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GUIDELINES FOR AUTHORS

General notes	The paper shall be processed in *MS **Word*** (*doc, docx*) format: paper size A4; font ***Times New Roman*** **(*Serbian-Cyrillic*)**, except for papers originally written in *Latin* script; font size 12 pt; line spacing 1,5.
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In-text citations and reference entries shall fully comply with the list of bibliographic units in the References, provided at the end of the paper. Each in-text citation and reference entry shall be clearly cross-referenced in the list of bibliographic units and, vice versa, each bibliographic unit shall be entered in the text of the submitted paper.

Type of work	**References**	**In-text citation**
Book (a single author)	Goldstein, A., (1994). *The ecology of aggression*, Plenum Press, New York.	(Goldstein, 1994:80)
Book (a number of authors)	Konstantinovic-Vilic,S.,Nikolic-Ristanovic, V., Kostic, M., (2009). *Kriminologija (Criminology)*, Nis, Pelikan print.	First in-text citation: (Konstantinovic-Vilic, Nikolic-Ristanovic, Kostic, 2009: 35). A subsequent in-text citation: (Konstantinovic-Vilic, et all., 2009: 77)
Joint authorship (a group of authors)	*Oxford Essential World Atlas* (7th ed). (2012). Oxford, UK: Oxford University Press	(Oxford, 1996: 100)
An article or a chapter in a book with an editor	Kostic, M., Miric, F., (2009).Ustanove za izvršenje krivičnih sankcija-pozitivno zakonodavstvo i strana regulativa-stanje i perspektive,(Facilities for execution of criminal sanctions -positive legislation and international regulations, state and perspectives) / In Djukanovic, P. (ed), *Proceedings of penology* /. - Banja Luka, Penological organization of KPZ, 2009, Vol.1, No.1, pp. 10-32.	(Kostic, Miric, 2009: 295)
Journal article	Papageorgiou,V., Vostanis, P., (2000).Psychosocial characteristics of Greek young offenders, *The Journal of Forensic Psychiatry*, Vol.11., No.2., 2000, pp.390-400	(Papageorgiou et all, 2000: 397)
Encyclopedia	(2009). *The Oxford International Encyclopedia of Legal History*. Oxford, UK: Oxford University Press	(Oxford, 2009:33)
Institution (as an author)	Statistical Office of the Republic of Serbia, Monthly statistical bulletin, No. 12 (2013)	(Statistical Office RS, 2013)
Legal documents and regulations	Execution of non-custodial sanctions and measures Act, Official Gazette RS, No. 55 (2014)	Footnote: Article 1. Execution of non-custodial sanctions and measures Act, Official Gazette RS, 55/2014
Court decisions	Case Ap.23037/04 *Matijasevic* v. Serbia	Footnote: Case Ap.23037/04 Matijasevic v. Serbia
Online sources	Ocobock, P., Beier, A.L., (2008). *History of Vagrancy and Homeless in Global Perspective*, Ohio University Press, Swallow Press, Retrieved 31 November, 2015, from http://www.ohioswallow.com/book/Cast+Out	In-text citation: (Ocobock, Beier, 2008)

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EDITORIAL

Dear Readers,

The first issue of the scientific journal ***Facta Universitatis*: Law and Politics** for the year 2018 contains articles from different fields of law, social sciences and humanities.

Zorica Mršević, LL.D., from the Institute of Social Sciences in Belgrade, and **Svetlana Janković, LL.D.,** from the Institute for Strategic Resaerch in Belgrade, submitted the paper titled **"*Local knowledge on the local ownership principle in Serbia",*** where they examine the functioning and implementation of the *local ownership principle* in situations entailing the lack of support of local knowledge during the process of establishing gender equality mechanisms. Gender equality mechanisms were part of the package of international organizations' influence over the process of democratic institutional reform in Serbia. The lack of local knowledge production regarding the essence and role of the *local ownership principle* in the creation of gender equality institutions is permanent in Serbia. Domestic actors became quickly satisfied with the comfortable position of secondary lead stakeholders, with a role of transmitters and users of foreign concepts. They did not take advantage of the opportunities provided by the *local ownership principle* and did not pretend to take on either the role of creators or of relevant knowledge holders of policy-based public policies and practices.

Anne Scheinberg, Jelena Nesić, Rachel Savain, Pietro Luppi, Portia Sinnott, Flaviu Petean and Flaviu Pop submitted the paper titled "***From Collision to Collaboration: Integrating Informal Recyclers and Re-Use Operators in Europe, A Review*".** The European Union (EU) hosts some of the world's most developed waste management systems and an ambitious policy commitment to the Circular Economy. The existence of informal recycling and re-use activities in Europe has been vigorously denied until quite recently, and remains a very challenging subject for the European solid waste management sector, as well as for European government and private institutions. In countries ranging from Malta to Macedonia and from France to Turkey, informal recyclers excluded from legal recycling niches increasingly collide with formalised and controlled EU approaches to urban waste management, packaging recovery schemes, formal re-use enterprises, and extended producer responsibility systems. This review focuses on the period from 2004 through the first half of 2016. The 78 sources on European (and neighbouring) informal recycling and re-use are contextualised with global sources and experience. The article focuses on informal recovery in and at the borders of the European Union, documents the conflicts and collisions, and elaborates on some constructive approaches towards legalisation, integration, and reconciliation. The overarching recommendation, to locate the issue of informal recovery and integration in the framework of the European Circular Economy Package, is supported by four specific pillars of an integration strategy: documentation, legalisation, occupational and enterprise recognition, and preparation for structural integration. This article will be re-published under the permission (granted by SAGE free of charge) to reprint the article "*From collision to collaboration – Integrating informal recyclers and re-use operators in*

Europe: A review", originally published in the SAGE Journal *Waste Management & Research*, on 5th July 2018.

Aleksandar Đorđević, LL.D., Assistant Professor, Faculty of Law, University of Niš, submitted the paper ***"Judicial Authority Reforms in Medieval Serbia, Bohemia and Poland".*** The author analyses the attempt to reform the judiciary in the medieval Slavic world. In the 14th century, three important legal codes were enacted in Serbia, Bohemia, and Poland: Dušan's Code, *Maiestas Carolina* and Statutes of Casimir the Great, respectively. The proclamation of these three codes was the result of strengthening the powers of their rulers: Emperor Dušan, the Bohemian king Charles IV, and the Polish king Casimir. Almost at the same time, these rulers passed very similar legal provisions on the reorganisation of courts. The main idea was to introduce special state judges, with the aim of suppressing and limiting the feudal and other forms of judiciary in their respective states. The reform of courts, the judiciary and court proceedings was part of the prevalent attempts to centralise the state authority in the three Slavic states. This process is a phenomenon of substanital relevance in the history of Slavic law, particularly given the fact that it involved the most powerful rulers of these medieval states, who were one another's contemporaries.

Rade Bogojević, LL.D., Police Counselor, Deputy Director at Centre for Basic Police Training, Sremska Kamenica, Ministry of Interior, Republic of Serbia, **and Tatjana Skakavac, LL.D.,** Assistant Professor, Faculty of Legal and Business Studies "dr Lazar Vrkatić", Novi Sad, Union University-Belgrade, submitted the paper titled ***"Corruption as an obstacle to European Integrations".*** The authors examine the concept of corruption from historical, social and legal perspective. The term derives from the Latin word "*corruptus*", meaning deterioration, blackmail, depravity, bribery, etc. The practice of bribery is as old as the state itself. The ancient Greeks and Romans faced this phenomenon and enacted rules aimed at its prevention and suppression. In the 18th century England, the notion of corruption was associated not only with corrupt government but also with giving bribes. Despite numerous efforts of the international community to put an end to this problem, the fact is that many countries have not ratified the proposed documents of this type yet. In terms of criminal law, corruption-related offences in Serbia today primarily include crimes against official duties, crimes against the economy, and crimes against freedom and civil rights. In this paper, the authors examine some issues related to corruption in light of its harmful effects on the European Integration process.

Ana Lukić Vidojković, Judge, Basic Court in Niš submitted the paper titled "***Compensation of Civil Procedure Costs in Mass Tort Litigation*".** This paper examines the legal consequences of mass tort litigation in cases where the amount of damages is multiple times lower than the litigation costs. In the context of current judicial practice, the author observes this phenomenon from the aspect of prohibition of abuse of rights, and offers proposals for improving the existing regulation in order to effectively prevent the abuse of rights.

Filip Mirić, LL.D., Associate for Postgraduate Studies, Faculty of Law**,** University of Niš, submitted the paper titled "***The Criminological Heritage of the Faculty of Law, University of Niš".*** Criminology, as a science dealing with the forms and causes of crime, has been studied at the Faculty of Law, University of Niš, since its establishment in 1960. In the past 56 years, the Law Faculty in Nis has published numerous

publications (textbooks and monographs) on criminology. This paper aims to provide a brief overview of the most important criminological literature published by the Faculty of Law, University of Niš, which contributed to casting more light on the multifaceted criminological issues. The author also recognizes and commends the dedicated work of Law Faculty teaching staff and the exerted efforts to present these complex issues in a comprehensible way, adapted to the needs of junior and senior law students and the needs of the wider academic, professional and social communities.

We hope you will enjoy reading the results of scientific research on the legal issues that the contributing authors have chosen to discuss in their theoretical and empirical research. The multidisciplinary nature of the submitted papers and the authors' choice of current legal issues indicate that our scientific journal ***Facta Universitatis: Law and Politics*** is open to different approaches to the legal matter under observation and committed to publishing scientific articles across a wide range of social sciences and humanities. In that context, we invite you to submit research articles on topics of your professional interest.

We would like to extend our appreciation and gratitude to our distinguished reviewers whose professional attitude to double-blind peer review has significantly contributed to the quality of our scientific journal.

Editor-in-Chief
Prof. Miomira Kostić, LL.D.

Niš, 28th September 2018

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Review Paper

LOCAL KNOWLEDGE ON THE LOCAL OWNERSHIP PRINCIPLE IN SERBIA

UDC 342.72/.73(497.11)

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Abstract. *This paper presents the way of functioning and implementation of the local ownership principle in situations where the support of local knowledge during the process of establishment of gender equality mechanisms is lacking. Gender equality mechanisms were part of the package of international organizations' influence over the process of democratic institutional reform in Serbia. The whole process is based on a numerous international documents that incite and justify the establishment of institutional mechanisms for gender equality at all levels of government: national, regional and local. The experience and knowledge of Western countries has contributed most to the process of formulating gender equality mechanisms and their subsequent functioning in Serbia. The lack of local knowledge production regarding the essence and role of the local ownership principle in the creation of gender equality institutions is permanent in Serbia. The concept of "learning sites", i.e. external actors becoming familiar with an internal situation has barely been applied in Serbia. The so-called "glocal" period of deep intermingling of both local and global elements did not happen. The authors argue that there was no essential "localization" of gender equality mechanisms based on domestic knowledge, and that both foreign and domestic actors are responsible for this situation: External actors because, apart from Western theory and experience, they are unaware of and/or neglect local knowledge, regardless of whether they consider it non-existent or inferior in comparison to the knowledge of Western countries. At the same time, domestic actors became quickly satisfied with the comfortable position of secondary lead stakeholders, with a role of transmitters and users of foreign concepts. They did not take advantage of the opportunities provided by the local ownership principle and did not pretend to take on either the role of creators or of relevant knowledge holders of policy-based public policies and practices.*

Key words: *international actors, local ownership principle, learning sites, humanitarian industry, gender equality mechanisms in Serbia, transversal policy.*

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INTRODUCTION

The local ownership principle has the primary goal of reducing the domination of external partners on projects financed through cooperation and activities aimed at development and peace building. This principle can work effectively to change the (im)balance of power in favour of local actors, but only if both external and domestic actors are aware of its essence and accept its application.

This principle began to be implemented by international organizations in the 1980s and 1990s and, to date, has become part of the standard 'package' of foreign development assistance in numerous countries. The *local ownership concept* began to be widely implemented as of its recognition as a key concept in 1996 by the Organization for Economic Co-operation and Development (OECD), which appealed for an inclusive approach to the development process supported by adherence to the *local ownership principle*. Namely, in 1996, the OECD determined that sustainable development must be 'locally owned' (Reich, 2006: 27), and in that time the term *"country ownership"* was also used. Since then, an increasing number of donors and multilateral agencies have taken into account local ownership, although it has to be noted that there is often a gap between intentions, implementation, and real impacts (Schirch and Mancini-Griffoli, 2015: 127).

Therefore, it may be necessary first of all to highlight its functioning, because in response to the challenges of the new millennium, many donors and multilateral agencies have emphasized their commitment to and respect for the *local ownership principle*. This principle provides balance of power between external and domestic project partners, but also ensures the effectiveness of international development and peace initiatives and organizations in post-conflict and transitional countries. Respecting local knowledge, local customs and traditions, as well as the involvement of local implementing actors, has been proven to be an important factor of such projects' successes.

However, local ownership is not the ultimate goal, but rather the means to achieve another, probably bigger and more important goal, to democratize and legitimize the state-society relationship. Local ownership is a principle that guides foreign assistance, respecting the needs and priorities of the country's population that will receive such assistance (United States Institute of Peace, 2011). The respect for local ownership ensures greater efficiency and sustainability of peacebuilding activities, as this reduces the potential for resistance from local actors when they themselves have the role of creators of solutions best suited to local conditions (Wong, 2013: 47-57).

Experience has shown that such activities are unsustainable if they have been fully conceived by external actors, even when the implementation was undertaken primarily on a local level. Instead, local stakeholders must be involved in the creation and decision-making process so that the entire enterprise can function more durably. Of key importance for long-term sustainability is that efforts to transform conflicts are locally conceived, guided and implemented (Reich, 2016: 8).

It is important to note that the United States Agency for International Development (USAID) (also active in Serbia) has been undertaking measures since the very beginning of the 2000s to ensure that, in the countries receiving aid, local authorities, civil society and the people themselves (ordinary citizens) are not just passive receivers and implementers of US development programs. Local ownership is a true, if not the sole, way to ensure a long-lasting and sustainable change for the better. The receiving

countries may receive food, medical supplies, various goods and services, financial resources, technical assistance, etc, but in that way, self-confidence and responsibility for their own future will never manifest itself. Local ownership improves the effectiveness of these assistance programs, as it hands over the decision making opportunity to local citizens (Kaplan, 2013). Local actors in the final instance must be trained and made responsible for the development of their own communities.

It is easy to speak theoretically about local actors, locally interested partners and/or users. But how can one determine who such users and/or partners would be? This is a key issue for the *local ownership principle*, pointing to the difficulties in identifying local partners to be engaged by international actors. It is indeed necessary to define who will be chosen as local partners in each individual case, and, in particular, how they are to be identified, how to negotiate their participation in ownership, and how and when they will take the lead in the whole process.

Multiple such criteria have been identified, e.g. "reflecting the diversity of society by being composed of a multi-ethnic, gender-balanced team", "being rooted in the country", "showing own initiative", "having an existing organizational infrastructure" or "explicit commitment to democratic principles and nonviolent conflict transformation". It is also stated that peace building interventions can quantitatively expand local ownership implementation, for example, by including previously excluded social groups (Schirch and Mancini-Griffoli, 2015: 127). There are three additional criteria to be added: Whether and how much (proposed projects, interventions, activities) affect the empowerment of the local population; whether these interventions/projects/activities contain a component of cultural sensitivity; and whether there is a long-term commitment to specific goals on the part of local actors.

All of them are rationally formulated, but these criteria for the selection of local actors and the localization of donor activities actually also reflect a pro-Western perspective, which is then essentially imposed as universally valid and transferrable. There is nothing wrong with that, but it must be clearly stated that, in fact, the first step in this process, i.e. the selection of local partners, actually reflects the principles, values and interests of foreign partners. This includes, among other things, decision-making (which often happens abroad), about who can be a user of resources and support, which thus creates a definitive change of power in local conditions.

Understanding local ownership can be understood in accordance with its other functions, e.g. it sometimes only emphasizes the political attitude or critiques the paternalistic attitudes of donor states toward local actors. One function is in the form of a political ideal that aims to convince policy- and decision-makers in donor countries about the existing fair, politically correct intentions of international agencies. These agencies will implement projects in cooperation with external and internal actors in the situation of urgent need, often causing deep social changes of existing local structures and practices. The proposed programs aim to convince stakeholders about the importance and usefulness of the planned activities. That is why the notion of local ownership is both pretentious and somewhat controversial, since it can conceal the omnipresence of asymmetric relations in power and authority between foreign and local actors. It is clear that the current practice in international cooperation implementation, whereby programs are financed from abroad, i.e. by Western countries, sets out a plan of action with more or less far-reaching consequences that are not always in line with the requirement to be adapted to the needs and demands of local actors in the region.

The term ‘local’ ownership can sometimes seem unjustified and counterproductive, because it also can lead to excessive and unrealistic expectations from local actors (e.g. "we are here to provide ideas and you to give us money") and, consequently, lead to disappointment in terms of the realities of cooperation with foreign actors. We must bear in mind the fact that the goal of development is precisely the necessity of changing the previously existing local, non-democratic, hierarchical, often discriminative, misogynistic and homophobic, despotic structures. These previously existing structures have contributed to the accumulation of local problems, due to which the intervention of foreign actors became necessary. Therefore, a message that can be transmitted by the term *"local ownership"* may misleadingly imply that everything will remain the same as before, only supported by generous foreign finance, what is not actually possible and also poses difficulties for the achievement of development goals.

LEARNING SITES

Learning sites is perhaps more practical than the principle of local ownership and, therefore, a more appropriate concept of learning local traditions, customs and mentalities that refers to the knowledge of local conditions, relationships and other specificities, which diminishes the effect of the patronizing, intrusive donor relationship to those who receive assistance (Reich, 2006: 27).

The concept of *"learning sites"* should logically and substantially precede the application of the *local ownership principle* and be its framework for all stages and phases of the project. In doing so, space and time are provided and clearly allocated, in order to enable stakeholders and actors to collect project-related issues, with latent conflicts and personal disagreements, and to ask for clarifications on the issues that arise during this process. Such a place of learning may not really serve to achieve greater local ownership of the project, but it can certainly achieve greater transparency and deeper understanding (and therefore learning) of the basic structural problems in the project partnership.

The *concept of learning sites* is proposed in the discussion of local ownership as a logical preceding phase, with hope that it can contribute to the dismantling of what is often represented as a relationship between the patron and the client, between the donor and recipient, in international projects relating to the transformation of post-conflict societies. In order to develop this framework, the use of the notion of local ownership should first be problematized and analyzed in relation to the process of transformation of the conflict society into a post-conflict one.

Although *learning sites* as an experience is currently more applied in the work on projects at the level of NGOs, and not in terms of the cooperation of bilateral or multilateral actors, it will inevitably climb up to this ‘higher’ governmental level. The reason for this is that, today, not only increased participation, but also complete ‘ownership’ of the process of social change is required in order to ensure and guarantee efficiency and sustainability. In this process, the question remains as to whether to strive for a truly equal partnership, or even the utopia of true local ownership, given the inevitable inequalities present in current financing practices (Reich, 2016: 10). It should not be forgotten that both knowledge (theory) and public policy are formed from the same material, and that is language. Those who do not emphasize their own knowledge, do not have their own politically built discourse, do not "speak" their own theory, inevitably remain unnoticed and without influence.

THE CASE OF SERBIA

The gender equality mechanisms in Serbia were part of international organizations' package of influences over the processes of democratic institutional reforms. As such, these were accepted by Serbian authorities and the state's institutional system in the process of democratic changes at the beginning of the 21st century. As all such international organizations active in Serbia were dominated by the policies of Western countries, their activities comprised all segments of the well-known 'Western' values of 'privatization', 'market-oriented economy' and 'democratization', which are consistently spread throughout the world (Majstorović, 2013: 199). Institutions established under such influences are not only organizational structures, but also adopted ways of thinking and acting (Abeles, 2014: 175).

Interventions of these organizations in the area of gender equality relied on a large number of international documents (primarily those created by the UN, EU and OSCE), which encourage and justify the establishment of institutional mechanisms for gender equality at all levels of government: state, regional, and local. These international documents guarantee a standardized functioning and (attempted) implementation of gender equality mechanisms. Furthermore, the high reputation of international authority, as well as the foreign experience of the countries from which the managers of these programs come from, which guarantees practical applicability, is a factor which is highlighted. These effects are reflected and materialized in certain, concrete institutional changes; that is, the successful formation and continuous functioning of new institutions, among which, as the most important, were the adoption and application of the following four mechanisms: 1) the quota electoral system (Mršević, 2007: 21), 2) the establishment of institutional gender equality bodies (Mršević, 2011: 104), 3) adoption of National Action Plans (2010 - 2015 and 2017 - 2020) for the implementation of UNSC Resolution 1325, and 4) introduction of gender equality in the security sector (Mršević and Janković, 2017: 240).

All of these institutional structures, collectively named gender equality mechanisms/ institutions were not genuine in origin, nor autochthonous, nor authentic in Serbia. Namely, these institutions existed and were developed previously in a number of European and other countries, and can therefore be considered a part of globalization trends and influences. It is impossible to argue that globalization has not affected Serbian society and its institutions, including those which promote gender equality. The external influences thus undoubtedly exist, and it is also certain that such influences have played a decisive role in the formation of these mechanisms. It should be emphasized that none of these mechanisms (e.g. a quota electoral system in Serbia as the first significant institutional change in the field of gender equality) were introduced by force, either under any external pressure or as a result of any external interventions of imperative character.

The influences of globalization upon the formation of gender equality mechanisms in Serbia did not occur in the form of the imposition of foreign institutional patterns and values, nor would such a 'hard' approach be accepted in a wider long-term and sustainable context. The impacts of this were preceded by the processes of so-called 'soft' influence of globalization changes within the international environment that contributed to the creation of a social climate of respect for gender equality and an increased visibility of women's political activities. The efforts of Serbian authorities to portray Serbia as a no-longer-negative European example and a permanent exception also played a role, and their political will was to catch up with regional and international standards (Mršević and Janković, 2017: 240).

Soft influence means any use of power that does not involve the use of force, which involves the absence of commands, and instead the use of convincing discourse based on the experience that a powerful narrative is always the best source of power. This soft power is – above all – of a discursive type, and utilizes the attractiveness of culture and values in order to increase the conviction of foreign influences (Naj, 2018: 17). Along with these soft influences, there was also a clear openness of society in Serbia and its institutions to accept such influences, considering them as authentic democratization elements of European integration processes.

Soft influences allow two-way exchange. The fulcrum for this can be respect of the *local ownership principle* by external actors and affirmation of that principle by internal actors. Local ownership often includes involvement of and cooperation with non-governmental organizations and independent experts, rather than only bilateral or multilateral state actors (Mršević and Janković: 2017). Problems that occurred during the implementation of this program in Serbia within international organizations at the beginning included an occasional lack of sensitivity for gender issues on the side of certain foreign program managers, both female and male. Such behaviour can be identified as a specific manifestation of transnational patriarchy at work. From time to time, this can occur in the form of a certain low evaluations of the gender equality program as allegedly "overly/unrealistically demanding", "feminist" and allegedly "unnecessary" ("*... isn't there already enough gender equality in Serbia?*"), or of lower importance or priority for the international organization involved and Serbia ("*... aren't there any major problems in Serbia to which resources should be directed?*"). Therefore, the principle of local ownership was, in fact, not applied, either fully, or with confidence in the necessity of such respect, while the practical application of the *concept of learning sites* was completely absent with regard to the introduction of gender equality mechanisms.

But the chance to take advantage of the concept of local ownership has not only been disabled by foreign actors, rather it simply was not considered to be required or utilized by domestic, internal actors. In Serbia, genuine gender equality mechanisms did not previously exist. But this was likewise the situation in many other European countries, which also mostly imitated the Scandinavian experience when establishing their gender equality mechanisms. Moreover, in Serbia an environment existed in which many domestic values developed over preceding decades were simply ignored to the extent of total oblivion upon the arrival of international organizations. We cannot only lay the blame for this upon the external actors, because internal actors such as experts, scientists and NGO activists could and should have affirmed existing domestic values and practices, such as 'development as a means of meeting human needs', 'equality of women and men', 'the human being as the highest value', 'foreign political engagement through the Non-Aligned Movement', as well as the powerful, decades-old sense of anti-colonialism. It should also be added that a fostering of a sense of social justice and social equality had also been instilled in society over previous decades. Likewise, the ideology and mantra of 'Brotherhood and Unity' as a means of living in multiethnic society – specific to Yugoslav socialism – and workers' self-management in industry, should not be ignored. Based on these grounds, former Yugoslav society evolved with the widely shared conviction that social progress was secured, and that there was a predictable flow of agency over time. Factories, universities, roads were created during socialism, and women earned the right to participate in the labour market, and receive paid employment outside the domestic sphere.

Additionally, the emancipatory heritage of socialism witnessed significant progress in terms of education of women to date (Majstorović, 2013: 102 and 214).

Feminist scholarship in Serbia during the previous decade, which increased in quantity, influenced democratic changes, proving the existence of specific gender aspects of conflict and gender-related reconciliation, but was tacit at the beginning of the 2000s when the activities and influences of international organizations in Serbia began. And when such works appeared, they essentially existed in a parallel reality, without affecting the activities of international organizations engaged in Serbia. Inclusion of gender issues too often emphasizes the differences, at the expense of locally owned values, but not the similarities between 'us' – the locals – and 'them' – the foreigners.

Because of this, concrete practices contained only token respect for the *local ownership principle*, most often in the form of a very small, almost symbolic presence of local knowledge. It is arguably best to say that it was not local knowledge but often local ignorance, due to the fact that the 'local expertise' that was included was often the opinions espoused by young (and low-level) domestic program clerks and assistants to foreign program staff. This is the result of two primary factors: First, it was easy to obtain such opinions through in-office discussions and interviews, and second, such opinions were superficial in nature, and could be easily moulded to conform with attitudes of their (foreign) superiors, making them, on the whole, 'acceptable' to foreigners. Because these superiors came almost exclusively from Western countries, and their Western imagination still holds the 'otherness' of the Balkans as being 'chauvinistic, abnormal and with nationalist tendencies', 'permanently transiting' toward, but never fully reaching, Europe and European prosperity (Majstorović, 2013: 202 and 205) .

The manner of formally respecting the principles of local ownership in these post-conflict processes mainly manifested itself in the sporadic, irregular participation of representatives of domestic women's non-governmental organizations and professionals of different profiles (Tarnaala, 2016) in conferences, round tables, panel discussions, and similar. The marginalized character of the local participants in these processes is confirmed by the fact that those involved in the creation of gender equality mechanisms remained within the limits of the role of transmission of the 'foreign knowledge' of Western countries, and, later, the role of the users in their local application.

Neither the Center for Women's Studies, as the presumed leading local theoretical think-tank, nor prominent women's non-governmental organizations, ever drew attention to discursive, descriptive, or even any theoretical knowledge of *local ownership principle* existence and functioning. Until recently, in fact, domestic production of knowledge has been continuously lacking in terms of the need for implementation and in the concrete functioning of the *local ownership principle*, particularly within gender equality programs, and therefore in the establishment of gender equality mechanisms. Foreign actors failed to inform the local scene, and local actors, intellectually sufficiently capable of independently reflecting on the meaning, importance and application of the *local ownership concept* missed a historic opportunity to do so by building their own discursive strategies for achieving local influence.

Therefore, there happens no essential "*localization*" of gender equality mechanisms based on domestic knowledge, i.e. their creation and colouring with local feminist knowledge, experience, local feminist theory and local pride in their own feminist tradition and achievements. And dealing with feminist theory and the conduct of feminist research did not proceed any further in the direction of a specific request addressed to

international actors to respect and apply the concept of local ownership, although, in terms of program design and implementation, they were – in fact – mandatory. In the situation of abandoning local efforts to promote and understand the significance of the *local ownership principle*, the measure of its implementation has remained a discretionary assessment by international actors, as not always being particularly willing to empower their local partners and to potentially create complications for their own work(load).

GLOBALIZATION AND THE HUMANITARIAN INDUSTRY

Gender-based power shapes all human relationships, including especially political power. Political inequality has been identified as the central public relationship of power between men and women, and such a lack of political equality is particularly emphasized in post-conflict societies. Some authors (Tiesen, 2015: 85) use terms such as 'fragile', 'unstable', 'incomplete', because these societies are in a situation where they have a primary need for urgent humanitarian aid, 'pacification' and 'normalization', and the establishment of a new beginning (Abeles, 2014: 277). Namely, the 'fragile state' is the definition of a post-conflict country with low incomes and poor governance, leaving its citizens in an uncertain social, political and economic context. Almost everywhere the topics are identical (environmental protection, anti-corruption mechanisms, the socio-economic-political position of women, democratization of institutions, etc.), and part of that package is the affirmation of the idea that women should be given the possibility of autonomous status and professional affirmation. The establishment of gender equality institutions is usually preceded by, politically and financially supported from the outside, the proliferation of a network of non-governmental organizations dealing with different aspects of gender equality, violence against women, political participation of women, the fostering of women's artistic creativity, economic independence of women, participation of women in the security sector, etc. From the standpoint of international organizations, the creation of NGOs acted as a guarantor of the emergence of a genuine civil society, all in the name of the principle that the greater the number of NGOs, the more democratic the society (Abeles, 2014: 278). But this issue did not only affect NGOs; also, local authorities became aware that they stood in line to receive international funds were they to place an emphasis upon gender equality activities.

According to the views of international agencies, such situations require an accelerated, even "feverish process of democratization", implying urgent education on market laws, the training of managers (Abeles, 2014: 277), and institutional reform and democratization. In fact, there was no need for hurry, and even less for a 'feverish' approach, and this was essentially dictated only by the justified (but also unjustified) fears of international actors that they would be left without funds for the long-term running of their own programs. Since projects usually last only six months to one year, they are unlikely to lead to more permanent, sustainable changes, as real and lasting institutional changes generally require decades; not months or years. Therefore, a common challenge for all international actors is irregularity and the lack of donors' financial resources to "think and plan for decades" with regard to their programs within a particular country or region. This is why, if there is a true motivation for sustainability, aims and efforts can only be achieved through local ownership: National dialogues and platforms allow local ownership to be the basis for building trust and security between domestic and foreign actors (Schirch and Mancini-

Griffoli, 2015: 124), but often overlook it, as they simply "do not have time" for it. What has not happened, at least in terms of feminist theory and the feminist movement of Serbia, regarding the mechanisms of gender equality is the critical deciphering of such a 'humanitarian industry' (Abeles, 2014: 277), with the consequence being that the opportunities provided by the local ownership principle have gone ignored.

With such interventions of the 'humanitarian industry' being repeated across the globe many times over, one can really change the political space of a society by amnestically erasing various local and pre-existing features. Manufacturers of knowledge have the power to make this 'generally accepted' knowledge. However, there remains an open question as to the longevity and sustainability of these changes so that, in this respect, local ownership can act as a fulcrum through which to provide them with local acceptance.

THE 'GLOCAL' PERIOD[1]

The term 'global' means the attainment of a level of integration and interconnection, belonging to the global world, regardless of cultural identity and place in a certain territory. Globalization as a multi-dimensional process transforms the network of relationships between the individual and the collective, and humanity's way of thinking and acting changes deeply throughout the planet (Abeles, 2014: 6 and 7).

The increasingly intense globalization trends of the last quarter of the twentieth century represent not only an environment of strong economic and political influence, but also an environment in which significant changes arose in the spread of institutionalized gender equality practices in countries where they were previously non-existent. Globalization opens a new era that is inherent, and a new set-up of the principles by which social life and the world's order are organized. A new face of society is reflected, whereby, in the processes of homogenization and standardization, the boundaries between original, traditional and locally understood cultural values are increasingly blurred. Boundaries and distances are no longer obstacles, the consequences being that, for example, across the globe people eat almost the same food, dress in the same clothes and listen to the same music (Abeles, 2014: 44, 45 and 52). And it is not too much to say also, that this includes women's demands for the same rights, from institutional protection against gender-based violence, through political parity, to raising the general level of gender equality in all social and private aspects. It is clear that globalization changes not only economic relationships, but also the configuration of traditional power relationships. Women, women's movements, women's groups, experts and activists increasingly communicate and cooperate on a global level. The emphasis of the modern world is placed on an intensification of all such flows and an acceleration of exchanges (Abeles, 2014: 16 & 17), and within this exchange gender equality concepts have their place.

Therefore, there are authors who argue that we have stepped into the so-called 'glocal' period (Abeles, 2014: 135), where deeper mixing and interweaving of local and global concepts occurs. Namely, the key determinant of the modern world is constant circulation. Globalization can be defined as an acceleration of the flow of capital, human beings, goods, images and ideas, and the concept of gender equality institutions/mechanisms. No longer are traditional geographical and political boundaries to be considered obstacles. Such

[1] Terminology taken from *Antropologija globalizacije*, by Marc Abeles.

movements and networks result in a change in social and cultural characteristics. It is true that gradually a peripheral culture will increasingly assimilate the imported meanings and shapes, and will become increasingly similar to that of the centre. Such a removal of differences contributes to the growing global homogenization and standardization (Abeles, 2014: 41, 43 & 44). But this does not remain forever a one-way movement from the centre to the periphery. The periphery also has the power to articulate knowledge of itself, and that knowledge is equally accepted as were it to have originated in the centre, though perhaps not with the same (self-)evaluated capacity and penetration. Nevertheless, there are needs and ways in which the voices of different actors within a society can influence reform processes in the field of security and gender equality (Welch, Gordon & Roos, 2015: 3).

The key element of globalization is the fact that movement between the centre and the periphery is not only one-way, but also involves very different two-way circular flows with different outcomes. The facts disprove the image of a planet subjected to ever-present one-way processes of homogenization, standardization and, by default, Westernization. Cultural globalization is a more complex issue than at first appears. All of these elements are found in a continuous circle from one end of the planet to the other (Abeles, 2014: 51 & 52). The centre increases its influence over the periphery, which in turn strives to reach the centre. The centre, which comprises the industrialized Western countries, uses intensive capitalist production of goods that are sold all over the world. The task of the periphery is to provide cheap raw materials and labour to the centre, but also to adopt the same – or at the very least a similar – system of values and beliefs that would simplify and facilitate the initial process. But it also makes control of the centre easier. Technological innovations in communications and transport in global frameworks have produced new forms of consumption (Abeles, 2014: 31 and 33) of both goods and ideas, and movements and directions of thought, methodology and values.

In the dichotomous centre:periphery pattern, the hegemony of rich countries stands as the core feature. With globalization, certain issues have become indispensable, above all those concerning the status of politics and changes that are experienced by nation states (Abeles, 2014: 118 and 122). Globalization can therefore be understood as a form of cultural imperialism and as an inevitable process of homogenization aimed toward the ease of influence and control from the centre. But the circulation of cultural products does not allow the exclusion of homogenization: All these elements are found in continuous circulation the world over (Abeles, 2014: 47 & 52). Global diversity can be understood today only if one takes into account interconnections and interdependencies. Awareness of interconnectedness increasingly affirms the view that it is necessary to allow other voices to be heard, and not only Western ones, which have thus far been undisturbed in their dominance (Abeles, 2014: 107 & 115).

In an open world, not only individuals and groups circulate, but also information and knowledge in all possible ways: Between the centre and periphery there is a more or less open circulation of mockery, parody and pastiche. The presence of a global institutional culture is, by its very nature, mostly patchworked, where the most diverse meanings and practices are intertwined. Social formulation of difference is a complex and continuous process of negotiation in which hybrid social forms are manifested. Gender regimes, as with stereotypes, circulate to contribute to global gender mainstreaming, resulting in significant political consequences (Abeles, 2014: 101, 102 & 161).

We argue that the inclusion of local knowledge in implementing the local ownership principle in the ‘glocal’ era in Serbia, the so-called ‘deep democracy’, did not happen.

External influences were predominant. Such 'deep democracy' would have evolved into a multidimensional space where the locally and globally harmoniously intermingled (Abeles, 2014: 274). The term is used to describe such a type of experience, rooted in the local and nearby environments, as well as the ability to receive and accept broad influences beyond the borders of states and continents. If external influences are always – and exclusively asymmetrically –prevalent over domestic ones, then we lack both established *deep democracy* and respect for the *local ownership principle*.

CONCLUSION

Other countries' experiences suggest that international donors and foreign governments often underestimate local capacities to contribute to change, but as is not uncommon, the same international actors simultaneously ironically complain about the lack of local ownership (Schirch and Mancini-Griffoli, 2015: 120). At the same time, civil society equally regrets that foreign governments and international donors overlook or underestimate their abilities. Both reactions failed to manifest themselves in Serbia when establishing gender equality mechanisms, as foreign actors were satisfied with the level of cooperation of lesser local actors that was achieved. And for their part, they did not emphasize requests for local ownership because they did not even know that this was possible, or did not have an interest in true local affirmation. On the domestic scene, the impression was given that there was no awareness that women's movements often sank into oblivion after short-term victories, after which these short-lived triumphs were replaced by long-lasting silences (Sklevicky, 1996: 74).

The initial lack of local feminist knowledge in some areas has been largely automatically and too easily in-filled by foreign, Western experiences, theories and practices.At worst, there has been a tendency toward the continuation of patriarchal traditions represented by local male political elites, uninterested in gender equality. This has particularly been the case in (near-)exclusively male professionally privileged domains, for instance the security sector.

We argue that both foreign and domestic actors are responsible for such a situation. Foreign actors because, apart from Western theory and experience, they failed to acquire and/or disregarded local knowledge, considering it either non-existent or inferior to that of Western countries. The concept of learning sites was not, however, applied in practice in Serbia. At the same time, domestic actors were satisfied with the comfortable position of the well-chosen transmitters and users of imported knowledge and practice, without trying to understand the possibilities that the *local ownership principle* offered, and failing to even pretend to have the role of either creators or owners of relevant facts and experiences.

Perhaps in Serbia, then, the winning combination would be so-called *transversal policy*. Namely, the specific form of coalition policy that Yuval Davis terms *transversal policy*, requires that the form and content of particular feminist struggles should be determined and framed by concrete historical conditions. The function of *transversal policy* is to open the way for mutual support and greater efficiency in the struggle for a less sexist, less racist and more democratic society in permanently changing contexts in which we live and act (Kolarić, 2011: 115-116). Having perceived and accepted different parts and histories of themselves, it should be a part of feminist critique to believe that

things can change and that history and oppression should not always be repeated (Majstorović, 2013: 215).

The need to create knowledge about gender equality in Serbia was obvious, and likewise there was a former – but also present – need to create a scientific space that would contribute to the development of contextual awareness (Jakšić, 2016). Or, to put it briefly, it was necessary at the beginning of the twenty-first century to be smarter than we once were, because, for the application of the concepts of *transversal policy, deep democracy* and an insistence on the application of the *local ownership principle* in relations with foreign actors, it can never be too late. The smart mind is never superfluous, neither now, nor in the future.

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LOKALNO POZNAVANJE PRINCIPA LOKALNOG VLASNISTVA U SRBIJI

Predstavljen je način funkcionisanja i implementacije principa lokalnog vlasništva u situaciji nedostatka podrške lokalnog znanja. Mehanizmi rodne ravnopravnosti bili su deo paketa uticaja međunarodnih organizacija na proces demokratskih institucionalnih reformi u Srbiji. Ceo proces se odnosio na veliki broj međunarodnih dokumenata koji podstiču i opravdavaju uspostavljanje institucionalnih mehanizama za rodnu ravnopravnost na svim nivoima vlasti: nacionalnim, regionalnim i lokalnim. Iskustva i znanje zapadnih zemalja najviše je doprinelo procesu formiranje mehanizama rodne ravnopravnosti i njihovo kasnije funkcionisanje. Nedostatak produkcije lokalnih znanja pre svega o suštini i ulozi principa lokalnog vlasništva u stvaranju institucija za rodnu ravnopravnost, je trajna u Srbiji. Proces „učenje mesta" tj. upoznavanje spoljašnjih aktera sa unutrašnjom situacijom, praktično se nije primenio u Srbiji. Takozvani „glokalni" period dubokog prožimanja lokalnog i globalnog se nije dogodio. U tekstu se argumentovano zastupa stav da nije postojala suštinska „lokalizacija" mehanizama rodne ravnopravnosti zasnovana na domaćem znanju i da su za tu situaciju odgovorni i strani i domaći akteri. Spoljašnji, jer osim zapadne teorije i iskustva, ne znaju i/ili zanemaruju lokalno znanje, bez obzira da li ga smatraju nepostojećim ili inferiornijim od znanja zapadnih zemalja. Istovremeno, domaći akteri su se prebrzo zadovoljili udobnom pozicijom sekundarno važnih aktera, samo sa ulogom odabranih prenositeljki/ka i korisnik/ca inostranih koncepata. Oni nisu iskoristili mogućnosti koje pruža princip lokalnog vlasništva i nisu ni pretendovali da zauzmu ulogu stvaraoca, niti ulogu relevantnih vlasnika znanja i na njemu zasnovanih javnih politika i praksi.

Ključne reči: *međunarodni akteri, lokalno poznavanje principa, programi učenja, humanitarna industrija, mehanizmi rodne ravnopravnosti u Srbiji, transverzalna politika*.

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Review Paper

FROM COLLISION TO COLLABORATION – INTEGRATING INFORMAL RECYCLERS AND RE-USE OPERATORS IN EUROPE: A REVIEW *

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Abstract. *The European Union (EU) hosts some of the world's most developed waste management systems and an ambitious policy commitment to the Circular Economy. The existence of informal recycling and re-use activities in Europe has been vigorously denied until quite recently, and remains a very challenging subject for the European solid waste management sector, as well as for European government and private institutions. In countries ranging from Malta to Macedonia and from France to Turkey, informal recyclers excluded from legal recycling niches increasingly collide with formalised and controlled EU approaches to urban waste management, packaging recovery schemes, formal re-use enterprises, and extended producer responsibility systems.*
This review focuses on the period from 2004 through the first half of 2016. The 78 sources on European (and neighbouring) informal recycling and re-use are contextualised with global sources and experience. The articles focus on informal recovery in and at the borders of the European Union, document the conflicts and collisions, and elaborate some constructive approaches towards legalisation, integration, and reconciliation. The overarching recommendation, to locate the issue of informal recovery and integration in the framework of the European Circular Economy Package, is supported by four specific pillars of an integration strategy: documentation, legalisation, occupational and enterprise recognition, and preparation for structural integration.

Key words: *Informal Recycling and Re-use, Europe, Circular Economy, Balkans and New EU, Informal Integration, Extended Producer Responsibility.*

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INTRODUCTION

Within and at the borders of the European Union (EU), home to the world's most developed and institutionalised waste management systems, and with an ambitious policy commitment to the Circular Economy, there are thousands, possibly millions of informal recyclers and re-use operators. The existence of informal recovery activities in Europe, and the corresponding need for informal sector legalisation and integration in Europe, has been vigorously denied until quite recently, and remains a very challenging subject for the European solid waste management sector. European government and private institutions, in charge of municipal cleansing and hygiene, see the informal sector as undermining their work and creating dangerous risks for public health and safety. Informal recyclers and re-use operators seldom have a legal status, and themselves feel that the economic niches that support them and their families are being eliminated without offering them an alternative. Clashes and conflicts are growing, and some form of co-ordinated action will be necessary if the European ambitions for resource efficiency are to become a reality (European Commission (EC) 2016a, 2016b European Environmental Agency (EEA) 2009, Eurostat 2015, Len 2014).

The Context: Recycling in the European Union and the Balkans

In Europe, the general approach to re-use and recycling is that they are part of the waste management sector, they are priorities in EU policy, and that they "belong" to governmental institutions who rely on them to achieve policy targets. Service chain institutions in Europe see their responsibilities as covering separation rules for households, set-out of waste and recycling, collection, transfer and storage, and processing, recycling, recovery and disposal of waste, bio-waste re-usables, and recyclables. Renewed focus on waste prevention takes this responsibility "upstream" to include influencing packaging and consumption choices.

The modernized European waste collection system is regulated by the Waste Framework Directive 2008/98/EC (EC 2008). All EU member states and pre-accession countries use the directive as a guide. Higher levels of the solid waste hierarchy – such as waste prevention, re-use, and recycling – have a higher priority in policy, but are outside of the purview of municipal cleansing institutions, and as a result are implemented unevenly. Important changes approved in April 2016 in the framework of the European Circular Economy Package introduce a robust set of reforms that give even more priority to reducing the production of waste, redesigning and diverting products and packages from disposal (ACR+ 2009, Len 2014, Luppi and Sole 2015, EC 2016a, EC 2016b, EEA 2009, Eurostat 2015, Zambryzcki 2013).

The EU waste and materials policy framework – and the new requirements of the Circular Economy Package -- require producers to manage the end of life of their products and packages. The three principal directives for packaging waste, chemicals, and electronics, regulate the management of the end of life of produces and packages in a sustainable way, largely through ensuring recycling and safe disposal. This highly developed, dynamic, and institutionalised approach to waste and materials management creates an entirely different context for informal re-use and recycling in Europe than for similar activities in Asia, Latin America, and Africa (ACR+ 2009, EC 2016a, EC 2016b, Zero Waste Europe 2015, EEA 2009, Ramusch *et al.* 2015, Scheinberg and Nesić 2014).

Most of the countries at the borders of the EU are in the process of becoming member states or of affiliating with the EU at some institutional level. The process of "accession" to

the European Union requires wide-ranging measures to "harmonise" governance, legal and regulatory systems and bureaucratic culture with the requirements for EU member states. Solid waste systems in Macedonia, Serbia, Bosnia-Herzegovina, Montenegro, Turkey, and Kosovo, are all being modernised in the framework of the EU accession and harmonisation process, just as occurred previously in Slovenia, Croatia, Bulgaria and Romania. Formal institutions in the waste management sector in Europe have been increasingly required to take responsibility for the entire waste cycle, including prevention and recycling. This has taken 30 years in the "old EU," but must occur rapidly in countries seeking accession to the EU. This brings far-reaching changes to three main institutional landscapes: the *service chain* businesses and public institutions responsible for city cleaning and waste collection; the *value chain* of recycling traders and processors that are closely connected to global materials chains in Asia and elsewhere; and producers, importers, wholesalers, distributors, and retailers of consumer goods and packaging (DTI 2013, EC 2016a, EC 2016b, ACR+ 2009, Belghazi 2008, Scheinberg and Mol 2010, Scheinberg and Savain 2015, Soos and Popoviçi 2008, Schmied *et al.* 2011, Doychinov 2008, Doychinov and Whiteman 2013, Newman 2015).

As the pre-accession period progresses, cities and national ministries in South-eastern Europe, Turkey, Tunisia, and other countries under EU policy influence, come to understand that they are now required to take responsibility for organising recycling and promoting prevention and re-use. With some exceptions, "recycling" is something that is new – and uncomfortable – for municipal authorities, whose public cleansing companies have focused on removing waste and cleaning streets. They seldom realise that "recycling" is above all a private value chain activity. They lack experience, contacts, expertise – and above all interest – in entering the complex and highly commercialised world of trading materials in the value chain. And they do not realise that the informal street pickers and re-use entrepreneurs who work the streets at 6 am, are the primary suppliers to a globalised recycling system. Nor does it occur to these public actors, that informal activities may already be meeting or exceeding the goals set by EU directives for recycling and recovery (Ramusch *et al.* 2015, Scheinberg *et al.* 2010b, Belghazi 2008, Luppi and Sole 2015, Toska and Lazarov 2007, Toska *et al*. 2012, DTI 2013, EEA 2011, Gunsilius *et al.* 2011, Vaccari *et al.* 2013, Wilson *et al.* 2006, Scheinberg and Mol 2010, Chikarmane and Narayan 2009, Scheinberg *et al.* 2007, Simpson-Hébert *et al.* 2005).

The situation for producers of products and packages is also uncomfortable. For them, the responsibility for end of life management is new: until relatively recently, they were responsible only for the "front end" of the life cycle, producing and selling, and not for the "back end," collection, processing, and recycling or end-of-life management. Especially in the new EU (Romania, Bulgaria, Croatia, Slovenia) and in pre-accession countries such as Turkey and former Yugoslav republics, producers are under pressure to organise packaging recovery systems. Even though producers active in these countries know how the value chains work, they often do not "see" informal recyclers and re-use operators as being critical to the entire recycling system (Zero Waste Europe 2015, OECD 2016, EXPRA 2014, see also Box 3 and Box 4, below).

Historical Overview: Scholarship and Practice on Informal Recycling, Re-use and Waste Management Outside of Europe.

Table 1 describes how informal recycling came to the attention of the international community. The push came from some European development co-operation organizations, especially those of Germany and the Netherlands, the Collaborative Working Group on

Solid Waste Management in Low- and Middle-income Countries (the CWG), the World Bank, social development initiatives in Egypt and India, the child labour elimination initiatives of the International Labor Organization (ILO), and the focus on member-based organisations of waste pickers by WIEGO (Women in the Informal Economy, Globalising, Organising). (ILO 2004, Chen 2012, Scheinberg and Anschütz 2006, Cohen *et al.* 2013).

Table 1 Insights from International Sources on Informal Recycling

Insights	First Wave- 1990s	Second Wave-2000s
Informal Recyclers and their activities	▪ informal recyclers choose activity due to lack of formal education or paperwork ▪ eliminating children's participation requires parental and community involvement in decision making ▪ often more interested in improving their business model than in "better work" ▪ either waste pickers do the activity for less than 6 months or a lifetime, involving multiple generations	▪ informal recyclers make up as much as 1% of the world population - large numbers are in Asian, Latin American, and North American cities ▪ formalisation trends favour men ▪ informal recyclers perform environmental services for their cities, some of which can be quantified and generate value that cities do not pay for or support
Informal Recycling Systems	▪ earnings often surpass minimum wage ▪ privatised landfills and waste collection disrupt informal livelihoods ▪ International and charity efforts to move waste pickers out of the system fall short because the profits are not comparable.	▪ in most developing country cities the majority of recycling happens informally ▪ more people work in the informal waste sector than the formal ▪ European cities have active informal systems ▪ pro-forma costs of informal recycling and waste collection are lower formal service costs. ▪ formalising and legalizing informal recycling depends on social and governance factors, including the establishment of identity of internal or cross-border migrants

Sources: Simpson (1993), Iskandar (1994), Medina (1997), Abarca *et al.* (2002), Chikarmane *et al.* (2001), ILO (2004), Dias (2006), Wilson *et al.* (2006), Medina (2009), Scheinberg *et al.* (2010a), Wilson *et al.* (2010), Scheinberg *et al.* (2010b), Wilson *et al*. (2009), Gunsilius *et al.* (2011), Conseil De L'Europe (2013), Porter (2012).

Informal recyclers live by primary extraction of discarded items and materials from disposal sites, streets, containers, and sometimes directly from generators. They valorise these materials and products, and sell them to the value chains. They support themselves and their families with the income from trading. Informal sector issues began to enter into the mainstream waste management discourse on developing countries starting around 2006, partially stimulated by the periodic workshops of the Collaborative Working group for Solid Waste Management in Low- and Middle-income Countries (the CWG), and the study "Economic Aspects of the Informal Sector in Solid Waste" financed by GIZ (German International Co-operation, at the time referred to as GTZ, German Technical Co-operation) (Scheinberg *et al* 2010b). Since then, there has been a growing literature on informal recycling in developing countries, and a robust body of practice on integrating informal recyclers into formal systems in Latin America, Asia, and North Africa.

According to a number of studies, dating back to 2006, this form of work keeps many tonnes of waste out of landfills, saves cities and households money, reduces greenhouse gas formation, and supports millions of families worldwide (Medina 2009, Chikarmane

and Narayan 2009, Gunsilius *et al.* 2011, Chaturvedi 2009, Linzner 2012, Wilson *et al.* 2009, Linzner and Lange 2013, Linzner *et al. 2011*, Scheinberg *et al.* 2010b, Wilson *et al.* 2010, Wilson *et al.* 2015).

Outside of Europe, the existence and importance of waste picking is gradually becoming accepted by the waste management industry, forward-looking producers, and a number of multi-lateral institutions including the World Bank, the International Finance Corporation, and the InterAmerican Development Bank. Informal activity has achieved the status of an uncomfortable but inescapable reality, that has to be considered in plans to upgrade waste management (Scheinberg *et al.* 2010a, 2010b, Wilson *et al.* 2006, Wilson *et al.* 2010, Velis *et al.* 2012, Cohen *et al.* 2013, Scheinberg and Savain 2015, Ramusch *et al.* 2015, Wilson *et al.* 2009, Popovska 2008).

In middle-income countries with very large populations of informal recyclers, such as Brazil, South Africa, Colombia, China, Indonesia and India, conflicts and competition for materials have led to a body of advocacy, research, and projects on integrating the informal sector into processes of modernisation of waste management systems. Legalisation and integration generally depend on a demand for informal recyclers to organise themselves in co-operatives, unions and/or associations, register, pay taxes, and operate legally within the framework of the service chain (waste collection and disposal) or the value chain (recycling industries). *Informal integration* refers to a situation where recycling is a recognised official occupation, and informal recyclers have a legal identity, are protected by laws and decrees, covered by social protection schemes, and, increasingly, paid for the value of the service they are delivering to the city and the environment (Dias 2006, Gunsilius *et al.* 2011, Chaturvedi 2009, CEMPRE 2014, Rutkowski and Rutkowski 2015, Godfrey 2014, Chikarmane and Narayan 2009, Medina 2009).

But there has been little willingness to acknowledge that informal activities are also affecting solid waste and recycling systems in middle, upper-middle, and high-income countries in North America Oceania, and high-income Asia, and in Europe. The EXPRA/RDN/ISWA meeting in Bucharest in 2014 was one of the first international meetings to break that taboo, and to engage in a discussion of conflicts between formal and informal recycling activities in and at the borders of the EU (EXPRA 2014, OECD 2016, Linzner 2012, Linzner and Lange 2013, Schmied *et al.* 2011, Velis *et al.* 2012, Cohen *et al.* 2013, Scheinberg and Savain 2015, Ramusch *et al.* 2015, Wilson *et al.* 2009).

Collisions in the Making

There are many more informal recyclers in Europe than is generally acknowledged, and their recovery activities are undermining EU-harmonised recycling, re-use, waste management and producer responsibility systems. Informal recycling and re-use activities are like double-edged sword: on the one hand they are seen as the cause of health, safety, and environmental problems, and on the other, they are a significant resource for cities and regions to meet or exceed ambitious EU recovery and diversion targets. Packaging schemes in Turkey and the Balkans are "losing" target materials, seeing them pass through informal hands and diminishing the value of investments in modern packaging systems (EXPRA 2014, Eröztürk 2015, Springloop Cooperatie 2016).

And the converse is also true: informal recycling and re-use operators are encountering increasing competition for recyclable and re-usable materials coming from formal recycling and re-use systems, and their spaces for legal operation are closing. Also in the re-use sector, formal or semi-formal second-hand shops, flea markets, and charitable institutions are seeking

to de-legitimise informal re-use operators and pop-up flea markets, stimulating a struggle for rights to continue to commercialise re-usables (Soos and Popoviçi 2008, IFC 2010, Linzner 2012, Obersteiner *et al.* 2012, Len 2014, DTI 2013, EXPRA 2014, Kozák 2012, Luppi and Sole 2015, Zero Waste Europe 2015).

Conflicts are emerging in interactions between informal re-use and recycling sectors and three sets of formal institutions:

- The service chain, consisting of public and private waste companies, inter-governmental entities and public sector operators;
- National ministries and institutions in the areas of social affairs, economics, migration, labour, and commerce;
- Producers of consumer goods and packaging, and the extended producer responsibility (EPR) institutions and organisations that represent them.

Waste management companies have difficulty with the fact that street pickers "make a mess" when extracting valuable materials from waste set-outs or containers, making their work more difficult. Conflicts with private waste companies arise in countries like Austria or Colombia where private waste collection is paid by the tonne and then the companies say that waste pickers are "stealing the waste," even when the households make a decision to give their washing machines or old clothes to an informal re-use entrepreneur or to someone collecting to sell at the flea market. Waste industry trade associations also note that "invasion" of landfills by dump pickers makes these landfills unsafe and unsanitary (Schmied *et al.* 2011, Scheinberg 2011, Newman 2015).

The collision with governmental and para-statal institutions is based on the governance of social norms and labour protections. United Nations organisations such as the International Labour Organization (ILO) and the International Trade Union Confederation (ITUC) have well-documented objections to the presence of children picking waste on landfills or in containers, but they have a more nuanced view of the position of adult independent recyclers. These and other organizations work to create social and health protections, reduce the risk of disease and injury in the recycling sector, and organize pickers in solidarity institutions such as labour unions or co-operatives. They also generally support the professionalisation and occupational recognition of waste picking (ILO 2004, Chikarmane *et al.* 2008, Scheinberg and Anschütz 2006, ITUC 2014).

The third, and perhaps the most dramatic set of confrontations, comes when waste pickers harvest discarded packaging wastes and wastes from electric and electronic equipment (WEEE) which are covered by packaging or e-waste collection and Extended Producer Responsibility (EPR) schemes. These systems enjoy robust levels of capitalization and political support, but, due to large and active groups of informal recyclers and reuse operators, have been documented to capture less than 10% of total recyclables collected in countries like Bulgaria, Slovenia, Turkey, Malta, and Greece (EXPRA 2014, Scheinberg and Nesić 2014, OECD 2016).

Discomfort also characterises relations between informal re-use operators and recyclers and two additional sets of (semi-)formal stakeholders (Luppi and Sole 2015, Len 2012):

- the value chains, that is, private recycling and re-use firms, who buy the materials, and
- civil society, including social enterprises, community-based organisations, environmental non-governmental organisations (NGOs) and charitable institutions.

Waste pickers and informal recyclers and re-use operators sell their materials to small and medium-sized junk shops, antique and second-hand shops, and sometimes also larger dealers, exporters, and end-users. Waste pickers depend on these enterprises, but often express a view that the prices are less than fair. There is clear need for improving existing co-operation, rather than a collision. Improving waste picker relationships and recycling performance through interventions in value chains have been studied in detail in a number of countries, most recently in Central America and North Africa, but also in the Balkans (Lobo Ugalde *et al.* 2016, Popovska *et al.* 2008, Soos *et al.* 2014, Scheinberg *et al.* 2007).

There is frequently a disconnect between informal recyclers and re-use operators in Europe, and NGOs involved in charitable re-use shops, social enterprises, community development and environmental activism. Social enterprises dominate the European re-use sector, and community development and environmental NGO's are abundantly present in some countries like the UK, in the area of packaging and recycling. These organisations have an uncomfortable relationship with the informal sector, which they would prefer to eliminate, but often settle for focusing on social entrepreneurship and/or "recycling projects" (Rutkowski and Rutkowski 2015, Oyake-Ombis 2012, Len 2012).

Structure of this Article

This introduction (Section 1) provides an orientation to the body of work – scholarship, policy advocacy, and practice – on informal recycling and re-use in Europe, lightly contextualised with historical and global information. Section 2, following, reviews sources that document and characterise informal recycling and re-use activities in Europe, as well as projects, initiatives and structural interventions ranging from traceability requirements to union organising. The third and final section does some light classification of the sources, draws out some insights from the review, and suggests conclusions and courses of action that can be derived from these sources.

European Informal Recycling and Re-Use, a Review

This section of the paper reviews the state of informal recycling in Europe using the approaches and (evolving) vocabulary that has characterised work in low- and middle-income countries outside of Europe. This review focuses on the 78 entries in the reference list that make a specific reference to European informal re-use and recycling:

1. sources documenting and characterising informal recyclers and re-use operators in Europe:
2. sources introducing the collision course between informal recyclers and re-use operators, and formal stakeholders; and
3. sources presenting initiatives, projects and approaches to informal legalisation and integration solutions.

The sources fall into four categories, including

1. scholarly article, action research or student report, conference, project report,
2. social or labour advocacy and/or organising,
3. policy documents, laws, government, donor consultant reports, plans, and
4. direct information provided by individuals or organisations working on informal recycling and re-use in Europe.

Documenting Informal Recyclers and Re-use Operators in Europe.

Practitioners and researchers in the recycling and waste management sectors began researching and documenting Europe's informal recycling sector between 1998 and 2008. One of the earliest available sources highlighting repair for re-use is a small handbook, *Rubber* Recycling, published in 1996. This document describes research on informal rubber recycling micro-enterprises in Naples, Italy, called *gomnisti*, who operate several levels of re-use, repair, and reprocessing. The earlier literature generally limits itself to the social issues, showing that waste pickers are members of vulnerable groups within the European society. Later articles treat operational questions, and begin the integration discourse by illustrating the practical, operational, social and environmental benefits created by waste pickers and informal re-users (Ahmed *et al.* 1996, Simpson-Hébert *et al.* 2005, Luppi 2006, Occhio del Riciclone 2006, Occhio del Riciclone 2007, Conseil De L'Europe 2013, Fernandez and Ruberto 2008, Popovska *et al.* 2008, Soos and Popoviçi 2008).

Italian informal re-use operators have been a major focus of research, activism, lobbying, and interventions at the Economic and Social Research Centre of Occhio del Riciclone (OdR, in English: *Eye of the Re-cyclone*). This rich source of information and analysis of the Italian re-use sector began with a consultation in 2003 with several hundred informal re-use operators active in the city of Rome, using a survey designed by a group of economists, communication experts and environmental technology specialists. The City of Rome awarded its Environment and Development prize for the study focusing on Rome, one of a group of cities studied, that included Anguillara, Ciampino, Udine, Vicenza, and Empoli (Luppi 2006, Occhio del Riciclone 2006, 2008, 2009). Working with OdR In 2008, WIEGO, the global charity Women in the Informal Economy Globalising Organising, co-financed a focused study on informal re-use in Rome (Fernandez and Ruberto 2008).

Box 1 Eurostat Mentions Informal Recyclers' Contributions

"The informal sector manifests itself in different ways in different countries, different regions within the same country, and even different parts of the same city. It encompasses different kinds of activities, different types of enterprise, and different reasons for participating. Informal activities range from street vending, shoe shining, food processing and other minor activities requiring little or no capital and skills and with marginal output, to those involving a certain amount of investment in skills and capital and with higher productivity, such as manufacturing, tailoring, car repair and mechanised transport. While some informal sector activities resemble traditional activities in handicrafts, food processing or personal services, others such as car repair, **recycling of waste materials** or transport, are new and arise from modernisation.

Reasons for participating in the informal sector range from pure survival strategies undertaken by individuals facing a lack of (adequate) jobs, unemployment insurance or other forms of income maintenance, to the desire for independence and flexible work arrangements and, in some cases, the prospect of quite profitable income-earning opportunities, or the continuation of traditional activities.

"It should be noted that **the vast majority of informal sector activities provide goods and services whose production and distribution are perfectly legal** (in contrast to criminal activities or illegal production). There is also a difference between the concept of the informal sector and that of the hidden or underground economy, because informal sector activities are not necessarily performed with the deliberate intention of evading the payment of taxes or social security, but to reduce production costs."

Source: Eurostat (2015), emphasis added.

The authors believe that the first focused treatment of informal recycling in Europe was in the ILO Desk Study in 2004, with contributions by an action research team that worked with Romanian informal recyclers. This study discovered that interventions in what is now called

"social integration" had generally failed to improve lives and livelihoods of waste pickers, and hypothesised that treating informal recyclers as recycling entrepreneurs with important skills and knowledge would lead to the formulation of a different kind of intervention, based on professionalising their recycling activities to improve working conditions and income levels (ILO 2004, Scheinberg and Anschütz 2006).

The definitive monograph on informal recycling in former Yugoslavia, "*A Paper Life*", by Mayling Simpson-Hébert, Alexandra Mitrović, Gradimir Zajić and Milos Petrović, documents waste picking in former Yugoslavia in a period before EU influence began to affect solid waste planning and practice. Available in Serbian and English, this small book provides a clear and immensely valuable baseline on European waste picking in the Balkans in a period when state socialist municipal waste institutions, the "Čistoća" or "Javno Komunalno Preduzece" still had a functional monopoly in the service chain (Simpson-Hébert *et al.* 2005).

The Belgrade waste pickers interviewed were primarily recycling paper and cardboard, non-ferrous metals, car parts, and re-usables. The monograph documents a state of mutual tolerance and understanding, so stable that waste pickers are quoted as saying, in response to questions about legality of waste picking "So far it has not been prohibited" or "As long as the dumps exist – that means that this work of ours is allowed." Waste pickers also reported that before the Vinca Dump in Belgrade was closed, they were not only tolerated, but garbage truck drivers would let Roma community members ride with them on their way to school or the city (Simpson-Hébert *et al.* 2005, Scheinberg *et al.* 2007).

The MIREA (Mainstreaming, Informal Recyclers in Europe and Africa) proposal to Europe-Aid was the occasion for several European organisations working in five European Union and pre-accession countries to establish an inventory of waste picking, including an inventory of occupations and an estimate of numbers of informal recyclers and re-use operators, in these countries.

The city of Cluj-Napoca in Northern Romania was selected as one of the six cities in the GIZ informal sector study and represents one of the earliest attempts to document "informal integration" in a European city. The City Report for Cluj-Napoca compared the performance, costs, and capture rates of informal recyclers at the Pata Rat landfill in Cluj-Napoca, with those of the formal European Union co-financed EcoRom packaging system, and concluded that informal recyclers were recovering many tonnes of materials at a fraction of the costs per tonne of the EcoRom system. They were providing a substantial positive environmental contribution to the city, but working in very poor and unhealthy conditions. The private waste company operating the landfill was interested in co-operation with the informal recyclers; in contrast, the city authorities, even when they understood that they benefitted from informal activities, were not willing to engage in dialogue (Soos and Popoviçi 2007, Soos and Popoviçi 2008, Scheinberg *et al.* 2010b, Gunsilius *et al.* 2011, Scheinberg and Mol 2010, Popovska *et al.* 2008, Tasheva 2012, Toska *et al.* 2012, Whiteman *et al.* 2009).

Table 2 Global informal occupations as documented in Europe

Global occupation	**Global features found in Europe**	**Specific variations or characteristics found in Europe**
Occupation 1, *waste pickers* (WPs):	Collect materials on foot or with tricycle or motorcycle with cart from street set-outs, containers, illegal and legal dumps.	European waste pickers pick both recyclables and re-usables, and do not usually specialise.
Occupation 2, *itinerant waste buyers/collectors* (IWBs/IWCs).	IWBs move along a route and trade directly with household and business waste generators, buying recyclables and offering a private separate collection service.	In Europe IWCs are more likely to get the materials "as a donation". A European variation is also to perform some paid service, like cleaning out an attic or helping with moving house, and have the right to take materials
Occupation 3, *small dealers*, or *small junk* shops	The first level of mobile or stationary traders who buy from waste pickers and IWB/IWCs. Premises are often without permits, and attract fines from zoning officers.	A European variant is second-hand traders, who buy and upgrade or repair materials, evaluate whether they can market them into the upper levels to antique markets, and then sell them.
Occupation 4, *second-hand operators*	Not considered part of the informal recycling sector in countries like Brazil or India, although picking of re-usables for own use is a common supplement to waste picking for recycling	In Europe re-usables are picked by street and container pickers, IWCs, traders, transporters, and merchants, and includes merchants specialised in direct sales of re-usables via pop-up flea markets, stalls in formal markets, and concession shops.
Occupation 5, *swill collectors, herders*	Collectors of food waste and spent frying oil for animal feeding or soap. A common variant is to graze livestock on official dumpsites or unofficial waste heaps.	Grazing of pigs on village dumps, is common. Swill or spent oil collection in Europe is usually an activity of the formal, rather than the informal, sector.

Sources: Schmied *et al.* (2011), Ramusch *et al*. (2015), Scheinberg *et al.* (2010b), Luppi and Sole (2015), Toska and Lazarov (2007), Toska *et al*. (2012), Scheinberg and Nesić (2014), DTI (2013), Velis *et al.* (2012), ITUC (2014), Gunsilius *et al.* (2011), Vaccari *et al. (*2013), Wilson *et al.* (2006), Scheinberg and Mol (2010), Chikarmane and Narayan (2009), Scheinberg *et al.* (2007), Simpson-Hébert *et al.* (2005).

The 2011 MSc thesis and resulting publication of Natasha Sim, on informal recycling in Bishkek, Kyrgyzstan (considered as lightly in the EU influence sphere), indicates that Central Asian informal recycling and re-use is similar to that in Europe, and that the formal authorities there are equally hostile to the ideas of integration. The study suggests that the informal sector in that city is recycling 18% of the waste, at no cost to the city, but generating positive financial benefits calculated as annual savings of US$1 million through savings in collection and disposal of waste (Sim *et al* 2013).

Table 3 Numbers of Informal Recyclers and Re-use Operators in Six European Countries

City and country	Census information/estimates	Occupations and level of organising
Sofia, Bulgaria	Diverse group of at least 2,000 pickers in Sofia. Roma men, and women and their young children, waste pick at non-compliant dumpsites near bigger towns.	Most active in Occupations 1 and 2. No organising is reported, although two Roma social development organisations worked on this 1990s
Attica Region (including Athens), Greece, half the country's population	Approximately 25,000 – 50,000 waste pickers regionally, as many as 100,000 in Greece, including part-time and seasonal pickers. Estimated 40% increase in waste picking since the economic crisis.	The oldest waste pickers association of 1,185 persons, that are self described as "mostly Muslim Greeks" mainly active in occupations 1 and 4, with some reporting of occupation
Rome and other major cities, Italy	60,000 to 80,000 operators work in the informal re-use trade, in occupation 4. Their involvement in metal and plastic recycling, usually associated with occupation 1, is occasional.	1100 are organised reuse traders and members of Rete ONU, primarily in occupation 4, with some activities associated with occupations 1 and 2.
Skopje, Macedonia	5,000 street & dump pickers active in occupations 1, 2, and 3 were identified by a USAID project	A subset were organised into co-operatives between 2005 and 2013
Bucharest, Romania	1.000 street pickers collect aluminium used beverage containers (UBC). Collect from apartments, offices open markets, litter bins, parks. Of these, 10% are regarded as "professionals" (working longer hours, collecting consistently more materials, and having better equipment, etc.) 80% are "full-timers", and 10% are "part timers."	The informal sector is unorganised, and there are no functioning associations, cooperatives, or unions of informal recyclers in Romania and no visible actors within civil society defending their rights. Most waste pickers involved in occupation 1
Belgrade & other cities in South, Serbia (former Yugoslavia)	5,000 to 15,000 disposal site and container pickers "collectors" - Roma men, many refugees from Kosovo	Social integration and education for Roma communities supported by UNICEF and a syndicate (union) based in the South Serbian city of Niš. Most waste pickers active in occupations 1, 2, and 3, and WEEE interest growing

Sources: Simpson-Hébert *et al.* (2005), DTI (2012), Occhio di Riciclone (2008), (2009), DTI (2013), ITUC (2014), Toska *et al.* (2012), Scheinberg and Nesić (2014), Soos and Popoviçi (2007), Petean and Pop (2015), Vaccari *et al.* (2013), Popovska (2008), Scheinberg *et al.* (2007), info from Box 2, Box 4, and Box 5, below).

The action research project "Engaging Informal Recyclers in Europe" received seed money from WIEGO in 2012, and was designed around *consultations*, casual meetings with groups of informal recyclers on landfills, in their communities, or, when they are already involved in projects, as is the case in Macedonia and Serbia. Consultations were held in Serbia, Bosnia, Montenegro, Macedonia, Italy and Greece, with the goal of establishing a base of information and identifying the main issues facing the collectors. In most cases the informal recyclers expressed their interests in the directions of socio-political integration, value chain optimisation, and inclusive EPR. The general reactions to business-based integration approaches were positive, but there was little interest expressed in forming co-operatives or social enterprises (Scheinberg and Nesić 2014, Conseil de L'Europe 2013).

Documenting the Collision Course between Informal and Formal Recycling Stakeholders.

The informal recycling operations in Europe seem to be on a collision course with EU approaches, institutions, and professional bodies working in the solid waste sector, in ministries of labour and social affairs, and in relation to extended producer responsibility (EPR) organisations and systems. This section focuses in on some of the collisions.

Box 2 Resistance: Organising Re-use operators at the Porta Portese Market

In 2009 a large number of the displaced (Roma) operators forced their way into conducting business in the Porta Portese Market, creating new incidents of destabilization and conflict with the deeply rooted local operators. The leaders of the market went to the levels of individual operators, and calming micro-conflicts, in their commitment to facilitate dialogue, ultimately solving the conflict. The leaders explained to each of the operators that a "war among the poor" would help no-one and hurt everyone, and they emphasized common interests and the need for everyone to benefit from solutions. This resulted in Italian and Roma itinerant operators jointly advocating a transparent and fair system for giving concessions in public spaces in the city.
This experience contributed to the formation of "Rete ONU," the national network of second-hand operators which unites all of segments of the Italian second-hand sector, and includes Rome and Italian operators. It succeeded in establishing an official dialogue with the national government and is working actively with the national congress to improve legislation.
In 2016, this unified group of re-use operators was able to produce a methodology for valuating re-use activities, based on life cycle assessment (LCA) methods developed by the group Mercatino SRL (Occhio di Riciclone 2015). On the basis of this method, the Turin city authorities made a formal decision to recognise and support re-use operators with concessions and allowing them to dispose of residues at a reduced price.

Source: Adapted by the authors from Luppi and Sole (2015); Occhio del Riciclone and Associazione Operatori Porta Portese (2006); Occhio del Riciclone (2009); Occhio del Riciclone & Ministero dell'Ambiente (2011); Torino City Hall and Rete ONU (2016).

Collisions between informal recyclers and EU-supported packaging recovery

As the highly transparent, organised, institutionalised, and technology-intensive EU approach to service chain recycling spreads to the new EU, former Yugoslavia, and neighbouring (pre-accession) countries such as Albania, Turkey and Moldova, spaces for informal activity close, often in parallel with economic reforms that lead to fewer opportunities for formal employment (Conseil de l'Europe 2013, Whiteman *et al.* 2009, Whiteman 2008, Soos and Popoviçi 2008). Those whom the labour system cannot absorb, and who are unable to survive in formal economic niches, face loss of livelihood, and have to depend on social welfare systems, at a time when these are also disappearing. This analysis is particularly relevant for understanding informal recycling (and re-use) enterprises in the EU and in the pipeline to join it, and it explains in part why the level of confrontation between waste pickers and local and national authorities seems higher – and more complex to resolve – than in other parts of the world (Luppi and Vergalito 2013).

Waste picking and informal recovery in Europe have a long history of co-production (as well as co-evolution) with the public cleansing companies, and rag-and-bone picking appear in waste management articles about the 19th century, and waste picking was legalised in Paris in the 1200s, only to be forbidden again in the 1960s. The current levels of conflict have emerged gradually, as the European Union has financed and supported the modernisation of its member countries and their waste management systems, which

pushes local and national authorities to divert increasing amounts of waste from disposal to recovery (Melosi 1981, Gutberlet 2008, Velis *et al.* 2009, de Swaan 1988, Poulussen 1987, Scheinberg 2011, Scheinberg and IJgosse 2004).

Box 3 Conflicts in Bulgaria on the frontlines of EU packaging systems

In 2003, the Bulgarian national government, in response to the demands of EU accession and harmonisation, implemented a packaging/product tax designed to feed a single, collective, industry-financed physical compliance scheme with 100% producer responsibility for end of life packaging management (Doychinov and Whiteman 2013, pp. 7, 10-11 et seq.)

The new system was layered on top of an old one, without consultation and also without bothering to deconstruct the mix of habits, economic instruments, and incentive structures that it sought to replace. The EPR designers did not find it necessary to consult with stakeholders about the design of the system, with the result that many of the private companies were driven into resistance, and without their co-operation and knowledge about the recycling value chain, the resulting system floundered. Meanwhile the old system continued to operate, with informal suppliers selling to the formerly state-run buy-back centres. The packaging industry could not show that it was meeting its targets, but through the informal recovery activities, the actual recovery rates were almost certainly higher than the EU-supported targets. With few tonnes flowing through the EU-supported systems, the costs per tonne for formal recovery were unexpectedly high. The industries in the packaging system found themselves in financial difficulties, since they were not getting materials revenues, and could not cover these high per-tonne operating costs.

The Bulgarian system has been much improved and updated, but the early situation represents a useful illustration of a collision between an exclusive EPR system and the informal sector, and shows how failure to involve all stakeholders and seek resolution can create perverse impacts.

Sources: Doychinov and Whiteman (2008), Doychinov (2013), EXPRA (2014), OECD (2016), Soos and Popoviçi (2008), Scheinberg *et al.* (2010b).

In 2008, the Collaborative Working Group on Solid Waste Management in Low- and Middle-income countries held its first meeting in Europe in Cluj-Napoca, Romania. The meeting was hosted by Green Partners, and entitled "Planning in the Real World." The "main lines" of discourse were about the difficulties of planning and implementing EU-mandated solid waste system modernisation, in Balkan countries where real, on the ground situations are completely different from Western Europe. The large numbers of informal recyclers in Romania, Bulgaria, Albania, and former Yugoslavian republics are one of the reasons that EU approaches and investments fail to produce the desired results, but until this meeting, the taboos around the informal sector had prevented professionals from engaging with the problems, and elaborating new approaches (Soos and Popoviçi 2008, Whiteman *et al.* 2009).

Box 4 Aluminium UBC recycling on the streets of Bucharest – the invisible agents

Bucharest is the capital of Romania, as well as Romania's largest and most developed city, and the sixth largest city in the European Union (EU). In 2013 the population of about 1.9 million generated roughly 600,000 tonnes of waste or 0.87 kg/capita/day, under the responsibility of the city authorities, with collection and disposal services outsourced to private companies.

Recyclables reach the value chains either through formal packaging compliance schemes, or through transactions based on informal recovery.

Current research estimates that the informal sector in Bucharest includes at least 1.000 street pickers involved in aluminium used beverage containers (UBC) collection. They collect from apartment and office buildings, open markets, shops, street litterbins, parks and green areas. Of these, 10% are regarded as "professionals" (working longer hours, collecting consistently more

materials, and having better equipment, etc.) 80% are “full-timers”, and 10% are “part timers.” The professionals earn minimum wage (200-300 euro per month), while the remaining great majority works to supplement other income or to provide themselves and their families with basic subsistence.
The formal recycling landscape includes approximately 1,000 neighbourhood packaging recycling collection points, operated under the national EPR scheme by the largest EPR organization, EcoRom. There are also six private sorting stations and approximately 80 private scrap yards buying aluminium UBC. According to an interview with EcoRom, the packaging system recovers 10% via the formal neighbourhood collection system and 90% from scrap yards buying 90% of their materials from street pickers, container pickers, and other private suppliers.
Up until the present, there are no channels of communication between informal suppliers and the EPR system: formal stakeholders see the informal recyclers as thieves of “our materials", but have done little to measure or report the benefits contributed by private informal recyclers, nor to reduce tensions.

Sources: Elaborated by the authors, based on information from Petean and Pop (2015), supplemented by Soos and Popoviçi (2007), Scheinberg *et al.* (2010b), Bucharest Municipal Council (2006), Ministry of Environment and Climate Changes of Romania and The National Environmental Protection Agency (2014), Romanian Ministry of Environment and Forests (2013).

Photo image 1 People queuing up at the recycling centre to valorise their work. 8-9 am is the peak at the scrap yard, since people start collecting early in the morning and also bring the materials collected the previous day. Source: Green Partners

Photo image 2 The quantity collected by a family of three (husband and wife and their daughter) in 6 hours. Mostly plastic, but also 1.5 kg of aluminium cans. Source: Green Partners

Collisions between informal packaging recyclers and formal EPR packaging schemes in the New EU and pre-accession countries formed the core theme of a regional workshop in Bucharest, Romania, in October 2014, entitled *“Challenges to separate collection systems for different waste streams - barriers and opportunities”* Representatives of EPR schemes in 10 Balkan and Mediterranean countries including Greece, Turkey, Malta, Tunisia, Romania, Bulgaria, and Macedonia presented their “challenges,” which were mainly about the difficulties of competing — largely unsuccessfully -- with established informal sector recycling. Across the wide variety of countries, the following composite picture emerged (EXPRA 2014, OECD 2016, Soos and Popoviçi 2008, Scheinberg *et al.* 2010b):

1. Formal EPR packaging recycling systems in the region are having a very difficult time securing materials and documenting their flows to the European Union or meeting agreed-upon targets.
2. In some countries, the EU-conform recycling targets for packaging recovery are actually beneath the recovery rate at the time that the systems were implemented.
3. The level of both overt and covert conflict is high, as formal systems are routinely vandalised. The formal actors blame the informal sector for "stealing" their materials, destroying their infrastructure and undermining revenues and economies of scale.
4. There are some instances of EPR operators entering into dialogue with the informal recyclers, but they are the exception rather than the rule.

Collisions in the Re-use Sector

Whereas collisions in recycling are often with service chain institutions, those in the re-use sector are more likely to relate to allocation of space and fair treatment of second-hand traders. Issues of urban cleanliness play a role, but there are additional complexities of competition between Roma and non-Roma second-hand operators, and between lower and upper levels of the second-hand value chains.

Box 5 Conflicts with local authorities around the Porta Portese Market in Rome

In 2015 the second-hand and re-use sectors in Rome were documented to include 3,500 itinerant second-hand re-use traders, dozens of second-hand shops, "rigattieri", and 90 consignment shops (Occhio del Riciclone, 2015). More than 70% of these *reuse operators* are informal traders, selling their wares in the streets, at fairs, in antique and historical markets, and at pop-up flea markets ("gypsy markets"). Occhio del Riciclone, an Italian political and social development association, estimates in Rome annual re-use sector revenues of 65 million euro, attributable to the informal operations in the sector. Yet despite this economic contribution, the sector enjoys neither recognition nor support from City Hall, there is continuous tension between the city and the operators, and there are numerous instances of small and large-scale conflicts.

Since 2000, organized reuse operators have offered local authorities numerous proposals to formalise and regularise their activities. Act 45 of Rome City Hall (2005) created the legal basis to regularise the supply chains for re-usable waste, but up to the present, none of its recommendations have been achieved. The situation deteriorated further in 2007 when City Hall and its sub-territorial entities introduced an all-out war on informal re-use operators to "clean" the city.

In 2009, 1,000 operators in the historic Porta Portese Marketplace succeeded in defending their interests through demonstrations and blocking traffic. Six "gypsy markets" were shut down one by one. Each closing increased uncontrolled activity and infractions at the margins of the others, which ultimately caused them all to be closed. In 2009 a large number of the displaced Roma operators, forced their way into the Porta Portese Market, creating destabilisation and conflict with the deeply rooted local (non-Rom) operators.

Luckily, the forward-thinking directors of the Association at Porta Portese succeeded in micro-interventions that resulted in a dialogue, reducing tensions, creating space for communication, and ultimately solving the conflict. The leaders explained that a "war among the poor" would help no one.

Later in 2009, Italian and Roma itinerant operators co-operated in negotiating with City Hall for a transparent and fair system for use of public spaces to sell used goods. This co-operation contributed to the formation of "Rete ONU," the national network of second-hand operators. Rete ONU has succeeded in establishing an official dialogue with the national government and are working actively with the national congress to obtain occupational recognition. One of their key proposals is for the government to establish a second-hand-friendly national extended producer responsibility (EPR) system, and a used durable goods distribution system that is fairer, safer, and

more reliable than their current strategy of micro-negotiations with a mix of municipal systems. With this in mind, one member of Rete ONU, Mercatini Srl, is working on a measurement instrument for life cycle assessment (LCA) currently being piloted in Turin, that quantifies and valuates the impacts of re-use incentives on the second-hand sector and the host municipalities. This approach would greatly facilitate traceability, which is the core demand made of EU EPR systems for e-waste and other durable goods.

Source: Elaborated by the authors based in part on information from Occhio di Riciclone and Associazione Operatori Porta Portese (2006), Luppi and Sole (2015), Occhio di Riciclone (2008), (2015), Rome City Council (2005), Carabellese *et al. (*2013), Occhio di Riciclone (2009), Battisti *et al. (*2013).

Photo image 3 Porta Portese Flea Market: detail. Photo credit Sebastiano Lauro

Photo image 4 Porta Portese Flea Market: detail. Photo credit Sebastiano Lauro

Project-based Analysis and Activism

Earlier work distinguishes between three, four, or sometimes six forms of interventions to bring informal actors in the re-use, recycling, and waste sector into a regularised, stable, and legal relationship with the service and value chains, national social and economic policies, and the activities of local authorities (Velis *et al.* 2012, ITUC 2014, Soos *et al.* 2014, Scheinberg and Savain 2015).

Roland Ramusch used his PhD-thesis to propose a variety of approaches for modelling the contribution of the informal sector contribution to recycling. His cumulative approach deals with the elaboration of methodological approaches in order to obtain data on the performance of informal systems directly at the level of informal stakeholders. But in many cases there will be only estimates, no clear data. The concept of triangulation enables a cross-verification of the estimates to quantify informally diverted recyclables. The result is a methodological framework for practitioners to estimate the contribution of informal systems to waste collection and recycling (Ramusch 2015).

Between 2007 and 2008, the IFC Recycling Linkages programme financed the "TA-Roma" project, which produced recommendations about the need for professionalisation, occupational recognition, and access to bank services credit for informal recyclers, a mix of socio-political and value chain integration. The recommendation about access to credit was taken into the design of the subsequent MATRA "Fair Waste Practices" programme (Ibid., Scheinberg *et al.* 2012, Whiteman *et al.* 2009).

USAID, the American international development agency, funded informal recycling integration projects in Macedonia from 2005 to 2013. The goal was to create sustainable livelihoods through small business service chain integration via the municipal waste

companies, and the project succeeded to create direct employment for at least 5,000 people in waste collection schemes in 24 rural municipalities. Primary waste management schemes were established throughout Macedonia, serviced by informal recyclers, who also gained access to small grants for equipment and working capital for establishment of recycling shops.

Project partners participated in drafting the Law on Packaging and Waste Packaging, thereby taking the first steps toward inclusive EPR. A pilot group of 19 collectors formed the Association of Informal Collectors, with a goal of strengthening the role of the informal waste collectors in EPR systems for packaging waste, as well as promoting their inclusion in the public service chain and the improvement of their economic performance in value chain transactions (Toska *et al.* 2012, Toska and Lazarov 2007).

In 2006-2008 the International Finance Corporation (IFC) financed capacity development in the recycling sector in Albania, Bosnia-Herzegovina, Macedonia (then FYR Macedonia) and Serbia. The Recycling Linkages Programme had an overall focus on facilitating better business, and trained a number of informal recyclers in the four focus countries, with the aim to improve the functioning (and job-creation potential) of paper, metal, and plastic value chains in post-Socialist and post-war former Yugoslavia (Popovska *et al.* 2008, IFC 2008, Whiteman *et al.* 2009, IFC 2010).

Between 2009 and 2011 the Dutch NGO WASTE, Advisers on Urban Environment and Development, together with eight Dutch and Serbian partners, implemented the "Fair Waste Practices" programme, financed by MATRA, a Dutch bilateral development support programme. The focus was strongly on service chain and political integration, with a subset of activities focusing on creating options for technical and operational integration of the informal sector in eight South Serbian municipalities. The multi-stakeholder National Recycling Platform brought many public and private sector stakeholders together and created a safe space for dialogue about informal recycling:

- Serbian waste pickers received national occupational recognition through direct action of YuRom Centar;
- a model for legalising informal recycling through co-operative-based integration was developed and proposed in several cities, but not implemented in the project period;
- some municipal public service companies stated their intention to co-operate with informal recyclers cooperatives via sub-contracts;
- informal sector inclusion in packaging waste recycling was fully endorsed and partially operationalised by two EPR packaging compliance organisations,
- the first European micro-credit scheme to support equipment loans for informal recyclers was implemented by the Serbian micro-credit organisation MicroFins.

The programme closing meeting held in October 2011 in Kopaonik, Serbia, was also the first formal recycling conference in the Balkans where fully half the participation was by informal recyclers (DTI 2012), supported by the YuRom Centar, one of the few European organisations with a focus on informal integration and legalisation, whose website describes their mission as follows:

"Providing innovative employment solutions for Roma people excluded from the formal labour market through a sustainable waste management initiative, and assisting these persons in obtaining identity cards and their full enjoyment of citizenship rights, while also addressing environmental protection issues related to waste." (Balić 2014, Conseil de l'Europe 2013).

One of the first events specifically to focus on formalisation of entrepreneurs in the European informal re-use (and recycling) sectors occurred as a closing event of the TransWaste project in September 2012. Many of the sources in this review were developed for that conference as presentations, and later published.

The TransWaste project produced a socio-economic integration approach for a number of Hungarian, Slovakian, and Polish re-use enterprises. Three distinct strategies were identified, which are coherent with the global ideas about integration, as shown in Table 4.

Table 4 Three types of integration for the European re-use sector in the global context

Integration approach	Description	Corresponding global approach
WISE (Work Integration Social Enterprises):	Integration of the informal sector into the establishment of re-use and repair networks in cooperation with WISE	Social enterprises (Iskandar and Shaker 2007, Ishengoma 2006, Oyake-Ombis 2012, Scheinberg *et al.* 2010a)
Used product corner:	Implementation of a used product corner in waste collection centres	Legal access to materials via newly created legal channels; North American "take it or leave it" at rural transfer stations (Chikarmane *et al.* 2008, Scheinberg 2011, Scheinberg and Savain 2015)
Collector association:	Forming of an used item collector & retailer association in the home countries of the informal waste collectors	Social integration and the solidarity economy (Soos *et al.* 2014, Rutkowski and Rutkowski 2015, Gutberlet 2008, Velis *et al.* 2012, Godfrey 2016)

Source: Elaborated by the authors based on Schmied *et al.* (2011).

Under leadership of a patriarch of a second-hand goods trading family, Mr. Janos Kozák, the TransWaste project supported the formation of ISHS (International Second Hand Service), a traders' association. The project pioneered a legal export procedure for traders, based on a listed load manifest, that allowed traders to show that their vans contained legally procured items. The mayor of the city of Devecser, the Western Hungarian hub of the trans-boundary second-hand trade in Europe, supported the organization and provided an unused military complex for the traders to sort and store their items. Unfortunately the gains made by ISHS were not anchored in new laws or regulations. At the Antwerp meeting in 2015, Mr. Kozak reported that the new mayor of Devecser withdrew public support for ISHS, and the situation deteriorated after the close of the project (Schmied *et al.* 2011, Kozák 2012).

Constructive Approaches to Co-operation in Europe.

Occhio del Riciclone (OdR) coordinated and incubated the development of Rete ONU, the largest association in Europe of informal workers and enterprises in the re-use and recycling sector, with 1100 members and many more affiliates. More than 70% of re-use enterprises in Rome are informal, and are jointly responsible for a total revenue estimated at Euro 65 million per year. They are working with one of their members, Mercatini SRL, on a methodology based on life cycle assessments (LCAs), to document the interactions between incentives for re-use and the system-level benefits of optimising the life cycle of

products. In the TransWaste Project, LCAs were also used to model the environmental benefits of the trade in second-hand white goods (kitchen appliances). Outside of Europe, there is an increasing literature on the contribution of informal recyclers to reducing CO_2 emissions (Chaturvedi 2009, King and Gutberlet 2013, Ramusch *et al.* 2015, Occhio del Riciclone 2008, Occhio del Riciclone 2015, Soos and Popoviçi 2007, Soos and Popoviçi 2008, Scheinberg *et al.* 2010b, Sim *et al.* 2013, ILO 2013).

Session 2 of the final conference of the project "TransWaste" was dedicated to the topic of organising waste pickers in Europe and included representatives from Hungary, Romania, Bulgaria, Serbia, Macedonia and Italy. After the main meeting there was a second "private" session where the European re-use operators and informal recyclers and their allies could exchange with each other. It was a first step of bringing informal recyclers and advocating institutions together at European level in order to discuss local peculiarities and problems related to informal activities (Linzner 2012, Linzner and Lange 2013, Ramusch 2015, Ramusch and Obersteiner 2012, Ramusch *et al.* 2015, Schmied *et al.* 2011, Obersteiner *et al.* 2012, Kozák 2012).

The ISWA 2015 World Congress in Antwerp, Belgium approved a related side event, a first meeting for European recycling and re-use operators and their advocates and allies, to share experiences, challenges and strategies.

Mr. Alphan Eröztürk of the Turkish Environmental Protection and Packaging Waste Recovery Trust (CEVKO) and Chairman of the Board of EXPRA, the Extended Producer Responsibility Alliance, participated in the meeting. His presentation began with a quick Republic of Turkey recycling status report: 77.695.904 people, 31.762.085 tonnes of waste per year, 409 kg per person, a single digit recycling rate and an estimated 71,000 street pickers. Recyclables from households and street set-outs are mostly collected by the informal sector (Eröztürk 2015).

Up until 1991 recyclables in Turkey were collected by waste pickers or simply left in the waste going to a local dumpsite. In 1991 the separate collection of wastes became a legal obligation and most municipalities stopped allowing dumpsite sorting. In the early 2000s, as the Turkish government began to regulate waste management, picker legality became an issue. In 2005 packaging producers became legally responsible for the capture, safe management and recycling of all packaging. Clash! Most of the knowledge and activity were in the informal sector, but the investment funds were all on the formal side.

In response, the EXPRA Street Collector Initiative, was designed to study these issues and learn more about the informal sector – demographics, infrastructure needs, preferences and best practices and then to develop win-win solutions especially in terms of social integration – fair wages, housing, social rights, legality and stability. CEVKO, working in cooperation with NGOs and municipalities has organized 3 meetings with Turkish street collectors (Eröztürk 2015).

Informal re-use operators and recyclers at the Antwerp meeting were amazed that a producer's organisation would actively seek ways to co-operate. What Mr. Eröztürk described sounded like a fairy tale; they had questions about self-employment, markets, price protections and exporting. Some stated that it should not be required to have a permit to accept recyclables that are donated to the informal sector by the households. There was approval but also broad concern that many pickers are not eligible for formalization and that this approach would take away access to materials and markets, and they would lose livelihoods and their only way to support their families.

SUMMARY, DISCUSSION, AND CONCLUSIONS

Summary of the Review

The literature, a mix of scholarship, conference papers, initiatives and projects, provides a surprisingly rich mix of information and experience on the European informal re-use and recycling sector. The core of the review is 78 sources, which have a clear and/or exclusive focus on informal re-use or recycling in Europe. In this case Europe is defined as including European Union member states, countries in the process of acceding to the EU or in the pipeline to start negotiations, and countries which are direct or regional neighbours and in some sense fall under the EU sphere of influence. (Gutberlet 2008, Rutkowski and Rutkowski 2015, Schmied *et al.* 2012).

These 78 sources have been classified into four types of work:

1. Scholarly article, scholarly, student, or action research, conference, project report,
2. Social or labour advocacy and/or organising,
3. Policy documents, laws, government, donor consultant reports, plans, and
4. Direct information provided by individuals or organisations working on informal recycling and re-use in Europe, or from their websites, including those who prepared the text boxes in the article.

The types of sources were then classified by the status of the country they refer to:

1. EU member, Italy, Belgium, etc.
2. Pre-accession and/or accession pipeline country, for example Turkey or Serbia
3. EU neighbour and "sphere of influence" country, such as Albania, Morocco, Tunisia or Kirgizstan

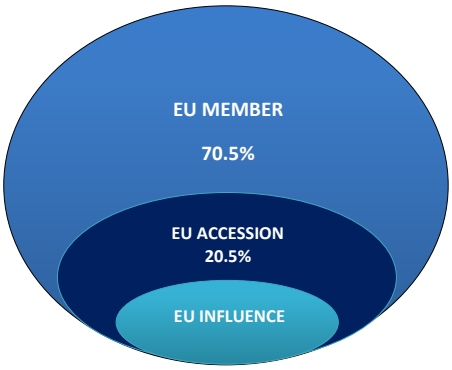

Fig. 1 Review of Literature by Type of Country

Perhaps the most interesting insight is that 70% of the sources focused on the informal sector in countries that are currently members of the European Union, as opposed to countries seeking to join the EU. Informal recyclers and re-use operators exist in Europe, and are a part of the landscape of recycling and re-use within the European Union, and there is therefore little to be gained by denying their existence.

We refer to the third classification as the "locus" of the research or the initiative. By this we mean the institutional site of research, project, or intervention:

a) The service chains
b) Social and labour ministries, occupational recognition, advocacy, union organising
c) EPR and PS (Product Stewardship) systems
d) The value chains, including both recycling and re-use value chains and end-use markets
e) Projects or interventions that are associated with civil society, for example, NGOs, social entrepreneurship, faith-based charities, community development, or similar.

Table 5 analyses the distribution of articles across these five focus areas of conflict and integration.

Table 5 Locus of conflict and/or integration

The service chains	40	51.3%
Social and labour ministries, occupational recognition, advocacy, union organising	8	10.3%
EPR and PS (Product Stewardship) systems	7	9.0%
The value chains, including both recycling and re-use value chains and end-use markets	21	26.9%
Projects or interventions that are associated with civil society, for example, NGOs, social entrepreneurship, faith-based charities, community development, or similar.	2	2.6%

Source: elaborated by the authors.

Contrary to the initial assumptions of the authors of this paper, more than half of the sources were published scholarly works. This suggests that while the topic is still quite new, there is robust activity to research issues and establish baselines. Scholarship is leading advocacy by quite a lot, and there is also more scholarship than policy formulation. This also suggests that the researchers could become a resource to the policy-makers.

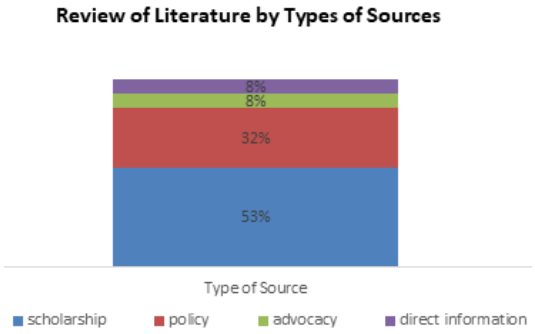

Fig. 2 Review of the Literature by Types of Sources
Source: elaborated by the authors.

There is another important finding coming from this information. The fact that only 16% of literature sources comes from advocacy papers and direct information tells us that the work of the informals, as well as initiatives to reduce conflict or stimulate co-operation, might not yet be adequately supported by civil society organizations able to document what happens on the ground. These organizations are either too engaged in implementation to document, or lack resources or a culture of reporting that would result in them documenting the process and results.

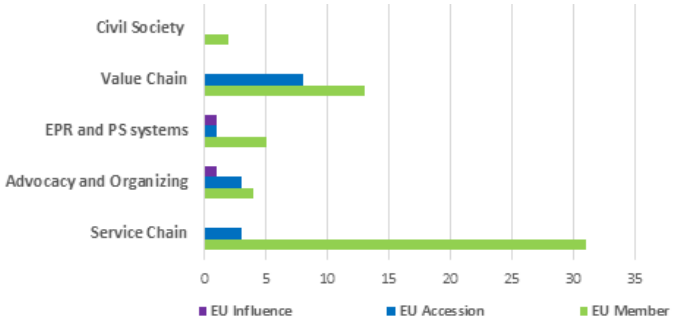

Fig. 3 Locus of Conflict and/or Integration by Type of Country
Source: elaborated by the authors.

This figure highlights the sectors engaged in creating integration opportunities and therefore is an indicator of where conflict is likely to be found. Sources with their main focus on EU Accession countries, show the most robust focus on the value chain. Lack of civil society sources suggests that although there may be initiatives run by civil society, there is no culture of documentation – or too many language barriers – to have produced sources that would come to the attention of a (primarily) English-language review.

Sources on EU Influence countries show examples of EPR and PS systems and advocacy and organizing, while there are no documents indicating issues with either service or value chains, nor civil society.

By far the most sources focus on EU member states with emphasis on conflicts, co-operation and co-production in the service and value chains. Demonstrated interest in advocacy, civil society and EPR and PS systems are much lower. This suggests that in these countries, research and practice are more directed towards improving practical results. The lack of civil society activity may suggest that there is little activity on culture change or in shifting stakeholders' opinions in relation to informal activity.

Moving towards a census on informal recyclers and re-use operators in Europe

The review did not find evidence of a source of reliable and verifiable census numbers for European recyclers, but it does provide some indicative numbers and descriptive factors. To start, most waste pickers in the EU belong to one or more of three vulnerable groups:

1. Persons of Roma ethnicity, who have very low educational levels and are the targets – especially in Italy – of a range of social exclusion measures, and
2. Internal and cross-border migrants and refugees without legal status or lacking formal identity papers, and
3. Young persons, the elderly, women heads of household, homeless persons and others who are excluded from the labour market.

An accumulation of research results and estimates by practitioners suggests that the numbers are large. Estimates of numbers of informal re-users and recyclers in Europe, from the review, suggest that there might be as many as one million active:

- 80,000 second-hand and re-use operators in Italy
- 71,000 in Turkey
- up to 50,000 in Serbia

- 20,000 in Greece
- 20,000 in Paris
- 5,000 in the Western Hungarian city of Devecser
- 5,000 in Skopje, Macedonia

(Ramusch *et al.* 2015, Schmied *et al.* 2011, DTI 2013, Scheinberg and Nesić 2014, Luppi and Sole 2015, Simpson-Hébert *et al.* 2005, Kozák 2012, Eröztürk 2015, Springloop 2016).

European waste pickers have many of the same vulnerabilities as waste pickers elsewhere, but they have also some unique challenges. Some significant similarities and differences between European informal recycling and similar situations in middle-income countries in Asia, Africa, and Latin America emerge.

Table 6 Summary of Differences Between European and Non-European Informality in the Re-use and Recycling Sectors

Parameter	Outside Europe	Europe
Existence and status	Waste picking occurs widely in large cities and where there is growing welfare; numbers in Africa are small, in emerging economies in Asia and Latin America very large	European informal recycling well established, and the numbers in South-east Europe are moderate to large
Social identifiers	Internal (rural-urban) migrants, unemployed and homeless persons, women heads of household, ethnic and religious minorities.	Young men of Roma ethnicity dominate among "full-time" waste pickers
Full-time/part time	Colombian researchers divide waste pickers into "authorised," "unaffiliated", and "street persons."	Many European informal recyclers see waste picking as a part-time or seasonal alternative to other forms of work.
Occupational recognition	Occupational recognition for "full-time" waste pickers is growing.	Occupational recognition is extremely rare and outside of European statistics.
Informality in the service chain	informal service provision (micro-privatisation of waste collection, is common in the service chain in sub-Saharan Africa and growing in Asia	Service chain informality is limited to under-served rural areas, or to "side" jobs such as cleaning out attics or removing bulky waste
Barriers to legalisation	Experiences in Asia and Latin America have produced progress in legalising and integrating informal recyclers in the framework of municipal waste management (and the service chain)	There are a few fragile examples of legalisation of re-use operators, and some intentions to legalise and integrate recyclers of packaging, but the taboos and resistance are very strong
Potentials for integration	Integration in the service chain as official recyclers has a good basis and potential to expand; the introduction of EPR systems for packaging in countries like South Africa and Indonesia appears to offer interesting new opportunities	Integration in the service chain appears to be extremely difficult; better potential exists in relation to EPR systems new EU directives on waste prevention and re-use

Source: elaborated by the authors based on ILO (2004), Vaccari *et al. (*2013), Mendonça (2015), Sim *et al.* (2013), Scheinberg and Anschütz (2006), ITUC (2014), Scheinberg (2011), Dias (2006), Scheinberg and Nesić (2014), Schmied *et al.* (2011), Ramusch and Obersteiner (2012), Linzner *et al.* (2011), Gutberlet *et al.*(2016) .

SWOT of European Waste Pickers in the Recycling and Re-use Sectors

European waste picking in the recycling and re-use sectors has both challenges and benefits.

European waste pickers share with their counterparts in other emerging economies, some core features and attributes. A brief SWOT analysis illustrates this:

Table 7 SWOT Analysis of European Waste Pickers in Recycling and Re-use Sectors

STRENGTHS (internal characteristics)	**WEAKNESSES (internal characteristics)**
▪ Responsible for most of the recycling outside of the "old EU," even where EPR systems exist ▪ Activities contribute to cities achieving re-use and recycling goals ▪ Manage substantial volumes of materials, keeping them out of landfills ▪ Legally support themselves and their families ▪ Deep recycling knowledge and strong commercial connections to the value chains ▪ Actively trade in second-hand, flea market, and antique sector ▪ Generally interested in improving their situations and legalising their work ▪ Have ideas of what they need for legalisation and improvement	▪ Originate from socially disadvantaged groups, have low levels of education, weak social skills, unstable living situations, and little experience with accessing public facilities or claiming their rights ▪ Activities exist based on disappearing opportunities, including legal access to materials and tolerance for their activities ▪ Little interest in or experience in organising themselves, or creating representation ▪ Lack experience navigating necessities of legalization such as registering enterprises and working in permitted areas. ▪ A substantial number lack legal identity
OPPORTUNITIES (external influences)	**THREATS (external influences)**
▪ New EU commitments to the hierarchy demand higher performance in the re-use and recycling sectors ▪ EU circular economy package is likely to increase recyclability of many products and packages ▪ Circular economy reporting systems creates an opportunity to register informal recycling transactions and material flow ▪ New registration systems can form the basis for meeting new demands for tracking and traceability of packaging and EPR systems, and be a channel for transfer of funds from producers to informal actors. ▪ Interchange of information between European countries and emerging economies creates a growing understanding of the sector and sets the stage for occupational recognition at the European level, and creates some momentum for engagement	▪ There is entrenched mutual distrust between formal institutions and informal re-use operators and recyclers. ▪ The European waste management service sector is under increasing pressure to perform, and this translates to an imperative to prevent informal valorisation on landfills and streets. There is increasing economic pressure on the solid waste sector and formal public and private stakeholders are not so willing to share responsibilities and resources ▪ Local authorities do not necessarily want to legalise illegal persons because they will gain access to education and medical facilities which are already under-financed. ▪ European local authorities may prefer to develop re-use and recycling and circular economy institutions through civil society and the formal private sector

Source: elaborated by the authors based on Simpson-Hébert *et al. (*2005), Samson (2009), Scheinberg *et al*. (2010b), Popovska *et al.* (2008), IFC (2008), Wilson *et al.* (2010), Scheinberg and Mol (2010), Scheinberg and Nesić (2014), Soos and Popoviçi (2007), Soos and Popoviçi (2008), Scheinberg *et al.* (2010a), Gutberlet (2008), Rutkowski and Rutkowski (2015), Schmied *et al.* (2011).

New Insights Coming from the Review

Experiences with informal integration and formalisation in Europe have mostly been project-based and formulated in response to financing opportunities, and without (much) consultation with the informal actors themselves. When considered together, and in contrast to recycling experience in civil society, this body of work advances the knowledge base by clearly disqualifying project-based integration experiments as unproductive and unsustainable.

Service- and value chain integration projects in Hungary, Macedonia, and Serbia made substantial gains during the project period, and opened up the spaces for dialogue. Despite positive results, none of these projects succeeded to make structural change, and gains made in these initiatives appear to have faded out after the closing of the projects. This may be due to the fact that European waste pickers, in contrast to their counterparts in Asia or Latin America, are more likely to identify themselves as individual or micro entrepreneurs, and are less interested in solidarity and more in pure economic performance

The post-project critique of YuRom Centar's Osman Balić about the Serbian Fair Waste Practices project is more generally applicable to European informal integration and organising projects: they do not succeed to make informal recyclers better off over the long term, and they often create expectations and false hopes which are not realised. Even ISHS, the successful TransWaste association of re-use operators in Devecser, Hungary, did not survive the change of mayors of that city. In contrast, Rete ONU, the Italian re-use association, appears more robust and long-lived, perhaps because it was created without project support, by and for re-use operators, and it serves their daily business needs (DTI 2012).

Recommendations for Constructive Approaches Drawn from the Review

The conclusions and recommendations of the recent aluminium UBC study in Bucharest (detailed in Box 4) propose some leading candidates for a constructive approach to working with the issues of informal re-use and recycling in the European Union, accession countries, and in the EU sphere of influence. That study, designed to support packaging producers in developing a structural approach to materials capture, states that:

> "A first step would be for city and national authorities to initiate a working group and conduct an assessment on the necessary conditions needed to allow natural persons to become legal recycling agents potentially in association with some form of price support from the producers' organizations and the recently introduced landfill tax. There is some merit to considering a preliminary award scheme based on documented and validated recovery performance. Later steps could include promoting associations or co-operatives, and integrating informal recyclers into new separate collection schemes along the lines advocated in Wilson *et al.* (2006)." (Petean and Pop 2015).

This quote nicely anticipates the main insights from the review, in identifying three pillars – legalisation, occupational and enterprise recognition, and systematic integration of informal re-use and recycling into formal EU recycling and circular economy processes, that are essential to developing a pan-European response to informal valorisation. A fourth pillar, documentation and benchmarking, is logically prior to the others, and is needed a basis for planning, evaluation, and fine-tuning of the activities and initiatives. The authors thus conclude this review with the following recommendations for pragmatic approaches to foment more co-operation and less conflict.

Overarching Recommendation: Bring Informal Integration into the Circular Economy Package in a Structural Way

The overarching recommendation is to locate actions in relation to informal re-use and recycling within the framework of the European Circular Economy Package (European Commission 2016b). This planned package of legal, regulatory, institutional and technical reforms proposes far-reaching changes to how materials are managed in Europe, and appears to provide a productive institutional home for regularising recycling and re-use activities. Structural change is preferred to project-based integration, since projects have so far generally failed to produce long-term change.

Within this, the four pillars of a constructive approach can be elaborated as follows.

Pillar 1: Documentation, Benchmarking and Statistics

The first recommendation is to assign Eurostat to work within the framework of the EU Circular Economy Package to increase and improve documentation of informal recycling and re-use in all EU, accession, and EU sphere of influence countries, with a focus on:

a) collection and validation of socio-economic numbers: census, ethnicity, sex, age, location, numbers of people living from informal recycling and re-use, vulnerabilities, and the like;
b) technical and economic performance and impact numbers: numbers of tonnes diverted from disposal through informal valorisation activities, and associated with modelling of negative and positive impacts. This should be integrated with traceability approaches for EPR schemes and possibly also linked to a system of incentives or price supports.
c) occupational and professional characteristics: occupations by country and city and rural/urban distribution; institutions and enterprises that have a link with the informal sector;
d) revisiting analysis of aspects of the European waste system where there are large reported "losses" of hazardous wastes or e-waste to examine the role of informal activity and whether legalisation and integration could improve the effectiveness of tracking and traceability in Europe, and
e) creating specific procedures for reporting, benchmarking and legalisation at the level of EU directives in the framework of the Circular Economy Package.

Pillar 2: Legalisation Options and Opportunities

Informal integration in Europe will have to have a strong focus on legalisation, and this makes it different from integration experience in Colombia, Egypt, or India. Legalisation initiatives (not projects) should be based on exploring and "stretching" the institutional spaces for experimentation with legalisation and integration in countries like Serbia, Turkey, and Macedonia where formal institutions in the service chain and/or in EPR systems have shown some positive interest in the issue Eröztürk 2015, Toska *et al.* 2012). Some steps towards legalisation could include:

a) inviting informal recyclers and re-use operators to co-operate with public institutions in identifying common goals, barriers, and approaches to legalisation;
b) discovering and creating spaces for legalisation and possibilities for co-operation;

c) creating a vocabulary of legalisation and integration strategies;
d) identifying sources of financing and technical support for project-based integration and legalisation where it is latent, and
e) supporting early adopter (non-project) legalisation and integration initiatives that lead to sustainable changes at medium-scale.

Pillar 3: Occupational and Enterprise Recognition as Circular Economy Agents

Up to now it appears that Serbia might be the only EU country with occupational recognition of "collectors of secondary raw materials". While the precise mechanism to achieve this is unclear, it appears that the Circular Economy Package could also provide an umbrella for the development of occupational categories in re-use and recycling. Since the International Labor Organisation is already involved with this, perhaps a co-operation between ILO and Eurostat could form the basis to standardise the approach of the labour ministries of individual member and pre-accession states.

Pillar 4: An Inclusive European Circular Economy: Structural and Systematic Integration of Informal Re-use Operators and Recyclers

The authors of this paper believe that the long-term vision must include a commitment – within EU legal and regulatory frameworks – to ensure that the waste directives and the Circular Economy Package have a component of economic and social inclusivity. That would mean that re-use operators and recyclers operating in the informal economy in Europe have access to a reliable, fair, and long-term process to legalise their status, stabilise their conditions and position, and participate in the circular economy as economic agents. Getting to this will not be easy, and it will perhaps take quite a long time, but it is important, both to the environment and to the economy of a well-functioning Europe.

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OD SUKOBA DO SARADNJE – INTEGRACIJA NEFORMALNIH RECIKLERA I OPERATORA PONOVNOG KORIŠĆENJA OTPADA U EVROPI: PREGLED

Evropska unija ima jedan od najrazvijenijih sistema upravljanja otpadom na svetu i ambiciozno postavljenu politiku cirkularne (kružne) ekonomije. Postojanje neformalnih oblika reciklaže, tretiranja i ponovnog korišćenja otpada u Evropi je do nedavno osporavano, tako da ove aktivnosti i dalje predstavljaju veliki izazov za evropski sektor upravljanja čvrstim otpadom, kao i za evropske vlade i privatne institucije. U mnogim zemljama Evropske unije, od Malte do Makedonije, od Francuske do Turske, neformalni recikleri (sakupljači i prerađivači otpada) su potpuno isključeni iz reciklažnog sektora, pa se sve više suočavaju i sukobljavaju sa prilično formalizovanim i kontrolisanim pristupom koji Evropska unija ima u pogledu upravljanja otpadom u urbanim sredinama, programa za reciklažu ambalaže, formalnih preduzeća za preradu otpada i proširenih sistema odgovornosti proizvođača.

Ovaj rad pokriva period od 2004. godine do prve polovine 2016. godine. U radu se daje pregled 78 dokumenata koji regulišu pitanje neformalne reciklaže i prerade otpada u Evropskoj uniji i susednim državama, u kontekstu globalnih smernica i iskustava. Nakon pregleda izvora koji se odnose na neformalne vidove reciklaže u Evropskoj uniji i na granicama Evropske unije, u radu se evidentiraju sporna pitanja i sukobi nastali u ovoj oblasti, i prikazuju neki konstruktivni pristupi legalizaciji, integraciji i pomirenju sukobljenih strana. Ključne preporuke u pogledu adekvatnog pozicioniranje pitanja neformalnih vidova reciklaže i njihovog uključivanja u Evropski paket mera za uvođenje kružne ekonomije nedvosmisleno su utvrđene u okvirima četiri stuba strategije integracije: dokumentacija, legalizacija, priznavanje zanimanja i preduzeća, i priprema za strukuralnu integraciju.

Ključne reči: *neformalna reciklaža i ponovna upotreba otpada, Evropa, cirkularna (kružna) ekonomija, Balkan i nova EU, neformalna integracija, proširena odgovornost proizvođača.*

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Review Paper

JUDICIAL AUTHORITY REFORMS IN MEDIEVAL SERBIA, BOHEMIA AND POLAND

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Abstract. *On the basis of relevant legal history sources, in this paper, the author analyses the attempt to reform the judiciary in the medieval Slavic world. In the 14th century, three important legal codes were enacted in Serbia, Bohemia, and Poland: Dušan's Code, Maiestas Carolina and Statutes of Casimir the Great, respectively. The proclamation of these three codes was the result of strengthening the powers of their rulers: Emperor Dušan, the Bohemian king Charles IV, and the Polish king Casimir. Almost at the same time, these rulers passed very similar legal provisions on the reorganisation of courts.The main idea was to introduce special state judges, with the aim of suppressing and limiting the feudal and other forms of judiciary in their respective states.The reform of courts, the judiciary and court proceedings was part of the prevalent attempts to centralise state authority in the three Slavic states. This process is a phenomenon of substanital relevance in the history of Slavic law, particularly given the fact that it involved the most powerful rulers of these medieval states, who were one another's contemporaries*.

Key words: *Slavic law, Middle Ages, judiciaryreform, ruler, state authority, state judges.*

INTRODUCTION

The rulers of medieval feudal states performed two basic functions without which the organisation of the state could not practically exist: the function of the supreme commander-in-chief and the function of the supreme judicial authority. The entire governmental organisation of the feudal society actually originated from the judicial function of the ruler, and the judiciary was the first and main instrument of maintaining social peace and establishing the legal state.

In medieval times, a very complex and dysfunctional system of judicial authorities and jurisdictions, which was partly interited from the antiquity and partly reorganised in

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line with the prevailing understanding of the role of the state at that time, was the product of the fragmented feudal society, largely based on privileges and favourism. Such a system was an obstacle and a substantial threat to the strengthened central authority and power of medieval rulers in Serbia, Bohemia and Poland in the mid-14th century. Thus, at about the same time, the rulers of these three Slavic states enacted legal codes which were aimed at introducing substanital reforms largely pertaining to the organisation of the state in general and the judiciary in particular.

Within a period of only several years apart, the three Slavic rulers – the Polish King Casimir the Great, the Serbian Emperor Stefan Dušan, and the Bohemian King and the German Emperor Charles IV – enacted three monumental legal codes: the unified Statutes of Lesser Poland and Greater Poland (in 1346 and 1347), Emperor Dušan's Code (in 1349 and 1354), and *Maiestas Carolina* (in the mid-14th century). The tendency towards the centralisation and unification of the judicial system in Russia would ensue only half a century later, at the end of the 15th century, when the Russian *Sudebnik* (collection of laws) was enacted in 1497 during the reign of the Grand Prince of all Russia, Ivan III Vasilyevich (Ivan the Great).

The courts of large feudal lords who were virtually sovereign rulers in their hereditary estates, the autonomous judicial authorities in medieval towns, mixed courts including and local patrimonial (feudal) tribunals based on the archaic traditions of kinship, tribal customs and territorial communities were entirely incompatible with the new socio-economic, legal and political reality in these Slavic states. The development of monetary economy (commodity for money), trade, mining, and society as a whole generated attempts to reform the organisation of the state authorities in general and the judical authority in particular. During the 14th century, the rulers of Serbia, Poland and Bohemia were the embodiment of the central state authority; as such, they endeavoured to put the organisation of the judiciary under their own control as much as possible. The tendency of "nationalising" different types of courts, such as state, patrimonial (feudal), autonomous and mixed courts, was apparent in these legal codes; regardless of the success it achieved, it was an important stage in the development of the Slavic judicial system.

The Judiciary in Emperor Dušan's Code (Medieval Serbia)

In the Serbian medieval state, the ruler's judicial authority was inseparable from his legislative and executive authority. The Emperor's Court and the Court at the Emperor's Palace, were the supreme judicial authority in medieval Serbia. The Emperor's Court had exclusive jurisdiction in proceedings dealing with the most serious criminal offences: treason, abduction, murder, aggravated assault and battery, horse theft, brigandry, robbery and land disputes (Jireček, Radonić, 1988: 118; Taranovski, 1996: 705-706; Mirković, 2002: 3-4).

Dušan's Code brought important novelties in the organisation of courts in medieval Serbia. By relying on the Byzantine judiciary model, the legislator envisaged the office of imperial curcuit judges (designated in the Code as "the judges of my Empire") into the Serbian legal system, with the intention to institute a significant redistribution of judicial powers. Bearing in mind that Emperor Dušan's Code was valid in the entire territory of the Serbian medieval state, it is clear that the introduction of curcuit judges into the legal system had an adverse effect on the judicial authority of the feudal lords on feudal lands.

State (circuit) judges were in charge of adjudicating all disputes among the noblemen, land disputes between a church or a monastery and feudal lords, and disputes between dependants (serfs and slaves) and citizens (Marković, 1986: 45). Unlike the feudal lord in Poland and Bohemia, Serbian feudal lords did not have their own courts; they were under the jurisdiction of the general state courts. In medieval Serbia, during the rule of Emperor Dušan, it was a reflection of the supremacy of the principle of legal state as compared to the principle of class system (Taranovski, 1996: 706).

Considering that the Emperor's circuit judges ("the judges of my Empire") had territorial and subject matter jurisdiction to hear cases and administer justice in assigned regions, this new institution was a threat to the traditional judicial organisation and special jurisdiction of feudal courts and autonomous judicial auhorities. By introducing the judicial office of circuit judges appointed by the Emperor, the legislator intended to establish uniform judicial proceedings in the entire territory of medieval Serbia and thus overcome the existing territorial fragmentation in the feudal society and the inherited personal particularism during proceedings. There is evidence that Emperor Dušan's reform of the legal system was partly aimed at separating the administrative and the judicial authority, given that the the newly-instituted curcuit judges had jurisdiction to adjudicate disputes concerning the so-called "imperial charges".[1] Numerous provisions of Dušan's Code which prescribed norms about courts and judicial proceedings (e.g.: Articles 89, 92, 105, 171, 175, etc.) envisage that the proceedings were to be conducted before state judges.

According to Dušan's Code, every judge was assigned to hear cases in a particular region or circuit: "*Let no man, who is within the jurisdiction of circuit judges whom I the Tsar have appointed, be summoned to trial in my Imperial Court, but let each appear before his own judge so that the matter may be tried according to the law"* (Article 178 of Dušan's Code, SASA, 1997: 151)[2]. According to the relevant provisions of the Code, state judges were appointed by the ruler, who also decided on the territorial unit (area, circuit) in which they would be administering justice. Under the influence of Byzantine law, the Code determined territorial jurisdiction of curcuit judges, but there were some differences. In the Byzantine Empire, the Supreme Court was established in Constantinople within the reforms instituted by Emperor Andronicus II in 1269; it included the representatives of the church and the state, which was not the case in medieval Serbia (Marković, 1986: 47). The provisions of Dušan's Code show that state judges did not have the permanent seat of court sessions and proceedings in the assigned regions; instead, they traveled across the assigned territory to hear cases and administer justice: *"Let judges go through the land within their jurisdiction, to supervise and do justice to the poor and the needy"* (Article 175 of Dušan's Code, SASA, 1997: 153). Purusant to Dušan's Code, state judges had exclusive jurisdiction to adjudicate cases involving the most serious criminal acts, such as: murder (bloodshed), brigandry, theft, aggravated assault and battery, harbouring runaway serfs or slaves, and land disputes (SASA, 1997: 153).

[1] The term "imperial debts" refers to the disputes which were excluded from the jurisdiction of other courts and transferred to the exclusive authority of the ruler; it includes cases of murder, land dispute, brigandry, and harbouring aliens, runaway serfs or slaves.

[2] *Emperor Dušan's Code,* The Serbian Academy of Sciences and Arts (SASA), Belgade, *1997.* A translated version of Emperor Dushan's Code is available at: http://www.srpskoblago.org/serbian-history/serbian-medieval-history/rulers/dushans-code.html (accessed 1.7.2018)

On the other hand, the remaining question is the actual implementation of the provisions envisaged in Dušan's Code, and the overall success of the legislative endevour to reform the Serbian judicial system of the time. As a matter of fact, some historical sources contain reference to other bodies of state authority which preserved their judicial authority well after the office of imperial circuit judges had been introduced. The elaborate Charter issued to the citizens of Dubrovnik in 1349, right after the proclamation of Dušan's Code, as well as the Hilandar Chrysobull of 1355, prescribed the old forms of judicial power, which was vested in the *Kephale* (the city Governor), *Knyaz* (Duke) and customs officers. This could be explained either by an assumption that the phrase "judges of my Empire" used in Dušan's Code refered to all existing bodies of judicial authority or by the claim that the legal norm had been undermined under the impact of much more durable and resistent customs and the force of formerly enacted law.

The Judiciary in King Charles' *Maiestas Carolina and* the Statutes of Casimir the Great

The process of the centralisation of the state and judicial authorities, which was the main pursuit of Emperor Dušan's Code, was also a prominent feature of some Bohemian and Polish legal history documents which were issued in the mid-14th century. Being the contemporaries of the Serbian Emperor Dušan, the German Emperor and Bohemian king Charles IV[3] and the Polish King Casimir the Great, were the exemplary embodiement of imperial power and strong centralised governing authority. Relying on the Church, their skillful diplomatic activity and monetary economy flourishing in wealthy cities, they both passed legal codes which aimed at centralizing and unifying the judicial systems in their respective states (Dvornik, 2001: 88-120).[4]

Unlike Serbia, Bohemia and Poland had feudal class-system courts which had jurisdiction in the proceedings involving feudal lords. Due to this fact, they could not prescribe exclusive jurisdiction of the state court for disputes involving feudal lords, unlike Emperor Dušan.

The Judiciary in King Charles' *Maiestas Carolina* (Medieval Bohemia)

Maiestas Carolina, the Code issued by the Bohemian King Charles IV, aimed to strengthen the imperial (state) court and prevent the abuse of judicial authorities in local courts which were still under the control of noblemen (Dvornik, 2001: 103). Charles IV prescribed that more serious criminal offences should be exempt from the jurisdiction of state and provincial courts, and should be adjudicated by the imperial officials, known as "*popravci*"[5] (Dvornik, 2001: 103). Charles' Code proposed an efficient control of the judicial system by setting up royal clerks and clan elders ("*starosta"*). The elders, who were appointed by the king, had a significant role during proceedings and in the control of the judiciary. Article 7 of Charles' Code stated: "*Hereby, for reasons of ultimate*

[3] This ruler had two names – King Charles I of Bohemia, and German Emperor Charles IV of Luxemburg .

[4] For more about these two Slavic rulers, see a separate chapter on *Charles IV, the Emperor and King of Bohemia, and Casimir the Great, the King of Poland* in: Dvornik, 2001: 88-120.

[5] This institution is known in the old Bohemian law, written in the co-called Rosenberg Book, a significant historical monument of old Check law. It originated from the term "*poprave*", which signified the judicial county. In the mid-13th century, during the rule of Premyslas II, special emissaries and officials of the ruler were assined to control the judiciary in towns, as well as the courts of feudal lords. For more, see: Беляева, 1961: 839.

necessity, we prescribe that the fortified towns shall have the elders who are worthy of that duty; and the border fortifications shall have burgraves, who shall perform their duties in line with the vested authorities and adjudicate cases involving both criminal proceedings and land disputes" (Беляева, 1961: 839). Article 17 of this Code envisaged that all state officials (judges, governors and elders) could be replaced and/or removed from office, which made them dependent on the royal authority (Беляева, 1961: 839).

The Judiciary in the Statutes of Casimir the Great (Medieval Poland)

The Polish King Casimir the Great seems to have followed the Bohemian example and tried to centralise the judicial system of Poland, to the extent possible. Here, the local authorities were vested in the elders ("*starosta"*), who were appointed for their offices in the territories of inland cities during the predominance of the Bohemian nobility. The institution of 'elders' proved to be very useful for the interests of the state and subsequent rulers. Casimir the Great prescribed that the elders should try all more serious criminal offences, which were quite common in the disunited feudal Polish state before he came to the throne. The adjudication of serious criminal offences was excluded from the jurisdiction of feudal courts and transferred to the exclusive jurisdiction of royal (state) judges, as representatives and advocates of the interests of the state unity (Любавский, 2004: 344-345). In Chapter XIII, the Statutes of Casimir the Great also regulated the place and time of judicial proceedings: "*It is known that, according to an old custom, judges conducted the proceedings regardless of time (part of day and hour) so that many of them (judges) commonly appeared in court after lunch; after being well wined and dined, they could hardly focus on trial proceedings. Therefore, in order be able to deliberate on cases at issue with due diligence, at the specific hour and time of day, we hereby prescribe that court hearings and adjudication in trial proceedings shall take place from 9 am to 12 am on the court working days...*" **(**Андреев, 2002: 295)**.**

Pursuant to the Statutes of Casimir the Great, the administration of justice pertaining to the dependent population (serfs) was entrusted to the city administrative centres *("castellany*"); thus, this kind of proceedings were excluded from the jurisdiction of feudal courts: "According to the *long-standing custom, if* ***a serf kills another serf****, he may be exempt from punishment by paying a fine; however, considering that a fine is insufficent punishment for murder, we hereby prescribe as follows: if a serf kills another serf, as punishment for murder he shall pay a fine* ***to the castellany*** *in whose territory he committed the murder, or to another, as prescribed by the the law... And if the murderer does not pay the fine, he shall be apprehended and punished by death*" (Андреев, 2002: 299-300). Similar to Emperor Dušan's Code, the Statutes of Casimir the Great also include provision on the royal (state) judges.

In Bohemia and Poland, the process of excluding court proceedings from the jurisdiction of lower feudal courts and transferring them to the jurisdiction of the state court was very similar to the judicial reform of Emperor Dušan. The process was essentially aimed at centralisation and nationalisation of the highly complex and polycentric feudal judiciary, and ultimately aimed at centralisation of the entire state authority. The appointment of special state officials (*starosta*) to a some extent corresponds to the appointment of state judges ("the judges of my Empire") in the Serbian medieval legal system.

CONCLUSION

The supreme judicial authority of rulers in some Slavic medieval states was only in certain epochs similar to the judicial authority of old Russian dukes and Serbian rulers. Observed in its entirety, the ruler's authority in medieval Poland, Bohemia or Croatia did not achieve the scope it had had in Kievan Rus or Serbia. Distinctive social conditions in certain parts of the Slavic territories generated important differences in the governmental structure and legal systems of individual Slavic states. Poland and Bohemia, which predominantly developed under the Germanic influence, were largely fragmented feudal states during the Middle Ages; therefore, their state organisation was in accordance with the relations which were typical for such states. In such a system, the supreme authority belonged to the feudal (patrimonial) lords of the lands, while the rulers had the supreme judicial auhtority only occasionally, depending on many internal and external factors. In Russia, Serbia and Bulgaria, where the Byzantine influence was predominant, the governing power was much stronger and more centralized. Consequently, there were differences in the systems of government of Slavic states, including the judicial systems and judicial power of the central authority.

However, the reforms of very complex medieval judicial system in Bohemia and Poland during the mid-14th century may be viewed as a departure from the feudal state organisation system which, in these two Western Slavic states, exclusively reflected the supremacy of big feudal lords over the ruler. Along with the strengthening of the ruler's authority, there were endevours to reorganise the feudal judiciary in line with the changing socio-economic, cultural and political circumtsnces of the time. The central authority of the ruler was increasingly on the rise due to the overall development of these medieval Slavic states, but also due to the support of certain institutions and social classes. Almost concurrent, these attempts in Serbia, Bohemia and Poland to streghten and centralize the ruler's authority over the state through the reform of the judiciary represents a highly specific phenomenon in social and legal history, as well as in the legal state theory and practice. While these three states were essentially class-based monarchies, the endevours to the reform the judiciary prompted the development of early stages of absolute monarchy. This type of state did not come into being in the Slavic world in the mid-14th century but at a later period it was established (to some extent) in the Grand Principality of Moscow.

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REFORMA SUDSKE VLASTI U SREDNJOVEKOVNOJ SRBIJI, ČEŠKOJ I POLJSKOJ

U radu autor na osnovu tekstova relevantnih pravnoistorijskih izvora analizira pokušaj reforme sudstva u srednjovekovnom slovenskom svetu. U Srbiji, Češkoj i Poljskoj u XIV veku doneta su tri pravna zbornika – Dušanov zakonik, Maiestas Carolina i Statuti Kazimira Velikog. Proglašenje ova tri zakonika bilo je uslovljeno jačanjem vladarske vlasti. Car Dušan, češki kralj Karlo i poljski kralj Kazimir doneli su, gotovo u isto vreme, veoma slične odredbe o reorganizaciji sudova. Osnovna ideja bila je uvođenje posebnih državnih sudija, sa ciljem potiskivanja i ograničavanja feudalnog i drugih oblika pravosuđa u svojim državama. Reforma sudova i sudskog postupka bila je deo sveobuhvatnog pokušaja centralizacije državne vlasti u trima slovenskim državama. Takav proces predstavlja fenomen u istoriji slovenskog prava i vezan je za najmoćnije vladare pomenutih država koji su bili i savremenici.

Ključne reči: *slovensko pravo, srednji vek, reforma sudstva, vladar, državna vlast, državne sudije*.

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Review Paper

CORRUPTION AS AN OBSTACLE TO EUROPEAN INTEGRATIONS

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Abstract. *Corruption is not a phenomenon of recent times. It derives from the Latin word "corruptus", meaning deterioration, blackmail, depravity, bribery, etc. The ancient Greeks and Romans faced this phenomenon and enacted rules aimed at its prevention and suppression. The practice of bribery is as old as the state itself. In the 18th century England, for example, the notion of corruption was associated not only with corrupt government but also with giving bribes. Despite numerous efforts of the international community to put an end to this problem, the fact is that many countries have not ratified the proposed documents of this type yet. In terms of criminal law, corruption-related offences in Serbia today include primarily crimes against official duties, crimes against the economy, and crimes against freedom and civil rights. In this paper, the authors examine some issues related to corruption in light of its harmful effects on the European Integration process.*

Key words: *corruption, corruption-related offences, prevention,suppression, abuse, economy.*

INTRODUCTORY REMARKS

There is a common belief that there is no society without corruption and that all socio-economics systems, in both developed and undeveloped countries, are prone to corruptive practices. Due to the high level of threat to society and danger for the operation of the state and economic institution, in the international community corruption has given the same priority as terrorism and organized crime (Konstatinović-Vilić, Nikolić, Kostić, 2009: 179).

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Corruption mainly occurs in times of crisis and disintegration of a country, when public services become empoverished and depleted, and when the political and economic systems start decomposing and transforming. Generally speaking, it can be said that corruption is one of the most dangerous forms of economic crime. In many societies, this socially unacceptable phenomenon seems to have become a customary form of behaviour. In Serbia, as well as in many other countries, the term "corruption" started being used rather recently. It was mainly related to bribery, which is defined as a gift in money or some other valuable item aimed at luring a person to fulfil the bribe-giver's wish, most frequently in illegal ways.

The contemporary theory emphasizes that political power and influence cannot be sold and bought, as well as that the official position cannot be subject to trade. However, we bear witness that there is a significant difference between these generally accepted principles and practice. For this reason, the abuse of political and official position is sanctioned in criminal law. In the most general sense, corruption represents the abuse of power that is vested in a specific office, post or job position in the socal or economic hierarchy for illegal acqusition of wealth or status (Bošković, 2007, str. 353).

When Serbia is concerned, corruption is present in all segments of social life. Hence, it is listed among countries with high level of corruption. We certainly cannot ignore the fact that the political events and socieo-economic circumstances in the past two decades have significantly contributed to the development of such practices. A more coordinated approach to fighting corruption is certainly inevitable, which necessarily calls for more substantial engagement of all competent institutions at the national and international level alike.

1. ISSUES IN DEFINING THE CONCEPT OF CORRUPTION

There are several problems in defining the concept of corruption. The most prominent one is the fact that there is no common and internationally accepted definition of corruption, which has a negative impact on both criminology and criminalistics because it significantly affects the process of identifying the causes of corruption and applying the relevant methods for its supression. Another problem is that many criminal activities in the area of corruption-related crimes cannot be classified under the existing criminal offences, whereas many corruptive practices in the field of public affairs are not sanctioned by criminal law. When corruption in the private sector is concerned, another problem is the impunity for committing these offences. Namely, in some countries, the legislative framework does not envisage the legal enties and persons employed in the private sector as possible perpetrators of corruption-related criminal offences. It should be noted that corruption is present in other economic and non-economic areas, such as: industry and civil engineering, banks and other financial organisations, insurance institutions, employment sector, media, sport, healthcare, education, art, show business, etc. Consequently, there are different definitions of corruption but their common feature is that they all entail the abuse of public service for the purpose of obtaining some benefit for oneself or another.

A further problem in defining the concept of corruption is that it can be viewed from different aspects: psychological, sociological, criminological, or legal. It is considered that corruption can be defined as 'the illness of leaders', i.e. as a situation in which the person authorized to make decisions and take actions in the public interest modifies the decision and actions guided by private interests. Another inevitable issue in defining the

notion of corruption pertains to its different forms. In theory, corruption is classified as follows: a) petty, minor, and grand corruption; b) sporadic (endemic) or systemic; and c) simple or complex (Mrvić-Petrović, 2001: 21-22). In addition, there are the following forms of corruption: low-level or street-level corruption; contractual corruption or corruption in public administration; political corruption; economic corruption; court corruption (Petrović, Meško, 2004: 186).

In line with the UN Convention against Corruption (2003) and given the diversity of its forms, most European criminal legislations classify corruption into two basic forms: active and passive corruption. Active corruption entails the criminal act of offering, promising or giving a gift, benefit or priviledged exercise of a right. Passive corruption exists when someone in official or private position accepts an offer, gift, benefit or a promise of gift or benefit, and thus commits a criminal offence.

Both before and after the ratification of the UN Convention against Corruption (2003), the aspiration to suppress corruption in Serbia imposed the need to ratify many other international documents, such as: the UN Convention against Transnational Organized Crime (2000), the Council of Europe Criminal Convention on Corruption and Civil Law Convention on Corruption (1999), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).

2. Negative Effect of Corruption on the Development of Modern Society

For a long time, fear of harsh punishment was the only form of deterrence from committing corruption-related criminal offences. Offenders of such offences were executed as murderers and enemies of the state. However, such harsh punishments did not produce adequate results. It is probably due to the fact that the emergence and development of corruption was largely influenced by the holders of political power holders, while legislative bodies had little impact. Even today, corruption is the most clandestine type of criminal activity; therefore, 'the dark figure' of committed criminal offences of this type is rather high. The high level of clandestinity comes from the fact that the one who gives and the one who takes bribe are equally interested not to be disclosed. One thing is sure: corruption is difficult to prove by currently available methods and legal instuments, which particularly refers to corrupt activities involving public officials. The control mechanisms are largely inadequate and inapplicable, and the system of competencies for combating corruption is undefined.

Suppressing corruption only through criminal laws is considered to be insufficient way of combating this social phenomenon. Excessive repression is considered inadequate because it creates a perception that combating corruption is not the problem of the entire society but an issue which has to be handled exclusively by the police, prosecution and courts. The efforts made in this domain result in defining different programmes in order to eradicate corruption from public life, especially by eliminating the abuse of public functions, which have been the subject matter of some major corruption scandals. In combating corruption, some countries have gone so far as to include relevant provisions in their constitutions. Corruption during the national elections for people's representatives in state intitutions is particularly dangerous because such practices directly affect the outcome of election results. Elections won in that way have immense negative consequences on the operation of the legislative body and executive authorities as the most important decision-makers.

The influence of corruption on the economic development of a society mainly depends on the nature and prominence of this phenomenon in each state. In modern economies, the correlation between the legislative, executive and judicial authorities, and their correlation with political structures, is very important because it establishes mutual relations between those who make decisions and those who run the country, ensures feedback and provides guidelines for further action. There is no dispute that infiltration of corruption into the key public administration offices is highly detrimental. The constant bias, favorism and privileges given to some at the expense of others impede the process of developing conditions for creating a strong economy (Stajić, 2008, str. 163).

Decision-making centres in poor Asian and African countries, and Eastern European countries in transition, are most susceptible to corruption. According to the findings of *Transparency International* (TI), international corporations and businessmen from the most developed countries (such as: Sweeden, Australia, Canada, Austria, Switzerland, Netherlands, Great Britain, Belgium, Germany and USA) are also enlisted as those who offer bribe (Stajić, 2008:168)

3. NEGATIVE EFFECT OF CORRUPTION ON EUROPEAN INTEGRATIONS

When it comes to European integrations, the question of corruption takes the prominent first place. Corruptive practices not only prevent but also considerably slow down political and economical reforms in all countries, especially in countries in transition. The Report of the European Comission,[1] submitted to the countries of Central and Eastern Europe, candidates for the EU accession, states that there has been very little progress in terms of corruption. This conclusion of the European Comission was given on the basis of analyses conducted by the World Bank, OECD and other international organizations that were active on the question of corruption prevention and suppression. The analyses of the countries in transition led to irrefutable facts that 'tycoons' exert significant influence on politicians, judicial and other state bodies to adopt legal solutions which would facilitate to conceal their corrupt activities. For example, in transition countries, there is a common practice of "rigging" the sale of companies during the privatisation process. The institutional govenmental control proved to be inadequate in most countries. The EC Report also showed that most MPs have a lack of awareness about their competences and accountability, as well as insufficient knowledge about the problems that government has to deal with (EC Report, 2016).

Due to the detrimental effects of corruption for the society, the police and prosecution authorities worldwide establish special units and bodies aimed at combating corruption and exchange information on this matter. Moreover, *Transparency International* was established as a special non-governmental organization for combating corruption, which is present in more than eighty coutries throughout the world. In 1998, the Council of Europe established the anti-corruption monitoring body - the Group of States against Corruption (GRECO).

When it comes to Serbia, corruption is not only present but also widespread in all spheres of social life. Serbia falls into the group of countries with high corruption rate. The political events and socio-economic circumstances in the past two decades created

[1] The European Comission Report: COM (2016) 715 final; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

convenient environment for corruption. Serbia started taking some steps in counteracting corruption only in 2002, when the Government established the Anti-Corruption Council. After being (re)admitted into the Council of Europe in 2003, Serbia approached the issue of combating corruption more seriously, particularly in view of Serbia's pursuit to become an EU member state. Thus, in 2005, the Serbian National Assembly adopted the National Strategy for fighting against corruption, and the Government of Serbia adopted the Action Plan for its implementation. Finally, the legislative act on establishing an independent anti-corruption body – The Anti-Corruption Agency – was adopted, and entered into force on 1st January 2010. The establishment of the Anti-corruption Council and the Anti-Corruption Agency were inevitably followed by difficulties and frequent disagreements with the governing authorities.

Therefore, corruption is an inevitable phenomenon during the process of transition, and it considerably undermines democratic and free market institutions of a society. Accordingly, during transition, a close attention must be paid to combating corruption, which should not be accepted as a matter of habit. Fight against corruption can only be successful through joint efforts of governing authorities, civil society organizations, and private economic entities. Finally, if we want to join the EU, we have to change the bad habits and eradicate corruption.

4. Difficulties in Preventing and Suppressing Corruption

The perpetrators of this type of criminal offences skillfully avoid criminal prosecution, most often because of their 'political status' which enables them to do so. Corruption is indeed most prominent in the public sector, i.e. in state and public institutions, but it is also present in the private sector, particularly in manufacture, trade and services.

Corruption is one of the crudest types of exploitation of subordinate layers of society; concurrently, it is the most perfidious method of capital accumulation of the stronger economic entity at the expense of the weaker one. Corruption is mostly encountered in the context of management structures and control procedures involving property. In most cases, the perpetrators of corruption-related criminal offences try not to have direct contact with property; thus, property-related irregularities and corruptive practices are commonly committed by the abuse of official positions, such as managerial, operational and control functions. The gravity and scope of these abuses are influenced by the economic position of business entity, the conditions on the market, the level of development of economic relations, the organization and operative technology, the level of development of protective mechanism in the business entity, state or other public institution.

Corruption is frequently connected with organized crime and may, to some extent, protect persons from the criminal environment. Public and civil servants, who are supposed to suppress organized crime, are often corrupt themselves. Organized crime resorts to corruptive practices in order to establish and maintain criminal contacts with influential individuals in political structures, state authorities and other areas of public life. When a person from the criminal environment makes a 'deal' with public officers and civil servants, they become regularly frequented 'patients'; at the same time, the criminal organization becames a regular 'patient' of the corrupt servant. Problems ensue when one party tries to walk away from the deal. Using corruption and mass media, criminals from the organized crime milieu present

themselves to the general public audiences as businessmen and honest citizens, people of trust, successful businessmen, etc.

Political corruption makes one of the most dangerous types of economic crime which organized crimes relies on. The largest threat exists if judicial and police employees are inclined to bribery and abuse of official positions. In that case, the whole legal system of a state is endangered.

Fight against corruption must predominantly include preventive measures, which implise removing the causes that lead to corruption. However, condidering the current level of corruption, repressive measures must not be excluded. Therefore, it is highly important to suppress corruption in the public authorities working on detection, prosecution and adjudication of corruption-related activities, primarily the police and judicial authorities.

In order to prevent corruption, public servants working on this matter have to be fully aware of the professional ethics in performing public services, the efficient supervision and control mechanisms, daily monitoring by the general public, the fact that all final judicial decisions on corruption-related criminal offences will be published in mass media, etc. In view of suppressing corruption, closer cooperation should be established with Anti-Corruption Network (ACN) for Transition Economies, which mainly specializes in assisting post-communist countries to improve the performances of their anti-corruption programmes.

5. CORRUPTION-RELATED OFFENCES IN SERBIAN LEGISLATION

The Criminal Code of the Republic of Serbia (CC)[2] includes a number of corruption-related offences which are categorized in different groups. We can single out some criminal offence against freedoms and rights of man and citizen, criminal offences against economic interests, and criminal offences against official duty.

Criminal Offences against Freedoms and Rights of Man and Citizen (Chapter 14)

1. Violation of Equality (Article 128 CC): This criminal offence is related to the constitutional principle of citizen equality, and it has the basic and a more serious form. The basic form of this offence is committed by anyone who "denies or restricts rights of a man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties, on grounds of nationality or ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property, or other personal charactheristics, or pursuant to such difference grants another privileges or benefits." A more serious form of offence exists when it is committed by an official in discharge of official work.

[2] Krivični Zakonik (The Criminal Code of RS), *"Sl.Glasnik R.Srbije", br.85/2005, 88/2005- ispr., 107/2005-ispr. i 72/2009, 111/2009, 121/2012, 104/2013, 108/2014)*, Beograd.

Offences against Economic Interests (Chapter 22)

1. Accepting Bribe in Performing Economic Activities (Article 230 CC): This criminal offence has two basic forms. The perpetrator of the first basic form is a person who, while performing economic activities for oneself or for other, directly or indirectly, solicits or accepts a gift or other benefit, or receives a promise of a gift or other benefit to conclude a contract or make a business arrangement or provide service or to refrain from official actions that he is oblidged to perform, or violates other official acts in performing economic activities in order to harm or give benefit to a business entity or other legal entity that he works for/in or to another. The second basic form of offence occurs when the perpetrator upon concluding the contract or achieving a business deal or upon provided service or not performing an official act, solicits or accepts a gift or other benefit, or promise of a gift or other benefit for oneself or another. The received gift or material gain shall be seized.

2. Bribery in Performing Economic Activities (Article 231 CC): This criminal offence consists of offering a gift or promising a gift or some other benefit to an official while performing his economic activities, in order to conclude a contract or achieve business arrangement or provide a service or not to perform an official act, or violates other duties while performing economic activities in order to harm or give benefit to a subject of economic activities he works for/in or in order to harm or give benefit to natural person or other legal entity or who mediates in such giving gifts or other benefits. With this criminal offence, Code states that if perpetrator reports the offence before he has found out it has been detected, he can be released from punishment. The received gift or material gain shall be seized.

3. Causing False Bankruptcy (Article 232a CC): This criminal offence has the basic and more serious form. The basic form of this criminal offence has three forms. It is committed by any person in a business entity who has the capacity of a legal person who, with intention to evade paying liabilities incurred by the business entity, causes bankruptcy of the business entity by fictitious or actual decrease of its assets by: 1) concealing, fictitiously selling, selling under the market price or relinquishing without compensation all or part of the assets of the business entity; 2) concluding fictitious contracts on debt or recognising non-existent claims; 3) concealing, destroying or altering business books that the business entity is obliged to keep in accordance with the law, thus making it impossible to discern therefrom the business results or state of assets or liabilities, or making false documents or otherwise falsely presenting the state of affairs on the basis of which bankruptcy may be instituted. A more serious form of offence exists when there are serious consequences for the creditor.

4. Damaging Creditors (Article 233 CC): This criminal offence has the basic and two more serious forms. The basic form of offence exists when a person in the business entity having the capacity of a legal person, knowing that the entity is insolvent or incapable of paying a debt, pays the debt or otherwise deliberately puts the creditor in a more favourable position and thereby significantly damages another creditor. The first more serious form of offence entails the perpetrator's intention to deceive or damage the creditor by recognising false claims, making false contracts or otherwise fraudulently damaging the creditor. The second more serious form occurs when the creditor experiences extensive damage or when the compulsory settlement or bankruptcy procedure is consequently instituted against the injured party.

5. Disclosing a Business Secret (Article 240 CC): This criminal offence has the basic and a more serious form. The basic form exists when the perpetrator communicates to another without authorisation, hands over or in any other way makes available the information representing a business secret, or obtains such data with intention to hand them over to an unauthorised person. A more serious form implies that offence is committed for benefit (gain) or in respect of particularly confidential information. The priviledged form of offence exists when it is committed as a result of negligence, in which case the legislator envisages a milder punishment. Two conditions have to be met in order to declare some data a business secret. The first (formal) condition is that these pieces of information are declared a business secret by law, other regulation or a decision of competent authority issued in accordance with the law. The second (substantive) condition is that the disclosure of such data has caused or could cause harmful consequences for the economic/business entity.

Criminal Offences against Official Duty (Chapter 33)

1. Abuse of Office (Article 359 CC): This criminal offence has the basic form and two more serious forms. The basic form exists when an official, by abuse of office or authority, by exceeding the limits of his official authority or by failing to perform the official duty, acquires any benefit for himself or another, or causes damage or seriously violates the rights of another. A more serious form of offence occurs when the aquired material gain stemming from the commission of this act exceeds 450,000 RSD (four hundred and fifty thousand dinars). The second more serious form exists if the value of acquired material gain exceeds 1,500,000 RSD (one million five hundred thousand dinars).

2. Violation of the Law by a Judge, Public Prosecutor or his Deputy (Article 360 CC*):* This criminal offence exists when a judge or a lay judge, a public prosecutor or his deputy involved in court proceedings issues an unlawful act or otherwise violates the law, with intent to acquire some benefit or to cause damage to another. The first more serious form of offence exists if the value of the acquired material gain exceeds 450,000 RSD (four hundred and fifty thousand dinars). The second more serious form of offence exists if the acquired gain exceeds 1,500,000 RSD (one million five hundred thousand dinars).

3. Trading in Influence (Article 366 CC): This criminal offence has four forms. The first incriminated form entails the act of soliciting or accepting a gift or any other benefit for oneself or another, either directly or through a third party, and using the official or social position or real or percieved influence in order to intercede for performance or non-performance of an official act. The second form of this offence is envisaged in case the perpetrator directly or through a third party promises, offers or gives a gift or any other benefit and uses the official or social position or real or perceived influence to intercede for performance or non-performance of an official act. The third form of this offence refers to the perpetrator who, by abusing his official or social position or influence, intercedes for performance of an official act that should not be performed or for non-performance of an official act that must be performed. The fourth form of the offence is commiteed by a person who promises, offers or gives a gift or any other benefit to another to intercede by using his official or social position or influence for performance of an official act that should not be performed or for non-performance of an official act that must be performed. In all cases, the prescribed sanctions are the seizure of gifts or

any other property gain as well as the security measure of compulsory seizure of property items. This Article also includes a provision on the liability of a foreign official who commits this criminal offence.

4. Accepting Bribes (Article 367 CC)*:* This criminal offence has three basic and one more serious form. The first basic form refers to an official who directly or indirectly solicits or accepts a gift or some other benefit, or accepts a promise of a gift or some other gain for oneself or another, in order to perform an official act that shall not be performed or not to perform an official act that must be performed within the framework of the official authority. The second basic form exists if an official directly or indirectly solicits or accepts a gift or some other gain, or receives a promise or some other gain, to perform an official act that must be performed or not to perform an official act that shall not be performed within the framework of the official authority. The third form of this offence is committed when an official, after performing or non-performing the previously described official act, solicits or receives a gift or some other benefit. A more serious form of this criminal offence refers to an official who has committed the first two forms of the criminal offence in the course of detecting a criminal offence, initiating or conducting criminal proceedings, imposing or enforcing criminal sanctions. In all cases, the prescribed sanctions are the seizure of gifts or any other property gain as well as the security measure of compulsory seizure of property items. This Article also includes a provision on the liability of a foreign official who commits this criminal offence.

5. Giving bribes (Article 368 CC): This criminal offence has two basic forms. The first form is committed by a person who makes, offers or promises a gift or any other benefit to an official or another person to perform an official act within his official competence that shall not be performed or not to perform an official act that must be performed, or a person who acts as an intermediary in bribing an official. The second form of this offence pertains to the perpetrator who offers or promises a gift or some other benefit to an official or another person in order to perform an official act that must be performed or not to perform an official act that shall not be performed within his official competence, or the person who acts as an intermediary in bribing an official. Yet, the perpetrator of this offence may be exempt from punishment if he reports the offence before finging out that it has been detected.

6. Disclosure of Official Secrets (Article 369 CC): This criminal offence has the basic, a more serious and a privileged form. The basic form of offence is committed by an official who without authorization communicates, delivers or makes the information representing an official secret available otherwise, or obtains such data with intent to give them to an unathorised person. The more difficult form of offence exists when it is committed for gain, or in case of particularly confidential information, or when the data are inteded for publishing or use abroad. The privileged form exists when the offence is committed due to negligence. These provisions also apply to former officials who disclose an official secret after the termination of their public or official duty.

CONCLUSION

A certain level of corruption is an inevitable part of every society. It cannot be entirely eliminated and, thus far, it has not been possible to create a system which would be fully immune to corruption. However, it is possible to take action to counteract,

suppress and reduce the scope of this negative social phenomenon. It can be achieved by providing relevant education and training of public and civil servants, and by reinforcing preventive measures. It would preclude the detrimental effects of corruption which substantially undermines the operation of democratic and economic institutions.

In societies with low corruption rate, the priority is to establish new values, i.e. to increase the well-being of society, whereas in societies with high corruption rate the priority is to redistribute the existing values.

In Serbia, the authorities vested in the police and the Anti-corruption Agency are certainly insuficient for combating corruption, particularly given the fact that their members are not sufficiently trained for this area of work. Progressive efforts should be taken to establish multidisciplinary teams, including police officers, Agency employees and a large number of experts whose coordinated activities would be aimed at counteracting the growing problem of corruption in society.

The fact that corruption-related criminal offences are committed in a specific manner cause difficultiess in their detection and further aggravates the process of proving the commission of such offfences. For this reason, contemporary criminalistic methods based on the latest scientific and technical achievements must be used in detecting, fact-finding and proving corruption-related criminal offences.

In the Republic of Serbia, the latest amendments to the Criminal Code (2016) have resulted in expanding the number of envisaged corruption-related criminal offences. Within the framework of criminal offences against economic interests, the legislator introduced two new criminal offences: the crimal offence of accepting bribe in perfoming economic activities, and the criminal offence of giving bribe in performing economic activities. It will certainly contribute to a more efficient fight against corruption.

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Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy {COM(2016) 715 final}; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

KORUPCIJA KAO PREPREKA EVROPSKIM INTEGRACIJAMA

Korupcija nije pojava novijeg vremena. Potiče od latinske reči „corruptus“, što znači pokvarenost, ucena, izopačenost, podmitljivost i sl. Stari grci i rimljani susretali su se sa ovom pojavom i donosili pravila u vezi njenog sprečavanja, odnosno suzbijanja. Praksa podmićivalja, stara je koliko i sama država. Na primer, u Engleskoj je pojam korupcije u 18. veku, pored činjenice o kvarenju vlasti, poistovećen i sa davanjem mita i podmićivanjem. Uprkos mnogobrojnim naporima međunarodne zajednice da stane na put ovom problemu, još uvek je prisutna činjenica, da veliki broj zemalja nije ratifikovao ponuđena dokumenta ove vrste. U krivično-pravnom smislu koruptivni delikti u Srbiji danas obuhvataju prvenstveno krivična dela protiv službene dužnosti, krivična dela protiv privrede i krivična dela protiv slobode i prava građana. U ovom radu autori su se dotakli pojedinih pitanja o korupciji kroz prizmu njenog negativnog uticaja na evropske integracije.

Ključne reči: *korupcija, koruptivna krivična dela, sprečavanje i suzbijanje, zloupotreba, ekonomski razvoj*.

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Review Paper

COMPENSATION OF CIVIL PROCEDURE COSTS IN MASS TORT LITIGATION

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Abstract. *This paper examines the legal consequences of mass tort litigation where the amount of damages is multiple times lower than the litigation cost. In the context of current judicial practice, the author observes this phenomenon from the aspect of prohibition of abuse of rights, and offers proposals for improving the existing regulation in order to effectively prevent the abuse of rights.*

Key words: *mass tort lawsuits, litigation costs, abuse of rights.*

1. INTRODUCTION

Acting on behalf of the plaintiff N. N., a lawyer filed a complaint with the Basic (Municipal) Court in Niš against the National Employment Service, the defendant, seeking damages for unemployment compensation which was not paid in full and litigation costs. The Basic Court ruled that the defendant shall pay the plaintiff the amount of 890,74 RSD (dinars) as damages, and the amount of 42,800.00 dinar as litigation costs.[1] In another case adjudicated by the same Court, a lawyer filed a complaint on behalf of the communal services company "*Objedinjena naplata*" (administering the payment of communal utility bills) against the defendant N. N., seeking payment of debt for provided communal services and litigation costs. The Court ruled that the defendant shall pay the debt in the amount of 2,767.00 RSD as well as litigation costs in the amount of 24,200.00 RSD.[2] In a third case, a lawyer filed a complaint on behalf of the public communal services company "*Parking servis*" against the defendant N. N, seeking payment of debt and litigation costs. The Court ruled that the defendant shall pay to the plaintiff the debt in the amount of 6,724.00 RDS the litigation costs in the amount of 34,800.00 RSD.[3]

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[1] Judgment of the Basic Court in Niš P 6750/15 dated 12/09/2017.
[2] Judgment of the Basic Court in Niš P 2706/14 dated 05/03/2015.
[3] Judgment of the Basic Court in Niš P 14313/15 dated 13/09/2016.

These examples are only some of the many types of mass tort lawsuits which are being tied in Serbian courts. Irrespective of whether the complaint is filed by a natural or a legal person, the main characteristic of such lawsuits is the plaintiff vests the power of attorney in their lawyers, that the litigation costs are necessarily awarded in a vast majority of cases, considering that the defendants are solvent legal persons[4], or due to the fact that the plaintiff is a solvent legal person[5]. The judicial practice shows that the complaints are justified in almost all of these cases; as a result, the defendant is ordered to compensate the plaintiff for the litigation costs. The amount of compensation for litigation costs substantially exceeds the value of the legal claim.[6]

Mass tort lawsuits are a controversial phenomenon which attracted media attention and provoked various public responses. One of the questions posed in this respect is whether such cases may be said to entail the abuse of rights. The paper is dedicated to this issue.[7] Relying on the analysis of the existing judicial practice, the goal of the paper is to consider possible solutions which would prevent any kind of abuse in compliance with the principle of prohibition of abuse of rights. For the purpose of providing a comprehensive review of the problem, the first part of the paper presents key features of the mass tort litigation phenomenon; the second part of the paper focuses on the litigation costs reimbursement regime, and the third (central) part of the paper considers whether there the parties' rights have been abused in these lawsuits and provides possible solutions to prevent the occurrence of abuse.

2. CONCEPT AND CHARACTERISTICS OF MASS TORT LITIGATION

The emergence of the so-called *mass harm situations*, involving the violation of rights of a large number of persons caused by the unlawful conduct of the same legal person, has resulted in a divergence from the concept of litigation as an instrument for protection of an individual plaintiff against an individual defendant, and introducing legal institutes that are more efficient in resolving mass (collective) disputes. In this respect, the legislation of the United States of America recognizes the institute of *class action;*[8] the United Kingdom has the institute of *representative proceedings;*[9] Austria, Germany and Greece have instituted *the test litigation*

[4] The National Employment Agency, Pension and Disability Insurance Fund, Tobacco Industry Niš, the City of Niš, Preschool institution „*Pčelica"*, Niš.

[5] Public community service (PCS) "*Objedinjena naplata*" Niš, and PCS „*Parking servis"* Niš (respectively).

[6] In the lawsuits against the National Employment Service, the plaintiffs were awarded up to 60,000 RSD each on the average, but more than two thirds of this amount relates to compensation for litigation procedure costs: judicial fees and lawyer fees. See:http://www.paragraf.rs/dnevne-vesti/300916/300916-vest6.html (accessed 12/10/2017).

[7] In mass tort litigation, there is also a problem of uneven application of law, which puts legal subjects in an unequal position regarding the exercise of their rights. These lawsuits also generate a heavy caseload for courts, which has a negative impact on efficiency. Due to the page limit, these issues are not the subject matter of analysis in this paper.

[8] See: Rule 23 of Federal Rules of Civil Procedure, USA; available at www.federalrulesofcivilprocedure.org (accessed 12/10/2017). "Class action lawsuit is a procedural instrument which enables the plaintiff to initiate a civil procedure for the infringement of his own rights, not only on his own behalf but alsoon behalf of other persons who find themselves in the same or similar legal situation, because their rights were violated in the same way by the same subject" (the definition taken from Janićijević, 2006: 111). See more on class action lawsuits in: Sherman, 2002.

[9] See more: E. Shreman, 2002: 422.

model[10] in Austria, Germany and Greece, whereas Slovenia recognizes *the sample model.*[11] For the purpose of harmonizing the national legislations of EU member states, enabling unhindered access to justice and equal legal protection, in June 2013, the European Commission adopted the *Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union*, was adopted by the European Commission in June 2013[12].

The current Civil Procedure Act of the Republic of Serbia (2014)[13] does not recognize any institute similar to the ones listed. In the Civil Procedure Act of 2011, Chapter 36 regulates "The procedure for protection of citizens' collective rights and interests"[14], but these provisions were found to be unconstitutional.

The concept of "mass tort" originated in the judicial practice and it signifies the existence of a significant number of lawsuits which have the same factual and legal basis; yet, in a number of such cases, the plaintiffs are natural persons while the defendant is the same legal person (most frequently the city or an organization vested with public authorities[15] or a public company), whereas in other cases the plaintiff is a public company and the defendants are users of its services.[16]

In recent years, the number of such lawsuits is steadily rising.[17] In some courts, these cases prevail in comparison to all other lawsuits, which is the situation in the Basic Court in Niš[18]. Almost all "mass torts" are proceedings in cases on small value disputes.[19] Civil

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[10] It is a "procedure where one plaintiff files an individual lawsuit for protection of his rights, where he files a motion to determine the existance of the violation, as well as to determine that all persons in same circumstances have the right to file a claim for compensation of the damage incurred. If the plaintiff is successful in the procedure, all other persons may initiate subsequent proceedings, where the subject matter of decision will be only the claim of these persons for damage compensation, without examining whether the violation had occurred in the first place". The definition was taken from: T. Zoroska-Kamilovska, T. Shterjova, 2014: 49.

[11] See: Art. 279b of the Civil Procedure Act of the Republic of Slovenia 26/1999-45/2000. More on the procedure: Betetto, 2011: 231-241.

[12] *Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU)*, Official Journal L 201/60, 26/7/2013, abbreviated as "*Colective Redress Recommendation*", [Electronic version]. Retrieved 4 April 2014 from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv: OJ.L.2013.201.01. 0060.01.ENG. See: N. Petrušić, 2014: 303-324.

[13] The Civil Procedure Act (hereinafter: CPA), *Official Gazette of RS*, no. 72/2011, 49/2013-decision of the Constitutional Court, 74/2013- decision of the Constitutional Court, 55/2014.

[14] Civil Procedure Act (CPA), *Official Gazette of RS*, no. 72/2011, and the decision of the Constitutional Court IUZ 51/2012 from 23/05/2013 published in the *Official Gazette of RS*, no. 49/2013. More on this procedure: N. Petrušić, D. Simonović, 2012: 890-903.

[15] According to data from the Communication of the National Employment Service, there were over 40,000 lawsuits filed against this organization for damages due to allegedly incomplete payments for unemployment, with over 10,000 court decisions in favour of the plaintiffs. See: http://www.paragraf.rs/dnevne-vesti/300916/300916-vest6.html (accessed 12/10/2017).

[16] The statistical data from the electronic record of the Basic Court in Niš show that a total of 18,998 lawsuits were received in 2015, out of which 2,439 lawsuits were filed against the National Employment Service, 363 lawsuits were filed against the PCS"Parking servis" Niš, and 578 lawsuits were filed against PCS "Objedinjena naplata" Niš. In 2016, the total number of filed lawsuits was 12,872, out of which 1,502 were against the National Employment Service, 228 lawsuites were against PCE *„Parking servis"* Niš, 416 lawsuits were against PCS "Objedinjena naplata" Niš, and 1,465 lawsuits were filed against the Preschool institution *„Pčelica"* Niš and the City of Niš.

[17] Out of 33,700 unresolved civil cases in the First Basic Court in Belgrade and 4,500 unresolved cases in the Second Basic Court in Belgrade, one third of cases relates to small claim disutes. Almost all lawsuits involving public preschool institutions and enterprises "Infostan", "Vodovod" and "Parking servis" entail small vlaue claims. See: http://www.pravniportal.com/trajanje-sporova-male-vrednosti/ (accessed: 12/10/2017).

[18] See footnote 16.

procedure costs, which are claimed and often accepted in such cases, are often much higher than the original claim which is the subject matter of the lawsuit[20].

3. CIVIL PROCEDURE COSTS

Civil procedure costs[21] are the expenses made during the procedure or in respect thereof, and they include fees for lawyers' services and the work of other persons whose right to remuneration is recognized by law (Article 150 CPA). The amount of lawyers' fees is regulated by the Tariff on Lawyers' Fees and Expenses[22], while the fees and expenses for expert witnesses' work is regulated by the Rulebook on Expenses in Court Proceedings.[23] Other expenses incurred in court proceedings may include expenses for court fees (taxes) in accordance with the Act on Court Fees,[24] and expenses for presentation of evidence, such as: accepted expenses for witnesses (Article 258 CPA; Articles 5-13 Rulebook), parties (Article 283 CPA; Articles 5-13 Rulebook), and judicial examinations outside the court building[25].

All expenses incurred during the civil procedure are initially charged to the party (Article 151 CPA). The final decision on the payment of litigation procedure costs is made by the court, at the request of a party. There are two principles guiding the decision on who will bear the final costs of the procedure: the principle of risk[26] and the principle of liability (fault)[27].

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[19] Lawsuits on small value claims pertain to lawsuits where monetary claims (receivables) that do not exceed the RSD equivalent of EUR 3,000 at the middle exchange rate of the National Bank of Serbia on the day of payment, lawsuits where the subject matter of the claim does not pertain to monetary claims but the plaintiff has stated in the complaint that he agrees to receive the said amount instead of performance of a particular request; and disputes where the plaintiff determines the value of the subject matter of dispute to a specific amount, and it is not a monetary claim. The legislator has envisaged a special litigation procedure for small claim disputes. This procedure is regulated in Chapter 33 of the Civil Procedure Act (CPA), and it is significantly different from the general civil procedure; the special rules provided therein aim to enable more efficient and economical resolution of small claim disputes, which are presumably of a relatively minor importance to the parties. See more on this procedure: N. Petrušić, D. Simonović, 2012: 862-883; S. Zarić, 2005: 253-278; N. Bodiroga, 2015: 653-670.

[20] See the Introduction to this paper.

[21] On civil procedure costs see: B. Poznić, V. Rakić-Vodinelić, 2010: 433; G. Stanković, 1998: 285; S. Triva, M. Dika, 2004: 462; I. Grbin, 1990: 86.

[22] Tariff on Lawyers' Fees and Expenses, *Official Gazette RS*, no. 121/12 (hereinafter: Lawyers' Tariff). The Lawyers' Tariff envisages lawyers fees in lawsuits where the value of the subject matter of dispute is up to 450,000.00 RSD; thus, the lawyer is entitled to receive the amount of 6,000.00 RSD for drafting the compaint and all subsequent submissions (pleadings); the amount of 7,500.00 RSD for legal representation in a hearing; the amount of 4,500.00 dinar for appearing in a hearing which was not held due to the other party's failure to appear; and the amount of 12,000.00 RSD for drafting an appeal.

[23] Rulebook on Expenses in Court Proceedings, *Official Gazette of RS*, no. 6/16 and 62/16, (hereinafter: Rulebook).

[24] Act on Court Fees, *Official Gazette of RS*, no. 28/94, 53/97, 16/97, 34/01-the second law, 9/02, 29/04, 116/08-the second law, 31/09, 101/11, 93/14 and 106/15. The amount of court fee (tax) for filing a complaint and delivering a final judgment in cases where the value of the subject matter of dispute does not exceed 10,000.00 RSD is 1,900.00 RSD; for values between 10,000 and 100,000 RSD, the legislator envisages the payment of 4% of the dispute subject matter value increased by 1,900.00 RSD; for values over 100,000 up to 500,000 RSD is 2% of the dispute subject matter value increased by 9,800.00 RSD. The fee for delivering the final judgment based on admission and judicial settlement is half the amount of the envisaged tax fee for filing a complaint.

[25] Decision on cost compensation for payment of flat-rate fees to judges and employees of the Basic Court in Niš, as well as compensation for the use of institution vehicles, Cy I-1 6/16 dated 18/04/2016.

[26] On risk principle, see more in M. Marković, 1982:147.

[27] See more on the principle of liability (fault) in: M. Marković, 1982: 149.

The principle of liability (fault) implies that the costs shall be paid by the party which has contributed to incurring the costs by its actions, or that the costs have been incurred by the event that involved that party, regardless of the final outcome of the lawsuit (Article 155 CPA). The principle of risk implies that the losing party will compensate the opposing party for the costs incurred (Article 153, para. 1 CPA). The *ratio* of such a principle is reflected in the fact that the party which has won the lawsuit is the party which succeeded to prove the veracity of its allegations, to substantiate that the claim was well founded and that the civil procedure was justified, all of which fully justifies the incurred litigation costs as well. A party which lost the lawsuit was "wrong", the party's claim was ill-founded, and it is therefore obliged to compensate the cost and expenses to the opposing party.

Obviously, the court will not recognize all the requested costs and expenses to the winning party, but only those that were necessary for handling the lawsuit (Article 154 CPA). The law does not give detailed instructions to the court on what these costs are; thus, taking into account all the circumstance in each particular case, the court will determine the costs necessary for civil proceedings. It is customary to recognize the following costs as necessary: court tax fees, lawyers' fees for drafting the complaint and other submissions, as well as lawyer fees for appearance in hearings.

Comparing the amount of awarded litigation procedure costs with the small amounts of claims in mass tort lawsuits imposes the need to address and respond to several key questions: what are the necessary costs involved in mass tort litigation; has the the winning party in any way contributed to incurring such costs; and is there abuse of rights in mass tort lawsuits, and if so, which ones?

4. Is there Abuse of Rights in Mass Tort Litigation?

Abuse of rights occurs when a right holder uses his right contrary to the purpose it has been established for[28]. The Civil Procedure Act prescribes that the parties shall use their rights given by the Act conscientiously (in good faith), and that the Court shall prevent and punish any abuse of rights that the parties are entitled to in civil proceedings (Article 9 CPA). The action involving abuse of rights may be completely legitimate and proper in terms of its external nature, but it shall be deemed impermissible in terms of its effects and the objective the right holder is striving for.[29] In light of the issue under observation, this would mean that the law entitles an individual to initiate civil action for the purpose of protecting his/her rights. By filing a complaint, the plaintiff initiates a litigation proceeding, which incurs certain costs; hence, the legislator recognizes the right of an individual to seek compensation for such costs which have been incurred in the course and for the purpose of exercising the right to legal protection. Therefore, the actions of filing a complaint and submitting a claim for compensation of costs are completely legitimate and correct, but can such actions sometimes constitute the abuse of rights?

The increasing number of mass tort lawsuits with high litigation procedure costs and small values of claims calls for examining the causes of such a phenomenon and responding to the following question: what is the actual motive governing the plaintiff's pursuit to protect his low-value claim in such an expensive procedure?

[28] See more on abuse of the right in: M. Marković, 1996; M. Popović, 1996: 3-10; G. Vukadinović, 1996: 11-16; R. Kovačević-Kuštrimović, 1996: 17-30; V. V. Vodinelić, 1997.
[29] See: D. Stojanović, 1970: 92.

The Civil Procedure Act acknowledges the right of the winning party to seek compensation of costs from the losing party, in the amount which is not dependent on the value of the claim, the only condition being that the costs were necessary (Article 154 CPA); neither this Act nor any other regulations[30] envisage that evidence shall be provided on the actual payment of these costs in the claimed amounts, nor is the fulfillment of this condition required in the judicial practice.[31]

Accordingly, the plaintiff does not incur any costs in the course of the proceeding; all the costs he has to pay, either to the court or to his attorney, will be paid by the opposing party upon the completion of the proceedings, either voluntarily or under force. Thus, it may be concluded that civil procedure is free of charge for the plaintiff, for which reason he actually enters the procedure; the final amount of costs is not a matter of his concern: for, he will only obtain the requested amount of his small value claim, whereas his lawyer will receive a much higher amount of the procedure costs.

On the basis of these circumstances, the fact that the final outcome of proceedings in mass tort lawsuits is largely predictable, as well as the fact that one lawyer often represents dozens and even hundreds of clients or files a lawsuit against a large number of persons on behalf of one plaintiff, it may be concluded that such proceedings are entered into only for the purpose of claiming the litigation procedure costs.

As the factual and legal grounds in mass tort litigation are almost identical, the lawyers acting on behalf of their clients commonly undertake the same legal activities: file complaints with almost identical content, submit motions with the same content, reiterate in hearings the same allegations contained in the complaints and submissions, and propose adducing the same evidence. The only difference is in written submissions, which include different personal data of the plaintiffs, claim amounts, and sometimes the specific period that the claim is requested for.

When a lawyer represents more than one client, the Lawyers' Tariff[32] prescribes that his original fee is additionally increased by 50% for every action undertaken on behalf of the second and every additional client. Thus, if a lawyer filed a lawsuit for multiple plaintiffs, he would be entitled to ask for a little more than 50% of the total procedure costs as compared to those which he would be entitled to seek if he filed individual lawsuits. Such an increase does not exist when a civil action is initiated against multiple defendants. To conclude, it is economically viable to run multiple proceedings, and multiple actions lead to the emergence of "mass tort lawsuits".

The aforementioned provision refers the abuse of right to legal protection and to the abuse of right to compensation of litigation costs.

The right to legal protection is abused by turning the civil procedure into a mechanism for the legitimate acquisition of gain. The primary goal of such mass tort litigation is not the protection of individual rights, but the collection of litigation costs. This type of abuse is exercised by some lawyers who "choose" not to file a single lawsuit on behalf of all their clients against the same defendant but, instead, they file separate lawsuits, sometimes even several lawsuits on behalf of a single client because it is more cost-effective from the standpoint of procedure costs.[33] In this way, the right to compensation of procedure costs

[30] It refers to the Act on Court Fees and Tariff for Lawyers' Fees and Expenses.
[31] See footnote 22.
[32] Lawyers' Tariff, item no. 17.
[33] A subjective right may also be successfully protected in a lawsuit with multiple plaintiffs or multiple defendants.

becomes the reason for exercising the right to legal protection, and not its consequence, as it should be.

The right to compensation of litigation costs is abused by requiring payment of costs for taken actions although the costs were not actually incurred, by using the language formulations of the Lawyers' Tariff, which prescribes lawyer fees for drafting the complaint and other submissions. It is often disregarded that lawyer's fees are envisaged due to the fact that charging clients is their sole source of income; lawyers are independent professionals who provide legal assistance to citizens and earn their living by charging clients for the provided services by using their legal knowledge. Thus, the lawyer did use his legal knowledge and practical experience when he drafted the first complaint against the defendant and some other submission for his first client but, after that, he did not employ any additional knowledge when he copy-pasted the same complaint and submission and used it against the same defendant for the next and every subsequent client. As already noted, the oral activities performed at a hearing in mass tort lawsuits are identical.[34]

Prevention of these forms of abuse of rights primarily entails narrowing the opportunity for the abuse of rights; it further implies that abuse should be recognized and adequately sanctioned. In the next part of the paper, the author endeavours to respond to the following questions: can the existing legal solutions be used to adequately prevent and eliminate the abuse of rights, or is there a need for amending the legislation in this area?

5. THE EXISTING LEGAL MESURES TO PREVENT ABUSE

The Constitution of the Republic of Serbia[35] prescribes that everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law. The European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR) acknowledges the right to a fair trial; and the Serbian Civil Procedure Act (CPA) prescribes that parties have the right to a lawful, equal and fair protection (Art. 2 CPA). This Act specifically regulates that a court can only prevent and punish any abuse (Article 9. Para. 1 CPA). It follows from these provisions that a party cannot be denied the right to file a complaint; so, the court cannot reject a complaint if it determines that it constitutes the abuse of rights.

The court may punish a party or other participants who use their procedural authorities in contravention with the envisaged goals and objectives (Article 186 para. 2 CPA). Punishing the attorney for the abuse of right to file a lawsuit is rare in Serbian judicial practice, which does not mean that this measure should not be applied. One of the reasons why it is not applied is the possible extension of the length of proceedings, as there is a possibility to file an appeal against such a decision, but this could be avoided by passing a decision on punishment which is issued along with the final judgment. The fact is that the courts are overloaded with cases and do not have time to make penal decisions[36]. However,

[34] In mass tort litigation, there are no unexpected situations at hearings, such as: filing objections that had not been posed formerly; introducing new evidence that has not been formerly disclosed which would potentially call for a additional statement of the party's attorney. In mass tort litigation, the entire course of proceedings takes place according to a well-known scenario, both in terms of the parties' litigation actions and in terms of court actions.

[35] Article 32 of the Constitution of the Republic of Serbia, *Official Gazette of RS*, no. 98/2006.

[36] Such a decision has to be justified by relevant statistical data on the number of filed lawsuits by the same lawyer against the same defendant, the amount of procedure costs in all procedures, the amounts of claims, and

such practice does not justify the non-application of the aforementioned legal provision since the task of the court is not only to "resolve cases" but also to prevent and punish the abuse of rights. In this way, the court protects the public interest, by making it clear to all participants in the proceedings that they have acted contrary to the envisaged goals of the civil procedure.

Joinder of cases is also one of the instruments that can successfully prevent the abuse of rights performed by filing multiple lawsuits against the same defendant (Art. 328 CPA)[37]. The insufficient use of this institute in mass tort lawsuits has been justified by administrative reasons: in the period when courts were literally "buried" under the heavy caseload of new lawsuits[38] (due to the lack of time, space and personnel), it was impossible to choose which cases would be joined, which was particularly aggravated by the fact that all lawsuits were not filed by the same attorney at the same time. The cost-effectiveness of the procedure is the key factor for not joining the cases, which are at different stages of civil procedure; the situation was further complicated by allowing the parties to submit an expert witness report before the first hearing (Articles 261 and 263 CPA), but this authority was not used in all litigations.

Abuse of rights can be punished by not recognizing the costs for drafting a complaint and other submissions in mass tort litigation to the party which was successful in litigation; such a measure can be used to prevent future abuses. As already explained, in "mass lawsuits", complaints and other submissions are not drawn in all cases where several persons are represented by one lawyer because they are almost identical in terms of content as well as in respect of verbal actions taken at the hearing. In the legal reasoning pertaining to such a decision, the court may apply the principle of liability (fault)[39], and explain that the lawyer himself has incurred these costs by filing several lawsuits against the same defendant, acting on behalf of several plaintiffs, thereby causing costs that would not have incurred if he had filed one lawsuit. The filing of an individual lawsuit significantly increases the costs and expenses of civil litigation, which is precisely the circumstance constitutes the abuse of rights.

6. FINAL CONSIDERATIONS

The increasing number of mass tort lawsuits with small value claims and large amounts of litigation procedure costs shows that courts rarely apply the principle of prohibition of abuse of rights by approving the high amounts for civil procedure costs compensation, nor do they use other mechanisms to prevent the abuse and punish the offenders. There are only occasional cases where the court applied these principles and

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the explanation of the court conclusion that procedural competences have been abused of rights by filing a greater number of lawsuits instead of one.

[37] Article 328 of CPA: If before the same court there are multiple procedures between same parties or several procedures where the same person is opposed to various plaintiffs or defendants, all these procedures may be joined by a court decision in order to be argued together, so as to expedite deliberation and reduce costs. The court may make a joint judgment for all the procedures which have been joined.

[38] This relates to mass tort lawsuits against the National Employment Service, Preschool Institution Pčelica Niš and similar. In this period, at the Basic Court in Niš, at certain times there were not enough case folders to form a case, judges would receive several dozens of cases on a daily basis, clerks could not perform timely delivery of lawsuits and subpoenas, so there were delays for several weeks.

[39] See footnote 31.

decided otherwise[40]. As it is not realistic to expect substantial changes in judicial practice, it it necessary to institute relevant changes of laws and other regulations on the compensation of costs in civil procedure.

In pursuit of appropriate legal solutions, it is necessary to bear in mind that lawsuits conducted under the rules of general civil procedure are not an efficient means of resolving mass disputes. This paper explains how this method is misused in order to charge the highest possible civil procedure costs. It is, therefore, necessary to introduce some of the institutes existing in comparative legislation, not only in order to reduce the litigation costs and expenses but also to ensure uniformity of the judicial practice and reduce the caseload that burdens the courts.

It is therefore necessary introduce

It is also necessary to introduce appropriate amendments to the Civil Procedure Act in the part that authorizes the court, when deciding on the request for compensation of the procedure costs, to recognize only the costs that were actually incurred by the party until the date of filing the request. The rule that would oblige the party to prove that it really paid the costs it is claiming would contribute to preventing abuse. The abuse of rights by a lawyer would not be an issue if the party really wants and insists that its small value claim is protected in an expensive civil procedure, and if the party is ready to allocate significant funds for the exercise of this right and indeed advances the funds (pay court fees; pay the amount for an expert witness fee into the judicial deposit, which should replace the frequently used expert statement on the record that the reward has been paid; provide proof that he has paid the attorney for representation).

Changes in the Lawyer's Tariff would also contribute to the prevention of the abuse of rights, provided that the Tariff would prescribe special fees for actions taken in mass tort lawsuits, in significantly lower amounts than the existing ones. Due to the common practice of copying complaints and other submissions, and the same manner of representation at hearings, it is obvious that in mass tort lawsuits lawyers do not exert their best effort, use their legal knowledge and spend the same time on these cases as compared to lawsuits with different content. It is therefore unjustifiable to identify representation in mass tort litigation with legal representation in lawsuits aimed at protecting individual subjective rights.

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NAKNADA TROŠKOVA PARNIČNOG POSTUPKA U MASOVNIM PARNICAMA

U ovom radu razmotrene su pravne posledice masovnih parnica u kojima je visina novčanog potraživanja višestruko niža od troškova parničnog postupaka. Ovu pojavu autorka razmatra s aspekta zabrane zloupotrebe prava, u kontekstu aktuelne sudske prakse, i nudi predloge za unapređenje zakonske regulative kako bi se delotvorno predupredila zloupotreba prava.

Ključne reči: *masovne parnice, troškovi postupka, zloupotreba prava*.

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Review Paper

THE CRIMINOLOGICAL HERITAGE OF THE FACULTY OF LAW, UNIVERSITY OF NIŠ

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Abstract. *Crime has always attracted the public attention. Criminology, as a science on the forms and causes of crime, has been studied at the Faculty of Law, University of Niš, since its establishment in 1960. In the past 56 years, the Law Faculty in Nis has published numerous publications (textbooks and monograps) on criminology. The aim of this paper is to provide a a brief overview of the most important criminological literature published by the Faculty of Law, University of Niš, which contributed to casting more light on the multifaceted criminological issues. The author also recognizes and commends the dedicated work of Law Faculty teaching staff and the exerted efforts to present these complex issues in a comprehensible way, adapted to the needs of junior and senior law students and the needs of the wider academic, professional and social communities.*

Key words: *Criminology, Faculty of Law, University of Niš.*

INTRODUCTION

Criminology has been studied at the Faculty of Law of the University of Niš since its foundation in 1960. It was initially part of the academic course *Criminology with Penology*. Under the Law Faculty Curriculum of 1995, the course was divided into *Criminology* and *Penology*, which have been studied as separate courses ever since. In the past 56 years, the Law Faculty in Nis has published numerous publications (textbooks and monograps) on criminology. The aim of this paper is to provide a brief overview of the most sigificant criminological literature published by the Law Faculty, University of Niš, which contributed to casting more light on the multifaceted criminological issues. The author also recognizes and commends the Law Faculty teaching staff for their dedicated work and exereted efforts to present these complex issues in a comprehensible way, specifically adapted to the needs of law students at all levels of study as well as the

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needs of the wider academic, professional and social communities. The paper will show how the most important criminological issues were analyzed in the textbooks and monographs published by the Faculty of Law, University of Niš. As all Criminology textbooks published since 1960 are not available, the presented sample of textbook literature is illustrative. Nonetheless, this overview provides an insight into the development of teaching and scientific activity at the Law Faculty in Niš, as well as the development of criminology as a science in the Serbian context. The dedicated work of professors and assistants has certainly served as an incentive for generations of young lawyers and criminologists who acquired their first knowledge in this criminal law area at the Faculty of Law, University of Niš.

Analysis of the Most Important Criminological Textbooks Published at the Faculty of Law, University of Niš

In this part of the paper, the author analyzes the most important criminological literature published at the Faculty of Law, University in Niš, from 1960 to 2012. Such a long period covered by research provides the opportunity to explore the complete opus of Criminology professors at the Faculty of Law in Niš. A vast majority of textbooks on Criminology was published by the Publication Centre of the Faculty of Law, University of Niš, as the official publishing unit envisaged in the organisational structure of the Law Faculty in Niš.

In analyzing the criminology textbook published by the Faculty of Law, University of Niš, we should definitely start from the textbook *Criminology*, written by prof. Milan Milutinović and published in 6 editions (1969, 1972, 1979, 1981, 1984 and 1990). In this textbook, all questions of importance for the development of criminology, as well as penology, criminal policy and victimology as "branches" of criminology, are presented in a systematic way (Milutinović, 1990: 19). One of the prominent features of this textbook is the extensive analysis of criminogenic factors of both endogenous and exogenous type that are explained in detail but in a clear and understandable way. It is a special quality of every useful textbook to be comprehensible to students. Regardless of the fact that more than two and a half decades have passed since the publication of the last edition of this textbook, it is an inevitable reading material for students at all levels of study, in the process of adopting and deepening criminological knowledge.

The textbook *Criminology* by prof. Slobodanka Konstantinović Vilić and Vesna Nikolić Ristanović, published in 2003, was preceded by the book *The Foundations of Criminology* published in 1992. Unlike *The Foundations of Criminology*, where the authors clearly systematized the basic knowledge in the field of criminology, *Criminology* contains a complex and detailed synthesis of knowledge about crime, which was the result of extensive research into the older and newer world criminological literature and the authors' own research into certain forms of crime. Thus, the *Criminology* textbook synthesized the latest knowledge about the concept and subject matter of criminology. In addition, the authors provided a complex analysis of phenomenological and etiological characteristics of crime, paying special attention to methodology and victimology, as well as to new forms of crime and specificities of crime with regard to perpetrator and victim (Konstantinović-Vilić, Nikolić-Ristanović, 2003:13). This textbook is primarily intended for students of law faculties and other related faculties in the field of social sciences and humanities, but it may also be

useful for practitioners who encounter criminological issues, problems and challenges in their practical work (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 15-16).

Due to the rapid development of criminology as a science, there was a need to update the criminology textbooks from 1992 and 2003 by introducing new scientific knowledge and the results of the conducted criminological research. Thus, a new edition of the *Criminology* textbook was published in 2009. In comparison with the previous two textbooks, this new 2009 edition contains changes in the chapter on the phenomenological characteristics of crime and in other parts of the textbook. Criminological typology includes the consideration of several new forms of crime, such as: hate crimes, violence in sports, crime of persecution, mobbing, political crime, terrorism, trafficking in human beings, and crimes comitted by women? In addition, the etiological part is supplemented by new theoretical explanations of crime (the theory of neutralization; peacemaking criminology and restorative justice; globalization theories) and the analysis of the impact of globalization and transition on crime. Wherever possible and meaningful, the authors updated the statistical and research data, and provided a new index of terms and concepts. A particularly important novelty is the development of summaries, questions and discussion topics, topics for seminar papers, key words and useful internet addresses at the end of individual units, which should facilitate students' learning and encourage further criminological research.

A tendency to provide contemporary criminological knowledge to the students of the Faculty of Law in Niš was further reflected in the publication of a new edition of the *Criminology* textbook, which was written by Slobodanka Konstantinović-Vilić, Vesna Nikolić-Ristanović and Miomira Kostić, and published in 2012. As compared to the previous publication, the new textbook includes updates in the phenomenological part, particularly regarding the scope, dynamics, structure and new forms of crime in Serbia and worldwide. Considering the significant changes in the criminal law and criminal procedural legislation of the Republic of Serbia which were introduced after the publication of the previous (2009) textbook, it was also necessary to update the statistical data, to include new research results and make a new index of terms and concepts (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2012: 15). These changes have facilitated the acquisition of scientific and academic knowledge provided in the textbook. Due to the abundance of practical examples, all these textbooks can be highly beneficial to students of undergraduate, master and doctoral studies, as well as to holders of judicial functions, employees of internal affairs bodies, and all others who need to study criminology and apply criminological knowledge in practice.

Criminology is a multidisciplinary science and, in order to provide a comprehensive analysis of crime, it is very important to use knowledge from other sciences, such as medicine, psychology, psychiatry, etc. Some important criminological questions were also analyzed in textbooks from other areas of criminal law, among which forensic psychiatry has a special place. Thus, in the textbook *Forensic Psychiatry*, prof. Zoran Ćirić analyzes the important issues related to the psychological mindset of different types of perpetrators, as well as the endogenous factors of crime. This textbook is primarily intended for the education of future legal professionals at undergraduate and postgraduate studies (of both second and third degree), but it also contains very important elements that may be highly relevant in the education of medical students and psychiatric specialists (Ćirić, 2013). Some older literature also illustrates the relevance of acquiring the basic knowledge in the field of psychiatry and psychology for law students, future legal practitioners and the judiciary, particularly in terms of the psychology of court proceedings. The textbook *Introduction to Psychology of Court Proceedings* (1980), authored by prof. Mihajlo Aćimović, is an excellent example of such

literature. This book analyzes the psychological status of individual participants in criminal proceedings (defendants, public prosecutors, witnesses, expert witnesses, etc.). Special attention is given to the psychology of adjudication, as one of the most important stages in the criminal procedure. Psychological processes pertaining to all participants in court proceedings are of great importance in the judicial process of evaluating their testimonies. Therefore, the knowledge of psychology of court proceedings is necessary for achieving the criminal procedure goals (Aćimović, 1980). This body of knowledge is also very useful for criminologists when analyzing the efficiency of criminal procedure in combating crime. Therefore, textbooks of this kind have a significant role in criminological literature.

The book *Crime Prevention Policy*, written by prof. Dragan Jovašević and prof. Miomira Kostić is an important study on criminal policy. Although it is primarily intended for students (of all academic levels) who study crime prevention policy at different faculties, the book may be highly useful in the professional work of a wider range of practitioners engaged in combating various forms of crime. This book is also significant for the study of victimology because it deals with some issues of importance for preventing the victimization of certain categories of people, such as homeless people and the elderly. Apart from being important for students of undergraduate, graduate, specialist and post-graduate law studies, the book may be useful to students of criminalistics, security and special education faculties, as well as to other persons who are in the process of education or professional development and to those who are involved in preventing and combating crime in their everyday professional work (Jovašević, Kostić, 2012: 12). From the aspect of criminal law literature, the distinctive feature of this book is the provided analysis of the historical development of criminal policy. The authors analyzed the theoretical concepts of different criminal law schools and learnings (including the classical and anthropological school, the school of social defense, and the contemporary tendencies in the policy of suppressing crime), and examined the nature and causes of various forms of criminal behavior. The comprehensive coverage of crime prevention policy is of great criminological significance. In some way, crime prevention policy sublimates the knowledge of a number of sciences and scientific disciplines that deal with the study of crime as a negative social phenomenon, its manifestations, causes and prevention. In this regard, the introduction of a special course on Crime Prevention Policy into the curricula of the undergraduate, master and doctoral studies at the Law Faculty in Niš would significantly contribute to broadening the students' knowledge on this subject matter. This should be taken into account during the subsequent reform of study programs at the Faculty of Law, University of Niš.

The monograph *Victimology - the basic tenets through individual topics* (2012), written by prof. Slobodanka Konstantinović-Vilić and prof. Miomira Kostić, was created from the need to provide the students of the Law Faculty in Niš with adequate literature for the course in Victimology at the undergraduate academic law studies. The authors carefully selected the topics to explain the causes and consequences of particular forms of victimization: victims of street crime, victims of domestic violence and human trafficking, poverty and social exclusion as one of the most significant factors of social exclusion, violence in sports, etc. This monograph is very important for criminology, bearing in mind that "victimology is seen as a subdiscipline of criminology" (Kostić, 2012: 3). In particular, the authors provided the analysis of different theoretical postulates and schools of thought in victimology. The special quality of this monograph is a rich glossary of basic concepts used in victimology, which greatly facilitates the readers' understanding and analysis of the content. This monograph is a very important step towards creating a textbook in the field of victimology.

The monograph *Murders in Southeastern Serbia* (2014), authored by Assistant Professor Darko Dimovski has significantly contributed to the criminological investigation of murders as the most severe form of crime. This topic was part of the author's doctoral dissertation *Criminological Explanation of Murder*, which he defended at the Faculty of Law, University of Niš in 2013. The criminal offence of murder is a topic that has always attracted public attention, particularly through sensational headlines in the media. In the past, newspaper reports on murders were significantly different from the reports today. In some newspaper articles, the authors sometimes justified or even invoked murder. In many cases, reports were based on "unofficial" sources, talking with the victim's family members or persons from the immediate environment of the perpetrator and the victim; thus, the authors of these reports created their own "truth" about the perpetrator, the victim and the circumstances of the committed criminal act. In this monograph, the subject matter of the author's interest was not the nature of journalists' reports on murders but such approach to journalism was one of the factors that undoubtedly drew the attention of socioligists and criminologists. In order to prevent the fabrication of "the journalist's truth" and its negative impact on the public perception of murder, there were scientific efforts to conduct detailed and fundamental research on the phenomenological and etiological characteristics of murder. Different researchers explored murder patterns, causes, consequences, forms of punishment, and the possibility of resocilizing the murderers. Although all these issues are very important for understanding the concept of murder, a one-way approach (no matter how fundamental and serious) cannot significantly contribute to understanding any phenomenon. The complex phenomenon of murder must be accessed comprehensively from an interdisciplinary perspective. This applies both to understanding the concept of murder in the broadest sense of the word, the process of resolving each individual murder case, and especially the adjudication stage of pronouncing a sentence and imposing the appropriate punishment. Former research did not address this issue, particularly in terms of the immediate environment. It is much easier to analyze the results of research elsewhere, beyond time, space and ethnic understanding of one's own environment; so, it is challenging to explore the investigative procedure of murder in our country (Dimovski, 2014: 1-2). In this monograph, the author presents several proposals for the reform of criminal legislation on murder and homicide that may be very interesting to the legislator during subsequent revisions of the Criminal Code of the Republic of Serbia. The author points out that partial reform of the Criminal Code may need to be considered, with regard to introducing the criminal offence of manslaughter, if the commited crime contains no elements of the aready existing forms of murder and homicides commited by exceeding the necessary defence. In Serbian judicial practice, the case where the husband is murdered in his sleep by the wife who has been physically, psycholocially, sexually abused and exploited for years has been treated as an aggravated form of murder. The question is whether it is justifiable to qualify such a criminal offense as a serious form of murder, which is punishable by a term of imprisonment of up to 40 years if the wife had been mistreated by her husband and subjected to ongoing abuse for many years before the fatal incident. Therefore, it would be reasonable to introduce a special form of privileged murder: the murder commited by a person who has been victim of previous abuse. In order to eliminate the inconsistencies in the application of the covert investigator's institute in detecting the criminal acts of organized criminal groups, it may be useful to envisage the criminal offences of murder committed by an organized group and by a hired hand, and another form of privileged murder: the criminal offence of murdering a person who had

previously persecuted the perpetrator of this murder. The precondition for introducing the latter form of murder is the definition of the crime of persecution in our criminal legislation (Dimovski, 2014: 255). In conclusion, the monograph *Murders in Southeastern Serbia*, is a valuable criminological study that can be useful not only to students but also to theoreticians who study this criminological and criminal law phenomenon.

As a result of the endeavour to continuously improve the teaching process at the Faculty of Law in Niš, some monographic publications have been included into the list of additional literature for exams at different levels of study. It may be illistrated by the monograph *Juvenile Delinquency through the prism of newspaper reports in Politika 1904-1941*, written by Miomira Kostić, Darko Dimovski and Filip Mirić, and published in 2015. This book has several thematic units. The theoretical part of the research includes scientific facts and descriptions on childhood and adolescence as important developmental periods in the life of each human individual. In particular, the authors analyzed specific physical and psychic features in the development of personality of children and youth in different periods of their social development, as well as the characteristics of their social and legal position. In the first part of the monograph, special attention was given to the history of the development of criminal liability of children and young people in Serbia, so that this knowledge would be available and comparable with the methods of reporting on the delinquent behavior of children and juveniles in the period 1904-1941. The authors focused on distinctive criminogenic factors and exogenous characteristics related to the causal relation between content in the mass media and the frequency of juvenile delinquency. On the one hand, juveniles can become participants in criminal events under the impact of the consumed content from the mass media, by imitating or identifying with the criminal conduct; on the other hand, mass media can contribute to shaping the public opinion about juvenile delinquents and other categories of criminal offenders. The second part of the monograph elaborates on the collection, recording and analysis of the content of articles on juvenile delinquency published in the *Politika* daily in the observed period. The structure covers four time periods (1904-1923; 1924-1930; 1931-1935; and 1936 to 1941) and within each period the offences are grouped according to the subject matter (e.g. property crimes, misdemeanours, felonies, etc.). All collected articles are analyzed and grouped into the specific type of delinquent behavior. The *Varia* section presents all available contents which were directly or indirectly related to the crime rate in Serbia at that time, especially pertaining to juvenile offenders. It is also important to point out to the recorded contents that describe various forms of deviant behavior of children and minors (such as: gambling, vagrancy, suicide, running away from home and truancy from school, etc.) as well as cases of their victimization, especially in the form of domestic violence and peer violence (Kostić, Dimovski, Mirić, 2015: 3-4). By the decision of the Academic Council of the Faculty of Law, University of Niš (Decision No.01-1776/12 of 24.09.2015) this monograph was entered into the list of additional literature for the elective course *Violence crimes* at the graduate (master) academic law study programe and the elective course *Criminology of Juvenile Delinquency* at the doctoral academic law study program, thus attaining the character of a textbook.

The criminological heritage of the Faculty of Law, University of Niš, also includes lexicographic publications. Thus, the *Criminal Law Lexicon*, written by prof. Dragan Jovašević, contains definitions and explanations on various criminological phenomena. Considering its nature, character and content, *the Criminal Law Lexicon* has a wide-ranging scope and practical value. It comprehensively presents the criminal law matter (Jovašević,

2006: 8). This lexicon can be useful to law students and students of other social sciences, as well as to legal professionals in the field of crime investigation, criminology and penology.

Based on this brief overview of the most important criminological literature published at the Faculty of Law, University of Niš, it can be concluded that the teaching staff and associates have exerted great efforts in the past 56 years since the establishment of this higer education insitution to provide students with adequate textbook literature in the field of criminology, which could help them aquire criminological knowledge and prepare for criminology-related exams at all levels of law study. Their pedagogical and scientific work has encouraged the development of scientific research in criminology and many related areas, which certainly have a bright future at the Faculty of Law, University of Niš.

It should be noted that the work of professors, assistants and associates of the Faculty of Law, University in Niš in the field of criminology was recognized and valued at the level of the University of Nis, as an independent higher education institution. Namely, starting from 2015, prof. Miomira Kostić was appointed Editor-in-Chief of the scientific journal *Facta Universitatis: Law and Politics Series,* which is another confirmation of her commitment to the development of criminology as a science. In addition, the first thematic issue of this journal for 2017 was dedicated to topics from the field of criminal law, criminal procedure, criminology, penology, victimology and criminalistics; the guest editor of this thematic issue was Assistant Professor Darko Dimovski).[1]

CONCLUSION

A rich criminological opus is the result of the dedicated work of professors, assistants and associates of the Faculty of Law, University of Nis. Although all the textbooks analyzed in this paper are not directly related to criminology, as they deal with other criminal law areas, this brief analysis has shown that valuable literature is available to students as textbooks for preparing their exams and as good theoretical grounds for their research. The development of criminological research at the Faculty of Law, University of Niš, is aligned with the development of criminology as a science in the world. In the first years after the establishment of the Law Faculty in Niš, criminology was studied within the subject called *Criminology with Penology*. Although this approach did not sufficiently consider the particularities of either Criminology (as a science of phenomenological and etiological characteristics of crime) or Penology (as a separate scientific discipline on different forms of treatment that can be applied to perpetrators of criminal offenses), it was important for the development of both Criminology and Penology as separate but correlated subjects. Namely, without knowing the factors, conditions and causes of crime, an adequate criminal sanction cannot be imposed on the perpetrators of criminal offenses. On the other hand, the theoretical concepts of criminal phenomenology and etiology are best examined in penological practice, reflected in the work of penitentiary institutions. The systematization of criminological textbooks, their short analysis and interpretation of the basic scientific findings contained in them can be beneficial not only to students of law faculties in acquiring basic criminological knowledge but also to researchers and scientists in the process of finding ideas and gathering materials for their own research. Further criminological research and more

[1] See more: *Facta Universitatis –Law and Politics Series*, No.1, 2017.

literature could definitely be of great benefit to the academic and scientific community in the future.

Criminological knowledge must be presented to law students and future legal professionals in a way that will encourage their critical thinking and independent scientific research work. It is not always easy to find the right measure between academic and practical, theoretical and empirical approaches. Today, there are complaints among students that current legal education does not provide relevant practical knowledge and skills, and that there is too much theory in the syllabi of most law subjects. Although these complaints are sometimes justifiable, we cannot ignore a very important fact: it is impossible to become a good law practitioner without acuiring a solid theoretical knowledge. As a matter of fact, it is this unity of theoretical and practical approach that is the most striking feature in criminological research, particularly bearing in mind the multifaceted nature of crime as a socially danderous phenomenon. Many generations of former Law Faculty students, who are current holders of the most important public and judicial functions, law practitioners, scientists and researchers, are extremely grateful to our professors, prof. Slobodanka Konstantinović-Vilić and prof. Miomira Kostić, for teaching us this valuable lesson. Many generations of successful lawyers and criminologists who acquired their first legal knowledge and skills at the Faculty of Law, University of Niš, are the most valuable proof that the commitment of the teaching staff of this higher education institution has not been in vain.

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Ključne reči: *kriminologija, Pravni fakultet, Univerzitet u Nišu*.

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