vulnerability, children become victims of various forms of abuse in great percentage. The abuse in the widest sense can be classified as: physical abuse, sexual abuse, psychological (emotional) abuse and neglecting. Related to the place where the abuse is happening, child abuse can be roughly classified to the abuse happening inside the family (some researches show that the percentage of abuse within the family makes 70 to 90% of all registered cases) and outside the family (in institutions, at work, in the street, in war zones), (Pejovic-Milovancevic, 2001: 177).

[10] The data have been taken from the researches of family violence in the West Balkans countries, conducted by the non-government organizations in the countries of the West Balkans in the period from 2003 to 2005. The research results were interpreted in: Nikolic-Ristanovic, V. and Dokmanovic, M. (2006) Medjunarodni standardi o nasilju u porodici i njihova primena na Zapadnom Balkanu, Beograd: IGP "Prometej".

According to Keiser (Konstantinovic-Vilic, et al. 2003), the victims of abuse inside the family become: an unwanted child; a child born out of incestuous relationship; a child born against the will of the "aging" mother; a child born as a "result of rape"; a child with either physical or psychical defects, who is considered a "personal burden" by the parents; a child born following the divorce of marriage, when new families have been established; an illegitimate child.

The results of some researches (Pejovic-Milovancevic, 2001) also show the following: the incidence of physical abuse is about 5.7 in a thousand children and it is rising. The incidence of physical neglect is considerably higher when compared to physical abuse, as is the case with both emotional neglecting and abuse.

The studies of family violence particularly point out that children are always victims when there is violence in the family. They are always victimized, regardless of whether violence is aimed at them or it happens between the parents, or among other family members (Mullender, 1996; Mrsevic, 1995; Banjanin-Djuricic, 1998). Also, when the mother is victimized by the father, it has direct implications on the mother's efficiency as a parent, since the majority of them takes care of children the most. The role of an abused woman as a parent is radically decreased due to her being victimized, and in extreme cases the children may be neglected and abused by their mothers (Jaffe, P. et. al., 1997).

In any case, the children witnessing family violence are secondary victims, by-products of violence against women (Stark, 1999–2000, cited according to: Lukic, Jovanovic, 2001). The correlation of violence against children and violence against women in the family has been confirmed by many researches. Very often violence against children is one of the strategies of extended violence, in other words of control of a woman. The so-called dynamics of "double victim" is often related to this strategy, which includes an abused woman whose children are victims of violence by her violent partner (Stark, 2000: 10). Namely, the first stage of abuse is represented by coercive control, which includes all mechanisms of physical and sexual abuse. As the consequence of this, a dilemma of an abused woman arises in the second stage, the woman who is forced to choose between her safety and the safety of her children. As Stark says, in the majority of cases the abused woman decided to either hurt a child or allows her child to be hurt, her perception is that the alternative attempts are equally or even more dangerous for both her and her children. In a situation in which the choice of responses is drastically limited, she makes attempts to be rational and chooses the best (often the minimum violence) for her or her children. Eventually, in the third stage, an abuser uses physical force on children, as an extended tactics of coercive control of his partner (*Ibidem*).

The researches of family violence in Serbia have shown that children can be direct victims of various forms of violent behaviour by the parents, which certainly leaves many and permanent consequences on both psychical and physical health of the child, but they can be victimized by frequent physical and verbal confrontations between the parents. Violence against children within the family relations in Serbia is in correlation with violence against women, because in cases where women are

abused their children become victims of the abuser, both when they are silent witnesses to the abuse and when they try to help their mothers (Mihic, 2002).

Almost all female respondents in the researches reported that they were far more involved in upbringing, care and nurturing of children than the fathers. At the same time, all respondents said that their partners often blamed them for being bad mothers in front of the children, that they wanted to "break the family", as well as for causing unnecessary conflicts, psychic derangement, cheating. The fact that the female respondents – direct victims – were at the same time mothers was used in conflicts as a mechanism of blackmail and control. Functional connotation of motherhood as natural and the most important role in a society takes special place within the context of family violence. Both in Serbian families and in social relations there has been a widespread opinion that mothers who abuse their children, even in violent situations, are bad mothers, and that those sacrificing in favour of survival of family or children are good mothers (Schneider, (2000: 120). This is particularly important when they have to make decision to leave the abuser and seek help for both themselves and children. The prejudice that women who together with their children left their violent partner would be safe and protected from further violence is one of the most dangerous prejudices. The studies show that not only these women and their children are exposed to the greatest risk of violence when they are leaving the abusive relationship, but the abusers often use children to continue the violence over their spouse/partner. Particularly characteristic are the situations in which abusers have the right to visit the children who were given to the custody of the mother.[11] The researches also show that violent partners twice more often seek exclusive custody over children than non-violent partners and that they often refuse to pay child support in order to continue their economic violence and thus keep mothers dependent (Zorza, 1999: 30). Generally speaking, according to some estimates, about 87% children in the world are witnesses to scenes of domestic violence (Davison, 1994: 57).

The data obtained by the researches in Serbia suggest the high degree of direct and indirect victimization of children in cases of violence against their mothers. Out of the total number of cases where the respondents were victims of family violence, the children were present to the last case of violence in more than a third (about 38%). Children themselves were victims of violence in almost half the cases of the last case of violence they witnessed to (about 44%).

The children were present during the violence inflicted by the respondents' partners, or their fathers (in about 85% cases), which is in accordance with the framework of an abuser on the whole. Although very rarely, however, the children were present also when other family members inflicted violence on the female respondents, particularly the father, father-in-law, son and daughter. In the majority of cases it was a combination of physical and psychical violence (about 60%), and rarely just physical violence (about 25%). It is however important to point out that

[11] NOW – Legal Defence and Education Fund: "Domestic Violence and Child Custody" in Legal Resource Kit, New York, 2000, p. 3. 75% of violent fathers threaten mother through children, during visits, adn even 25% threaten to hurt children during visits.

children were present even in cases where physical and psychical violence was accompanied by sexual violence (about 15%). The abuser was under the influence of alcohol in about half the cases where the children witnessed the violence (about 51%). In about 14% cases the abuser had a knife, a gun or some other weapon, and in about 67% cases women were physically injured.

Some of the reports by the female respondent which were obtained during the researches say much about how children behaved in situations of violence over the mother:

"They (the children, note by D. S.) would wake up and cry, pour things. Then he would start battering them. They had to cover over the head and be silent. I always tried to calm them somehow and told them to let go and be silent when he battered me. They suffered much together with me. They spent many nights in the basements of other people. They were afraid of him even when they got married."

On the other hand, the awareness that the children are witnesses to violence represents an additional suffering for a woman, because, as a rule, she finds the suffering of her children much harder than her own. This is why women do not think that battering related to most serious violence is not the most difficult, but the most difficult violence for them is the violence inflicted on their children:

"I cannot tell you which battering was the worst: they were all horrible, because he used to beat me until collapse. Until I fall down. But it was the most horrible when he used to batter me in front of the children. I scream, the children scream and cry."

Considering direct violence, primarily of the father against the children, two models of behaviour surfaced during the researches. The first one and domineering, is the model of violent relationship towards children, and the other one and rare is non-violent.

Violence against the children ranged from a smack on the face to the most brutal abuse:

"He abused the youngest daughter the most. He hoped that she would also be a son and he could not stand her. He threatened to sell her. He used to grab her by her hair and drag her on the floor. Once he chased our eldest daughter with an axe threatening to chop her to pieces. The child runs, shouts, calls for help, and I just stand mesmerized – I did not dare help her."

"He once threw the elder daughter over the terrace. I was then pregnant with our younger daughter and I do not know how I managed to stay alive then because of the battering and the stress when he threw my child over the terrace." (Nikolic-Ristanovic, 2000: 92). As for the physical violence of the female respondents against their children, two models also can be noted, but in this case, as opposed to the use of physical violence by their husbands, the non-violent model prevails (in over 50% cases). According to what the respondents said, it was usually some light battering as a form of physical punishment of children because of their disobedience. In some cases, however, more serious form of children victimization would appear as a consequence of mental instability of the respondents because of difficult economic situation, frequent conflicts with the husband or persistent effort, for instance, to

raise a daughter according to the traditional patriarchal model. In that way, they were the ones pushing them into so-called gender trap (Richie, 1996).

7. Conclusion

The extent of family violence in everyday life of both urban and rural families in Serbia proves that it can be considered an internal pattern of family behaviour.

The results of the researches of family violence in Serbia have shown that the majority of victims are women (about 80%), but also that children were present as either direct or indirect victims of domestic violence. In every situation when they are witnesses to violence in the family the children are secondary victims, or in other words the by-products of violence against a woman, which confirms the correlation of violence against the children and violence against the women in the family.

The researches of domestic violence in Serbia as both criminological and socio-pathological phenomenon, identified the following factors of primary victimization of victims: creation of the identity of the future victim through life in the primary family, socialization by learning sex/gender roles and man-woman relationship, being caught in gender trap and growing up in the circumstances full of violence according to the pattern of patriarchal family stereotypes considering the relationship between genders.

According to this, it can be assumed that the rate of reporting domestic violence to the police in Serbia is considerably below the rate of reporting other crimes – about 17% in comparison to 33%, which was recorded by the international victimization survey, carried out in Belgrade in 1996 (Nikolic-Ristanovic, 1998). It is also below the rate of reporting domestic violence in neighbouring Macedonia (about 21%) (Caceva, et. al., 2000). The number of cases which resulted in court proceedings is even smaller. The reasons of not reporting to the police suggest, on the one hand, the powerful influence of patriarchal stereotypes that the domestic violence is not a "sufficient crime" to seek help of the state institution and that it is a woman's guilt and shame. On the other hand, the reason for not reporting it is also distrust in the willingness of the police to intervene and the doubt in the quality of that intervention.

The presented facts speak in favour of the need for the institutions of social control as well as informal social subjects to take every measures and activities in order to define and adopt mechanisms of equality of genders, but also to set guidelines of national strategy to fight against violence against women. At the level of local community, it is necessary to coordinate protocols of inter-sector cooperation of services and institutions that are legally dealing with prevention and suppression of domestic violence. The victims should be provided all legal, psychological and social help and support, overcoming bureaucratic dimensions of social reaction.

"Safe houses", shelters for victims and services offering help to victims are just a foundation, the beginning of the fight against violence and complex program of protection of victims, but also a modest contribution to the prevention of psycho-social disorders, in other words minor or major consequences of experienced episodes of violence.

The analysis of research results showed that women as victims have observed well the very essence of the problem of domestic violence, and they have suggested the following solutions and manners to overcome the problem of violence:

- To solve difficult material and housing situation and introduce measures for economic independence of women;
- To raise children, educate and inform them "since early childhood" about the problems of domestic violence;
- To raise consciousness of women to break the "wall of silence, shame and disgrace";
- To develop better marketing related to the work of non-government organizations, spreading more information by means of public media about the institutions where the victims can seek help;
- The abusers should be punished more strictly;
- The abusers should be treated medically;
- Special groups of police officers should be established in order to monitor certain parts of town/village that would also be familiar with the cases of domestic violence, particularly in cases when there was a restraining order pronounced considering movement and approach to the victim (Nikolic-Ristanovic, 2000; 2002).

In addition to legal ones, there should be a number of social actions in order to lower the risk the abused women are exposed to, then to make them stronger, to inform and educate them properly. It is particularly important accordingly to provide the shelters for victims continuously (both women and children), to organize support groups and information campaigns, as well as gender sensitive treatment of victims of violence, when they find themselves in prison for having committed a crime (Walker, 1979).

According to Peking Declaration[12] the first subjects called to intervene in cases of violence against women are the governments, who are expected to undertake integral measures of prevention and elimination of violence against women. There is a particularly highlighted need to make legal and stronger the existing penal, civil, working and administrative sanctions in domestic legislation in order to punish those inflicting violence and indemnify the victims. There is also a pronounced need to adopt the international standards of human rights and documents referring to women's human rights and full application of Convention on elimination of all forms of discrimination against women.

8. References

Banjanjin-Đuričić, N. (1998). Udarac po duši. Beograd: Institut za kriminološka i sociološka istraživanja, Jugoslovenski centar za prava deteta.

Browne, A. (1987). When battered women kill, New York and London: The Free Press and Collier Macmillan Publishers.

[12] Peking Declaration was adopted as a final document of IV World Conference on women, held in Peking from 4th to 15th September, 1995.

Calderon, J. A. R. (1990). Victimology. International Criminal Police Review, 432.
Casey, M. (1987). Domestic violence against women. Social and Organisational Psychology Research Unit UCD. Dublin.
Čačeva, V., Čoneva, Lj. (2000). Semejno nasilstvo. Skopje: Ese.
Davison, H. (1994). Impact of Domestic Violence on Children. On Children and the Law. New York.
Dobach, E., Dobach, R., Cavanagh, K. Lewis, R. (2000) Changing Violent Men. London: Sage Publications Ltd.
Engelhard, M. (1990). Viktimizacija i spremnost na prijavu. Der Kriminalist, br. 10. Heidelberg.
Erlich, V. (1964). Porodica u transformaciji. Zagreb: Naprijed.
Finkelhor, D. (2000). The victimization of children: Recommendations for assessment and instrument development, Journal of the American Academy of Child and Adolescent Psychiatry, 39(7), str. 829–840.
Finkelhor, D., Gelles, R., Hotaling, G., Straus, M. (1983) The Dark Side of Families, London: Sage Publications Ltd.
Gelles, R. (1997). Intimate violence in Families. London: Sage.
Gelles, R. (1994). Introduction: Special issue on Family Violence, Journal of Comparative Family Studies, (1) 1–6.
Heise, L. et al. (1999). Ending violence against women, Population Reports, Baltimore: Johns Hopkins University School of Public Health, Population Information program Series L, No 11.
Herman, J. L. (1996). Trauma i oporavak. Zagreb: Centar za žene žrtve rata.
Konstantinović-Vilić, S., Nikolić-Ristanović, V. (2003). Kriminologija. Niš: Centar za publikacije Pravnog fakulteta.
Lukić, M., Jovanović, S. (2001). Drugo je porodica: nasilje u porodici – nasilje u prisustvu vlasti. Beograd: Institut za kriminološka i sociološka istraživanja.
Matijašević, D. i sar. (2003). Nasilje nad ženama i posledice po zdravlje – za radnike primarne zdravstvene zaštite i urgentne medicine. Beograd: Institut za mentalno zdravlje.
Miletić-Stepanović, V. (2004). Nasilje u porodici: način proizvodnje nasilja nad ženama u Srbiji krajem devedesetih. Beograd: Odeljenje za sociologiju Filozofskog fakulteta (magistarska teza).
Mitić, G. (2005). Nasilje u porodici: rezultati istraživanja. Kragujevac: Centar za edukaciju, komunikaciju i istraživanje Alternativni krug.
Mihić, B. (2002). Porodično nasilje nad decom, Temida, 3/02.
Mrvić, N. (1993). Žene-ubice – žrtve dugogodišnjeg porodičnog nasilja. Zbornik Instituta za kriminološka i sociološka istraživanja, broj 1. Beograd.
Mršević, Z. (1998). Ženska prava u međunarodnom pravu. Beograd: Jugoslovenski komitet za ljudska prava.
Mullender, A. (1996). Rethinking Domestic Violence. London: Routledge.
Nikolić-Ristanović, V. (1989). Žene kao žrtve kriminaliteta. Beograd: Naučna knjiga.
Nikolić-Ristanović, V. (1998). Victims and Police in Belgrade. International Review of Victimology, 1.

Nikolić-Ristanović, V. (2000). Od žrtve do zatvorenice – nasilje u porodici i kriminalitet žena, Beograd: Viktimološko društvo Srbije, Institut za kriminološka i sociološka istraživanja.
Nikolić-Ristanović, V. (2002). Porodično nasilje u Srbiji. Beograd: Viktimološko društvo Srbije, Prometej.
Nikolić-Ristanović, V., Dokmanović, M. (2006). Međunarodni standardi o nasilju u porodici i njihova primena na Zapadnom Balkanu. Beograd: IGP Prometej.
Pejović-Milovančević, M. i dr. (2002). Model zaštite dece od zlostavljanja i zanemarivanja. Psihijatrija danas, 1–2.
Smeenk, W., Malsch, M. (2005). Family Violence and Police Response – Learning From Research, Policy and Practice in European Countries. Burlington: Ashgate Publishing Company.
Stark, E. (2000). Faliure to Protect: Unrevealing The Battered Mother`s Dilemma. Western State Law Review, No. 29.
Schneider, E. (2000). Battered Women and Feminist Making, New Haven.
Thyfault, R. (1984). Self-defence: battered women syndrom on trial. California Western Law Review, 20.
Walker, L. (1993) The Battered Women Syndrom, u: R. J. Gelles and D. R. Loseke (eds), Current Controversies on Family Violence, London: Sage.
Weiss, B. et al. (1992). Cognitions, depressive symptoms and development in adolescents. Journal of Abnormal Psychology, 102.
Žegarac, N., Brkić, M. (1998). Nasilje u porodici – mogućnost zaštite i prevencija, u: Nasilje nad decom. Beograd: Fakultet političkih nauka.
Zorza, J. (1999). Protecting the Children in Custody: Disputes when One Parent Abuses the Other. Clearinghouse Review, No. 3.

ŽRTVE PORODIČNOG NASILJA U SRBIJI

Rezime

U radu su predstavljeni rezultati istraživanja porodičnog nasilja sprovedenih u periodu od 1997. do 2006. godine, od strane nezavisnih istraživača ili nevladinih organizacija koje se bave pružanjem pomoći i podrške žrtvama kriminaliteta.
Istraživanja su pokazala da najveći deo žrtava čine žene (oko 80%), ali da su i deca direktne ili indirektne, sekundarne žrtve porodičnog nasilja, čime je potvrđena korelacija između nasilja nad decom i nasilja nad ženama. Nasilje nad decom predstavlja jednu od strategija produženog nasilja, kao oblika kontrole nad ženom.
Studije porodičnog nasilja u Srbiji identifikovale su sledeće faktore primarne viktimizacije žrtava: kreiranje identiteta buduće žrtve u primarnoj porodici, socijalizaciju učenjem tradicionalnih muško-ženskih uloga i relacija, tzv. „uhvaćenost u zamku roda" i život u okruženju opterećenom nasiljem. Istraživanja su, takođe, odredila profil žrtava nasilja u vezi sa njihovim uzrastom, obrazovanjem ili zaposlenjem, to jest, ekonomskom (ne)zavisnošću.

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PRACTICAL TRAINING OF STUDENTS WITHIN THE SYSTEM OF TERTIARY POLICE EDUCATION IN THE REPUBLIC OF SERBIA

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Abstract: The main institution of law enforcement officers' education in the Republic of Serbia is the Academy of Criminalistic and Police Studies. The Academy of Criminalistic and Police Studies is a higher education institution established by the Decision of the Government of the Republic of Serbia and based on the Law on Higher Education. The Academy has created the study curricula for the requirements of the higher police education. Pursuant to the educational processes, the Academy has made and defined their own concept of practical training for the requirements of the Serbian police which have been approved by the Ministry of the Interior of the Republic of Serbia.

There is a *Directorate for Education, Training, Professional Development and Science* established within the Ministry of the Interior of the Republic of Serbia. This organizational unit of the Ministry performs all work related to professional training (both training and further education) of the personnel required by the police, as well as other work of interest in order to create the most suitable educational structure of the Ministry of the Interior of the Republic of Serbia. The Directorate includes *the Basic Police Training Center* and *the Center for Specialized Training and Professional Development of the Police*. In addition to this, the Directorate manages the cooperation between the Ministry of the Interior of the Republic of Serbia and the Academy of Criminalistic and Police Studies in Belgrade.

Key words: professional education, training, further education, education, police officers.

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1. Introduction

While the training for police work is mainly delegated to the Directorate for education, training, professional development and science, the higher education for police requirements is carried out at the Academy of Criminalistic and Police studies. This is an institution of higher education and a separate legal entity in legal transactions.

The Directorate for education, training, professional development and science performs the professional training and development,[4] science and research, as well as other activities within the scope of educational work of interest of the law enforcement. The Directorate includes the Basic Police Training Center (COPO)[5] and the Center for Specialized Training and Professional Development of the police (CSOUP). In addition to this, the Directorate for education, training, professional development and science is responsible for the cooperation between the Ministry of the Interior of the Republic of Serbia and the Academy of Criminalistic and Police Studies in Belgrade.

Higher education for the police requirements is carried out at the Academy of Criminalistic and Police Studies which has been founded by the Decision of the Government of Serbia [13], and pursuant to the Law on Higher Education [8]. The Academy of Criminalistic and Police Studies has been founded in order to carry out the studies for the requirements of the police education. This institution of higher education is actually a legal successor of two former schools – Police College[6] and Police Academy[7] from Belgrade [13]. In terms of organization, the Academy of Criminalistic and Police Studies is a part of the educational system of the Republic of Serbia, in other words the Ministry of Education, considering that the founder is the Republic of Serbia and that the corresponding Ministry is in charge of

[4] The beginnings of education for the requirements of police service in the Republic of Serbia date back to 1880, 1883 and 1884. The first gendarmerie school was established in Dorcol in 1899, but it was closed only a year later. After that, on May 19 (according to the Old Calender), or on June 01, 1909, the permanent gendarmerie school was established with the three-month courses at the beginning and then four-month courses. The first two-month course for night watchmen was open three years later, at the beginning of 1912 (Bogdanovic, 2002). For the educational purposes, at the beginning of 1920, Gendarmerie school for non-commissioned officers was established in Sremska kamenica. At the same time, the courses for preparing gendarmes and patrol leaders were organized in gendarmerie stations and schools, the courses for officers on preparation in gendarmerie, as well as specialist courses (for telephone operators, drivers, skiers, Bogdanovic, 2002). The first police school in Serbia was founded on February 08, 1921. Dr Rodolph Archibald Reiss was appointed its first director. Since then until today the training and education of police personnel makes a united whole of theoretical and practical preparations of people for police service in the Republic of Serbia (Bogdanovic, 2002).

[5] By 2009, when the last generation of the students completed their education in Police High School in Sremska kamenica, enrolled according to the old curriculum, there was also a Center for Basic Police Training. The Center was in charge of training both men and women who have completed four-year high school for basic police work. The goal of the basic police training is to provide for high-quality vocational development of a general uniformed police officer, which would meet the requirements of the Ministry of the Interior of the Republic of Serbia for qualified personnel in the field of the stated police jobs, but of the society as a whole as well, in accordance with the Police Law (http://www.copo.edu.rs/novi_vid_obuke.html).

[6] During 1972, the Act on Police College was passed and it started its work in Zemun in 1972/1973. The studies lasted four semesters, and since 1977 they lasted five semesters. After completion of studies, the students acquired the title of undergraduate lawyer (http://www.kpa.edu.rs).

[7] During 1993, by the Act on Police Academy, the first institution of higher police education and the first of its kind in our country at the time was founded. The basic studies lasted eight semesters. After completion of studies, the students acquired the title of graduate police officer.

education, while it has outstanding functional relationship with the Ministry of the Interior and the Ministry of Science.

A considerable part of the curricula of the Academy of Criminalistic and Police Studies from Belgrade is dedicated to the so-called special forms of teaching. This is a part of the curricula which, complete with certain vocational and narrowly-specialized courses at the Academy, is oriented at the adoption of skills that represent the necessary contents of the working profile of a law-enforcement officer. These skills actually represent the most applicable part of the knowledge of the future police officers who receive their education at the Academy of Criminalistic and Police Studies.

Special forms of teaching represent unique contents within the Academy curricula, since they are one-of-a-kind expression of its essence, but they are also a specific feature of the academies as a type of higher education institutions in Serbia. In other words, while the Faculties represent the institutions of higher education which include primarily scientific aspects of theoretical-cognitive disciplines, the curricula at the Academies include a considerable part of skills. Such applicable knowledge of crime-investigators educated at the Academy of Criminalistic and Police Studies represent a part of the educational profile which is mostly harmonized with the working profile of a police officer within the Ministry of the Interior of the Republic of Serbia.

Skills are adopted at the Academy through lectures, exercises and special forms of teaching. Special forms of teaching make the part of the curricula at both the academic and specialist studies at the Academy. The most important special forms of teaching are carried out in cooperation with the Directorate for education, training, professional development and science which is a part of the Ministry of the Interior of the Republic of Serbia. As far as the student practical training is concerned, the Academy has established a particularly important cooperation with the Basic Police Training Center and the Center for Specialized Training and Professional Development of the police, as basic organizational units of the mentioned Directorate (Milošević & Subošić, 2010).

2. Practical Training of Students of Basic Undergraduate Vocational Studies of Crime-Investigation

The purpose of the curriculum at the Basic undergraduate vocational studies of crime-investigation is to acquire the title of *crime-investigation (law-enforcement) expert*. This qualification enables a student to get a job as a police officer within the Ministry of the Interior, but also to find a job in other bodies and institutions of the state administration, or in the private security sector. Among other things, the goals of this curriculum refer to the adoption of skills necessary for the police job which require crime-investigating knowledge.

A part of the curriculum contents of the Basic undergraduate vocational studies of crime-investigation refer primarily to the adoption of skills which distinctly show the connection between the educational profile of a crime-

investigation expert and a police officer. These curriculum contents are called special forms of teaching, although there are also the exercises of vocational and narrowly-specialized subjects which are also dedicated to the adoption of skills. Special forms of teaching, as professionally-applicative contents, are intended for the students of Basic undergraduate vocational studies of crime-investigation and they make part of all three years, i.e. all six semesters of the studies.

During the first semester there is Informative professional practical training, which includes 15 classes, which is allotted 2 (two) ECTS points. The goal of the practical training is to acquire the necessary knowledge on the organization of police units and their line of work. Pursuant to the goals, the outcome and the contents of this practical training are also derived.

During the second semester, the student training intensifies considerably. Namely, during the second semester the students have courses such as Police equipment (which includes 30 exercises as well), and Special Physical Education I (SPE I – includes 45 exercises). In direct connection with the subject Police equipment there is also a Vocational field practice in summer conditions carried out, while Special Physical Education I includes Practical training in handling a service handgun – basic level and Swimming course. The Professional field practice in summer conditions includes 15 classes and Practical training in handling a service handgun – the basic level and Swimming include 30 classes [15].These special forms of teaching and the courses in the function of which they are carried out are allotted 14 ECTS points, which clearly suggests their importance within the curriculum of basic undergraduate vocational studies at the Academy.

All the mentioned contents of special forms of teaching provided for by the Academy curriculum of for the I-year students of basic undergraduate vocational studies are united in so-called Basic police training. The stated contents are carried out for all I-year students of basic studies at the Academy, which means that this form of practical training is attended by the students of basic undergraduate academic studies as well. The goal of this basic training is that the students acquire competence to use basic police powers and to perform basic police works.

The basic police training lasts 5 (five) working days, or the total of 30 classes. The Activities planning report provides for the complete training program to be carried out during May in the premises of the Academy of Criminalistic and Police Studies. In addition to this, the Activities planning report states the goals and tasks, planned contents, security measures, organizational and methodological assumptions required for the successful preparation and accomplishment of the basic training, as well as the rights and obligations of the students, teachers, instructors, mentors and other participants in practical training. The stated contents are organized and realized in cooperation with the Ministry of the Interior of the Republic of Serbia, within which this falls within the scope of activities of the Directorate for education, training, professional development and science [3].

During the third semester of basic undergraduate vocational studies at the Academy the specialization intensifies in that the students elect their major courses. Namely, at this stage of their studies the students have an opportunity to choose

between one of the two major groups, either Crime-investigation and forensics group or Police Tasks and Security group. During this semester, the students who have chosen the former group attend the Professional crime-investigation and forensic practical training I and the students who have chosen the latter group attend the General professional practical training. Both practical training courses are included by the Elective practical training I and have been accredited as 15 classes and are allotted 2 (two) ECTS points.

The goal of the Professional crime-investigation and forensic practical training I is to acquire practical knowledge required for the work in criminal police departments on cases of crime scene investigation. The expected outcome of this practical training is to make a student qualified for crime scene investigation. The contents of this practical training and the methods of their implementation have been structured accordingly.

General vocational practical training is aimed at acquiring practical knowledge required for performing police work, and it is directly related to acquiring contents of professional disciplines (for instance, Crime-investigation tactics) which are studied in the course of the third semester of the basic undergraduate vocational studies at the Academy. The expected outcome of this practical training is to develop skills required for the performance of police work. Symmetrically, the contents and the methods of General vocational practical training have been structured accordingly.

The fourth semester intensifies the contents of the Basic undergraduate vocational studies of crime-investigation even more, so that it includes the activities such as attending a legal suit (in the function of Criminal proceedings law), practical training in handling a service handgun (training-condition level), practical training in handling a service handgun (situational level) as well as Elective practical training 2 (Professional crime-investigation and forensic practical training 2 and General elective practical training). While the first three contents are carried out during 15 classes respectively and are given 1 (one) ECTS point respectively, the contents of Elective practical training 2 is carried out during 15 classes and is given 2 (two) ECTS points.

By uniting a part of the total number of exercises of corresponding courses and the stated special forms of teaching forms to all students, but not to those who have chosen Police tasks and security group, into one whole, there are a number of classes which are realized through field practical training in summer conditions. This training is organized and performed based on special plans (plan of preparation and activities report), in order to provide for a high level of security and efficiency of its performance [5].

The field training is carried out during 8 (eight) days, and the total of 60 classes. It is carried out in "Mitrovo Polje" training center at the mountain of Goč, which is also an organizational unit of the Center for Specialized training and Professional Development. Therefore, the stated field training is prepared and realized in cooperation with the Directorate for education, training, professional development and science.

The main goal of the field training is to establish a direct link between theoretical knowledge acquired at the Academy and the practical conduct of general police officers, i.e. expanding the existing theoretical knowledge and acquiring of new practical knowledge and skills required to perform both regular and exceptional police jobs and tasks. The field training is aimed at offering the students of the Academy more complete and more comprehensive mastering of and acquiring certain syllabi contents of more vocationally-oriented courses so that their preparing for work within the Ministry of the Interior of the Republic of Serbia could meet as high standards as possible [7].

The Vocational crime-investigation and forensic practical training 2, which is attended by those students who have chosen the Crime-investigation and forensic group, is realized to the total of 60 classes or 8 working days. It is carried out in the police departments of the Police Administration for the City of Belgrade, i.e. its Crime-fighting divisions. Therefore, this special form of teaching is also organized and performed in cooperation with the Ministry of the Interior of the Republic of Serbia.

The main goal of this special form of teaching is to establish a direct link between theoretical knowledge acquired at the Academy with practical conduct of criminal police officers, i.e. to expand the existing theoretical knowledge and acquire new practical knowledge and skills required to perform both regular and extraordinary police jobs and tasks. In accordance with the underlined goals, the main tasks of this form of training are: 1) to get acquainted with organization, jurisdiction, tasks, conditions and the manner of functioning of organizational units of criminal police of the Ministry of the Interior of the Republic of Serbia; 2) to have insight into: relevant regulations; operative records, working records and records on the use of powers; files, cases; plans, reports and other managing documents; 3) making the official documents (memos, minutes, reports, charges, requests); 4) participation/presence at planning, preparation and realization of concrete activities in the procedure of preventing, detecting, clearing and proving crimes (operative control, operative processing), etc [5].

During the fifth semester of the Basic undergraduate vocational studies of crime-investigation the students do not have any special forms of teaching. However, as all courses in this semester are vocationally-oriented to some degree, the education of students to this effect is not missing during this period either. Namely, when we add up all exercises provided for by all courses attended during the fifth semester, we come to 165 classes.

Finally, during the sixth semester of Basic undergraduate vocational studies of crime-investigation, special forms of teaching are reactivated intensely. In this semester they include the Practical training in handling a service handgun (instructor's level), Professional methodological practical training, and Elective practical training 3 (Professional crime-investigation and forensic practical training 3 and Professional organizational and methodological practical training).

Practical training in handling a service handgun is directly related to the course titled Police organization and tactics. The total number of classes is 15 and the stated course is given 8 (eight) ECTS points. Logistics for the realization of this

training is provided by the Academy in cooperation with the corresponding organizational units of the Ministry of the Interior of the Republic of Serbia (primarily with the Administration for Common Affairs).

The Professional crime-investigation and forensic practical training 3 for those student who have chosen the group of the same title is carried out to the total of 70 classes or 10 working days and it is given 2 (two) ECTS points. It is carried out in the Criminal police department of the Police Administration for the City of Belgrade. This means that this form of practical training is also organized and performed by the Academy in cooperation with the Ministry of the Interior of the Republic of Serbia.

The goals and tasks that should be achieved by this special form of teaching are identical to the values drawn up for the Professional crime-investigation and forensic practical training 2.

The professional organizational and methodological practical training of the students of the Police Tasks and Security group is carried out to the total of 15 classes, which together with 60 classes of exercises of other professionally-oriented courses makes a total of 75 classes; they are carried out in the period of 10 working days. Also, this practice is allotted 2 (two) ECTS points. This practical training is carried out in police stations/general jurisdiction stations of the Police Administration for the City of Belgrade.

The main goal of the practical training is to establish a direct link between theoretical knowledge acquired at the Academy with practical activities of general jurisdiction police officers, in other words to expand the existing theoretical knowledge and to acquire new practical knowledge and skills required to perform both regular and extraordinary police jobs and tasks. The practical training is also aimed at offering the students as complete and comprehensive mastering and acquisition of syllabi contents within the group of vocationally-oriented courses so that their preparation for the work in the Ministry of the Interior of the Republic of Serbia would meet high quality standards [4].

3. Practical Training of Students of Basic Undergraduate Academic Studies of Crime-Investigation

Parallel to the previously described curriculum, the purpose of the curriculum of the basic undergraduate academic studies of crime-investigation is to acquire the professional title of bachelor in crime-investigation/law enforcement. This professional qualification provides for a student to acquire a managing position in the Ministry of the Interior of the Republic of Serbia at all levels of the hierarchical structure of both the police and the Ministry as a whole. Therefore, the profession of a crime-investigator as a police officer is of special social importance in the Republic of Serbia. In addition to this, acquiring the educational profile of a bachelor of crime-investigation/law enforcement provides for other employment opportunities, such as the employment in other government institutions and organizations of state administration, as well as in private security sector.

A part of curriculum content of basic undergraduate academic studies of crime investigation refers to acquiring of skills the aim of which is to express most prominently the link between the educational profile of a crime-investigator and a police officer in the Ministry of the Interior of the Republic of Serbia stationed at the executive job of higher level of complexity on the one hand and managing position on the other hand. The contents of this curriculum oriented at this are called the special forms of teaching as in the case of the basic professional studies, but this curriculum includes also the exercises of professional and more narrowly and vocationally-oriented courses. The special forms of teaching are aimed at acquiring the skills during all four years of studies, i.e. all eight semesters.

As in the case of basic undergraduate vocational studies, the first semester of basic undergraduate academic studies includes Informative professional practical training. The scope of training, its evaluation, goals, outcomes and the contents are identical to the contents of the special forms of teaching under the same name which has already been dealt with in the previous part dedicated to the practical training of the students of basic undergraduate vocational studies during the first semester.

During the second semester of the basic academic studies curriculum, as in the case of basic undergraduate vocational studies, the practical training intensifies considerably. Symmetrical to basic undergraduate vocational studies, during the second semester the following professionally-oriented courses are introduced: Police equipment (which includes 45 classes of exercises as well), and Special Physical Education I (SPE I – includes 45 exercises), which makes the total number of 90 classes, primarily dedicated to the adoption of skills. This, however, is not the total number of classes dedicated to the development and adoption of skills, but there is also a Professional field practical training in summer conditions, which is related to the former course mentioned, (includes 15 classes) while related to the latter course there is also a Practical training in handling a service handgun – basic level and Swimming course (include 30 classes) [15]. Complete with other courses in the function of which the mentioned training is carried out, the special forms of teaching are allotted 16 ECTS points (two more if compared with the basic undergraduate vocational studies), which at the same time suggests their considerable importance within the curriculum of the basic undergraduate academic studies at the Academy.

All the mentioned contents of special forms of teaching which are foreseen by the curricula of the Academy of Criminalistic and Police Studies for the I-year students of the basic undergraduate academic studies have been united as the so-called Basic police training. As it has already been mentioned, this training is realized with all I-year students of the basic studies at the Academy. The basic police training is carried out with the same goal and in the identical way as for the students of basic undergraduate vocational studies.

During the third semester the practical training of the students of basic undergraduate academic studies includes a visit to prison, the attendance of a legal suit and General professional practice. While the two former are in the function of the course Essentials of Criminal Procedure Law, the later is the content *per se*. The

visit to prison and the attendance of a legal suit together include 15 classes and together with a course in the function of which they are realized they are evaluated with 7 ECTS points. The general professional practice is realized also during 15 classes and evaluated with 1 ECTS point. The methodological characteristics of this practice are identical to the contents of the same name which has been explained in the part of this report dedicated to the basic undergraduate vocational studies.

The fourth semester of the basic undergraduate academic studies includes the contents of practical training in handling a service handgun (training-condition level), practical training in handling a service handgun (situation level), as well as Elective professional practical training. Practical training in handling a service handgun (training-condition level) is dedicated to increasing a level of skills in safe handling a service handgun. On the other hand, Practical training in handling a service handgun (situation level) is dedicated at increasing the level of skills in safe handling a service handgun within the scope of situational firearms training. Both contents of special forms of teaching are directly linked to the course Special Physical Education II, with which they make a whole of 60 (15+45 classes) of training/exercises, which are allotted 7 ECTS points.

The Elective professional practical training should offer assistance to students in their professional orientation. Related to this, it is expected that the students would recognize, based on their own professional information about the jurisdiction and scope of work of particular organizational units within the Ministry of the Interior of the Republic of Serbia and other security services, their own inclinations and orient more easily with regards to the choice of one of the three majors of the basic undergraduate academic studies and thus manage their own education and carrier in a better way. Accordingly, the methods of realization of the Elective professional practical training have been accredited.

The fifth semester, as in the case of the basic undergraduate vocational studies, does not include special forms of teaching. However, this does not mean that the contents related to practical training are completely excluded, taking into account that during this semester only professionally-oriented courses are attended. The number of exercises, which is partly dedicated to the adoption of skills, is 135 classes.

As in the case of basic undergraduate vocational studies, the sixth semester of basic undergraduate academic studies is full of intensive contents aimed at adoption of new and development of the existing (already acquired) skills of the students. Namely, during this semester there is a professional field practical training in winter conditions and practical training in handling a service handgun (instructor's level), as well as two other trainings: professional crime-investigation practical training and professional methodological practical training I, which are comprised by Elective practical training I. Professional field practical training in winter conditions and practical training in handling a service handgun (instructor's level) are accredited as directly related to the course Special Physical Education III. By accreditation documents, they include 15 classes, and together with the exercises within the same course (45 classes) they make a respectable total of 60 classes.

Complete with lectures of the said course and successful acquiring of course syllabus, the student is given 7 ECTS points.

However, as in the case of basic undergraduate vocational studies (during the IV semester), the already mentioned special forms of teaching are carried out through field practical training of III-year students of the basic undergraduate academic studies – Police orientation. As it has already been mentioned, this training is carried out at Mitrovo Polje training center at the mountain of Goč during 8 (eight) working days. The total number of classes allotted to this training includes the classes of the already mentioned training in handling a service handgun, a part of exercises within the professionally-oriented courses and the classes of the Professional methodological practical training I, which is a mandatory content for the students of both Police and Security optional groups.

For the students of Crime-investigation optional group there is a Professional crime-investigation practical training. This special form of teaching is dedicated to acquiring practical knowledge required for the work within criminal police units. The outcome of the Professional crime-investigation practical training is to develop the corresponding skills for the work in criminal police [14].

The foreseen number of classes of Professional crime-investigation practical training (III-year students of the basic undergraduate academic studies) is 60 classes or 10 working days. This training is carried out at the Police Administration for the City of Belgrade, or more precisely in the general jurisdiction police stations, the divisions for crime suppression. The Activities planning report, as the basic planning document, presents the goals and tasks planned and program contents, as well as organizational and methodological assumptions for the successful preparation and realization of this special form of teaching [4].

The seventh semester of the basic undergraduate academic studies of crime-investigation includes one special form of teaching accredited by the Academy and this is the Professional practical training. This training is realized in the total of 15 classes and evaluated with 1 (one) ECTS point. It is dedicated to the acquiring of practical knowledge and experience in management (planning, organization, giving orders, coordination and control) within the police organizational units. The contents and methods of realization of the Professional practice have been adapted accordingly.

Finally, during the eight semester of the basic undergraduate academic studies there is Elective practical training 2, which includes Professional methodological practice 2 (for Crime-investigation optional group), Professional organizational and methodological practice (for Police optional group) and Professional security practical training (for Security optional group). All the mentioned practical trainings are accredited to the total number of 15 classes and are allotted 2 ECTS points.

However, according to the evaluation of the curriculum of the Academy of Criminalistic and Police Studies, and the requirements of the Ministry of the Interior of the Republic of Serbia, these contents are realized far more intensively than their accredited versions. In other words, by uniting the number of exercises of

all courses during the eighth semester and the number of concrete practical training there is a considerable number of exercises realized within the scope of 75 classes and during 10 working days. They are performed at the appropriate organizational units of the Ministry of the Interior of the Republic of Serbia.

More specifically, the Professional organizational and methodological practical training is carried out at police stations/general jurisdiction police stations (71 classes) and 92 Intervention unit of the Police Administration for the City of Belgrade (4 classes). The basic goal of this practical training is to establish a direct link between the theoretical knowledge acquired at the Academy with practical procedures of the general jurisdiction police officers, or to expand the existing theoretical knowledge and acquire new practical knowledge and skills required to perform both regular and extraordinary police jobs and tasks. Practical training is also aimed at offering the students as complete and comprehensive mastering and acquisition of certain contents within the scope of professionally-oriented courses as possible so that they would be prepared for the work within the Ministry which will meet the most demanding quality standards. As a final special form of teaching for the students of the Police optional group, this practical training should provide the following:

1. To get the students acquainted with organization, jurisdiction, jobs, conditions and manners of functioning of police station/general jurisdiction police division and 92 Intervening unit related to the tasks to secure the valuable transport within the Ministry of the Interior of the Republic of Serbia;
2. To get the students acquainted with relevant regulations; operative, working and other records; files, cases; plans, reports and other management documents;
3. To get the students make realistic or sampled official documents (notes, reports, minutes, charges, requests);
4. Student participation in/attendance to planning, preparation and realization of certain regular and extraordinary police tasks;
5. To develop capability, commitment and inclinations of the students to accept and support specific regimen and methods of work of police units to respect human rights and the professional code of ethics, and
6. Parallel consideration of educational profile of the student of the Academy of Criminalistic and Police studies and the working profile of a police officer for which the student is educated [6].

The professional methodological practical training 2 and the Professional security practical training are partially realized together. While the former is realized continuously for the IV-year students in the Police Administration for the City of Belgrade, in the Criminal police department [4] the latter is realized for the IV-year students in three parts, one of them jointly with the students of the former optional group [2]. Taking into account that these are final special forms of teaching there follows a more detailed analysis of their main characteristics.

The Professional methodological practical training 2 represents a special form of teaching which is primarily directed at specific and from the point of view of working profile of crime-investigator relevant introduction of students to professional acts, procedures, methods, technical means and equipment the criminal investigation

police uses. A part of the total number of classes of the Professional methodological practical training 2 which is realized with the students of the Security optional group is 35 classes and lasts during the first five days of the training. A part of the practical training which is realized jointly with the students of the Security optional group refers to the contents adopted in the divisions of the Criminal police administration of the Police Administration for the City of Belgrade, which holds jurisdiction over suppression of economic and property crimes, homicide and sexual crimes, drug-related crimes, determining the causes of fires, explosions and damages, as well as juvenile delinquency [4]. The remaining part of the practical training covers the training of students in search, crime scene investigation, the jobs of operative criminalistics and National criminalistics center [4].

The Professional security practical training, as it has already been mentioned, is carried out through three stages, the first (joint) already having been explained in the previous passage. The second stage is carried out during three working days (24 classes) in the Sector for Emergency Management of the Ministry of the Interior of the Republic of Serbia and other services within the protection and solving system. Finally, the third stage, which lasts two working days (or 16 classes) is carried out at the Academy under the simulated conditions of contemporary security issues [2].

4. Conclusion

The systematic analysis of student practical training within the system of police higher education of the Republic of Serbia leads to the conclusion that the adoption of skills in the function of performing the police jobs has an important influence on forming the educational profile of professional crime-investigator who is educated during basic undergraduate vocational studies of crime-investigation, i.e. the crime-investigator who is educated at the basic undergraduate academic studies of crime-investigation at the Academy of Criminalistic and Police Studies in Belgrade. Such a conclusion can undoubtedly be made based on the fact that the mentioned curricula take into account the requirements for high correlation between the educational profile of the students, on the one hand, and the working profile of police officers in the Ministry of the Interior of the Republic of Serbia, on the other. Almost without exception, the performance of special forms of teaching, through which the students are trained for police jobs, is prepared and realized in cooperation with the Ministry of the Interior of the Republic of Serbia.

The cooperation between the Academy of Criminalistic and Police Studies and the Ministry of the Interior of the Republic of Serbia on preparation and accomplishment of special forms of teaching is just one of many fields of their intensive cooperation. This is a logical consequence of the fact that the Academy educates the students primarily for the requirements of the Ministry, which in return has as a consequence a caring relationship of the Ministry of the Interior related to the process of recruitment, selection and education of the students at the Academy. Namely, starting from the approvals given by the Ministry for the Academy curricula, and then for the conditions of the application for the

enrollment to the Academy, through delegating the members to the commission for the enrollment to the basic undergraduate studies, the members of the Board of the Academy (in the name of the Republic of Serbia Government), concluding the contracts on mutual obligations with those students whose education is financed from the budget of the Republic of Serbia, to the active participation in educational process, including its special forms, the Ministry of the Interior of the Republic of Serbia represents a purpose of existence, the stable basis and a strategic partner of the Academy of Criminalistic and Police studies in its mission to develop crime-investigation science and profession and create the most favourable educational structure of the Ministry.

To be more specific, 15 special forms of teaching have been accredited at the basic undergraduate vocational studies and 18 at the basic undergraduate academic studies. Out of the total number of 33 special forms of teaching carried out at the Academy, even 30 are realized in direct and intensive cooperation with the Ministry of the Interior of the Republic of Serbia. The Director of the police approves the Activities planning reports which comprise the basic elements of the practical training implementation.

The total number of classes of special forms of teaching at basic undergraduate vocational studies is 135 classes per student (out of 2160 classes) during three academic years, which makes 6.25%, and together with the exercises of the courses in the function of which these special forms of teaching are carried out, this percentage increases to 13.2% (285/2160 classes). The number of exercises of other professional and more professionally-oriented courses should be added to this number of classes, which increases many times the number of classes dedicated to the adoption of skills required for police work. Together with the courses in the direct function of which they are carried out, the special forms of teaching take 37 (out of 180) ECTS points, which makes 20.55% of the total number of ECTS points of the basic undergraduate vocational studies.

As for the number of classes allotted to special forms of teaching at the basic undergraduate academic studies, they include 180 classes per student (out of 2895 classes) during all four academic years, which makes 6.22%, and together with the exercises of the courses in the function of which these special forms of teaching are carried out, this percentage increases to 12.95% (375/2895 classes). As in the case of basic undergraduate vocational studies, the number of exercises of other professional and more professionally-oriented courses should be added to this number of classes, which increases many times the number of classes dedicated to the adoption of skills required for police work. Together with the courses in the direct function of which they are carried out, the special forms of teaching take 46 (out of 240) ECTS points, which makes 19.16% of the total number of ECTS points of the basic undergraduate academic studies.

The analysis of the practical training of the students within the higher police education in the Republic of Serbia and the conclusions resulting from it refer to the currently accredited curricula of the Academy of Criminalistic and Police Studies. Such curricula are subject to continuous evaluation, which is also a legal obligation

but also the necessity of the Ministry of the Interior of the Republic of Serbia, as well as appreciation of the state-of-the-art accomplishments of crime-investigation theory and practice, or methodology of education in this area. We hope that this is the way that the students of the Academy will reach the ideal: I KNOW – I WILL – I CAN!

5. References

Activities planning report for a part of security practical training of IV-year students of basic undergraduate academic studies – Security optional group in summer semester of 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

Activities planning report for I-year student police practical training, 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

Activities planning report for III-year students of basic undergraduate academic studies – Crime-investigation optional group – and Professional methodological practical training 2 for IV-year students of basic undergraduate academic studies – Crime-investigation and Security optional groups – summer semester of 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

Activities planning report for II-year students of basic undergraduate vocational studies for Professional crime-investigation and forensic practical training 2 – Crime-investigation and forensic optional group and Professional crime-investigation and forensic practical training 3 for III-year students of basic undergraduate vocational studies – Crime-investigation and forensic optional group in summer semester of 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

Activities planning report for Professional Organizational and Methodological practical training for IV-year students of basic undergraduate academic studies – Police optional group and Practical Training of IV-year students according to former Police Academy curriculum in summer semester of 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

The Activities planning report for student field training in summer semester of 2009/2010 school year. (2010). Belgrade, Academy of Criminalistic and Police Studies.

Bogdanović, B. (2002). Dva veka policije u Srbiji. Beograd, Ministarstvo unutrašnjih poslova Republike Srbije.

Curriculum of basic undergraduate vocational studies. (2009). Belgrade, Academy of Criminalistic and Police Studies.

Curriculum of basic undergraduate academic studies, (2009). Belgrade, Academy of Criminalistic and Police Studies.

http://www.kpa.edu.rs.

http://www.copo.edu.rs/novi_vid_obuke.html.

Kulić, Ž., Milošević, G., Ristić, S. (2005). Upravljanje kadrovima i njihovim potencijalima. Beograd: Viša železnička škola.
Law on Higher Education. Belgrade. The Official Gazette of the RS, 76/05.
Milošević, G., Subošić, D. (2006). Elementi javne bezbednosti. Bezbednost, 3/06.
Milošević, G., Subošić, D. (2010). Praktična obuka studenata u sistemu visokog policijskog obrazovanja Republike Srbije. Bezbednost, 1/10. Beograd, Ministarstvo unutrašnjih poslova Republike Srbije.
Police Law. The Official Gazette of the RS. 101/05.
Subošić, D. (2010). Organizacija i poslovi policije. Beograd: Kriminalističko-policijska akademija.
The Decision on the founding of the Academy of Criminalistic and Police Studies. The Official Gazette of the RS, 58/06.

PRAKTIČNA OBUKA STUDENATA U SISTEMU VISOKOG POLICIJSKOG OBRAZOVANJA REPUBLIKE SRBIJE

Rezime

Nosilac visokog obrazovanja policijskih službenika u Republici Srbiji je Kriminalističko-policijska akademija. Akademija je ustanova osnovana Odlukom Vlade Srbije, a na osnovu Zakona o visokom obrazovanju. Kriminalističko-policijska akademija realizuje studijske programe za potrebe visokog policijskog obrazovanja. Shodno obrazovnom procesu, Akademija je definisala i izgradila, uz saglasnost Ministarstva unutrašnjih poslova Republike Srbije (MUP RS), sopstveni koncept praktične obuke za potrebe policije.

U okviru Ministarstva unutrašnjih poslova Republike Srbije posebno mesto zauzima Uprava za stručno obrazovanje, osposobljavanje, usavršavanje i nauku. Ta organizaciona jednica Ministarstva obavlja poslove stručne obuke (osposobljavanja i usavršavanja) kadra, koordinacije naučnoistraživačkog rada za potrebe policije, kao i druge poslove od interesa za stvaranje što povoljnije obrazovne strukture MUP RS. Uprava u svom sastavu ima Centar za osnovnu policijsku obuku i Centar za specijalističku obuku i usavršavanje policije. Pored toga, navedena Uprava je nosilac saradnje MUP RS i Kriminalističko-policijske akademije iz Beograda.

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TEACHING ENGLISH FOR LAW ENFORCEMENT OFFICERS

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Abstract: Teaching English for specific purposes (ESP) or for specific academic purposes (ESAP) involves a number of issues topical among the language teaching personnel. Beside these problems, common to the English teaching community, there are some concerns that apply in particular to teaching English to future police officers and the managerial staff in the field of law enforcement. Since teaching a language inevitably involves transferring of or at least exposure to certain values and attitudes characteristic of L2, learners have to be well informed about the cultural and historic background of such attitudes. Teaching English to students in the educational institutions of Serbian police imposes on us a task to make them aware of the differences between the legal framework within which police agencies operate, that is between the Anglo-American system and the continental one.
Key words: teaching English, ESP, ESAP, law enforcement officers, police, Roman law, common law, diversity, globalization.

1. Introduction

When people are being trained to become language teachers, they often think that too much is asked of them and frequently feel that the treatment they are receiving, to put it mildly, is not fair. The range of topics they have to cover seems too wide and, not infrequently, exaggerated. They tend to think that many of the topics they have to deal with are only there because their trainers find them interesting and they sincerely hope they will never ever have to set their eyes on those tiresome samples of extensive or, even worse, intensive reading they have so cruelly been exposed to over the not-so-short course of their professional training.

At long last, the graduation day arrives, they – or would it be more appropriate to say – we, put away piles of textbooks, exercise books and notebooks and cheerfully and confidently start studying, very eagerly, an entirely new type of

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reading – ads for job vacancies. To be honest, finding a post as a teacher of English is not too difficult or time-consuming, since the demand is very high. Besides, it is not among the best paid jobs, so it is only real enthusiasts who compete for it. Thus congratulations that we receive upon graduation are usually closely followed by those we receive for getting a job. For many of us, it soon turns out they have followed too soon, especially if we teach English for specific academic purposes.

Just to set one thing straight, this is not supposed to be an instance of taking a gloomy look on teaching ESP. On the contrary, the topic here is the unique experience, which the author is sure she shares with many of her colleagues, and that is the experience of teaching English for specific purposes with joy, enthusiasm and dedication.

So, once we have graduated, found a job of our dreams, and for a moment regretted because it all happened so quickly, we immediately start unpacking our dog-eared readers and exercise books and start going through all of them much more attentively than we did when we were students. Suddenly we are grateful that our teacher trainers took pain to introduce us to so many different topics. Sometimes we even resent their laziness: Weren't they supposed to give us more examples, more reading material, more homework? Did they really think it would be enough to read only a few pages of text about law or medicine or architecture? What were they thinking?

Soon we realize that, after all, we were lucky to have been given at least some vague ideas about the subject matter at hand and that our teachers' efforts were not in vain, for, if nothing else, they have contributed to our awareness of our own limitations and it is thanks to them that we understand, probably better than people in any other occupation, how much we do not know and how much there remains yet to be learnt.

2. English for Law Enforcement

The first thing that has to be emphasized when speaking about teaching English for specific purposes (ESP) and for specific academic purposes (ESAP) in particular, is that it involves, at least initially, far more LEARNING than TEACHING.

It requires proficiency not only in linguistics but also in the skills and knowledge related to the occupation for which your students are being trained. That is the reason why it frequently raises questions of who should teach such a subject: an expert with excellent knowledge of English or an English teacher with excellent knowledge of the particular field.

In order to teach English to future police officers or those who are receiving in-service training, one has to become familiar with the walk and talk of law enforcers.

Police are entrusted with enforcing all such laws as govern and guide the society's life and conduct. Policing is therefore an occupation that requires very high standards of personal integrity but also acquiring special skills and studying a lot of theoretical subjects.

Just like any other sphere of human life and knowledge, law enforcement has its own terminology and occupation-specific discourse. It is characterized by a broad range of registers, both formal and informal, the diversity of which may be surprising to people outside the world of law enforcement.

Firstly, the very expression law enforcement implies that there are certain laws underlying the whole business of it. Those of us who choose to study foreign languages are hardly ever interested in the variety of legal acts that govern our daily life. We certainly have some ideas about a huge number of legal provisions, rules and regulations that we are supposed to adhere to, but how many of us, people with no legal education, know the difference between, say, criminal law and law on criminal procedure? How are we to tell which conventions and declarations are legally binding, within the border of one country or across continents?

But our students need to know the legal framework, which includes primarily criminal and procedural law, and within which the police agencies and services operate, as integral parts of all criminal justice systems. They also have to be familiar with ever increasing international legislation (internationally binding conventions, declarations, protocols).

Enabling them to read and understand original theoretical works and relevant international documents, as well as to communicate with their foreign counterparts in both spoken and written English inevitably implies introducing them to a concept of criminal justice entirely different to the one they are familiar with.

The extensive growth of international legislation over the past few decades has made us all better acquainted with different legal concepts, some stemming from the Roman law, and the others typical of the Anglo-American world.

The main difference here is related to the sources of law. Continental law implies the existence of a set or sets of written documents, called statutes, which define what people are obliged to do, what actions are prohibited and what sanctions can and shall be applied in the case of failure to comply with these provisions. These statutes, as legal act, are drawn and passed by legislative bodies, such as parliament, and are usually accompanied by sets of regulations provided by executive authorities. Such legal systems are referred to as civil law systems and they originate mostly from the *Roman law* and the *Napoleonic Code*.

Much of English law, however, is based on *common law* or *case law***.** Common law nowadays is a concept peculiar to England and Wales, as well as to those countries whose laws are derived from English law, such as Australia, USA and Canada (therefore known as Anglo-American). It is based on the body of decisions in previous cases made by relevant courts (*courts of first impression* or *courts of record*) which become the source of law.

However, common law is what used to guide or even govern the lives of communities for centuries before written laws appeared. There is virtually no culture without some historic form of common law, which comprised customary and traditional mechanisms applied to ensure the proper functioning of a community and full compliance of its members. For example, one of the common law mechanisms, used by communities in the past in order to get rid of 'rotten

apples', was exile. Individuals were stripped of their rights and denied support even of their closest relatives.

People living in the former Yugoslavia will remember the work of famous Montenegrin movie director, Živko Nikolić, whose movies contained examples of some common law family duties and punishments. One of his most popular films, *The Beauty of Vice*, begins by showing a woman who takes a loaf of bread she has baked and follows her husband high up in the mountains, where he is supposed to place the loaf on top of her head and smash it with a huge hammer. That was the common law punishment for unfaithful wives. Adultery was punishable by death, unless the adulterous wife was quite an expert in baking bread.

In England, by the time the Roman law was rediscovered in the 12th and 13th centuries, the common law had already developed far enough to prevent a Roman law reception as it occurred on the continent. However, the first common law scholars, most notably Glanvill and Bracton, as well as the early royal common law judges, had been well acquainted with Roman law. These judges often were clerics trained in the Roman canon law. One of the first and, throughout its history, one of the most significant treatises of the common law, Bracton's *De Legibus et Consuetudinibus Angliae* (On the Laws and Customs of England), was heavily influenced by the division of the law in Justinian's *Institutes*. The impact Roman law had decreased sharply after the age of Bracton, but the Roman divisions of actions into *in rem* and *in personam* used by Bracton had a lasting effect and laid the foundation for a return of Roman law structural concepts in the 18th and 19th century. Signs of this can be found in Blackstone's *Commentaries on the Laws of England*, and Roman law ideas regained importance with the revival of academic law schools in the 19th century.

As colonies gained independence from Britain, most adopted British common law as the basis for their legal systems. In most cases, newly independent colonies received common law precedent as the default law, to the extent not explicitly rejected by the newly freed colony's founding documents or government.

For example, following the American Revolution, in 1776, one of the first legislative acts undertaken by each of the newly independent states was to adopt a "reception statue" that gave legal effect to the existing body of British common law to the extent that American legislation or the Constitution had not explicitly rejected British law. British traditions such as the monarchy were rejected by the U.S. Constitution, but many British common law traditions such as *habeas corpus,* jury trials*,* and various other civil liberties were adopted in the United States.

As a result, the common law constitutes the basis of the federal law of the United States and the law of individual U. S. states, except Louisiana, which uniquely uses a system based on the Napoleonic code, remaining true to the state's French and Spanish roots, which predate the U.S. annexation of the Louisiana territory in 1803. It is also interesting that significant elements of British common law prior to 1776 still remain in effect in many jurisdictions in the United States, because they have never been rejected by American courts or legislatures.

In Canada, all but one of the provinces use a common law system (the exception being Quebec, which uses a civil law system for issues arising within provincial jurisdiction). Criminal law, which is uniform throughout Canada, is based on the common law in all provinces.

The main alternative to the common law system is the civil law system, which is used in Continental Europe, and most of the rest of the world. The contrast between civil law and common law legal systems has become increasingly blurred, with the growing importance of jurisprudence (almost like case law but in name) in civil law countries, and the growing importance of statute law and codes in common law countries.

Examples of common law being replaced by statute or codified rule in the United States include criminal law (since 1812, U.S. courts have held that criminal law must be embodied in statute if the public is to have fair notice).

Common law that constitutes the foundation of the Anglo-American systems of justice, while still bearing traces of custom and tradition, mostly consists of court decisions pertaining to cases previously dealt with, which is why it is also referred to as case law. Some courts are regarded as courts of record and their decisions are used as precedents in trials that come later. This is often seen in the movies, again, when a judge presiding the court refers to the ruling of such-and-such a judge in such-and-such a case.

Some of the common law has indeed been superseded by statutes passed by legislative bodies, but some significant aspects of criminal law are still governed by common law. This is the case with the criminal offences of murder or incitement, whereas some other criminal acts have been defined by statutes, which are in fact codifications of common law, with or without modifications.

The establishment of international tribunals also called for some compromise and mixed type law systems similar, for instance, to that in Scotland. Such systems are also referred to as *bijudicial systems*. Thus, although the term "common law" is still frequently used as a contrast to Roman-derived "civil law" and although the fundamental processes and forms of reasoning in the two are quite different, we can conclude that considerable cross-fertilization of ideas has occurred, much as the two traditions and sets of fundamental principles remain distinct.

What implications does this have for teaching English to law enforcers? Just watching news broadcasts for five minutes or going through a few pages of any daily paper will make it obvious.

The twentieth century, which brought about unthought-of breakthroughs in technology and science, also brought about enormous possibilities for perpetrating criminal activities across state borders. The internationalization of businesses was closely followed by internationalization of criminal activities and transnational organized crime and terrorism have almost outgrown all mechanisms of social control.

This is where international law enforcement comes in, in the form of international crime-combating organizations, such as INTERPOL (founded in 1923) and EUROPOL (founded in 1994), or in the engagement of officers in the United Nations peacekeeping troops. Dramatic increase in international organized

crime and terrorism calls for stepped-up cooperation among national and international law enforcement agencies involved in international policing, transnational policing and global policing.

Here again the study of languages proves to be of great importance, because most peacekeeping missions have English as their official language. Besides, the law enforcers engaged in these missions come from different countries and sometimes dramatically different cultures.

When they get together, police officers from different countries may joke that they only need the services of an interpreter until they have had their second pint of beer, because the peculiarity of their job makes them brethren whose ways and manners are not easily understood by outsiders.

And indeed, law enforcement officers, especially uniformed police officers, have to cope with the strain of being conspicuous 'outsiders' on a daily basis. Their uniforms and the insignia of their profession make it very hard for them to stay out of the focus of the public. The strain is even greater when they are performing their duties in a foreign country teamed up with their peers from different cultures. If they are not well prepared, they may face embarrassment and sometimes even get involved in conflicts.

Not so long ago, people who lived in the former Yugoslavia believed that they knew everything about diversity and that they were experts in handling it, only to be awoken from this delusion by fierce ethnical clashes which taught us how little we actually knew about one another. The bloodshed in which our former common fatherland dissolved showed us how vital it is to learn as much as possible about people we live and work with, about our neighbours and colleagues, about their customs and beliefs.

3. Instead of Conclusion

Therefore the study of diversity, its advantages and obstacles, should by no means be neglected by us who teach future law enforcers. Globalization can easily mean that some day they may find themselves policing communities in distant regions of the world together with their local counterparts or with police officers raised and trained in the settings entirely different from their own.

It is our responsibility to enable future law enforcement officers to understand cultural backgrounds different from their own, to be able to present their systems of value in an unobtrusive way and, most importantly, to appreciate diversity. The success of their performance as working officers may greatly depend on how they respond to and how much appreciation they show of other people's customs and traditions.

4. References

Baker, J. H. (1990). *An Introduction to English Legal History*. London.

Card, Cross, Jones (1995). *Criminal Law*. 13th ed. London, Dublin, Edinburgh: Richard Card.

Cox, Steven, M. (1996). *POLICE, Practice, Perspectives, Problems*. US: Allyn & Bacon.
dir.yahoo.com/Society and Culture/Crime/Law Enforcement
Douglas, Geoff (2003). *Criminal Law*. Oxford University Press.
Garfitt, A. (1958). *The Book for Police*. London.
Haarman, L., Leech, P., Murray, J. (1988). *Reading Skills for the Social Sciences*, Oxford.
http://europa.eu.int/eur-lex/
Kiralfy, A. K. R., (1990). *The English Legal System*. 8th ed. London.
Molan, Michael, T. (1994). *Criminal Law Textbook*, 8th ed. London.
Schultz, D. O., Beckman, E. (1992). *Principles of American Law Enforcement and Criminal Justice*, 2nd (revised) ed. Placerville.
The United Nations and Crime Prevention (1991). New York.
Williams, Katherine, S. (2001). *Textbook on Criminology*. Oxford University Press.
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ENGLESKI JEZIK U NASTAVI ZA LICA KOJA SPROVODE ZAKON

Rezime

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Online sources	Book: Wallace, A. R. (2001). *The Malay archipelago* (vol. 1). [Electronic version]. Retrieved November 15, 2005, from http://www.gutenberg.org/etext/2530 Articles in online journals: Rickson, B. L. (2001, March 7). Cultivating positive emotions to optimize health and well-being. *Prevention & Treatment, 3,* Article 0001a. Retrieved November 15, 2005, from http://journals.apa.org/prevention/volume3/pre00300001a.html Documents and reports: Organization for Economic Co-operation and Development. (2001). *Trends in international migration: Continuous reporting system on migration* (Annual Report, 2001 edition). Retrieved October 24, 2005, from http://www.oecd.org/dataoecd/23/41/2508596.pdf	(Wallace, 2001) (Rickson, 2001) (Organization for Economic Co-operation and Development [OECD], 2001) Subsequent: (OECD, 2001)

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