UNIVERSITY OF NIŠ

ISSN 1450-5517 (Print)
ISSN 2406-1786 (Online)
COBISS.SR-ID 138066439

FACTA UNIVERSITATIS

Series
LAW AND POLITICS
Vol. 17, N° 3, 2019

Scientific Journal **FACTA UNIVERSITATIS**
UNIVERSITY OF NIŠ
Univerzitetski trg 2, 18000 Niš, Republic of Serbia
Phone: +381 18 257 095 Telefax: +381 18 257 950
e-mail: facta@ni.ac.rs http://casopisi.junis.ni.ac.rs/

Scientific Journal FACTA UNIVERSITATIS publishes original high scientific level works in the fields classified accordingly into the following periodical and independent series:

Architecture and Civil Engineering	*Linguistics and Literature*	*Physical Education and Sport*
Automatic Control and Robotics	*Mathematics and Informatics*	*Physics, Chemistry and Technology*
Economics and Organization	*Mechanical Engineering*	*Teaching, Learning and Teacher Education*
Electronics and Energetics	*Medicine and Biology*	*Visual Arts and Music*
Law and Politics	*Philosophy, Sociology, Psychology and History*	*Working and Living Environmental Protection*

SERIES **LAW AND POLITICS**

Publication frequency – one volume, three issues per year.
Published by the University of Niš, Republic of Serbia

Printed by "UNIGRAF-X-COPY" – Niš, Republic of Serbia

ISSN 1450-5517 (Print)
ISSN 2406-1786 (Online)
COBISS.SR-ID 138066439

FACTA UNIVERSITATIS

SERIES **LAW AND POLITICS**
Vol. 17, N^{o} 3, 2019

UNIVERSITY OF NIŠ

FACTA UNIVERSITATIS
Series: Law and Politics (M53)

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.
Paper length	The paper shall not exceed 16 pages. **An article** shall not exceed 40.000 characters (including spaces). **A review** shall not exceed 6.000 characters (inclusing spaces).
Language and script	Papers may be written in English, Russian, French and German.
Paper title	**The paper title** shall be formatted in font ***Times New Roman***, font size **14 pt, bold.** The title shall be submitted in Serbian as well.
Author(s)	After the title, the paper shall include the name and surname of the author(s), the name and full address of the institution affiliation, and a contact e-mail address (font size 12 pt). The data on the author(s), academic title(s) and rank(s), and the institution shall be provided in English as well.
Data on the project or program* (*optional*)	In the footnote at the bottom of the first page of the text shall include: the project/program title and the project number, the project title, the name of the institution financially supporting the project.
Data on the oral presentation of the paper* (*optional*)	In case the paper has already been presented under the same or similar title in the form of a report at a prior scientific conference, authors are obliged to enter a relevant notification in a separate footnote at the bottom of the first page of the paper.
Abstract	The abstract shall comprise 100 - 250 words at the most The abstract shall be submitted in both Serbian and English.
Key words	The list of key words following the abstract shall not exceed 10 key words. The key words shall be submitted in both Serbian and English.
Text structure	1. Introduction 2. Chapter 1 Section 2 Subsection 3 3. Chapter 2 4. Conclusion All headings (Chapters) and subheadings (Sections and Subsections) shall be in *Times New Roman*, font 12 pt, **bold.**
References	At the end of the submitted text, the author(s) shall provide a list of References. All entries shall be listed in alphabetical order by author's surname, and each entry shall include the source and the year of publication. When referring to the same author, include the year of publication (from the most recently dated backwards). Please, see the table at the end of the ***Guidelines for Authors***.
Summary	The summary shall be included at the end of the text, after the References. The summary shall not exceed 2.000 characters (including spaces) and it shall be submitted in both Serbian and English.
Tables, graphs, figures	Tables shall be prepared in *MS Word* or in *Excell*. Photos, graphs or figures shall be in **jpg.** format (maximum quality).
Electronic submission	Papers for consideration should be submitted to the Series Editor in electronic form via the Journal's home page: http://casopisi.junis.ni.ac.rs/index.php/FULawPol.

Citation Guidelines

The citations should be included in the text, in line with the guidelines provided below. Footnotes shall be used only for additional explanation or commentary and for referring to the specific normative act, official journals, and court decisions.
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)

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, No 3, 2019, pp. i - ii

EDITORIAL

Dear Readers,

The *third issue* of the scientific journal ***Facta Universitatis*: Law and Politics** for the year 2019 contains articles from different fields of law, social sciences and humanities. This thematic issue is co-edited by Darko Trifunović, PhD, Faculty of Security Studies, University of Belgrade and Director of Institute for National and International Security - INIS, Belgrade.

Prof. Srdjan Golubović, LL.D., Full Professor, Faculty of Law, University of Niš, and **Prof. Nataša Golubović, PhD,** Full Professor, Faculty of Economics, University of Niš, Republic of Serbia, submitted the paper titled ***„Rule of Law and Democratic Consolidation in Serbia“,*** where they discuss the concept of liberal consolidated democracy, the rule of law and accountability mechanisms as institutional guarantees for the application of fundamental democratic principles. While renowned international organizations classify Serbia as democracy, relevant research shows that Serbia is classified as a semi-consolidated (defective or flawed) democracy. Irregularities in election procedures, as well as the violation of elements that guarantee respect for democratic norms and institutions in recent years, indicate a certain democratic "regression". The paper examines the extent to which the rule of law represents support to the consolidation of democracy in Serbia and points out to the potential causes of observed deciciencies in this area, which aggavate democracy consolidation.

Prof. Igor Vukonjanski, LL.D., Associate Professor, National Academy of Public Administration, Belgrade, submitted the paper titled ***"The Substance and Implication of Integral Planning in Local Government Units".*** The author discusses the issue of development planning in local government units which has been regulated in recent decades by adequate laws: yet, these laws are significantly different in the developed and developing counties, primarily due to an underdeveloped science-based local development theory. Recent theory theory indentifies two local planning systems: the *partial system* (driven by the narrow state interests) and the new *integral system* (which implies partnership between the state and the most influential professional democratic forces in local development planning activities. The comparative analysis reveals the great advantages of the integral local planning system, which generates positive social change and enables developing countries to catch up with the developed ones.

Tijana Stančevski, PhD student, Faculty of Law, University of Niš, submitted the paper titled *"**Institute of Rehabilitation in the National Legislation (1929- 2011)".*** The author examines the legal documents containing the legal institute of rehabilitation, starting from the 1929 Criminal Code of the Kingdom of Serbs, Croats and Slovenes, as the first Code that envisaged this institute. In the post-war Yugoslavia, the new legal order brought about three new criminal codes (the 1947 Criminal Code of the FPRY, the 1951 Criminal Code of the FPRY, and the 1976 Criminal Code of the SFRY), all of which included provisions on rehabilitation. In the current legislation, rehabilitation is envisaged in the Criminal Code of the Republic of Serbia and two legislative acts on rehabilitation of political convicts of 2006 and 2011. The paper examines the normative framework of rehabilitation in our legal system from the historical perspective.

Marija Stojanović, PhD student, Faculty of Law, University of Niš, submitted the paper titled ***"Criminological Aspects of War".*** The author discusses the historical origins of war as

a negative social phenomenon. After a brief overview of war-related mythology in polytheistic religions, the author discusses the social phenomenon of war in different parts of the world and in different epochs: the Old Age, the Middle Ages, and the New Age. With the development of technology and its misuse, wars have become even more barbaric. Yet, at the international level, there is no systematic approach to prosecuting war crimes. Economic interests of the powerful minority seem to be more important that the interest of the huge majority whose lives are not perceived as invaluable assets but merely as casual statistics.

This issue also includes two reviews on different but very important events: a review of a scientific conference which may be interesting to the general academic and professional public, and a review of an educational legal clinic project envisaged for practical training of law-school students.

Darko Obradović, BSc in Security Management, Faculty of Security Studies, University of Belgrade, submitted **"*Review of the International Scientific Conference "Serbia-United States Relations" and the Monograph "Serbia-United States Relations"*.** The international scientific conference "Serbia-United States Relations" was held at the National Assembly of the Republic of Serbia, on 11 September 2019. It was organized by the Institute for National and International Security, and realized in partnership with the National Assembly of the Republic of Serbia and the Archives of Vojvodina. The conference was an opportunity for scholars and experts from different fields to exchange views and experiences, to improve the understanding of this issue, strengthen and promote cooperation between the two countries. The published monograph provides an insight into different aspects of cooperation that have been addressed in the articles submitted by the conference participants.

Sanja Tošić and Nikola Božanović, from NGO KOM 018, submitted the review of the ***Project "Mobile Legal Clinic* – service for vulnerable and disadvantaged groups**"(2016-2018). The Project was implemented by Club for Youth Empowerment (KOM 018) from Niš in cooperation with Faculty of Law, University of Nis, and the Roma Association from Prokuplje, in the period from December 2016 to November 2018. The project goal was to develop a local community service for human rights protection of vulnerable and disadvantaged social groups and provide free legal assistance to their members. Specific objectives were: to develop law students' knowledge, skills and competences to protect and promote human rights, to ensure additional educational opportunities and support students' engagement in the local community; to support vulnerable groups in exercising their rights; and to contribute to the combat against violation of human rights.

We hope you will enjoy reading the results of scientific research on the legal, economic, social policy and other 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 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.

We wish you a happy New Year and we look forward to our prospective cooperation.

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

Guest Editors
Darko Trifunović, PhD

Niš, 17th December 2019

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 197-208
https://doi.org/10.22190/FULP1903197G

Original Scientific Paper

RULE OF LAW AND DEMOCRATIC CONSOLIDATION IN SERBIA*

UDC 321.7:340.131(497.11)

Nataša Golubović[1], Srđan Golubović[2]

[1]Faculty of Economics, University of Niš, Serbia
[2]Faculty of Law, University of Niš, Serbia

Abstract. *Renowned international organizations classify Serbia as a democracy. However, they usually assess the state of democracy on the basis of the narrow theoretical concept of electoral democracy, which easily creates a fallacy that the free elections represent not only a necessary but sufficient condition for democracy. The concept of liberal consolidated democracy, in addition to procedural aspects, implies stricter normative and analytical criteria, such as the rule of law and the mechanisms of vertical and horizontal accountability, which constitute institutional guarantees for the application of fundamental democratic principles. In the absence of these mechanisms, electoral democracies become defective. According to relevant research, Serbia is classified as a semi-consolidated (defective or flawed) democracy. Irregularities in election procedures, as well as the violation of elements that guarantee respect for democratic norms and institutions in recent years indicate a certain democratic "regression". Bearing this in mind, the paper examines the extent to which the rule of law represents support to the consolidation of democracy in Serbia and points out to the potential causes of the observed deficiencies in this area, which aggravate the consolidation of democracy.*

Key words: *democracy, consolidation, rule of law, Serbia*

1. INTRODUCTION

After more than two decades of political and economic reforms, Serbia is still in a state of prolonged democratic transition, with uncertain prospects for the full consolidation of democratic institutions. According to relevant empirical research, Serbia is classified as a

Received April 24th, 2019 / Accepted June 5th, 2019
Corresponding author: Srđan Golubović, LL.D. Faculty of Law, University of Niš, Trg Kralja Aleksandra 11, 18000 Niš, Serbia; E-mail: golub@prafak.ni.ac.rs
* The article is the result of reserach within the project *Sustainability of the identity of Serbs and ethnic minorities in border municipalities in eastern and southern Serbia* (179013), conducted at the Faculty of Mechanical Engineering, University of Niš, and funded by the Ministry of Science and Technology of the Republic of Serbia

semi-consolidated (defective or flawed) democracy. Irregularities in election procedures, as well as the violation of elements that guarantee respect for democratic norms and institutions in recent years indicate a certain democratic regression. There are no guarantees that reform will necessarily lead to democratic consolidation. Since democratic consolidation has not been achieved yet, research on progress in the area of democratic consolidation and the problems that arise in this process is very important, especially having in mind that the way in which consolidation is achieved determines the performance of the democratic regime after consolidation. It is important to understand the challenges that these regimes face and what makes democratic structures more resilient. Serbia is considered a defective democracy, with most pronounced weaknesses in the areas of rule of law, political and social integration and institutional stability. Weak rule of law, combined with weak horizontal accountability, could undermine the entire democratic system. Starting from this, the paper examines the extent to which the rule of law is a support to the consolidation of democracy in Serbia and points to the potential causes of deficiencies in this area, which impair the essential transition to democracy.

2. DEMOCRATIC CONSOLIDATION

The process of consolidation and the factors that are crucial for the consolidation of democracy have been the subject of numerous theoretical and empirical researches (Linz & Stepan, 1996; Diamond, 1999; O'Donnell, 1996). In defining democratic consolidation, some authors start from the minimum of necessary conditions (Schumpeter, 1942; Przeworski, 1991), while others consider that democracy is not sustainable without the fulfillment of additional requirements that ensure the constitutional equality of all citizens (Huntington, 1991; Linz & Stepan, 1996). Within the minimalist definitions, the most commonly quoted author is Przeworski, who defines democracy as simply "a system in which parties lose elections". A minimalistic understanding of democracy presupposes the existence of an opposition that has some prospects to win elections, through the contesting process. Democracy is consolidated when, in the prevailing political and economic conditions, the existing system of institutions has no alternative, when no one tries to achieve their interests outside democratic institutions, and when those who are losing election are trying again within the same institutional framework, within which they have just lost (Przeworski, 1991: 26). The emphasis is on the actors, their attitudes and behavior; they have to accept the legitimacy of institutions, even when they consider them unsuitable. Critics of the concept of electoral democracy point out that this approach is incomplete and has limited analytical usefulness. Merkel (Merkel, 2004; 2008) points out that, although free democratic elections constitute the basis of democracy, it is necessary to take into account some additional elements concerning the procedures and goals of democratic elections that differentiate formal and substantive democracy. The concept of electoral democracy reduces democracy to the proper conduct of democratic elections, but it does not include necessary institutional guarantees providing that elected representatives rule in accordance with the basic constitutional principles of democracy. The definition of democracy, based on electoral democracy, free elections and some basic corpus of human rights allows certain political regimes to be qualified as democratic, even though elections in such regimes are defective and certain groups are socially and politically excluded. The disadvantage is that many factors that are important from the aspect of democracy are omitted. The assessment of the consolidation of democracy

cannot be grounded on the minimum requirements for the existence of democracy, but on the criteria that make democracy stable. This is why theoretical and empirical researches are increasingly based on the definitions that apply a broader set of criteria and emphasize the essence of democracy, both horizontal and vertical accountability.

Probably the most frequently cited concept of democratic consolidation is the one developed by Linz & Stepan (1996), which takes into account different levels of democratic consolidation. The first level refers to the consolidation of behavior; the democratic regime is consolidated when there are no important actors in a society trying to achieve their goals by return to the undemocratic regime, through violence or foreign intervention. The second level implies consolidation of attitudes; democracy is considered to be consolidated when the majority in the society considers democratic institutions and procedures appropriate for the management of the society, and when the support to anti-system alternatives is negligible. The third is a constitutional dimension (conflict resolution through democratic procedures and rules). Consolidation takes place in five areas: civil society, political society, *rule of law*, state apparatus, and economic sphere. In each of these areas, it is necessary to fulfill certain conditions in order for democracy to be considered consolidated. This concept is more comprehensive than the previous ones since it enables the analysis of system consolidation at three different levels, including civil culture (behavioral dimension).

Merkel's (2008) concept of democratic consolidation is probably the most comprehensive. Merkel has developed a four-level model of consolidation, with analytical sequencing of consolidation levels and an analysis of their interdependence. If all four levels are consolidated, one can say that democracy is consolidated and resilient to crises. Institutional consolidation refers to the consolidation of state bodies and political institutions, such as government, parliament, judiciary and the electoral system (with special emphasis on the *rule of law* and separation of powers). Institutional consolidation determines the next level, which is representative consolidation. This level refers to the main actors of representative democracy - political parties and interest groups. The degree of consolidation of the first and second levels, as well as their configuration, influences the incentives of powerful informal actors (church, military, entrepreneurs, etc.) to exercise their interests outside democratic institutions (consolidation of behavior). If the first three levels are consolidated to a satisfactory degree, it gives impetus to the development of a civil society that supports democracy, thus stabilizing the socio-political foundation of democracy (the consolidation of civic culture). In this context, Merkel distinguishes general support and specific support (related to specific political decisions) as a criterion for the consolidation of civic culture. Consolidation of civic culture is a process that requires time. Consolidated, crisis-resistant democracy is present only when all four levels are consolidated.

3. The Rule of Law and Democratic Consolidation

Research has shown that hybrid political regimes, based on more or less competitive choices, are more likely to transform into other regimes, whether consolidated democracy or some form of autocratic regime (Hadenius & Teorell, 2007; Howard & Roessler, 2006; Roessler & Howard, 2009). A certain number of so-called defective democracies remain long in the gray zone of mixed regimes that neither further consolidate democracy nor return to the authoritarian regime. Such regimes can develop stable relationships with the environment, which become accepted by the elite and the public as an adequate solution to the numerous problems present in post-authoritarian societies (Merkel, 2004).

It is often emphasized that the rule of law is essential for democracy. Sagay claims that "there can be no democracy without the rule of law" (1996: 13). Violating the rule of law and horizontal accountability can destabilize other parts of the democratic regime and easily lead to the return to authoritarianism (Merkel, 2004). The rule of law is such a system in which laws are well known, clear, accessible to all and applied equally; judges are impartial and independent of any influence; key institutions of the legal system, including courts, regulatory agencies, prosecutors and the police are fair, competent and efficient; the government and its officials respect the laws; laws are made according to transparent, stable, clear and general rules and procedures; and the laws themselves are known, clear and relatively stable.

The essence of the rule of law lies in respect for and protection of fundamental human rights and freedoms. Effective protection of these rights implies an independent judiciary, as a corrective of legislative and executive power. The limitations of the legislative and the executive power prevent individuals and groups from being oppressed by the majority. The principle of the rule of law implies a restriction in the exercise of state power and implies that the state must comply with the rules and act in accordance with clearly defined prerogatives (Elster, 1988).

A fair and efficient administration of justice, including the organization and functioning of the country's justice system, is a prerequisite for the rule of law (Prica, 2018: 140). The content of the law loses importance if the institutions established for the interpretation and implementation of these laws are ineffective, arbitrary or corrupt. For these reasons, the reform of the judiciary and institutions (including the appointment and promotion of judges, education and training of judicial staff, transparency in decision making and the availability of court services and officials) are the preconditions for building a fair, open and efficient legal system.

The rule of law represents the horizontal backbone of the institutional minimum of democratic elections and democratic participation. According to O'Donnell (1998), horizontal accountability implies that elected representatives, entrusted with the exercise of public power, are under the constant control of independent institutions. Institutionalizing the horizontal accountability allows control of the basic democratic structure. Institutalizing the vertical accountability ensures periodical control of the government through elections and public opinion. Protection of civil rights prevents the violation of individual freedoms by the state. Division of power into legislative, executive and judicial power, where each of the aforementioned branches of government represents a counterweight to others, prevents the abuse of power. Horizontal accountability ensures that responsibility and responsiveness of the public authorities are ensured not only periodically, at the time of the election, but also continuously, through the system of checks and balances between different branches of government (Beetham & Boyle, 1995: 66).

It quickly became clear that comprehensive political and economic reforms in transition countries will be difficult to implement and maintain with an inadequate or outdated legal system, deprived of functional institutions that would ensure application of existing rules and the resolution of disputes. Reforms of the legal framework in transition countries have two key elements. The first is reconsideration of formal rules, including the constitution, laws, regulations, and so on. This segment of reforms should ensure that the content of the rules meets the needs of the society and that they are the result of some kind of participation of those to whom these rules apply. The second is the effective implementation of formal rules. The rule of law rule has become one of the main priorities in the process of enlargement of the European Union to the Western Balkans/European integration of the Western Balkan

countries. At the beginning of this process, European Union requested from candidate countries to fulfill formal legal criteria, ignoring the inherited specificities of the legal systems of post-socialist countries. However, it turned out that, beside formal rules, informal rules are also important for the strengthening of the rule of law. This tension between formal and informal rules has remained an important feature of developments in the sphere of the rule of law in transition countries. Bearing in mind the poor state of the rule of law, the EU has extended over time the standard Copenhagen criteria to include the rule of law promotion strategy, which emphasizes the implementation and irreversibility of reforms.

4. Consolidation of Democracy in Serbia

According to renowned international organizations who regularly publish democratization indices, Serbia has made significant progress in the development of democratic institutions during the last two decades. Serbia is ranked as a democratic country, that is, a country that guarantees its citizens basic political rights and civil liberties (Table 1). Such estimates are based on the concept of a democratic minimum, which is almost exclusively related to electoral democracy. This implies that an institutional minimum has been achieved in Serbia in terms of the general suffrage and implementation of free and fair elections. Although detailed analysis points to deficiencies within the electoral process, Serbia can be classified into a type of electoral democracy.

According to theories of democratic transformation, the process that begins with the transition from autocratic to democratic regime has several potential outcomes, of which consolidated democracy is the best possible scenario. However, in a large number of cases, as in the case of Serbia, the institutionalization of democracy is not necessarily followed by the process of consolidating democratic institutions. Some new democracies could easily remain captured in a state of incomplete consolidation for a long time. Such democracies are characterized by anomalies in the functioning of certain elements of the democratic system, which makes them flawed or defective democracies. The data in Table 1 indicate that, after more than two decades of democratic transformation, Serbia today belongs to the category of defective (semi-consolidated) democracies. In the latest Freedom House report, Serbia is rated as a partially free country, which indicates deterioration as compared to the previous year when we were in the group of free countries. The causes of this fall, according to the Freedom House report, are electoral irregularity and distrust in the election process, pressure on certain media and journalists, as well as concentration of power in the hands of the president of the republic (violation of the principle of separation of powers).

Table 1

Index	*Score*	*Status*	*Status*
Bertelsman Transformation Index	7,70/10	Democracy	Defective democracy (6-8)
FH Nations in Transit	3,97/7*	Democracy	Semi-consolidated democracy (3-3,99)
FH Freedom in the World	67/100	Democracy	Partly free
Economist Intelligence Unit	6,41/10	Democracy	Flawed democracy (6-8)

*Score ranges from 1 to 7, where 1 denotes the highest and 7 denotes the lowest level of democratization.

Source: Bertelsman Foundation 2018, Freedom House 2018, Freedom House 2019, Economist Intelligence Unit 2018.

Recent research on hybrid regimes and defective democracies has shown that a weak rule of law, combined with weak horizontal accountability, could undermine the entire democratic system (Merkel et al., 2003). Serbia is considered to be a defective democracy, with most pronounced shortcomings in the areas of rule of law, political and social integration and institutional stability. Defective democracies represent a mixture of multi-party systems, competitive elections parliaments and other elements usually associated with liberal democracies and mechanisms and techniques of the authoritarian regimes. These practices lead to the further de-institutionalisation of fragile democratic structures and to their ongoing deterioration. Weak rule of law and a barely functioning system of horizontal checks and balances undermine other parts of the democratic regime, and could ultimately call into question the meaningfulness of democratic elections.

5. The Rule of Law as a Determinant of Democratic Consolidation in Serbia

The Bertelsman Transformation Index (BTI) ranks countries according to the quality of democracy and the market economy. It aggregates the results of political and economic transformation into two indices: The Status Index and The Governance Index. The Status Index, with its two analytical dimensions - political and economic transformation - shows where each of the 129 countries stands on the path to democracy, based on the rule of law and the social market economy. The results achieved in the field of political transformation are assessed on the basis of five indicators, among which is the rule of law. The rule of law indicator has four components: separation of powers, independent judiciary, prosecution for office abuse, and protection of basic civil rights. In addition to this indicator, additional insight into the level of rule of law can be obtained on the basis of the sub-indicator Protection of private property, within the framework of economic transformation. Within the political transformation, the weakest results in 2018 were achieved in the area of the rule of law (6.8). Within the economic transformation, Protection of private property was estimated at 7.5 (the lowest rating is 1 and the highest is 10) (Bertelsman Foundation, 2019).

A constant problem with the separation of powers in Serbia is the dominance of the executive over the judicial and the legislative powers. Although the power of the state is formally limited by law, this principle is violated in practice, in particular by passing laws under urgent procedures and violations of the independence of autonomous bodies, such as the Ombudsman. The Bertelsman Index estimates the separation of powers in Serbia as unsatisfactory (7/10) (Ibid). (Bertelsman Foundation, 2019). The judiciary is characterized by inefficiency and susceptibility to political influence. It is noted that there were no significant results in terms of increasing the judicial independence, which is one of the key problems and reform challenges for Serbia. Corruption is a significant weakness of the judiciary. Anti-corruption policy is not consistent because there are few sentences for official misconduct, and the activities and measures anticipated by the anti-corruption strategy and the action plan have not been fully implemented. Although the Constitution guarantees the rights and freedoms of citizens, in recent years there has been a significant limitation of the freedom of the media and freedom of expression in Serbia.

Nations in Transit (Freedom House). The Nations in Transit study, as part of the *Democracy Score*, assesses the degree of *Judicial framework and independence* as a key guarantor of civil liberties. The data for 2018 indicate that, despite the reforms carried out in this area, the failure to establish an independent judiciary, along with its inefficiency, is the

greatest shortcoming of institutions in Serbia. Despite the government's declarative desire to improve the rule of law and the efficiency of the judicial system, partly under EU pressure, the quality of the judicial framework and the judicial independence in Serbia are considered unsatisfactory (4.5/7). Numerous problems of the Serbian judiciary are mentioned, such as exposure to political influences, financial dependence from the executive power, and the spread of corruption within the judicial system. A number of irregularities and delays in the process of election of judges were noted. This is the reason why estimates regarding the independence of the judiciary and the rule of law have been very low in the past few years (Freedom House, 2018).

An integral part of the *Heritage Foundation's Index of Economic Freedom* (economic freedom is estimated by using a scale from 0 to 100, where the higher value of the indicator reflects a higher level of economic freedom) is a set of indicators of the rule of law (property rights, government integrity and efficiency of the judiciary), where Serbia is poorly rated. In the field of property rights, Serbia had an estimate of 50.1; the integrity of the government was 37.2, and the independence of the judiciary was 44.8. In addition, in the sphere of judicial independence, there was a decrease of 3.4 points as compared to the previous year. The Heritage Foundation's Report indicates that Serbian citizens and foreign investors are guaranteed property rights, but the implementation of these rights is slow. Independence of the judiciary is endangered by political influence, and corruption remains a major problem, with anti-corruption regulations not being applied effectively. The key areas in which reforms need to be deepened are: modernization of tax administration, reduction of corruption, and strengthening of the judicial system (Heritage Foundation, 2019).

Freedom in the World (Freedom House) is a global annual study of political rights and civil liberties. Starting from the fact that formal guarantees of citizens' rights and freedoms are not sufficient, this study, although evaluating both elements, places greater emphasis on the practical exercise of these rights than on the laws and regulations that regulate them. The Civil Liberties Index includes assessments of the freedom of expression and belief, association and organization rights, the rule of law, and the personal autonomy and individual rights. In the area of the rule of law, there was deterioration as compared to the previous year (from 10/16 to 9/16). According to the report, the state of civil liberties in Serbia can be considered satisfactory. However, a more detailed assessment of citizens' rights and freedoms suggests that Serbian citizens face difficulties in exercising formal rights. For example, ownership rights are guaranteed, but their protection is hampered by the inefficiency of the judicial system. Citizens freely decide to start their own business, but bureaucratic obstacles make this process more difficult. There is gender equality in Serbia, but women are faced with discrimination in the labor market. A significant problem in the sphere of the rule of law is political influence on the appointment of judges and judicial decisions, which threatens the independence of the judiciary. In the media, politicians regularly comment on court decisions, ongoing court proceedings and investigations. In the past period, political influence on the work of the police and the prosecution has been evident. For these reasons, the degree of independence of the judiciary was assessed as unsatisfactory (2/4) (Freedom House 2019).

Economic Freedom (Fraser Institute) measures the degree of economic freedom in five key areas. One of these areas is the Legal System and Property Rights. According to the Fraser Institute, in 2016 Serbia ranked 84th out of 162 countries, with an index of 6.85 (where 1 means the smallest and 10 the largest economic freedom). The lowest results were in the subindicator of the Legal System and Property Rights, where Serbia obtained

unsatisfactory ratings in those segments that are crucial for the rule of law: judicial independence 3.05, impartial courts 2.73, protection of property rights 3.93 and legal enforcement of contracts 3.20 (Fraser Institute, 2016).

The *Quality of governance* (and the rule of law) within the Worldwide Governance Indicators is measured on the basis of several elements. Some of them are related to the independence of the judiciary, the fairness of court procedures, the speed of procedures, judicial responsibility and trust in the judiciary, as well as the implementation of the contract. Others refer to the degree of crime and the efficiency of law enforcement. Estimates for the rule of law range from -2.5 (weak governance effect) to 2.5 (strong governance effect). In the case of Serbia, there has been a continuous deterioration in the rule of law over the past ten years. The value of this indicator was 0.47 in 2007, 0.36 in 2012, and 0.19 in 2017 (World Bank, 2017).

According the subindicator of the Rule of law, within the International Property Rights Index (Property Right Alliance, 2018), Serbia scored 4,769, which places it 69th in the world and 16th in the region in 2018. According to the judicial independence, however, Serbia received a score of 3.046, ranking 108th in the world and 20th in the region. Investors have no problems with the registration of property (where Serbia is 54th in the world and 18th in the region, with a score of 9,291), but there are issues concerning the protection of property, where Serbia is ranked 112th in the world and 20th in the region (score 3.926). In the sphere of intellectual property protection, Serbia is 107th in the world and 21st in the region.

The Rule of Law Index of *The World Justice Project* probably represents the most comprehensive set of data of that kind in the world, which primarily relies on primary data in measuring the commitment of countries to the rule of law from the perspective of citizens and their experience. This index provides the basis for identifying strengths and weaknesses in the sphere of the rule of law and, on this basis, the formulation of measures that will contribute to the strengthening of the rule of law.

The Rule of Law Index of the World Justice Project – WJP (2019) measures the degree of rule of law based on the experiences and perceptions of citizens and legal professionals in countries around the world. Countries are assessed and ranked on the basis of eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil and criminal justice. The aforesaid indicators are based on two main principles concerning the relationship between the state and the governed. The first principle pertains to whether the law imposes limits on the exercise of powers by the state and its representatives, as well as individuals and private enterprises (factors 1, 2, 3 and 4 within the index). The second principle relates to whether a state limits the actions of members of society, fulfills its basic duties towards the population (serving the public interest), whether citizens are protected from violence, and whether all members of society have access to justice - dispute settlement and grievance mechanisms (factors 5, 6, 7 and 8 within the index). The index value ranges from 0 to 1, where 1 denotes the highest degree of respect for the principle of justice, and 0 is the smallest. Serbia is ranked 78th out of 126 ranked countries, with a rule of law index of 0.5. For comparison, on the list of all ranked countries, Slovenia is in the 26th place, Croatia is 42nd, Bosnia and Herzegovina is 60th, Macedonia is 56th and Albania is 71st. Among the Western Balkan countries, Serbia takes the last place (World Justice Project, 2019).

The first group of indicators refers to the *Accountability of the government*. Within the Rule of law index, it is accessed on the basis of two factors: constraints on government powers and the absence of corruption. The first factor, *constraints on government powers*,

measures the extent to which the government respects the law. It includes mechanisms (both constitutional and institutional) that limit the power of government and its representatives, and make them accountable within the framework of the law. This factor also includes non-governmental mechanisms of government control, such as the free and independent press. Separation of powers is very important since it ensures that no branch of government has unlimited power. Serbia in this area received a score 0.40, experiencing a continuous deterioration since 2012, when the value of this indicator was 0.48 (World Justice Project, 2012; 2019). The weakest link is the sanction for official misconduct, where Serbia received an exceptionally low score of 0.27. Serbia is not well placed regarding the legal limitations of arbitrary power (0.42). The judiciary is responsible for the bad score in this area because of its inability to oppose the executive power (0.35). Non-governmental mechanisms of government control are marked as relatively weak. The second factor is the *Absence of corruption*. The degree of corruption shows the extent to which state officials are abusing their position for private gain. Different forms of corruption have been taken into account, examined in the sphere of legislative, executive and judicial power. Legislature is rated as the most corrupted (0.26), followed by the judiciary (0.49) and the executive authorities (0.46). The least corrupted were the police and the army (0.54).

The second group of indicators refers to *Security and Fundamental Rights* and is estimated on the basis of two factors: order and security and fundamental rights. *Order and security* shows the extent to which the state provides security of individuals and property. Citizens' security is one of the basic aspects of the rule of law and the fundamental function of the state. Violence not only inflicts harm on society but also prevents achievement of other goals, such as achieving freedom and access to justice. This factor includes three dimensions: absence of crime, absence of political violence (terrorism, armed conflicts and political unrest), and violence as a way of resolving disputes. The fourth factor (*Fundamental Rights*) assesses the degree of protection of basic human rights. It includes: equal treatment of all citizens and absence of discrimination; right to life and security; freedom of expression and beliefs; freedom of association, including the right to collective bargaining; prohibition of forced and child labor; right to privacy. Among the eight factors covered by the Rule of the law index, Serbia scored above 0.5 only in the area of Order and Security (0.77) and Fundamental Rights (0.56), mostly due to freedom of religion (0.70), freedom of association (0.59), absence of discrimination (0.62) and the absence of civil conflicts (1.0). In the area of Order and Security there was an improvement, since the value of this factor increased from 0.75 to 0.78, but in the area of basic rights there was deterioration from 0.61 to 0.56 as compared to 2012 (World Justice Project, 2012; 2019).

The third group of indicators is the *Openness of state institutions and the Efficiency of the regulatory framework*. These indicators show the extent to which the processes through which the laws are passed and applied are accessible, fair and efficient. It concerns access, participation and cooperation between the state and citizens, and it plays a key role in fostering accountability. Citizens' access to information of public importance is essential for ensuring the accountability of the authorities. When it comes to the *Open government*, there was some deterioration compared to 2016, but the value of this indicator is slightly higher than in 2012. In the area of the right to information, Serbia received a score of 0.48, while the score for the attainability of laws and government documents was 0.52. Direct involvement of citizens, as well as civil society organizations, from the point of view of transparency and accountability of the authorities, is still in its infancy in Serbia. A more transparent and inclusive decision-making process contributes to better public policies.

Cooperation with the civil society is necessary, both through civil society organizations and through individual activities (e.g. through complaint mechanisms). In this context, citizens' participation (0.47) and citizens' participation through complaint mechanisms (0.41) are unsatisfactory. *Regulatory enforcement* indicates the fairness and effectiveness of state regulation. An important feature of the rule of law is that the rules are respected and effectively enforced, without any abuse by state officials. In this area, Serbia received a score of 0.47. The efficiency of the regulatory framework is relatively low (0.45), which is due to the fact that the rules are not implemented efficiently, as there are many undue delays in the application of the rules (0.40), as well as the improper influence (0.47) (World Justice Project, 2019).

The fourth group of indicators, *The accessibility and affordability of justice*, is monitored through the following factors: civil and criminal justice. *Civil justice* shows the extent to which citizens can resolve their disputes through formal institutions in a peaceful and effective manner, in accordance with commonly accepted social norms. Effective civil justice implies that the system is available and accessible, without discrimination and corruption, and without the improper influence of public officials. It is also necessary that court proceedings are conducted in a timely manner, without undue delays. Finally, recognizing the value of alternative dispute resolution mechanisms, this factor also measures the accessibility, impartiality and efficiency of the mediation and arbitration system, which help the parties resolve civil disputes. *Criminal justice* (factor 8) assesses the effectiveness of the criminal justice system as an important aspect of the rule of law. An effective criminal justice system is able to investigate and prosecute crimes successfully and timely, through a system that is impartial and non-discriminatory, without corruption and political influence, while ensuring that the rights of the victims and the accused are effectively protected. Creating an effective criminal justice system also requires corrective mechanisms that effectively suppress criminal behavior. Consequently, the assessment of the effectiveness of the criminal justice system should take into account the whole system, including the police, lawyers, prosecutors, judges and prison officers. In the area of accessibility of justice, unreasonable delays in court proceedings and improper political influence are highlighted as key problems.

6. CONCLUSIONS

According to the available data, Serbia belongs to unconsolidated democracies that are still facing the challenges of pursuing democratization and rule of law. The analysis of the rule of law indicators from different sources points to the weaknesses of the institutional and legal environment in Serbia. Serbia has advanced in the sphere of the rule of law, but the situation in this area cannot be described as satisfactory. Further reforms in the field of rule of law and legal security are necessary for further consolidation of democracy. The legal framework that defines and protects property rights in Serbia is mostly well defined. However, the main problems lie in the field of implementation. Courts are slow and inefficient, leading to lengthy court proceedings, accompanied with high costs. The low degree of efficiency of the regulatory framework is the result of the fact that the rules are not implemented effectively; there are a lot of undue delays in the application of rules and political interference.

The low level of judicial independence is considered as the weakest link in the mechanism of horizontal accountability. There is a strong external influence on the judiciary and the prosecution, mainly on the part of the executive power, which significantly affects court

proceedings and the protection of property rights. The degree of judicial independence points to the quality of horizontal accountability, which includes the separation of powers between the mutually independent and autonomous bodies of the executive, the legislative and the judicial powers. The capacities of the legislative and judicial authorities to control the executive power are limited, while the functioning of the judiciary is hampered by political pressures, inefficiency and corruption, which undermines the system of horizontal accountability. In spite of the officially adopted legal framework for combating corruption and the abuse of power, there are very few cases of officials being prosecuted for misconduct.

The rule of law is important for the consolidation of democracy. The violation of the rule of law and horizontal accountability can destabilize other parts of the democratic system and result in a return to authoritarianism. One of the indicators of the potential danger of returning to authoritarianism is the deterioration within the factor *Constraints on government powers*, where a greater decline has been recorded than in any other factor within the Rule of Law Index in recent years. This factor measures the degree to which those who govern are limited by formal and nongovernmental mechanisms, such as an independent judiciary, freedom of the press, etc.

Different factors have contributed to this situation in the area of rule of law, starting from the historical heritage and social, political or cultural factors, shaping today's institutions and policies. One of the characteristics of the transition in Serbia, which significantly contributed to the weakening of the rule of law, is unfinished privatization. A significant amount of state-owned resources has strengthened the state's power to control other social and political actors. One should not neglect the fact that the transition in Serbia took place during the period marked by civil wars and international military intervention, which contributed to institutional degradation and institutional inefficiency.

Serbia also has a long history of strong informal institutions, which affects the prevalence and impact of informal networks and clientelism. These networks gave rise to the development of informal institutions that have the potential to suppress the formal ones, thus creating favorable conditions for the abuse of power by political elites and unfavourable institutional development in many areas, from the judiciary to independent regulatory bodies.

REFERENCES

Beetham, D. & Boyle, K. (1995). *Introducing Democracy. 80 Questions and Answers*, Polity Press, Cambridge.

Bertelsman Foundation (2018). *Bertelsman Transformation Index 2018 - Serbia Country Report*, https://www.bti-project.org/en/reports/country-reports/detail/itc/SRB/ (accessed 20.03.2019).

Diamond, L. (1999), *Developing Democracy. Toward Consolidation*, John Hopkins University Press, London.

Economist Intelligence Unit (2018), *Democracy Score*, https://www.eiu.com/topic/democracy-index (accessed 11.03.2019).

Elster, J. (1988). Introduction/In Elster, J., Slagstad (eds), *Constitutionalism and Democracy/.-*, Cambridge, Polity Press, pp.1–18.

Fraser Institute (2016). *Economic Freedom 2016*. https://www.fraserinstitute.org/economic-freedom/dataset?geozone=world&page=dataset&min-year=2&max-year=0&filter=1&countries=SRB/, 20.03.2019.

Freedom House (2018). *Nations in Tranzit 2018 – Serbia Country Profile.* https://freedomhouse.org/report/nations-transit/2018/serbia/ (accessed 25.03.2019).

Freedom House (2019). *Freedom in the World 2019 – Serbia Country profile*, https://freedomhouse.org/report/freedom-world/2019/serbia/ (accessed 15.03.2019).

Hadenius, A. & Teorell, J. (2007). Pathways from Authoritarianism, *Journal of Democracy*, Vol. 18, No. 1, pp. 143-157.

Heritage Foundation (2019). *Index of economic freedom 2019*, https://www.heritage.org/index/country/serbia/ (accessed 10.03.2019).

Howard, M. M. & Roessler, P. G (2006). Liberalizing Electoral Outcomes in Competitive Authoritarian Regimes, *American Journal of Political Science*, Vol. 50, No. 2, pp. 365–381.
Huntington, S.P. (1991). *The third wave. Democratization in the Late Twentieth Century*, University of Oklahoma Press, Oklahoma.
Linz, J., Stepan, A. (1996). Toward Consolidated Democracy, *Journal of Democracy*, Vol. 7, No. 3, pp. 14-33.
Merkel, W, Puhle, H-J; Croissant, A., Eicher, C. & Thiery, P. (2003). *Defekte Demokratie: Band 1: Theorie*. Westdeutscher Verlag, Opladen.
Merkel, W. (2004). Embedded and Defective Democracies, *Democratization*, Vol. 11, No. 5, pp. 33-58.
Merkel, W. (2008). Plausible Theory, Unexpected Results: The Rapid Democratic Consolidation in Central and Eastern Europe, *International Politics and Society*, Newsletter der Friedrich-Ebert-Stiftung 2/2008, pp. 11–29.
O'Donnell, G. (1996). *Illusions about Consolidation*, Journal of Democracy, Vol. 7, No. 2, pp. 34-51.
O'Donnell, G. (1998). Horizontal Accountability in New Democracies, *Journal of Democracy*, Vol.3, No.9, pp. 112–126.
Прица, М. (2018). Правни принципи у поретку правне државе: канони правног поретка и „унутрашњег правног система", *Зборник радова Правног факултета у Нишу*, Vol. LVII, бр. 80, pp. 135-180.
Property Rights Alliance (2018). *International Property Rights Index 2018*, available at https://www.internationalpropertyrightsindex.org/full-report/ 10.03.2019.
Przeworski, A. (1991). *Democracy and the Market. Political and Economic Reforms in Eastern Europe and Latin America*, Cambridge University Press, Cambridge.
Roessler, P.G. & Howard, M.M. (2009). Post-Cold War Political Regimes: When Do Elections Matter?/ In Staffan I. L. (ed), *Democratization by Elections: A New Mode of Transition/*.- The Johns Hopkins University Press, Baltimore.
Sagay, I. (1996). The Travails of Democracy and the Rule of Law/ In Ajomo, M.A., Sambo, A. (eds), *Democracy and the Rule of Law/*.- Spectrum Books Ltd, Ibadan, Nigeria.
Schumpeter, J. (1942). *Capitalism, Socialism and Democracy*, Harper Perennial, London.
World Bank (2017). *Worldwide Governance Indicators 2017*. http://info.worldbank.org/governance/wgi/#reports/ (accessed 12.03.2019).
World Justice Project (2012). *Rule of Law Index 2012*. https://worldjusticeproject.org/sites/default/files/documents/WJP_Index_Report_2012.pdf (accessed 15.03.2019).
World Justice Project (2019). *Rule of Law Index 2019*. https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/ (accessed 12.03.2019).

VLADAVINA PRAVA I KONSOLIDACIJA DEMOKRATIJE U SRBIJI

Poznate međunarodne organizacije klasifikuju Srbiju kao demokratiju. Međutim, one ocenjuju stanje demokratije prema teorijskom konceptu izborne demokratije, što može da stvori zabludu da slobodni izbori predstavljaju ne samo neophodan, već i dovoljan uslov za demokratiju. Koncept liberalne konsolidovane demokratije, pored proceduralnih aspekata, podrazumeva ispunjavanje strožih normativnih i analitičkih kriterijuma, kao što su vladavina prava i mehanizmi vertikalne i horizontalne odgovornosti, koji predstavljaju institucionalne garancije za primenu osnovnih demokratskih principa. U nedostatku ovih mehanizama, izborne demokratije postaju manjkave. Prema relevantnim istraživanjima, Srbija je klasifikovana kao polukonsolidovana (defektna ili manjkava demokratija). Nepravilnosti u izbornim procedurama, kao i kršenje elemenata koji garantuju poštovanje demokratskih normi i institucija posljednjih godina, ukazuju na određeno demokratsko nazadovanje. Imajući ovo na umu, u radu se istražuje u kojoj meri vladavina prava predstavlja podršku konsolidaciji demokratije u Srbiji i ukazuje na potencijalne uzroke nedostataka u ovoj oblasti, koji otežavaju konsolidaciju demokratije.

Ključne reči: *demokratija, konsolidacija, vladavina prava, Srbija*

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 209-221
https://doi.org/10.22190/FULP1903209V

Original Scientific Paper

THE SUBSTANCE AND IMPLICATIONS OF INTEGRAL PLANNING IN LOCAL GOVERNMENT UNITS

UDC 352(497.11)
340.132:342.25

Igor Vukonjanski

National Academy of Public Administration, Belgrade, Serbia

Abstract. *Local development planning in local government units (municipalities and towns) has always played an important social role in all countries. In recent decades, this area has been regulated by adequate laws, which differ greatly from one another primarily due to an underdeveloped science-based theory of local development. According to the recently constructed theory, two local planning systems were identified. The first system (of a long-standing tradition) is called the partial system because local and overall social development in a particular country is solely taken care of by a country that has its own development interests. The second (new) system is called the integral system, which implies partner relations between the state and the most influential professional democratic forces that participate in development planning activities. The comparison of these two systems points to the great advantages of the integral system of local planning over the partial one; for this reason, developed countries are increasingly switching to the use of the integral system. Due to the insufficiently developed theory of local planning, this scientific article aims to contribute to supplementing the integral system of local development by projecting its general implications for local self-government and the associated nation-state, as well as the international community. Based on relevant research methods, the obtained results have shown that the implementation of this system implicitly causes positive fundamental social changes which enable less developed countries in particular to catch up with the developed countries much faster and much more efficiently.*

Key words: *local development, integral planning, planning partnership, planning implications, trends, effects*

Received October 28th, 2019 / Accepted December 11th, 2019
Corresponding author: Igor Vukonjanski, LL.D., Associate Professor, National Academy of Public Administration, Belgrade, Serbia; E-mail: igor.vukonjanski@napa.gov.rs

1. INTRODUCTORY NOTES

Compared to other fields of social sciences, the theory of local and overall social development has evolved significantly more slowly, primarily due to the traditional state monopoly in the field. For this reason, in the newly constituted theory, this system of local planning is called *partial system* (state-of-interest), which is increasingly inefficient in implementation. In contrast, due to the effects of science and the increasing level of education of the society primarily in developed countries, the first forms of integral local planning system have begun to be applied, which is markedly more vital and effective than the partial system. Its comparative advantages stem from the fact that it uses integral principles and that planning is implemented in partnership by the competent state bodies with the increasing participation of a growing number of social (democratic) forces (scientific, educational, political, economic, environmental, security, etc.).

When it comes to the integral system of local planning, which is increasingly pushing the partial system towards accelerated elimination, it should be noted that this new system is still poorly developed both in theoretical and practical terms. This applies, in particular, to the underdeveloped integrity of this system, to its poorly developed structure (principles, methods, models, computerization, etc.), as well as to the unexplored implications of its application to the local community and society in general, both in the nation-state and at the international level. In such a reality, in many countries (especially the developed ones), the term "integral"[1] is increasingly used in local and overall social development planning, without a clear understanding what kind of integration it entails (Radovanović, 2019: 49-56).

This theoretical scientific paper has been developed with the basic aim to fill in the existing "gaps" and advance a theory of integral local and social planning based on scientific tenets and its effective applicability. To this end, this paper is the first attempt to identify the impact of such local and overall social planning on the local community, the nation-state, and the entire global community.

In order to cater for this scientific research, an adequate internal research project was created, in line with the contemporary scientific research methodology, which enabled the collection of relevant theoretical data. Their interpretation should produce certain research results which will contribute to enhancing the scientific knowledge of the integral system of local and social development, and ultimately improve social practice in the field. The research project presented in this paper was structured as follows:

- The research problem came down to the formulation of a basic question that needs to be addressed by research: What is the essence of integral local and overall social planning, and what are the general implications of its application? The research problem thus formulated was the basis for defining all other factors of this research project.
- The purpose of this research was to explore in greater depth and detail the essence of integral local planning and to identify the impact of that planning on the further social developments in the local, national and global social community.
- The research objectives included the intention to deepen the scientific knowledge in the field of new integral local planning, to explore the implications of such an improved planning system, and to increase the practical efficiency of the most important types of social planning;

[1] The term “integral” first emerged in the area of social planning at the beginning of the 20th century. However, it was used sproradically and the authors barely explained what it entails.

- The research hypotheses have been set out to be the basic guidelines in solving the set research problem. In this context, the basic research hypothesis is the following view: the intended deepening of the theory of integral local planning will identify in greater detail the components of the integral system, which will form the basis for determining the impact of that planning on the further development of the local, state and global social community.
- The scientific methods used in this research are the general dialectical method, the subject-specific analytical method, and the integral method for individual analysis. On this basis, adequate techniques have been defined and subsequently applied in the collection of relevant research data, which were then interpreted by using the process of inductive and deductive reasoning.

The structure of this scholarly article includes into several parts. The first part of the paper presents the relevant scientific literature dealing with integral local and overall social planning, which was the starting point for identifying the insufficiently examined factors that need to be further and more thoroughly addressed in this research. The second (central) part focuses on the structure and fundamental features of the integral social planning system, which is more comprehensively addressed by using appropriate argumentation and discussing the general social implications for its implementation. The third part deals with the urgency of implementing the integral local planning system, suggesting that the results of this research may be used by developed countries to refine the instituted planning systems, whereas the less developed countries should rapidly introduce integral planning in order to most effectively catch up with the developed countries. The fourth part of the paper identifies and discusses the new scientific knowledge on this matter and new professional achievements resulting thereof. Finally, in the concluding remarks, the author summarizes the basic research findings, pointing to the solution to the posed research problem and the verification of established research hypotheses. The scientific research in this paper is supported by a list of scientific literature, but it has to be noted there is a lack of quantitative research data in the consulted literature due to the fact that the integral planning theory has just been constituted.

2. The Scope of the Scientific Literature Used

In comparison to other fields of social sciences, published scientific literature in the field of local and overall social planning is rather modest in terms of types of available references. As pointed out earlier in this paper, this is a consequence of the long rule of partial planning and the monopoly of the state in this field; for which reason, the establishment of a scientifically based theory of social planning has been lagging behind. This is evidenced by the very small number of published scientific books and a slightly larger number of published scientific articles in the field.[2] This posed a serious difficulty in selecting the appropriate literature to consult when drafting this scholarly article. An additional difficulty was the author's basic requirement that the scientific literature should deal with the most important segments of integral local planning theory, which are the subject matter of this research: the principles, technology, participants, and implications

[2] The small number of published scientific papers of the monograph type in the field of social planning is the consequence of the long traditional, monopolistic role of the state in that planning.

of such planning. In line with this basic requirement, a smaller number of published scientific papers were selected from the consulted subject area literature, which were then were evaluated in relation to the research goals. The assessment results will be presented more specifically in this paper.

Regarding the principles and technology of integral local planning, the authors of the consulted scientific literature[3] are essentially involved in defining the local planning structures (long-term, medium-term, and short-term plans) and the process of their preparation, but primarily in a professional rather than in a scientific way. Therefore, their works are heterogeneous and rather varied in terms of structure. The same is true of the educational logistics provided for the leading planners and their professional associates (Vukonjanski, 2011: 8-11). The situation is similar when it comes to the holders of the integral local planning; namely, the consulted works in this field[4] indicate that the partnership between the state authority and the engaged social (democratic) forces has not been addressed in detail in the process of development of these plans and in their critical appraisal by the general public. Accordingly, in the observed works, insufficient consideration was given to the partners' structural cohesion and the further development of their cooperation.

Finally, when it comes to the implications of integral local development, some of the selected authors[5] emphasize the need for expanding the integral local development to the state and social partnership in all areas of social policy and practice (science, education, economics, ecology, culture and security), but they do not provide a deeper analysis and syntheses on how the initiated state and social partnership would affect the future life of humanity at the local, national and international level. Moreover, scientific literature includes a very small number of scientifically based works where the authors attempted to address the issue more systematically and comprehensively, particularly in terms of the three basic factors of integral local planning (technology, holders, and implications).

This general assessment leads to the conclusion that the basic factors of integral local planning were inadequately explored and theoretically elaborated in the observed scientific literature. For this reason, this scientific paper seeks to adequately fill in the existing gap in theory for the purpose of contributing to the development of a more effective future policy and practice at the local, national and international level. At the same time, it certainly opens the questions of redefining the approach to the current globalization trends, establishing new relations between countries, and establishing a new general integral philosophy which should be further addressed by philosophers, political scientists, sociologists, etc.

3. INTEGRAL LOCAL PLANNING PROFILE

Starting from the established research problem and the defined research goals, and relying on the theoretical scope of the consulted scientific literature, it is first necessary to determine the substance of integral local planning, and then to identify and explain the basic social implications of such planning. This task has been undertaken in an endeavour to contribute to a more comprehensive development of the newly constituted theory of

[3] Hamdouch, Frank, Rosoolimenesh, Arimaviciuti, Matarrita,, Wisley, UN Habitat, Government of Uganda.
[4] Bassand, Nanson, Kovrliouros, Molebatsi
[5] Hirst, Mersal, Subaini, Harrison; Green, Falk; Djordjevic, Filijovic& Gacic, UNDP.

integral local and social planning and, on that basis, to promote a more effective practice in this field.

When it comes to the substance of integral local planning that is currently being instituted in the developed countries without a more serious scientific basis, we must first clarify the notion of integral local planning, then identify representative structures of the basic types of this planning (long-term, medium-term and short-term plans), and clarify the character of the partnership between the state and social forces in such planning.[6] Here, we will focus on three most important features of integral local planning, which are essentially characterized (Mersal, 2016: 56-59) as follows:

- In integral local planning, as a scientifically based and most effective approach, the term "integral" has several complementary meanings (Radovanović, 2019: 36-45). The first meaning has an internal character and refers to the fact that it encompasses planning relations and links between all relevant factors of the local community (Wigley, Petiey, 2015: 36-39). The second meaning refers to the external planning linking of local community factors with their environment (other local governments, the state and the relevant international community). Finally, the third meaning relates to the fact that the bearers of local planning are the adequate and competent state authorities and various complementary social organizations (scientific and educational organizations, political parties, various associations, etc.), while all other segments of the covered society may participate in criticizing the prepared local plans and make proposals for their improvement. For this reason, the said creators (bearers) of local planning, together with the involved local organizations and the population, participate in certain aspects of preparation and evaluation of the adopted local plans; thus, local planning has a full integrative character (Arimavčiute, 2011: 124-127);
- In order to be successful, integral local planning must be rooted in appropriate science-based theory. This is especially true when designing the structures of basic local planning (long-term, medium-term and short-term plans). However, due to the aforementioned delays in the creation of such a theory, the initiated integral local planning (primarily in developed countries) is primarily based on the recommendations of the UNCTAD, the European Commission, the World Bank, and some other international organizations that do not have the necessary scientific basis for development planning. For this reason, the applied plan structures are mutually quite different, which is harmful in terms of their quality. Thus, in accordance with the results of previous scientific work in this field, the necessary structures of all basic integral local plans will be briefly outlined. The basic structure of a long-term (strategic) local development plan (for the period of 10 to 15 years) should include the following segments: general community profile; development potential achieved; vision and mission of development; goals and directions of integral development; integral development projects; project effects development; and managing the realization of development (Molebatsi, 2012: 11-13). The basic structure of a medium-term local development plan (from 3 to 4 years) should include the following segments: frameworks and planning sources; selection of development projects for comparison; comparison of selected projects; final

[6] The difficulties in addressing this issues have especially arisen from the fact that the published scientific works thus far only incidentally dealt with the substance of integral local planning.

selection of projects; preparation of project documentation; effects of project implementation; financiers of development projects; project realization management (Rasoolimanesh, 2016: 290). Finally, the structure of a short-term plan (for one year) should include: project implementation sequence; project implementation activities; project implementation activities; project evaluation activities; project implementation management. All these activities can be computerized and software programs may be developed as an appropriate tool for collecting and using relevant information to produce these local plans;

- The partnership between the state and society in integral local planning, which has been gradually introduced in the developed countries in recent years, is theoretically complex. It is a consequence of the growing number of highly-educated members of the society who increasingly exert pressure on the state to be actively involved in local community activities, which implicitly leads to the decentralization in managing the public policy and practice in a particular country. This is especially true in the area of local and overall social development planning as the most important segment in the management of society, which then implicitly extends to the society as a whole; ultimately, it contributes to the development of democracy and overall efficiency. When it comes to integral local development, this partnership refers to the formal and organizational involvement of the most competent social forces and state authorities in the development and realization of all plans for integral local development. Such a new reality has huge (even epochal) positive effects on every state and, thus, on the whole world (Frank, 2011:135-138).

Therefore, it can be concluded that the emergence of state and social partnership in integral local planning is a key cause of the democratization in the management of the local government and the society in a particular country, which all leads to the decentralization in the public management as well as in regulating relations in the world as a whole. It is certainly a lengthy process which primarily depends on the level of education in the particular society (state). This process is not strictly timed, and it can ensue at a faster or slower pace, depending on the strength of the democratic forces in each country (Green, 2016:13-16).

When it comes to specific implications of implementing integral local planning in any country, they are numerous and complementary. They are primarily reflected in the management of the local community and the state, the development of science, the dynamics of education, the national economy, environmental protection, social welfare, cultural development, and security.[7] These implementation issues deserve further consideration:

- The implementation of integral local and overall social development, due to the aforementioned partnership of the state and the society as a whole, will obviously accelerate the process of decentralization in the public management of concrete nation-states, whose bearers will increasingly be the most competent representatives of the state and society. Thus, the public management of the society will gradually move closer to Plato's idea of the state and the experience of the Nordic countries in this area, which imply that the state should be guided by the most intelligent individuals, and which will be enabled by the initiated general partnership of the state and the society in integral local and overall social development. The aggregate results of such social changes have the character of a new developmental era of

[7] Due to the poorly addressed essence of integral local planning, the literary literature so far has not discussed in detail the implications of such planning.

humanity, which should be discussed in more detail by leading world philosophers, political scientists, and sociologists (Hamdouch, 2016: 21-22);

- In such a reality, further development of science will play the most significant role. The new scientific content should lead to an advancement of the theory of integral local and overall social development in all fields. In particular, social sciences should pave the way for further development of integral and overall social planning, primarily from the standpoint of further decentralization in public management and the partnership between the state and the society in that process. Thus, we highlight the fundamental impact of education on the development of the society, both at the local and the national level (Harrison, 2001:178-180);
- Accordingly, further development of the level of education of a particular society undoubtedly plays a decisive role in the aforementioned further decentralization and democratization of the partnership-based management of all public policies of each country, which is especially true of the forthcoming (realistically expected) integral local and overall social development. In this regard, it should be reiterated that the level of education of each social community depends directly on its democratic power, which is first reflected in the implicit partnership of the state and social forces in managing a particular country (Bassand, 2001:7-8). This crucial social rule should be constantly taken into account by the leading national and social forces, which should continually insist on raising the level of overall education of the population (Hanson, 2017: 8-10).

In addition, the application of integral local and overall social development planning in the future will have a significant positive impact on the development of all aspects of work and society, especially in the field of economy, ecology, living standard, culture, human security, etc. These issues deserve further consideration:

- The expected future development of countries in the world will have a decisive impact on the development of their national economies. It will be realized through an increasingly constructive attitude of national economies towards further unsustainable penetration of international business and overall globalization in each country. This constructive attitude is primarily related to the use of the positive aspects of international business (growth of gross domestic product and employment rate), and suppressing its negative aspects (striving for reckless use of available natural resources, suppression of national business, etc.). Such future development of national economies must obviously be accompanied by adequate international trade, the further development of which will first move towards organized general freedom of trade that suppresses the accompanying barriers (customs, protectionist and other barriers) (Hirt, Stanilov, 2009: 11-14);
- Similarly, for the sake of sustainability and survival, further development of ecology is expected to move towards improving the protection of all social communities from detrimental impacts that pollute the land, air and water, causing many different hard-to-repair negative effects on the local, national and international community as a whole. As all these dangers affect particular countries and the world at large, there is no alternative but to further affirm the separate and joint struggle of all states to preserve the healthy living and working environment in each country and the world as a whole;

- In such anticipated global movements, nation-states and the international community will have to collaborate and take action to reduce the current large international disparities in the living standard of the population and to protect the most vulnerable members of society in specific national communities (UN Habitat, 2009: 117- 120). This is significant not only for humane reasons but also because it accelerates the economic and social development of each state. Certainly, further development of social protection should be an ongoing process, which will be subject to constant change and refinement;
- Further development of culture, which will be triggered by the expected decentralization of countries and their integral planning and development, will certainly be comprehensive and complex. It will obviously develop towards fostering multiculturalism, which will increasingly move towards affirming a common general culture in all areas as a combination of the most valuable examples of national cultures. This implies the introduction of national and international concern for culture at large, as the cultural heritage of the hitherto life and artistic creation of distinctive parts of humanity and the humankind as a whole (Kourliours, 2013: 4-7);
- Given the anticipated partnership-based public management of the national communities by their state authorities and democratic forces, major and significant changes are likely to occur in the field of security. Namely, although security was largely state-oriented ever since the Westphalian Peace (1648), the attempts aimed at redirecting the focus of security policy towards the well-being of an individual have not gone unnoticed. This is evidenced by the 1994 Report of the United Nations Development Program, which outlines the concept of human security, where humanity is central (UNDP, 1994). On the contrary, some scholars believe that each state is the bearer and the guarantor of the security of its own population and that nothing needs to be changed (Buzan, 2000: 24-27). Such attitudes and the many challenges in the ongoing action of states obviously delay the more front-line implementation of the aforementioned UN concept of human security. However, the expected frontal application of a scientifically-based system of integral planning for local and overall social development removes all obstacles to the affirmation of the concept of human security, as an approach that ensures an increasingly secure and quality life for future generations.

The presented substance of integral local planning and the accompanying implications indicate that this planning is based on the involvement of democratic forces empowered by the high level of education of the population involved in implementing the overall social policy, which was hitherto carried out by the state alone. It is considered to have been the first and most important victory for the democratic forces, which implicitly affects all other areas of life and development of particular states and concurrently causes the decentralization of power in each nation-state (Matarrita, Brannan, 2012: 8-11). In essence, this is a landmark turning point in the further development of all nation-states and humanity as a whole The considerations provided in this paper outline the further (expected) developments in the most important areas of life management and public management. These considerations are intended to point to the major changes that the partnership between the state authorities and the democratic forces will bring in a decentralized public management system; it is obviously a change on an epochal scale which should be further explored by the world's leading philosophers, political scientists

and sociologists. In view of the newly constituted science-based theory of integral local planning, the research results of this paper tend to contribute to shaping the further development of this theory.

4. URGENCY OF IMPLEMENTATION OF INTEGRAL PLANNING

The new theory of integral local planning, which relies on adequate social science and state and social partnership in this, is undoubtedly a revolutionary turn not only in local planning but, consequently, in all other areas of public management of a particular country. It is convincingly more effective than the long-ruling partial (elitist and narrow-interest) state planning. In recent years, due to the strengthening of democratic forces, it has been primarily entering into developed countries, while forms of partial local planning have remained in other countries. Thus, in view of the newly constituted science-based integral local planning theory, all countries should implement it in an organized manner. Yet, in its application, there are serious differences between developed and underdeveloped countries.

Given the requirements of the new theory of integral local planning, the developed countries should first and foremost adequately innovate their legal regulations in the area of local/social planning, then accordingly amend their regulation on the systematic professional development and training of relevant personnel from local self-governments, and entrust the development of their local development plans to appropriate expert organizations in the field. In particular, these activities entail the following tenets and goals:

- Innovation of the legal regulation in the area of local planning implies that it is adapted to the requirements of the newly formed theory of integral local planning, especially in terms of using the designed structures of the basic local development plans (long-term, medium-term and personnel-related plans), and their implementation by means of accompanying computerization and use of relevant software for managing local planning information. In this way, adequate legal regulation on all types of plans and their structures will be ensured in line with the aforementioned theory;
- Improvement of legal regulation on systematic professional development of relevant personnel from local self-governments is essential for their further education in terms of obtaining expert knowledge in the field of integral local planning theory, accompanying computerization and use of software programs for managing local planning information. Thus educated and trained personnel will become important internal associates in the development of all basic plans for the integral development of local self-government. Beyond this, in light of theoretical and legal changes in the field of local planning, these individuals should be required to periodically update their knowledge and skills;
- According to the theory of integral local planning, the development of those plans should in principle be entrusted to expert teams composed of engaged external expert organizations in the field and selected and trained internal planners. External experts should play the role of plan leader in the methodological and integral sense, while the internal planners should cooperate in the concrete design and development of local plans in all their economic, communal and social aspects. It will contribute to creating the necessary professional conditions for developing quality basic local development plans.

On the other hand, when it comes to less developed countries, their local planning legislation is much weaker than such legislation in the developed countries. Thus, in order to accelerate their transition to integral local planning, it is necessary to urgently implement a suitable program for introducing integral local development in these countries (especially African countries). This project should be entrusted to competent expert organizations. The program should include the design of legal regulations for integrated local planning, the development of an action plan for the implementation of that regulation, and the necessary education of leading experts from those countries for successful implementation of this major undertaking. In particular, these activities should entail as follows:

- the design of legislation for integral local planning should be based on the tenets of that theory, which implies revision of existing (if any) or preparation of new legislation, especially in the area of social planning and professional development of employees in local self-governments;
- on this basis, an action plan for the implementation of this legislation should be prepared, which will elaborate on the participants and method of its implementation, in order to successfully introduce the system of integral local planning in a specific country;
- finally, leading experts from a particular country should be provided relevant professional education and training in order to empower them to be the emissaries of the practical introduction of integral local development in a particular country.

Certainly, all these activities need to be implemented urgently both in developed and less developed countries, given that it has a decisive impact on the dynamics and quality of further development of local governments and the countries to which they belong.

5. Research Results and Discussion

The interpretation of the research results, based on the inductive and deductive reasoning, has enabled the acquisition of new scientific knowledge related to the field of local and overall social development planning. In particular, it includes the following findings:

1. the overall development of local and social planning in each country directly depends on the level of education of the population involved;
2. partial (state-regulated) system of local/social planning development is suitable for less developed countries, while the integral system is pertinent to more developed countries;
3. the integral system of development is highly more efficient and has high potentials for prospective development, while the partial one is increasingly inefficient and, as such, it will be progressively abandoned;
4. The front-line implementation of integral planning for local and overall social development worldwide will ultimately result in partnership between the state and democratic forces covering all aspects of public management with many major, primarily positive changes (Radovanović, 2019: 22-67).

These new scientific findings call for brief discussion and concluding observations:

- planning for local and overall social development is indisputably dependent on the level of education of the population involved; thus, in less developed countries with modest education means, it is more suitable to apply a purely state-regulated system; in developed countries, the application of an integral system based on state-democratic partnership is much more appropriate;
- the partial (state-regulated) system of local/social planning corresponds to less developed societies with a lower general level of education, and the integral (state-democratic) system is more suitable for developed societies with a higher general level of education;
- due to the anticipated further growth of education in the population worldwide and due to the high efficiency of the integral system of social development, this system is highly perspective; on the other hand, due to its lower efficiency, the partial (state-regulated) system must be rapidly eliminated;
- finally, the partnership of state and democratic forces in the field of integral social planning will logically expand to all areas and aspects of public management, which will implicitly cause many major, primarily positive changes in particular countries and in the world at large.

This kind of scientific knowledge contributes to rounding off the theory of local and overall social development planning, and substantiating its scientific grounds and practical efficiency. Thus, the author of this paper hopes for the positive verification of these findings by the relevant scientific public and the social practice.

6. Basic Conclusions

The presented considerations of the theory and practice of new integral local planning lead to specific conclusions, which will be briefly summarized by highlighting the most important findings of this research paper.

In the introduction of this paper, it was pointed out that the constitution of local planning theory, as a basic part of the entire social planning, was rather slow-paced. The delay was caused by the aspiration of each state to maintain its monopoly position and to change nothing in this area. However, in recent years, owing to the increase in the level of education of the population (especially in developed countries), the democratic forces in these societies have been fighting for partnership with the state in local planning and, to a certain extent, have managed to strengthen their position in the public management of those countries. This was precisely the reason for the ongoing constitution of the scientifically based integral local planning, as a system that is undeniably more effective than the traditional long-standing (elitist and narrow-interest) planning system. All this has led to heterogeneous developments in the theory and practice of local/social planning. Hence, this scientific paper has been primarily aimed at developing the scientific and practical knowledge on this issue and promoting the effective application of this theory.

For the purpose of drafting this paper, an adequate research project was created and implemented, on the basis of the defined research problem and specified research questions: 1) What is the substance of integral local and overall social planning, and what are the general implications of its implementation? 2) What are the general implications of implementing the concept of integral local development? In this context, all other

conceptual factors of the research were determined (subject, goals, hypotheses and methods), which ultimately served as guidelines for conducting this theoretical research.

Accordingly, the paper first outlines the scope of the researched scientific literature; research results indicate that the existing literature primarily elaborates on recommendations issued by international organizations on how local development plans should be prepared, while only a small section focuses on the scientific reinforcement of this theory. For this reason, this paper focuses on the substance of local and overall social planning and its specific and general implications.

In examining the substance of integral local planning, the paper focuses on the conceptual definition of the "integral" approach, the basic types and internal structures of those plans, and the need for establishing partnership between the state and democratic forces in the process of designing, implementing and evaluating these plans. Notably, the author proposes the use of appropriate models for gathering and managing planning information (registry or software), which would significantly facilitate the preparation and enhance the quality of these plans.

Based on the substance of local/social planning, and especially the infiltration of the observed partnership of state and democratic forces in developed countries, adequate implications of such local and overall social development are projected. They show that this type of partnership, initiated in integral local planning, quickly and easily penetrates all areas of public management, leading to decentralization of states and consequently effecting epochal positive changes in the further development of each country and the humanity as a whole. The introduction of integral local and overall social planning and its implications certainly represent a sort of tectonic change that should be addressed in more detail by philosophy and certain areas of the social sciences.

On the whole, it can be stated that the research problem has been successfully addressed and the postulated research hypotheses have been verified by research results. Considering the significance and the highly positive impact of the initiated partnership between the state and democratic forces in the public management of each country, this paper proposes adequate programs to innovate the initiated integral local planning in developed countries and to accelerate the introduction of such planning in less developed other countries that do not have much experience in implementing such programs. In this context, the research results presented in this paper address important new scientific knowledge related to the substance of integral local planning, the established partnership of state authorities and democratic forces in public management, as well as the revolutionary positive changes that will ensue from these developments. In addition, the paper proposes structural models of all basic local development plans and supporting tools (registry and software) for gathering planning information.

REFERENCES

Arimavčiute, M., (2011). The Strategic Development Planning for Local Governments, *Social Studies*, Vol 3, No 1

Bassand, M. (2001). Za obnovu urbane sociologije, 11 teza (For the Restoration of Urban Sociology, 11 Theses), prevod, *Sociologija*, Vol 43/2001, No 4, Beograd, pp.345-352.

Buzan, B., (2000). "Human Security: What It Means and What It Entails?", Text book Asian-Pacific Round Table, Sydney

Đorđević, I., Filijović, M., Gačić, J., (2017). Bezbednost, ekonomija i održivi razvoj (Security, Economics and Sustainable Development), Fakultet bezbednosti, Beograd

Falk, R., (1998). Pursuing the quest for human security, *Review of International Studies*, 24, pp. 4-22.
Frank, D. (2011). City Development Strategy, A Conceptual Framework, Discussion Paper No. 1, World Bank, Washington, DC.
Green, L. N. (2016). Planning Local Economic Development Theory and Practice, Sixth Edition, Sage Piblication
Hamdouch, A., Nyseth, T., Demaziere, Ch., Forde A., Serrano, J., Aarsæth, N. (2016). Creative Approaches to Planning and Local Development, Routlege, Abington
Hanson, R. (2017). Planning Politics and the Public Interest, Comell University Press
Harrison, P. (2001). The genealogy of South Africa's Integrated Development Plan, Third Wordl Planning Review 23(2): 175-193, DOI: 10.3828 / twpr.23.2q4172h26466148n3
Hirt, S., Stanilov, K. (2009). Revisiting urban planning in transitional countries, available at http://www.unhabitat.org/grhs/ (accessed 10.11.2019)
Kourliours, E., (2013), Local Development and Collaborative Planning, *Journal of Regional -Socio-Economic Issues*, Vol 3
Matarrita, D., Brannan, M. (2012). Conceptualizing community development in the twenty-first century, *Community Development*, No 43
Mersal, A. (2016). Sustainable Urban Futures, *Procedia Environmental Sciences*, New York
Molebatsi, C. (2012). Participatory Development Planning in Botswana, *Town and Regional Planning*, No2.
Radovanović, T. (2019). Integralno lokalno planiranje (Integrated Local Planning), Visoka škola strukovnih studija za ekonomiju i upravu, Beograd
Rasoolimanesh, S. M., Badarulzaman, N., Jaafar, M. (2016). City Development Strategy: theoretical background, themes, and building blocks. *International Journal of Urban Science*, 20 (2), 285-297.
Suhaini, Y. (2016). Effectivenese Form and Content of the Local Plan as a Tool for Quality of Life in the Urban Area, *Procedia Social*, Vol 23
UNDP, (1994). Human Development Report, New York-Oxford: Oxford University Press
UN Habitat (2009). Planning Sustainable Cities, UN, New York
Vukonjanski, I (2011). Novi javni menadžment i ljudski resursi u jedinicama lokalne samouprave Republike Srbije (New Public Management and Human Resources in the Local Self-Government Units of the Republic of Serbia), Radnička štampa, Beograd
Wigley, M., Petriey, T. (2015). Integrated Development, FHI 360

SUŠTINA I IMPLIKACIJE INTEGRALNOG PLANIRANJA U JEDINICAMA LOKALNE SAMOUPRAVE

Planiranje lokalnog razvoja u jedinicama lokalne samouprave (opštinama i gradovima) u svim zemljama oduvek je imalo važnu društvenu ulogu. Upravo zato se ta oblast poslednjih decenija reguliše adekvatnim zakonima, koji se međusobno veoma razlikuju prvenstveno zbog nedovoljno razvijene naučno zasnovane teorije lokalnog razvoja. Po toj tek konstituisanoj prvoj viziji teorije, s razlogom su identifikovana dva sistema lokalnog planiranja. Prvi sistem, sa dugom tradicijom, nazvan je parcijalnim sistemom zato što o lokalnom i ukupnom društvenom razvoju u konkretnoj zemlji isključivo brine država sa svojim razvojnim interesima. Drugi, novi sistem se zove integralni sistem u kojem partnerski učestvuju država i najuticajnije stručne demokratske snage koje su se za takvu ulogu izborile. Njihova međusobna komparacija ukazuje na krupne prednosti integralnog u odnosu na pracijalni sistem lokalnog planiranja, pa se zato naročito u razvijenim zemljama, s razlogom sve više prelazi na korišćenje integralnog sistema. U tome, naročito zbog nedovoljno razvijene teorije lokalnog planiranja, prišlo se izradi ovog naučnog rada, sa ciljem da on svojim rezultatima doprinese dopunjavanju integralnog sistema lokalnog razvoja sa projektovanjem njegovih opštih implikacija na lokalnu samoupravu i pripadajuću nacionalnu državu, kao i međunarodnu zajednicu. U radu su korišćene adekvatne metode istraživanja, a dobijeni rezultati su pokazali da se primenom ovog sistema implicitno izazivaju pozitivne funadamentalne društvene promene koje, naročito manje razvijenim zemljama, omogućuju brže i efikasnije sustizanje razvijenih zemalja.

Ključne reči: *lokalni razvoj, integralno planiranje, plansko partnerstvo, planske implikacije, trendovi, efekti*

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 223-234
https://doi.org/10.22190/FULP1903223S

Review Paper

INSTITUTE OF REHABILITATION IN THE NATIONAL LEGISLATION (1929-2011)

UDC 343.848
343.21(497.1)''1929/2011''

Tijana Stančevski*

Faculty of Law, University of Niš, Serbia

Abstract. *This year, it has been nine decades since the Criminal Code of the Kingdom of Serbs, Croats and Slovenes was put into effect on 29 January 1929. Apart from the unification of criminal laws on the entire territory of the Kingdom of SCS, where several different criminal laws had been in operation earlier, the new Code provided for the institute of rehabilitation unknown to the old criminal laws. In the aftermath of World War II, the Federal People's Republic of Yugoslavia (FPRY) was based on the tenets of the republican legal system. The new legal order introduced new criminal codes which were consistent with the times and the values that the new state was protecting: the 1947 Criminal Code of the FPRY, the 1951 Criminal Code of the FPRY, and the 1976 Criminal Code of the SFRY. All these Codes included provisions on rehabilitation. Nowadays, this institute is contained in the current Criminal Code of the Republic of Serbia and in special legislative acts on rehabilitation of political convicts of 2006 and 2011. This paper aims to examine the normative framework of rehabilitation in our legal system from the historical perspective.*

Key words: *rehabilitation, criminal laws, resocialization*

INTRODUCTION

During his life, man encounters various challenges. Some people succumb to temptations, by causing harmful effects through their negative social actions. In that case, the state stands on the side of society and, through its appartus, imposes measures which should, on the one hand, affect the criminal offender and show him that his action is socially unacceptable or, on the other hand, indicate to the rest of society that the same type of sentence could be imposed on them should they commit the same or another punishable offense. The question is what happens to the convicted persons after serving the sentence. Do such persons have any rights?

Received November 20th, 2019 / Accepted December 4th, 2019
Corresponding author: Tijana Stančevski, Faculty of Law, University of Niš, Trg Kralja Aleksandra 11, 18000 Niš, Serbia; E-mail: tijana.stancevski@gmail.com
* PhD Student

Do convicted persons become equal (in terms of rights) with persons who have never acted against the law, and when does this happen?

Modern criminal legislations support a standpoint that convicted persons should be enabled to resocialize after serving the sentence. Thus, a convicted person is fully integrated into the society, whereas the likelihood of re-offending is minimalized. Rehabilitation makes this possible. Etymologically, the word "rehabilitation" is derived from the Latin prefix "*re*" (again) and the adjective "*habilis*" (apt, fit, suitable, manageable). From the viewpoint of criminal law, rehabilitation is defined as restoring the social status of the convicted person whose criminal past is put behind and who is by law considered not to be convicted (Babić, Marković, 2015:451).

This paper examines the concept, characteristics, effects and the conditions for rehabilitation. The first part of the paper provides a historical overview and analysis of criminal law provisions on this matter in the period from 1929 to 1976. The second part of the paper analyzes the institute of rehabilitation in the current legislation of the Republic of Serbia, by exploring the provisions of the Serbian Criminal Code and the Criminal Procedure Code. The third part of the paper refers to the rehabilitation procedure envisaged in *lex specialis*.

1. HISTORICAL DEVELOPMENT OF REHABILITATION IN SERBIA

As an institute of criminal law, rehabilitation is one of the most significant rights that are conferred to convicted persons. In legal terms, this institute allows for the suspension of the pronounced or served sentence, and enables the convicted person to be considered as a non-convicted person (without prior convictions). On the one hand, the importance of the imposed sentence is reflected in the principle of both general and specific prevention. On the other hand, the purpose of punishment and serving the imposed sentence is to improve the conduct of the convicted person and enable resocialization of such a person after serving the sentence.

In the first part of the paper, the following laws will be observed in the context of the historical development of the institute of rehabilitation.

A) the Criminal Code of the Kingdom of Serbs, Croats and Slovenes of 1929
B) the Criminal Code of the Federal People's Republic of Yugoslavia–General Part of 1947
C) the Criminal Code of the Federal People's Republic of Yugoslavia of 1951
D) Criminal Law of the Socialist Federal Republic of Yugoslavia of 1976.

1.1. Criminal Code of Serbs, Croats and Slovenes

The Criminal Code of the Kingdom of Serbs, Croats and Slovenes[1], adopted in 1929, signifies an important event in the history of our legislation. At that time, the contemporaries estimated that "the Criminal Code of Serbs, Croats and Slovenes is among the most modern criminal laws in Europe, based on more advanced ideas than those found in French, German or Italian codes" (Petrović, 1929: 114-118). Apart from "unifying the criminal laws in our state on whose territory several different criminal laws had been in operation" (Čubinski,

[1] Criminal Code of Serbs, Croats and Slovenes, *Official Gazette of the Kingdom of Serbs, Croats and Slovenes*, no. 33/1929

1934:3), an important feature of this law was the institute of rehabilitation which had existed in the former criminal legislation. It was considered that the essence of this institute "lies in the fact that the convicted person, who has been deprived of his civil (personal) and other rights provided by the law, is restored such rights. Amnesty can play the same role, but there is a significant difference because amnesty is an extraordinary measure used in exceptional cases, while rehabilitation is a regular measure" (Čubinski: 1934:21).

In the Criminal Code of Serbs, Croats and Slovenes, the institute of rehabilitation is defined in Chapter XI, under the title: "Restitution of Rights and Cancellation of Conviction (rehabilitation)". In terms of legal systematics, the institute of rehabilitation is regulated in a single article, which is divided into three paragraphs. Under Article 90 of this Code, rehabilitation implies that, after the expiry of the prescribed three-year time limit from the date when the imposed punishment has been served, abolished or outdated (under the statute of limitations), the court, acting upon the convicted offender's request, may proclaim the convict worthy of exercising and acquiring his lost rights, provided that the convict demonstrated proper conduct and, if possible, compensated the damage.

Article 46 of this Code provides that a permanent deprivation of civil (personal) rights shall be imposed in cases involving a death sentence or a prison sentence exceeding 5 years (Čubinski, 1934: 167-168). This leads us to the conclusion that the restoration of civil rights is not allowed. In case the court imposed the prison sentence of up to five years, the offender could be deprived of civil rights for a period ranging from one to five years.

According to Article 47 of this Code, the loss of honorable rights was reflected in: 1) loss of the right to employment in civil or other public services; 2) loss of the right to the academic degrees, awards and other public honors, as well as political rights; and 3) loss of the right to vote and the right to be elected for a political function.

If the convicted person was deprived of civil rights for a period of time, after the expiry of that period, the lost rights would be restored and the person would be enabled to acquire other rights; namely, the person was allowed to perform a civil or other public function, as well as to attain academic degrees, awards and other public honors.

Article 90 (para.3) of this Code envisaged that, upon the expiry of five years after the sentence has been served, outdated or abolished, the court, acting upon a personal request of a person who was sentenced for the first time, may issue a decision annulling the imposed sentence together with all its legal consequences for a future period, provided that the convicted person was well-behaved while serving the sentence, and, that he compensated for the damage caused by the criminal offense. In this legal solution, we may observe the following mandatory requirements for granting rehabilitation: 1) that five years have elapsed upon the served, outdated or suspended sentence, 2) that the convicted person has filed a request for annulment of the sentence; and 3) that the person has been sentenced for the first time (first-time perpetrator), which further implies that it was not possible to ask for the erasure of conviction if the person was a recidivist.

As an optional condition for "annulment of conviction", the Code provides that the damage caused by a criminal offense should be compensated, if possible. However, although the the legislator allowed the possibility of voiding the legal consequences of conviction, the rights of third parties were not affected; therefore, regardless of the decision on annulment of the conviction, third parties were given an opportunity to claim compensation for damage.

1.2. Criminal Code of the Federal People's Republic of Yugoslavia– General part

The 1947 Criminal Code of the Federal People's Republic of Yugoslavia (FPRY)– General part[2], in Chapter V titled: "Cancellation of the sentence" (Article 92), provides for the erasure of former convictions from records (rehabilitation). This Code distinguishes two types of rehabilitation: a) legal rehabilitation, and b) judicial rehabilitation.

Under this Code, an "unconvicted" person was defined as a person who: 1) was sentenced to correctional labor, imprisonment not exceeding six months, or a more lenient sentence, provided that he did not commit another criminal offense within three years from the date of the served or abolished sentence; or, 2) a person who was sentenced to a term of imprisonment ranging from six months up to three years, or imprisonment with forced labor for up to two years, provided that he did not commit another criminal offense within five years from the date of the served or abolished sentence. This provision refers to legal rehabilitation.

Another form of rehabilitation is judicial rehabilitation. It applies in cases when the person has been sentenced to the prison term of more than three years or a more stringent sentence, provided that after the expiry of the period of eight years from the date of the served or abolished sentence, the person files a request for erasure of conviction from records; the request may be approved under the following conditions: a) that the person was well-behaved all that time; b) that, by such conduct, he deserved to have his conviction erased; and c) that he compensated the damage caused by the committed criminal offence, if possible.

If the court adopts a decision to erase the conviction, such a decision can be annulled upon the request of the public prosecutor if the convicted person is established to have committed a criminal offense before the decision on erasure of conviction was issued, and if the court finds that, in such a case, there would be no grounds for rehabilitation of such perpetrator.

1.3. Criminal Code of the Federal People's Republic of Yugoslavia

The Criminal Code of the Federal People's Republic of Yugoslavia (FPRY) of 1951[3] provided for the rehabilitation as well. This Code clearly distinguishes between legal and judicial rehabilitation; accordingly, in terms of legal systematics, each type of rehabilitation is regulated in a separate article.

Article 87 of this Code provides a general definition of rehabilitation. Thus, rehabilitation is intended to erase the conviction and terminate legal consequences, which ultimately results in the convicted person being considered to be "unconvicted" (without prior convictions). If the convicted person was imposed a secondary punishment in addition to the main one, by the decision on rehabilitation of the main sentence itself, all secondary sentences which had not been served would be cancelled. This Code also provided for the opportunity of third parties to seek compensation damage stemming from the conviction.

Pursuant to Article 88 of this Code, legal rehabilitation is granted only if the persons have not been convicted previously or if they could be considered under the law as unconvicted persons. The Code explicitly stipulates the following conditions for granting legal rehabilitation to: 1) the persons found guilty and released from sentence, provided

[2] Criminal Code of the FPRY-General part, *Official Gazette of the FPRY* , no 106/1947).
[3] Criminal Code of the Federal People's Republic of Yugoslavia, *Official Gazette of FNRY,* no. 13/1951.

that they did not commit another criminal offense within a year from the final decision; 2) the persons sentenced to a fine or imprisonment not exceeding six months, provided that they did not commit another criminal offense within three years from the date when the sentence was served, outdated or abolished; and 3) those convicted to a term of imprisonment ranging from six months to two years, provided that they did not commit another criminal offense within five years from the date the sentence was served, outdated or abolished.

Under Article 89 of this Code, judicial rehabilitation is allowed to persons who have been sentenced to imprisonment of more than two years or a sentence of strict-security prison (with forced labour) but who have not been convicted earlier (first-time offenders), or to those treated under the law as unconvicted persons, as well as to those who have been convicted of committing multiple offences. As for persons sentenced to a term of imprisonment of more than two years or to strict-security imprisonment, who have not been convicted earlier, the court, acting upon their personal request, may permit the erasure of conviction, provided that eight years have elapsed from the date the sentence was served, outdated or abolished, if the convicted person has compensated the damage according to his abilities, and if by his conduct the person deserved the erasure of conviction.

In case the person has been convicted multiple times, judicial rehabilitation may be granted when the time envisaged for each separate conviction expires. Apart from this requirement, the following conditions must be met as well: a) those pertaining to the conduct of the convicted person; b) those pertaining to the gravity and the consequences of the committed crime; and c) those pertaining to possible compensation of damage caused by a criminal offense.

Upon the request of the convicted person, the court decides in each individual case whether or not the conditions prescribed by the law were fulfilled, particularly considering the discretionary right of the court to decide on the issue of the convicted person's conduct, as well as on the gravity and the consequences of the committed offense.

1.4. Criminal Code of the Socialist Federal Republic of Yugoslavia

The Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY)[4] also provides for rehabilitation. Article 91 of this Code provides that, after a sentence has been served, outdated or abolished, or after a sentence of juvenile prison, the convicted persons are granted all rights provided for by the constitution, laws and other regulations, and may obtain all rights, except for those which they are forbidden to exercise due to the implementation of security measures or due to ensuing legal consequences. Rehabilitation is also granted to persons who are on parole, unless their rights have been restricted by special regulations.

According to Jakovljević (1981:204), this Code provides for three forms of rehabilitation: a) legal rehabilitation; b) judicial rehabilitation; and c) clemency rehabilitation.

By interpreting Articles 91-94 of this Code, it can be noticed that judicial rehabilitation is envisaged in the following cases: 1) due to the termination of security measures prohibiting the performance of professional duties, activities or obligations, prohibiting public speaking and prohibiting the person to drive a motor vehicle if three years have elapsed since the date of imposing these measures; 2) if three years have elapsed from the date the sentence was served, outdated or abolished, the court may order that the legal consequences of the conviction pertaining to the prohibition of attaining a certain right have ceased to exist,

[4] Criminal Code of the Socialist Federal Republic of Yugoslavia, *Official Gazette SFRY* no. 44/1976.

3) upon the request of the convicted person, the court can decide to erase the imprisonment sentence ranging from one up to three years from the criminal records, provided that five years have elapsed since the date of the served, abolished or outdated sentence; the offender is also obliged to fulfill additional requirements, regarding non-commission of another criminal offense, good conduct, as well as those related to the gravity and the consequences of the committed crime.

When deciding whether to grant rehabilitation, the court will take into account the conduct of the convicted person and his willingness to compensate the damage and return the illegally acquired gain. This law also provides for the right of third parties to seek compensation for damage, in a special proceeding, regardless of the rehabilitation itself.

Legal rehabilitation is envisaged in the following cases: 1) when a conviction for a judicial reprimand or release from punishment is erased, provided that the person does not commit an offense within a year from issuing the final court decision; 2) a suspended sentence is erased within one year from the expiry of the probation period if no new criminal offense has been committed during that time; 3) a sentence to a fine is erased after the expiry of the period of three years from the date of the served, outdated or pardoned sentence, provided no new criminal offense has been committed; and 4) a sentence of up to one year of imprisonment and a juvenile imprisonment sentence is erased within five years from the date the sentence was served, outdated or abolished, unless a new criminal offense has been committed during that time.

Judicial and legal rehabilitation are not allowed during the application of security measures. In addition, the same law explicitly provides as follows: if, during the erasure period, the person who rehabilitation refers to is sentenced to a term of imprisonment exceeding three years, the erasure will not be allowed, either of the former or of the subsequent conviction. In case of multiple convictions, all convictions may only be erased simultaneously, provided that the requirements for erasing each individual conviction have been met.

3. Rehabilitation in the Legislation of the Republic of Serbia

The Criminal Code of the Republic of Serbia[5] defines the general concept of rehabilitation. Article 97 of this Code allows for the erasure of conviction from criminal records and ceasure of all legal consequences, so that there is a fiction that the convicted person is regarded as an unconvicted one. The meaning of this norm is reflected in the need to allow the convicted person a full resocialization after serving the sentence. By analyzing this norm, it can be concluded that this Code enables the so-called full rehabilitation.

Serbian criminal law recognizes two types of rehabilitation. These are: a) legal rehabilitation, which occurs by virtue of law; and b) judicial rehabilitation, which is ordered by the competent court. The Serbian legislator also envisaged that rehabilitation does not affect the rights of third parties, if their rights derive from the conviction.

3.1. Legal rehabilitation

Under Article 98 of the Serbian Criminal Code, "legal rehabilitation may be granted only to persons who, prior to conviction in respect of relevant rehabilitation, had no prior

[5] Criminal Code of the Republic of Serbia, *Official Gazette of the Republic of Serbia* no. 88/2005, 107/2005, 72/2009, 111/2009, 121/2009, 121/2012, 104/2013, 108/2914, 94/2016 and 35/2019.

convictions, or are by law considered to be without prior convictions". Legal rehabilitation is granted in the following circumstances: a) if the person who has been convicted but released from punishment, or the person who has been issued a judicial admonition, does not commit another criminal offense within a period of one year after the judgment becomes final; b) if the person who has been issued a suspended sentence does not commit another criminal offense during the probation period and within one year after the end of the probation period; c) if the person who has been sentenced to a fine, community service, revocation of a driving license, or imprisonment not exceeding six months does not commit another criminal offense within the period of three years after the date when the sentence was abolished or outdated under the statute of limitations; d) if the person who has been sentenced to imprisonment ranging from six months up to one year does not commit another criminal offense within a period of five years from the date when the sentence was served, outdated or abolished; and e) if the person who has been sentenced to a term of imprisonment ranging from one up to three years does not commit another criminal offence within a period of ten years after the sentence was served, abolished or outdated under the statute of limitations (Article 98 para. 2 CC). However, Article 98 para.3 CC envisages that "legal rehabilitation shall not ensue if the secondary penalty has not been enforced or if security measures are still in force".

3.2. Judicial rehabilitation

Under Article 99 of the Serbian Criminal Code, judicial rehabilitation can be granted to a convicted person who files a request with the competent court if the following requirement have been met: a) the person was sentenced to a term of imprisonment ranging from three to five years, provided that the person does not commit another criminal offence within a period of ten years from the date the sentence was served, outdated or abolished; b) the convicted person deserved rehabilitation due to his good conduct; and c) the convicted person compensated the damage caused by the committed criminal offense, according to his financial capacity. Judicial rehabilitation may not be granted if the secondary punishment has not been served or if security measures are still in place (Article 99 para. 3 CC).

Upon making decision on the request, the court considers other circumstances that might be of importance for granting rehabilitation, such as the gravity and the legal consequences of the committed offense. Given the fact that the court decides on the merits of each case, the court has a discretionary right to decide on the specific circumstances in each case.

If the person has had multiple convictions, judicial rehabilitation can be granted only if the statutory time limit has elapsed in respect of each criminal offense that the person has been convicted for (Article 100 CC), and if during that time the convicted person has not committed another criminal offense time until the day the rehabilitation decision was rendered.

In case the sentence is accompanied by the prohibition, loss or termination of certain rights, after the expiry of the period of three years from the date when the sentence was served, abolished or outdated, the court may decide that the legal consequences of the conviction have ceased to exist and terminate the ban on acquiring particular rights if they have not ceased as a result of rehabilitation. In this case, the court takes into account whether the damage caused by a criminal offense has been compensated and/or whether the material gain acquired by the commission of a criminal offense has been returned (Article 101 CC).

4. Rehabilitation of Political Prisoners by Lex Specialis

4.1. The Rehabilitation Act of 2006

The first *lex specialis* on rehabilitation in the Republic of Serbia was passed half a century after the dissolution of the Informbiro in 1956 and the abolition of the political prisoners' camp on Goli Otok. On 17 April 2006, the National Assembly of the Republic of Serbia adopted the Rehabilitation Act[6], which regulates the rehabilitation of persons who were deprived of life, liberty or other rights for political or ideological reasons, with or without a court or administrative decision, starting from 6 April 1941 until 25 April 2006, when this law entered into force. This law has a narrow scope, including only nine articles.

First, Article 2 of this Act stipulates that any natural or legal person has the right to submit a request for rehabilitation, which is not time-barred. Authorized persons may submit a request for rehabilitation to the competent district court (today's higher court), including personal data and evidence justifying the request. The request is made according to the place of residence or the place where the crime has been committed or prosecuted. If such a request cannot be filed by an authorized person, the Act allows the opportunity to provide the court with a description of the committed violence and/or the reasons for prosecution with information that can serve for closer identification of the victim and the event.

Article 4 of this Act stipulates that the court, before deciding on the request, should obtain all the needed documents and data from the competent state authorities and organizations, which are obliged to deliver them at the request of the court within 60 days. On this basis, in a public procedure, a panel of three judges approves or rejects the requests for rehabilitation. Although, the contribution of this law is considerable in terms of promoting the democratic awareness of the society and strengthening the responsibility of the state towards its citizens, it did not fully consider all aspects of this problem and, above all, the right of rehabilitated persons and their heirs to seek compensation.

4.2. The Rehabilitation Act of 2011

In view of overcoming the imperfections of the 2006 Rehabilitation Act, the National Assembly of the Republic of Serbia adopted a new Rehabilitation Act on 7 December 2011[7], which is still in force. This Act regulates in more detail the subject matter of rehabilitation as well as the right of the rehabilitated persons and their heirs to compensation for damage. The enactment of this law is closely related to the previously adopted Act on Restitution of Confiscated Property and Remuneration[8] since the final and effective decision on rehabilitation of the convicted person is required for restitution of property.

The 2011 Rehabilitation Act regulates rehabilitation and legal consequences of the persons who have been deprived of life, liberty and other rights for political, religious, national and ideological reasons, without a court or administrative decision. The Act applies to the territory of the Republic of Serbia, as well as outside its territory, provided that the persons have residence and citizenship of the Republic of Serbia and that they have been deprived of these rights without a court or administrative decision of military or other Yugoslav authorities. (Article 1 para.1 RA) The right to rehabilitation is also granted to

[6] Rehabilitation Act, *Official Gazette of the Republic of Serbia* no. 33/2006.
[7] Rehabilitation Act, *Official Gazette of the Republic of Serbia* no. 92/2011
[8] Act on Restitution of Confiscated Property and Remuneration, *Official Gazette of the Republic of Serbia,* no. 72/2011.

persons who have been imposed a punishment by a court or an administrative decision which is contrary to the norms of the legal state and the generally recognized standards on human rights and freedoms (Article 1 para.2 RA). The Act stipulates that the rehabilitation procedure is actually the procedure of establishing the nullity or invalidity of the acts and actions by which the citizens have been deprived of life, liberty and other rights for political, religious, national or ideological reasons until the day of its entry into force (Article 1 para.1 RA).

The Act provides for two types of rehabilitation: a) legal rehabilitation; and b) judicial rehabilitation. The difference between them is that, in the case of legal rehabilitation, the court makes a decision declaring that the person has been rehabilitated by force of law whereas, in the case of judicial rehabilitation, the court brings a decision to rehabilitate a person. A special rehabilitation proceeding is envisaged for each type of rehabilitation. What is common to all rehabilitation proceedings is the court authority to obtain evidence on its own initiative and to conduct its own investigation on the matter at issue (Article 5 para.3 RA).

Legal rehabilitation (under the force of law) is envisaged for persons who have been deprived of liberty on the basis of a court or administrative decision, under the charges of having pleaded for the Cominform Resolution of 28 June 1948[9], and the persons who have been held in political prisoners' camps or prisons on the territory of the Federal People's Republic of Yugoslavia in the period from 1949 to 1955 (Article 5 para.3 RA).

Under the 2011 Rehabilitation Act, the rehabilitation procedure is initiated by submitting a request for rehabilitation, which can be submitted by: a) the convicted person; and b) his legal heirs (spouse, children, brothers, sisters, testamentary beneficiaries), which is an important novelty in comparison to the 2006 Rehabilitation Act. In the case of particularly grave violations of the rule of law and the generally accepted standards of human rights protection, the rehabilitation procedure may also be initiated by a public prosecutor (Article 7 RA).

The procedure of legal rehabilitation on the basis of the Informbiro Resolution is conducted before a higher court in the territory of the claimant's place of residence or the place where the convicted person's rights were violated. The decision is taken by a single judge. Given the subject matter of this legal rehabilitation (the Informbiro Resolution), it should be noted that the court proceedings involve a single party (claimant); they are conducted under the rules of non-contentious proceedings, which entail an obligation of the court to obtain a prior opinion of the competent public prosecutor from the Higher Public Prosecution Office. If the public prosecutor does not contest the submitted request and the allegations contained in it, the process is completed as a single-party proceeding. However, if the prosecutor does contest the request, then the proceedings involve two parties, whereby the second party (respondent) is the Republic of Serbia, represented by the public prosecutor from the Higher Public Prosecution_Office. In this case, the procedure is the same as the procedure for judicial rehabilitation (Article 14 RA).

In these proceedings, the court establishes the facts independently. Article 13 of this Act regulates the duty of the competent state authorities and organizations to submit the data and evidence at their disposal to the court within 60 days. This Act also established new obligations of the archives, primarily the Archives of Serbia, which started obtaining access to the archival material from the Security and Information Agency (SIA) in 2004.

[9] For more on this issues, see: Modern History Sourcebook: *Cominform* Communiqué: *Resolution* of the Information Bureau Concerning the Communist Party of Yugoslavia, *28 June 1948, available at* https://sourcebooks.fordham.edu/mod/1948cominform-yugo1.asp (accessed 12.12.2019)

The steering committee of the Archives of Serbia issued a Rulebook on the conditions and manner on using this material in 2008 (Nenadić, 2009:5).

Pursuant to Article 4 (para. 2) of the 2006 Rehabilitation Act, the Archives of Serbia are required to deliver the requested data or documents to the district courts of the Republic of Serbia within 60 days from the receipt of the request. In addition to the district courts, applicants for rehabilitation are also obliged to provide evidence that their request is justified, which means that the Archives perform all the necessary research within the same time frame, upon the citizens' requests, with one significant difference. Namely, the Archives provide copies of the archival material belonging to the Security and Information Agency (SIA) only to the district courts, while citizens can only obtain information on whether a file is currently in the Archives of Serbia, but they still cannot access these files, nor obtain their copies (Nenadić, 2009:5).

The reason for this limitation in terms of use and access to the needed archival material, lies in the fact that there is no legislative act that regulates the procedure and the manner of using such archival materials and handling files, which would determine the circle of persons that could get an insight into a file or get a copy of it. Besides, as the material from SIA archives has still not been completely retrieved, or archived, it cannot be put to use (Nenadić, 2009: 5). In the first three years of implementation of the 2006 Restitution Act, the Archives of Serbia responded to 1,100 requests. The number of requests was significantly increased after the entry into force of the 2011 Rehabilitation Act, which provides the right to rehabilitation compensation under Article 26. In the period from 2009 to 2017, the Archives of Serbia received 16,958 requests. The reception of the material from SIA archives continued. As recorded by Petrović, "around 1,000 SIA collections have been received so far, which is close to 380,000 pages of text and 80,000 personal files (criminal records) classified into 36 categories (war criminals, Chetniks, Ustashas, members of Ljotić and Nedić nationalist groups, Informbiro supporters, and other class and ideological enemies). The volume of these personal files varies from one to several dozens, hundreds or thousands of pages; the most extensive one has 11,425 pages" (Petrović, 2017:18).

However, the largest share of the increased workload is related to the requests submitted by higher courts, especially when a single letter of request covers research on a larger number of persons. For instance, in a single letter, the Higher Court in Sombor asked for available documentation on 212 persons. Petrovic notes that research activities are complex: "In order to provide data on a single person, it is sometimes necessary sometimes to check 20, 30 or 40 personal files which are kept under the same name and surname. Once the file is ascertained to pertain to the particular person, the relevant documentation is selected and copied; anonymity of personal data of third parties is ensured by darkening the text containing data on such persons; then, the document is copied again and such a copy is sent to the competent higher courts. If the document is illegible, but of utmost importance for the procedure of rehabilitation, its transcript is made upon a request of the court "(Petrović, 2017: 18)

Judicial practice has substantiated the provisions of the Rehabilitation Act; thus, there has been no difficulty in the process of rehabilitation of people convicted on the grounds of the Informbiro Resolution. Article 17 of this Act specifies that the decision by which the court approves the request for legal and judicial rehabilitation has to establish that the prior decision made against the rehabilited person is null and void since its adoption, and that its legal consequences are null and void.

This Act also regulates the procedure for exercising the right to rehabilitation compensation. Articles 26 and 27 of this Act envisage the type of damage as well as the circle of persons who can be compensated. Thus, the rehabilitated person is entitled to

compensation of pecuniary or non-pecuniary damage, as well as to the reimbursement of paid fines and costs of the proceedings in revaluated amounts (by calculating the current value of formerly paid amounts). Article 21 of this Act specifies that the right to rehabilitation compensation is granted to a spouse, children, parents, brothers, sisters and extramarital partners of the rehabilitated person, provided that a more permanent community of life existed between them and the deceased rehabilitated person, in line with the law regulating obligation relations. Article 23 of this Act provides for the right to a special monthly allowance to the rehabilitated person in the amount of 50% of the average monthly pay in the Republic of Serbia for the previous year. The said allowance is calculated and paid by the Republic Pension and Disability Insurance Fund.

CONCLUSION

The first part of the paper provides an overview of the historical development of the institute of rehabilitation in the legislation of the Kingdom of Serbs, Croats and Slovenes and in a number of post-war criminal codes in Yugoslavia. The second part presents the legal provisions on rehabilitation envisaged in the current Serbian criminal legislation. Taking all these provisions into account, it can be noticed that, in order to erase the conviction, it has always been necessary to fulfill several formal and substantive requirements prescribed by the law. In addition to meeting the specified time limit for erasure after the sentence has been served or abolished, it has always been necessary to consider the conduct of the convicted person in the course of serving the sentenced, as well as his willingness to compensate the damage caused by the committed criminal offense. Modern legislations have largely retained such a conception of the concept, characteristics, effects and conditions for granting rehabilitation.

Upon reviewing the legislation from 1929 until the present day, there is a notable fact that the rights of third parties have never been restricted by the application of rehabilitation; hence, third parties have always been able to exercise their rights stemming from the conviction in a separate procedure. The legislator has managed to find a compromise: on the one hand, the convicted person is held responsible for a committed criminal offense and, on the other hand, the person is given a chance to integrate into the society.

The integration of the convicted person itself is of crucial importance for each society, including the Republic of Serbia. In the long run, resocialization should play an important role in decreasing the crime rate and recidivism. However, the issue of resocialization in Serbian society is still largely uncertain. One of the reasons for this situation lies in the stigmatization of convicted offenders by society which, in addition to the imposed sentence, is an additional punishment for the convicted person.

In the Republic of Serbia, the institute of rehabilitation is prescribed in two legislative acts: 1) the Criminal Code, which differentiates between legal rehabilitation and judicial rehabilitation; and 2) special legislative act on rehabilitation enacted in 2011.

In terms of the Criminal Code provisions, rehabilitation requires the fulfillment of certain conditions pertaining to the prior conviction of the criminal offender, the specific period of time after the sentence was served, abolished or outdated during which the convicted person did not commit another criminal offense, good conduct of the convicted offender and his willingness to compensate for the damage caused by the committed offence. These conditions are prescribed by the Criminal Code, but the competent courts determine whether the requirements have been met and decide on the appropriacy of granting rehabilitation.

REFERENCES

Babić, M., Marković, I. (2015). *Krivično pravo,-Opšti deo* (Criminal Law- General Part), Pravni fakultet, Banja Luka

Čubinski, M. (1934). *Naučni i praktični komentar Krivičnog zakonika Kraljevine Jugoslavije* (Commenary on the Criminal Code of the Kindgdom of Yugoslavia-theoretical and practical aspects), Beograd, 1934.

Jakovljević, D. (1981). *Rehabilitacija u krivičnom pravu* (Rehabilitation in Criminal Law), Beograd, Servis Saveza udruženja pravnika Jugoslavije.

Nenadić, M. (2017). Primena Zakona o rehabilitaciji u Arhivu Srbije (Application of the Rehabilitation Act in the Archives of Serbia), *Arhivski glasnik br*. 6/2017, str.5

Petrović, B. (1929). Novi krivični zakonik za kraljevinu Jugoslaviju i ideje trodeobnog (tripartitnog) sistema u nauci krivičnog prava (The new Criminal Code of the Kingdom of Yugoslavia and ideas of the tripartite system in criminal law theory), *Branič*, br. 1-6./1929, str. 114-118

Petrović, V. (2017). Značaj arhivske građe BIA-e u procesu rehabilitacije i restitucije (Significance of the SIA Archives in the process of rehabilitation and restitution), *Arhivski glasnik* broj 12/2017, str. 19-20.

LEGAL DOCUMENTS

Krivični zakonik Srba, Hrvata i Slovenaca, Službene novine Kraljevine Srba, Hrvata i Slovenaca (Criminal Code of the Kingdom of Serbs, Croats and Slovenes, 1929), *Službene novine* Kraljevine SHS br. 33/1929

Krivični zakonik Federativne Narodne Republike Jugoslavije - opšti deo (Criminal Code of the Federal People's Republic of Yugoslavia–General Part, 1947), *Službeni list FNRJ* br. 106/1947

Krivični zakonik Federativne Narodne Republike Jugoslavije (Criminal Code of the Federal People's Republic of Yugoslavia, 1951), *Službeni list FNRJ* br. 13/1951

Krivični zakonik Socijalističke Federativne Republike Jugoslavije (Criminal Code of the Socialist Federal Republic of Yugoslavia, 1976), *Službeni list SFRJ* br. 44/1976

Krivično zakonik Republike Srbije (Criminal Code of the Republic of Serbia), *Službeni glasnik Republike Srbije* br. 88/2005, 107/2005, 72/2009, 111/2009, 121/2009, 121/2012, 104/2013, 108/2914, 94/2016 and 35/2019.

Zakon o rehabilitaciji (Rehabilitation Act), *Službeni glasnik Republike Srbije* br. 33/2006 (2006)

Zakon o rehabilitaciji (Rehabilitation Act), *Službeni glasnik Republike Srbije* br. 92/2011 (2011)

Zakon o vraćanju oduzete imovine i obeštećenju (Act on Restitution of Confiscated Property and Remuneration), *Službeni glasnik Republike Srbije* br. 72/2011

INSTITUT REHABILITACIJE KROZ PRAVNE SPOMENIKE DOMAĆEG PRAVA 1929-2011. GODINE

Ove godine navršava se devet decenija od donošenja Krivičnog zakonika za Kraljevinu Srva, Hrvata i Slovenaca koji je stupio na snagu 29. januara 1929. godine. Sem ujednačavanja krivičnih zakona na celoj teritoriji kraljevine, na kojoj je pre toga važilo nekoliko različitih kaznenih zakona, novi Zakonik propisao je institut rehabilitacije koju nisu poznavali stari kazneni zakoni. Novi pravni poredak, ustanovljen posle Drugog svetskog rata u novoformiranoj državi iznedrio je nove krivične zakonike uskađene sa vremenom i vrednostima koje država štiti- Krivični zakonik FNRJ iz 1947, Krivični zakonik FNRJ iz 1951, Krivični zakonik SFRJ iz 1976. godine. Svi oni sadržali su odredbe o rehabilitaciji. U novije vreme ovaj institut sadržan je u važećem krivičnom zakoniku Republike Srbije i posebnim zakonima o rehabilitaciji političnih osuđenika iz 2006. i 2011. godine. Ovaj rad ima za cilj da kroz istorijsku prizmu sagleda normativno uređenje rehabilitacije u našem pravnom sistemu.

Ključne reči: *rehabilitacija, krivični zakoni, resocijalizacija*

Translated by: Danica Milošević

Proofreading/copyediting: Gordana Ignjatović

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 235-243
https://doi.org/10.22190/FULP1903235S

Review Paper

CRIMINOLOGICAL ASPECTS OF WAR

UDC 343.9.01
355.01:27

Marija Stojanović*

Faculty of Law, University of Niš, Serbia

Abstract. *The paper deals with criminological analysis of war as a negative social phenomenon, from the earliest communities up to the New Age, by using historical and comparative methods. Being an armed conflict between people and groups, war is an act of force and coercion aimed at imposing one's will on the enemy. The paper aims to describe the evolution of warfares through three major historical epochs: the Old Age, the Middle Ages, and the New Age. The author analyzes each major historical period in terms of the prevailing causes, motives, justifications and consequences of war in the specific period. The author points out that the use of force in warfare progressively expanded in every subsequent historical epoch, particularly as a result of the development of destructive tools and technologies. Although international customary law imposes limitations on the use of force in warfare, it does not necessarily reduce the scope and the impact of its application.*

Key words: *war, battle, army, religion, Church*

INTRODUCTION

War, as a negative social phenomenon, dates back to the earliest human communities. Being an armed conflict between people and groups, war is an act of force and coercion aimed at imposing one's will on the enemy. Even in the earliest communities, war was seen as a necessary social phenomenon for achieving a wide range of political and social goals. Various deity cults in polytheistic religions testify about the significance of war for those societies. One widely accepted interpretation is that warfare occurred at the time of transition from the wandering hunter-gatherer lifestyle to the new rural-agricultural lifestyle that certain groups opted for. Violence was a common feature of the medieval world, frequently combined with the traditional slaughter in battle. The history of Europe and of the World in general is largely a history of religious wars. The church accepted

Received November 16th, 2019 / Accepted December 4th, 2019
Corresponding author: Marija Stojanović, Faculty of Law, University of Niš, Trg Kralja Aleksandra 11, 18000 Niš, Serbia; E-mail: msmarija@hotmail.com
* PhD Student

and blessed the warrior class from the very beginning. In the New Age, endemic warfare generated a proliferation of diseases and epidemics (typhoid, malaria, black plague, variola vera, scurvy, dysentery, etc.), which progressively reduced people's resistance to diseases and caused death among soldiers and civilians alike, both in war zones and beyond. War is a very common phenomenon in the Modern Age. With the development of technology and its misuse, we bear witness to the devastating power of weapons used in warfare and the horrible consequences of using them. International customary law imposes limitations on the use of force in warfare but it does not necessarily reduce the scope and the impact of its application (Von Clausewitz, 1951: 41).

There are numerous conceptual definitions of war. It is generally perceived as an armed conflict between opposed political groups involved in "hostilities of considerable duration and magnitude"; in military theory, it primarily entails hostilities among groups of more or less equal power; in social sciences, it has additional socio-political, economic, anthropological and other features.[1]

WAR IN THE MYTHOLOGY OF POLITEHISTIC RELIGIONS

Even in the earliest communities, war was seen as a necessary social phenomenon for accomplishing a wide range of political and social goals. In polytheistic religions, members of various cults worshiped and offered sacrifices to different deities in order to indulge their idol and pray for victory in battle; these practices testify about the significance of war in the archaic human societies.

Ares was the god of war in the polytheistic religion of the ancient Greeks. He was not very popular among the followers of the Greek Pantheon, or among other gods, because he was associated with the most brutal aspects of war and bloodshed. Although the cult of Ares lacked the theological, moral, and social lessons peculiar for all the great deities, it gave birth to many local customs; for example, in Sparta, prisoners of war were sacrificed to Ares.[2]

Odin or Watan was the god of war and the supreme deity of the Scandinavians. He ruled in Valhalla, the mythical sacred place for warriors killed in combat, while men who did not die in battle ended up in the underworld. He was always portrayed sitting on a white horse, with a spear a sword in his hands, and surrounded by Valkyras, warlike maidens chosen to escort warriors to Valhalla (Udaljcov, Kosminski, Weinstein, 1950: 99).

In ancient Rome, Mars was the counterpart to the Greek good Ares but, unlike Ares, was highly revered and worshiped. Festivals that were completely or partly dedicated to him took place during the month of March (which was named after him). Until the reign of Augustus[3], only two temples in Rome were dedicated to Mars but, during his reign, the worship of this cult gained a new momentum. He was not only a traditional guardian of the Roman military affairs but also *Mars Ultor* (Mars the Avenger); given his role of the avenger, he became the personal guardian of Emperor Julius Caesar[4] and the protector of Rome.[5]

---

[1] See: Encyclopædia Britanica, https://www.britannica.com/topic/war, accessed 25.02.2019.
[2] See: Encyclopædia Britanica, https://www.britannica.com/topic/Ares-Greek-mythology (27.02.2019).
[3] Octavian Augustus (Lat. *Gaius Julius Caesar Octavianus Augustus*-Rome, 23/09/63 63 BC-Nola, 19/08/14 AD) was the founder of the Roman Empire and the first Roman emperor who ruled from 27 BC to his death in 14AD.
[4] Gaius Julius Caesar (Lat. *Gaius Iulius Caesar*-Rome, July 13, 100 BC-Rome, March 15, 44 BC), was a Roman leader, politician and ruler.
[5] See: ENCYCLOPÆDIA BRITANICA, https://www.britannica.com/topic/Mars-Roman-god (27.02.2019).

Huitzilopochtli was the Aztec god of war. In order to please him, the Aztecs offered prisoners of war as human sacrifices ("by opening the victim's chests and ripping out their still beating hearts"), which were *inter alia* made to ensure success in battles.[6]

Gods were a sublimated collective expression of every community and epoch. In that context, Dragojlović poses a question: "Has war, as a way of solving problems among groups of people and communities in the distant period of creating Israel and other human communities, been introduced by the god of each of these communities, or has the life of the people on earth encouraged violence and war as part of their everyday lifestyle? God has no other moral principles than those given to him by men themselves" (Dragojlović, 1994: 32).

WARS IN THE OLD AGE

The history of warfares dates back to the Stone Age. Although the origin of warfare is largely "shrouded in mystery", relevant literature does provide some insight into the early developments in the field of warfare.

In the Old Stone Age (Paleolithic period), nomadic groups used spears and flint arrows for hunting; in the Neolithic period, hunters were armed with slingshots, bows and arrows, and daggers, which were most likely used in individual or group conflicts. However, it seems that organized aggression was not "biologically programmed" in human beings of the Stone Age, and that people engaged in wars for very specific reasons. One widely accepted interpretation is that warfare occurred at the time of the transition from the wandering hunter-gatherer lifestyle to the new rural-agricultural lifestyle that particular groups opted for. The reason for the outbreak of war at that time was the accumulation of supplies, i.e. the surplus of food and other goods in rural settlements, which wandering hunter-gatherer gangs considered worth stealing. An alternative argument proposed in relevant literature is that organized warfare began much later, in very specific circumstances, when the dispossession of territory began due to population growth. For example, the Neolithic farmers who settled in the territory of the present-day Europe (about four or five thousand years ago) occasionally clashed with wandering Mesolithic groups and dug defensive trenches around their settlements to prevent gang raids (Archer, Ferris, Herving, Travers, 2006: 11-12).

The backbone of the political and economic expansion of ancient Greece was the specific state structure: the city-state (*polis)*. The most well-known among the city-states were Athens in central Greece and Sparta in the Peloponnese, which gradually came to the fore of political life and whose history reflected the entire Greek history (Rostovtsev, 1974: 56, 57).

Sparta held a special position among these city-states. It was essentially a military state, with very rigid social organization which was designed so that every individual was subordinate to the state. All adult *Spartiates*[7] were soldiers, subjected to very rigorous training from early age. The entire ruling class constituted a standing army, ready for battle at any time (Rostovtsev, 1974: 58, 60). "Spartiates were trained since the early childhood to live for the state. If declared to be healthy by a special committee of elders, boys born into a

[6] See: Ancient Facts, https://www.ancientfacts.net/gods-war-7-deities-propagated-violent-bloodthirsty-rituals/2/, (05.04.2019).

[7] *Spartiates* were Spartan citizens who enjoyed full rights and ruled over the larger population.

Spatriate family would immediately fall under public custody. Deformed or frail infants, both boys and girls, were exposed in a public place, and they would die there unless some compassionate helot[8] took them. By the age of seven, they were nurtured by mothers and special state nannies. As they turned seven, they abandoned their families and joined military units, under the command of some *Spartiate*. There, they were taught to march, do physical exercises, use weapons, and engage in reading and music. They ate simple self-prepared food and slept on reeds, which they would collect along the coast of Eurota" (Rostovtsev, 1974: 61).

The Ancient Rome is also renowned for its long-standing military campaigns, conquests and warfares in Europe and beyond. Their fierce opponents were different Germanic tribes which frequently raided the Gaul territories occupied by Julius Caesar (Udaljcov, Kosminski, Weinstein, 1950: 27). This period was also marked by the onslaught of the Huns, the nomadic people from Central Asia whose aggressive raids and physical appearance caused fear among the Europeans. They were described as "deformed, extremely ugly creatures, not much like human beings". They were horsemen, who lived in tribal groups and spent all their lives on horseback. They used very peculiar attack strategy: first, riding-archers would attack by firing arrows to disorganize the opponents, and then the infantry would give the final blow by using swords (Archer, Ferris, Herving, Travers, 2006: 203).

WARS IN THE MIDDLE AGES

The slaughter in battle continued in the Middle Ages. On the battlefield, it was a common practice to kill a deadly wounded soldier, who was not rich enough to pay ransom. After the battle, a large number of soldiers were simply left on the battlefield to be scavenged by vultures or robbed by villagers (Archer, Ferris, Herving, Travers, 2006: 172).

At the end of the 8th century, there was an expansion of the Scandinavians. The first Vikings (Danes and Norwegians) raided England and Ireland, the Frankish countries of Western Europe, the Mediterranean and Byzantine territories, and some areas of the present-day Ukraine and Russia. The "Northerners" sailed in search for new territories in order to settle, conquest, plunder and exchange goods (Archer, Ferris, Herving, Travers, 2006: 159). In order to facilitate their conquest and achieve their goals without a fight, they spread horrifying stories about their ruthlessness in order to intimidate their opponents, which were sometimes quite effective. For example, they forced the English to pay *danegeld* (tribute to the Danes) in silverware. The cruel story of "eagle sacrifice" was associated with the Vikings, although there is no direct evidence that it had been performed. It was an extremely cruel manner of killing, where the victim's chest was cut open "and both lungs were pulled outward, to the left and to the right, to resemble eagle wings". However, the Vikings favoured such reputation because their fleets "were actually small, sometimes less than two thousand soldiers" (Archer, Ferris, Herving, Travers, 2006: 163).

In the Middle Ages, the most common cause or justification for war was religion. Religious intolerance was at its peak in the Middle Ages, and wars were often fought both within one state and between states, with the aim of destroying non-believers, infidels, and members of a particular religion which was considered heretical. Apart from numerous conflicts within the same religion (e.g. within Christianity, between the Protestants and the

[8] *Helots* were state slaves in Sparta.

Catholics, the Catholic and the Orthodox Church) (Dragojlovic, 1994: 33), the fiercest war of that kind was fought between Christians and Muslims.

The First Crusade was called by Pope Urban II at the Council of Clermont in the 1095, in order to liberate Jerusalem from the Muslim infidels. However, apart from the religious zeal, the motives for waging this "holy" war were far more lucrative ambitions and appetites for new territories, money, trade, but also escape from poverty, famine and plague that stormed Europe at that time (Archer, Ferris, Herving, Travers, 2006: 194). The siege of heavily fortified Jerusalem began in 1099, under the leadership of Godfrey of Bouillon. Jerusalem was conquered on the 13/14 July 1099. The conquest was followed by the desecration of Al-Aqsa mosque and the massacre of Muslim men, women and children. The Jews also suffered a terrible fate; as the Christians believed that the Jews were trying to save Muslims from persecution, they were locked in the largest synagogue and burnt alive (Archer, Ferris, Herving, Travers, 2006: 199).

THE CHURCH IN THE MIDDLE AGES

The church played a significant role in medieval warfare. The church supported the soldier class, which defended Christians against the assault of non-Christians. The clergy often directly participated in the war, but they were forbidden to kill. They also received possessions from the rulers for their participation in the war. In the war against non-Christians, nothing was forbidden, and the knights easily received forgiveness for their sins, due to the fact that they participated in such a "holy" war (Howard, 1999: 189).

Although the Church did not approve of the wars between Christians themselves, such wars did occur. But still, there were opinions among Christian theologians that "some wars were just; generally speaking, they were fought for a just cause, respecting the law of the stronger" (Howard, 1999: 19). Howard further notes that "Struggles of this kind were understood as appealing to the judgment of God, and almost throughout the Middle Ages every honorable man had the right to fight for what he considered righteous". Over time, a distinction was made between "a private war" (*guerre couverte* fought on individual level) and "a public war" (led by the ruling nobility). It was considered that the private war had to be managed in such a way as not to cause substantial damage to the community; thus, "a man can kill his opponent in a fight, but not to burn or damage his property". On the other hand, restrictions in the public war were minor; so, it was allowed to enslave people, often with the aim of demanding ransom, to take the adversaries' property, to impose taxes, etc. In general, the clergy and their property were protected from war crime (Howard, 1999: 19, 20).

WARS IN THE EAST

Unlike the warfare strategies and techniques in Europe, which included the use of cavalry, infantry (archers), and siege as needed, the eastern-style warfare practiced by the Mongols, the Chinese and the Japanese was quite different. The most striking difference was the use of "light cavalry armed with composite arches", especially in Central Asia. This eastern-style tactic was extensively used by the Mongols, who thus created "the most expansive land empire in human history" (Archer, Ferris, Herving, Travers, 2006: 199).

Temujin, later Genghis Khan, was the first Mongolian emperor to succeed in unifying the Mongol tribes and leading them to a great conquest. He believed that God determined that the fate of the Mongols was to conquer all the countries of the world. The empire he created, at the time of his death in 1227, occupied the territory from the Caspian Sea as far as the Pacific, including northern China (Archer, Ferris, Herving, Travers, 2006: 204). The Monogols' war strategy is described as follows: "In the battle, the Mongol army performed by letting the light cavalry enter the battlefield first, as its first strike, with its center and its two wings. Behind it, two rows of heavy cavalry, and behind them, three rows of light cavalry again. The first blow is to rivet the enemy to one place, to make them hold. Then, through the rows of heavy cavalry, the light cavalry shoots the arrows from behind, in an effort to break the enemy's front. If it does, the light cavalry rushes to the left and right, and then a huge drum, carried on a camel, is heared; at that sign, the heavy cavalry rushes and overtakes the enemy. If this fails, another tactic, called *tulug*, is applied, which means lateral attack - all light cavalry rushes to attack from the side, on only one wing" (Archer, Ferris, Herving, Travers, 2006: 209). Another commonly used war tactic was "*mangudai"*, which entailed a "false escape of a large group of horsemen", aimed at making the enemy go after them, but during the chase they were actually ambushed and trapped between two groups of shooters, and finally finished off by heavy cavalry (Archer, Ferris, Herving, Travers, 2006: 209).

The other great empire in the east was China. The Mongol rule in China ended between 1350-1360 AD. The leader of the rebellion was Chu Yuangchang, a former monk who founded the Ming Dynasty in Beijing in 1368 and became emperor Hung-vu. During his reign, he introduced strict military discipline. Thus, he ordered "the tongues to be cut off to all those officers who allowed their sons to spend time singing, instead of riding on horseback and training with bow and arrow. Those who played chess had their hands cut, and who played football had their feet cut off" (Archer, Ferris, Herving, Travers, 2006: 230). After the rebellion against the Ming Dynasty, the Manchu people (forest nomadic people from Manchuria) occupied the northern part of China in 1644, but in a couple of years they managed to occupy the rest of China. Like the Mongols, the Manchus used intimidation to make the enemy surrender without resistance. In 1645, during the siege of the city of Yang-chu, after they had destroyed the walls with cannons, they entered the city and carried out a massacre (Archer, Ferris, Herving, Travers, 2006: 235, 236).

Given that Japan was an isolated country, military skills and tactics developed in internal conditions, within the framework of Japanese traditions, until the moment when the Portuguese brought firearms around 1540 (Archer, Ferris, Herving, Travers, 2006: 240). In Japan, the *samurai*[9] were the counterpart of knights in Europe. The *samurai* had to abide by a host of formal rules of war, including the rules on one-to-one combat, pre-battle formalities (a samurai had to present himself to the enemy, to challenge another to a duel), the rules of honorable conduct in battle and, ultimately, to cut off the opponent's head after defeating him (as part of the warriors' code of honour). The *samurai* code of conduct and fighting was called the Bushido-the Warrior Way. Yet, the most famous Japanese tradition is certainly *hara-kiri*, a ritual suicide committed by the *samurai* who lost a battle; as he could not continue to fight and provide military services, the warrior code obliged him to save face by ending his life in an honorable way by stabbing himself in the stomach (Archer, Ferris, Herving, Travers, 2006: 241, 242).

[9] The word *samurai* comes from the verb *samurau* or *saburau*, which means "to serve", but the concept mostly referred to military service. (Archer, Ferris, Herving, Travers, 2006: 241).

WARS IN THE NEW AGE

In the New Age, Europe was constantly in in turmoil, divided by religious wars (between Catholics and Protestants), various rebellions, uprisings, wars over territories, etc. Constant warfare brought about poverty, famine, and proliferation of diseases (typhoid, malaria, black plague, variola vera, scurvy, dysentery, etc.), which affected not only soldiers on the battlefields but also civilians (Archer, Ferris, Herving, Travers, 2006: 322).

After the Civil War in England (1642-1648), the Commonwealth Republic was formed, under the leadership of Oliver Cromwell, and Scotland and Ireland lost their independence. In Northern Ireland, the Irish Catholics killed Protestants, and Cromwell raised an army against them. As the Catholics refused to surrender, a siege ensued in the area of Lenster, after which the Irish soldiers were massacred by the English army. Similarly, the siege of Wexford and Manster in the south was followed by the massacre of both Irish soldiers and civilians. Cromwell justified such horrors "as the justly judgment of God to the deplorable barbarians, who dipped their hands in much innocent blood only to prevent such bloodshed in the future" (Archer, Ferris, Herving, Travers, 2006: 322, 323).

The eastern parts of Europe were burdened by long-standing conflicts between the Habsburg Empire and the Turks. The largest religious conflict in the 17th century took place in 1683, when Vienna was at stake. The siege of Vienna, led by Grand Vizier Kara Mustafa, ended in favor of Austria as the Ottomans failed to occupy Vienna (Archer, Ferris, Herving, Travers, 2006: 324). "The red tent of the Grand Vizier was destroyed, but he escaped while thousands of his soldiers were slaughtered or captured. The reports state that it took the army and the people of Vienna a week to collect the loot left in the Turkish camp."[10]

The 18th century was the time of absolute monarchism (absolutism), which was marked by ideas of rationalism and enlightenment. In Western Europe, the age of Enlightenment triggered scientific and other interests, leading to reduced religious hatred and war barbarism. However, in the Balkans, bloody battles between Christians and Ottoman Mislims continued. In the European colonies overseas, colonists were also involved in conflicts with the colonized Native Americans (Archer, Ferris, Herving, Travers, 2006: 371).

In central Europe, wars were commonly waged by France, Austria, the German states and Russia, and battles occurred in the strategically important territories of the Netherlands, Flanders, Germany, central Europe and northern Italy. These wars were largely waged for territories which contained a wealth of natural resources or had strategic geopolitical benefits. In line with the stronger force rule, territories were conquered by whoever who had a stronger interest in the specific territory. These territories were often used as negotiating instruments in international peace negotiations. (Archer, Ferris, Herving, Travers, 2006: 377).

CONCLUSION

In his work "the Law of Nations" (1758), Emmerich de Vattel wrote about war: "The right to wage war belongs to nations only as a remedy against injustice. It is the offspring of an unhappy necessity. This remedy is so dreadful in its effects, so destructive to humanity, so severe even to the party resorting to it, that unambiguously the law of nature permits it only to the last extreme-that is, when every other expedient mean proves

[10] See: Encyclopædia Britanica, https://www.britannica.com/event/Siege-of-Vienna-1683, (10.05.2019).

ineffective in maintaining justice".[11] However, we can easily conclude that war is a very common phenomenon even in the Modern Age, and a means for achieving the goals pursued.

Unlike the earlier epochs of human history, wars today are more perfidious because the real reasons for the outbreak of war are hidden under the veil of democracy, which appears to be the reason for waging almost every armed conflict. With the development of technology and its misuse, the devastating power of weapons used in war and the consequences of using them became dire, which speaks in favour of the observation that modern society is far more barbaric than civilized, as we tend to call it. Before World War II, the concept of war crime did not exist. The horrors of war were perceived as an integral part of warfare and a necessary consequence. There was no systematic approach to dealing with war crimes, nor was there international awareness that political and military leaders should be held accountable or criminally liable for the actions of their states or their troops. These attitudes were changed during World War II when the killing of several million people, mostly Jews, by Nazi Germany and the mistreatment of civilians and prisoners of war by the Japanese, prompted the Allied forces to prosecute the perpetrators of these war crimes, genocide, and crimes against humanity.[12]

However, at the international level, there is no systematic approach to prosecuting war crimes, nor does the international community show the necessary willingness to suppress this negative trend. It seems that the economic and other interests of the powerful minority have become by far more important than the interests of the huge majority worldwide, whose lives are not perceived as invaluable but merely as casual statistics on the way to achieving their goals.

REFERENCES

Арчер, К., Ферис, Џ., Херциг, Х., Траверс, Т., (2006), Светска историја ратовања (World History of Warfare), Београд: Alexandria Press, стр. 11,12, 159, 160, 163, 172, 194, 195, 199, 204, 209, 230, 231,235, 236, 240, 241, 242, 322, 323, 324, 371, 377

Драгојловић, Д., Ратничко и божанско (The Warlike and the Devine), У: Ђуровић, Б., (1994), Религија рат-мир, Ниш: ДИГП Просвета, стр. 32, 33, 34

Фон Клаузевиц, К., (1951), О рату (On War), Београд, стр. 41.

Хауард, М., (1999), Рат у европској историји (Howard M., War in European History), Београд: C-print, стр. 19, 20, 189

Ростовцев, М., (1974), Историја старог света (History of the Old World), Суботица: Матица Српска, стр. 56, 57, 58, 60, 61

Удаљцов,А.Д., Косминский, Ј.А., Вајнштајна, О.Л., (1950), Историја средњег века (History of the Middle Ages), Београд: Издавачко предузеће Народне Републике Србије, стр. 27, 99

ONLINE SOURCES

Ancient Facts: Gods of War, https://www.ancientfacts.net/gods-war-7-deities-propagated-violent-bloodthirsty-rituals/, accessed 05.04.2019.

Ancient History Encyclopedia: Roman Warfare, by M. Cartwright (published 22 Oct. 2013), https://www.ancient.eu/Roman_Warfare, accessed 15.10.2019

[11] See: Duhaime's Encyclopedia of Law: War-definition, http://www.duhaime.org/LegalDictionary/W/War.aspx, (accessed 15.11.2019).

[12] See: BBC.com: War crimes; http://www.bbc.co.uk/ethics/war/overview/crimes_1.shtml, (access 15.10.2019).

BBC.com: Ethics guide: War crimes, http://www.bbc.co.uk/ethics/war/overview/crimes_1.shtml, accessed 15.10.2019.
Duhaime's Encyclopedia of Law: War (definition), http://www.duhaime.org/LegalDictionary/W/War.aspx, accessed 15.10.2019.
Encyclopædia Britanica: War, https://www.britannica.com/topic/war, accessed 25.02.2019.
Encyclopædia Britanica: Ares/ God, Myths, Sibilings & Family, https://www.britannica.com/topic/Ares-Greek-mythology, accessed 27.02.2019.
Encyclopædia Britanica, Mars, https://www.britannica.com/topic/Mars-Roman-god, accessed 27.02.2019.
Encyclopædia Britanica: Siege of Vienna/Europe 1683, https://www.britannica.com/event/Siege-of-Vienna-1683, accessed 10.05.2019.

KRIMINOLOŠKI ASPEKT RATA

U radu je izvršena kriminološka analiza rata, kao negativne društvene pojave od najstarijih socijanih zajednica pa do Novog veka, upotrebom istorijskog i uporednog metoda. Cilj rada je da ukaže da rat, kao oružani sukob naroda i grupa, u svakoj narednoj istorijskoj epohi doživljavao sve veću ekspanziju, upravo sa razvojom oruđa, odnosno tehnologije, koji imaju destruktivnu namenu. U radu je opisano ratovanje kroz tri velike istorijske epohe- Stari, Srednji i Novi vek. Izvršena je pojedinačna analiza svakog razdoblja: kako je došlo do rata, motivi i pobude za rat, izgovori i povodi, kao i posledice rata.

Ključne reči: *rat, bitka, vojska, religija, Crkva*

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 245-248
https://doi.org/10.22190/FULP1903245O

Review

REVIEW OF THE INTERNATIONAL SCIENTIFIC CONFERENCE "SERBIA-UNITED STATES RELATIONS" AND THE MONOGRAPH “SERBIA-UNITED STATES RELATIONS"

Darko Obradović

Faculty of Security Studies, University of Belgrade, Serbia

THE INTERNATIONAL SCIENTIFIC CONFERENCE "SERBIA-UNITED STATES RELATIONS” (2019)

On 11 September 2019, the Institute for National and International Security organized and hosted the International Scientific Conference "*Serbia-United States Relations*", which was held on the premises of the National Assembly of the Republic of Serbia. The conference was realized in partnership with the National Assembly of the Republic of Serbia and the Archives of Vojvodina. The domestic and foreign expert public expressed great interest in attending the first (and rather unique) conference of this type, which was reflected in the total number of over 250 participants (Serbian and American professors and experts, Serbian ministry representatives and MPs, and the diplomatic corps).[1] Given the fact that the conference focused on significant and often complex Serbia-US relations, the organizer strongly believes that the conference has contributed to strengthening the relations between the two countries and promoted the understanding of the Serbian scientific community and state actors on major issues.

The conference was opened by the Vice President of the National Assembly of the Republic of Serbia, prof. Vladimir Marinković. He emphasized that relations between Serbia and the United States have been advancing in the past few years and are ultimately moving in the direction of establishing closer cooperation and strategic partnership between the two countries. The United States and its citizens generate a large body of ideas, initiatives, business activities and innovations that benefit the entire planet. The US economy is an example of a long-term process of continuous growth and progress that promotes the spirit of entrepreneurship, culture and work ethics, and creates new opportunities for citizens to pursue

Received November 28th, 2019 / Accepted December 4th, 2019
Corresponding author: Darko Obradović, BSc in Security Management, Executive Secretary at Institute for National and International *Security*, Faculty of Security Studies, University of Belgrade;
e-mail: obradovic@intelligence-security.rs
[1] See: National Assembly of the Republic of Serbia: National Assembly Hosts International Scientific Conference “Serbian-American Relations”, 11 September 2019; available at: http://www.parlament.gov.rs/National_Assembly_Hosts_International_Scientific_Conference_%E2%80%9CSerbian-American_Relations%E2%80%9D_.37236.537.html (accessed 12.12.2019)

prosperity, development and progress. Serbia is in a very complex geopolitical position but it is committed to modernizing, advancing and creating a quality environment for prosperous life of its citizens. US companies in Serbia employ 17,000 Serbian citizens; the US strongly supports EU integration of Serbia, most importantly by taking into consideration Serbia's legitimate interests. Thus, it is important to take every opportunity to strengthen cooperation with the US, particularly in terms of developing new partnerships, business and investment opportunities, cooperation with the Serbian diaspora, US Congress and the State Department, universities, and other institutions. Prof. Marinković pointed out that, as responsible people, we will continue working in the interest of developing our own state and promoting cooperation with the US, hoping that a possible strategic partnership can generate closer links between the two countries, which we had at the time when they were allies.

The conference participants were then addressed by the first Vice Prime Minister and the Minister of Foreign Affairs of the Republic of Serbia, Ivica Dačić, who referred to the long-standing history of Serbia-US relations. In terms of history, our two countries and peoples are connected by an alliance in the two world wars as well as by cooperation during the Cold War. Minister Dačić stressed the importance of recalling the positive examples from the long history of Serbia-US relations. Throughout history, Washington has shown understanding for the fight for the liberation of a small and remote Balkan nation. Minister Dačić highlighted the event of Raising of the Serbian flag at the White House on 28 July 1918, in honor of brave Serbian people who, as state by President Wilson, embarked on a battle against a significantly superior enemy. Minister Dačić referred to the alliance and partnership during the Second World War and the Cold War, as well as the challenges and difficulties over the last thirty years. In addition to the rich history of bilateral relations and alliances in the two world wars, he underscored a common strategic commitment to ensuring security and economic stability of the region as ultimate values that should shape Serbia-US relations. He noted that the current relations between the two countries are marked by positive dynamics and Serbia’s goal to advance our bilateral relations, which is constantly reflected in the demonstrated interest to maintain regular political dialogue at the highest level with US officials. Serbia wants to reaffirm itself as an active, proven and reliable partner, and a pillar of regional stability. In the end, Minister Dačić emphasized the need to overcome the negative views and biases of the recent past, and to take joint action in building cooperation between the two states and their peoples based on the common values and interests.

The current US Ambassador of the US in Serbia, Mr. Kyle Scott, referred to the 140 years of diplomatic relations, strong historic ties and strategic alliance between the two countries, as well as to ongoing US efforts to advance the bilateral relations, provide financial support and assistance, and contribute to promoting Serbia’s stability and further development.

The conference participants were greeted by prof. Darko Trifunović, Director of the Institute for National and International Security, and MP Dragan Šormaz in front of the Parliamentary US-friendship group (PFG), and subsequently addressed by: Mrs. Biljana Popović Ivković, the State Secretary at the Ministry of the Interior; Mr. Aleksandar Živković, the State Secretary at the Ministry of Defence; and Major General John Harris Jr., Ohio National Guard.

In the operative part of the conference, scholars and experts from different fields of expertise presented their papers and exchanged experiences and views on the Serbia-US relations involving different aspects of cooperation between the two countries: geopolitical and security cooperation, educational and scientific cooperation, international cooperation in criminal matters, the US contribution to the development of Serbian public services, etc.

OVERVIEW OF THE MONOGRAPH "SERBIA-UNITED STATES RELATIONS"

One of the significant results of this international scientific conference is the publication of the monograph, titled "Serbia-United States Relations"[2], which clearly demonstrates the joint efforts of scientists from Serbia and the United States to explore, reconsider and promote Serbia-United States relations. The Scientific Committee of the monograph brought together scientists from Serbia, Israel, China, Greece, Romania, Slovakia, Slovenia and Germany, demonstrating high international scientific interest in Serbia-US relations.

In their scientific articles, the authors covered a wide range of topics and aspects of Serbia-US relations, including the new strategic framework for for US-Serbia relations, geopolitical and security aspects, historical perspective, the US impact on the development of Serbian public institutions, criminal law cooperation and related agreements, economic cooperation, the prospects for the 21st century, etc. An issue of particular interest is the authors' qualitative approach to the topics presented in this monograph.

Gregory R. Copley (PhD), an expert from the International Strategic Study Association, elaborates on a new strategic framework for US-Serbia relations and points out that this period in history provides a unique opportunity for the advancement of these relations. This new framework offers an opportunity for Serbia to fill in the existing vacuum, thread its way as a proven historical ally, and impose itself as a loyal and reliable partner in the Balkans. The author argues that Serbia has a chance to incline to and incorporate itself into the new strategic approach of the USA in the Balkans only by redesigning and reorganizing its existing strategic cooperation framework. The mutual relations between the two countries slowly began to decline during the socialist Yugoslavia. At the same time, other countries (such as Russia, the PR China and Turkey) have been trying to exert its own influence in the region. In the current circumstances, the United States should take the opportunity to do the same, particularly in terms of supporting a resolution of conflict between Serbs and Albanians regarding Kosovo and Metohija.

Darko Trifunović (PhD) and Zoran Dragišić (PhD), professors of the Faculty of Security, University of Belgrade, discuss the geopolitical and security aspects of Serbia-US relations. They provide evidence of the long-standing alliance between Serbia and the USA, which was disturbed during the rule of the pro-Bolshevik dictator Slobodan Milošević. To support this thesis, the authors point out to the constructive role of President Wilson, who had a great respect for the heroic battle of the Serbian people in World War I and played a significant role in defining the borders of the Kingdom of Serbs, Croats and Slovenes after the Great War. The period of history behind us shows that Yugoslavia, as a communist and later socialist state, was a constructive ally of the West and enjoyed all possible benefits from the United States. The authors consider that the greatest success of the neo-Stalinist ideology was to turn Serbia against the West and put the Serbian people in the service of Russia's foreign policy interests. The authors conclude that Serbia and the Serbian people have been victims of ideologists' propaganda, global political influences and economic interests.

Steven Oluic (PhD), a retired US Army colonel, discusses Serbia's geopolitical position and direction in terms of choosing its geopolitical (East or West) way forward. The US

[2] See: Proceedings / International Scientific Conference "Serbian-American Relations", Belgrade, 11 Sept. 2019; [eds. Nebojša Kuzmanović, Darko Trifunović].- Novi Sad : Archives of Vojvodina; Belgrade: Institute for National and International Security, 2019. ISBN 987-86-80017-61-7; abailable at: http://intelligence-security.rs/assets/img/Serbian%20American%20Relations.pdf (accessed 11.11.2019)

global hegemony has been overcast by other global competitors. He identifies Russia's recent successes in Syria and China's "Road and Belt Initiative" project as economic, military and geopolitical challenges for the US and the Western countries. While the former Yugoslavia had long been a "shelter belt" region, Serbia is a borderland European state largely outside the Western central sphere of interest but increasingly subject to the Russian, Chinese and Turkish spheres of interest in the Balkan region. He concludes that the legacies of recent past, geopolitical challenge and potential opportunities are most likely to continue governing Serbia's way forward.

Orhan Dragaš (PhD), an expert from the International Security Institute (ISI)-Serbia, examines the historical context of Serbia-US relations and proposes "Five Points for Building new Serbia-US Relations in the 21st Century". The Serbia-US relations have always had their ups and downs, periods of friendship and fraternity, as well as periods of broken relations and even armed conflicts. The author perceives the last 30 years' period as a low point in the history of Serbia-US relations, and strongly believes the broken relations can be repaired. To that effect, the author proposes five points of reference that may actually contribute to establishing links and fostering cooperation between Serbia and the USA. These connecting points are technology, security, culture, personal ties and relations, and historical connections, which can help redefine and improve Serbia-US relations.

Further in this monograph, the authors discuss a wide range of related issues: the impact of the US on public administration reform and establishment of public agencies in Serbia (P. Dimitrijević, D.Vučetić, J. Vučković); the economic perspective of Serbia-US relations and importance of US Government donations for the needs of the Serbian population and the Serbian Army (D. Obradović); the implementation of international treaties and bilateral agreement on the extradition of perpetrators of serious crimes, including the European Arrest Warrant agreement (M. Kostić, G. Pantić, N. Obradović); the need to reinvent Serbia-US relations by focusing on shared values and mutual interests (P. Cvetković); and a number of other subject-specific topics, such as: Serbian immigration and contribution of the Serbian Diaspora to American religion, science and US-Serbia international relations (E. Isaac); Serbian-American heroes of WW II (G. Moore), and portraits of four Serbian-Americans decorated by medals of honour for their services in the US Army, Navy and Air Force in WW II (J.Adams); US role in the annexation of Voivodina to the Kingdom of Serbia in 1918 (S. Marković); Serbia's cooperation with neighboring states in counteracting migrant crisis and extremism (J. Nomikos); the role of archives in international cooperation (N. Kuzmanović, Lj. Dožić); and the role of technology in industry-driven education (M.Božić).

On the whole, the International Scientific Conference "*Serbia-United States Relations"* and the related monograph represents a significant scientific contribution to the understanding and advancement of Serbia-US relations. They have certainly contributed to breaking the taboo topic in the Serbian scientific community, raising awareness of Serbia-US relations, and addressing the issues from different perspectives in an impartial and ideologically neutral manner.

FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 17, N° 3, 2019, pp. 249-254
https://doi.org/10.22190/FULP1903249T

Review

PROJECT: "MOBILE LEGAL CLINIC – SERVICE FOR VULNERABLE AND DISADVANTAGED GROUPS"

(DECEMBER 2016 - NOVEMBER 2018)

Sanja Tošić, Nikola Božanović

Club for Youth Empowerment 018, Niš, Serbia

The Project "**Mobile Legal Clinic – service for vulnerable and disadvantaged groups**" was implemented by the Club for Youth Empowerment 018 (KOM 018) from Niš in cooperation with the Faculty of Law, University of Nis, and the Association of Roma "Prokuplje" from Prokuplje, in the period from December 2016 to November 2018.

PROJECT GOALS

The overall goal of the Mobile Legal Clinic (MLC) project was to develop services for protection of human rights and provide free legal assistance to members of vulnerable and deprived social groups in the local communities. Specific objectives of the project were:

- to equip law students with the knowledge, skills and competences to protect and promote human rights, to ensure additional educational opportunities and support their engagement in their local communities,
- to support people from vulnerable groups in exercising their human rights, and
- to contribute to the combat against violation of human rights.

PROJECT ACTIVITIES

The Mobile Legal Clinic Project was implemented through different kind of activities:

1. **The preparation stage** included the following activities: publishing the Call for participation and selection of student-trainees; obtaining approval from the Niš Bar Association; and signing protocols of cooperation.
   Call for participation and selection of students who would be trained and who would participate in the mobile legal clinic activities was aimed at law students in the 3rd and 4th year of undergraduate academic law study program. After the call had been published, students submitted their applications and a total of 30 law students were selected to participate in the Project.

Received May 15th, 2019 / Accepted July 5th, 2019
Corresponding author: Sanja Tošić, president of the Club for Youth Empowerment 018
E-mail: sanjatosic1@hotmail.com;

Obtaining permission from the Bar Association of Niš was essential in terms of hiring qualified legal practitioners (lawyers) to provide legal assistance to MLC beneficiaries.

Protocols of cooperation: KOM 018 and Faculty of Law signed protocols of cooperation with local organizations and institutions in order to ensure greater outreach in the local communities and provide free legal assistance to a larger number of MLC beneficiaries. Some of the organizations involved were the local Roma organizations working with youth and women, Safe House for the victims of domestic violence, the Social Welfare Center in Niš, Association of Roma "Prokuplje", other Roma NGOs, youth organizations, etc.

Time frame: the first two months of the project (November-December 2016)

2. **Mobile Legal Clinic theoretical and practical training** for 30 law students: initial Mobile Legal Clinic theoretical and practical training in the first 1st year of the Project.
   Time frame: in the 3rd month of the Project (January 2017)
3. **Mobile Legal Clinic outreach for 160 - 200 beneficiaries in the local communities**: Within the envisaged 20-month period, Mobile Legal Clinic organized monthly visits to organizations/institutions involved in the project (one organization per week). The visits were organized in Nis and Prokuplje. During the visit, each Mobile Legal Clinic team included 4 to 6 students, a Law Faculty professor or teaching assistant, and a legal practitioner (lawyer). This stage of project activity includes *a client interview*, where two students talk to possible beneficiaries, in the presence of a professor/teaching assistant and a lawyer sitting in a separate room. First, an oral interview is conducted in order to collect the beneficiary's information; then, the beneficiary explains the specific problem and the kind of assistance he-she would like to obtain within the envisaged project activities. After that, students have an obligation to collect all necessary documents related to the case, prepare legal documents that will help beneficiaries to start legal proceedings, and consult with the professor/assistant and the lawyer how to proceed with the case. Once the professor/assistant and the lawyer approve the prepared documents for the case, the beneficiary is invited to take adequate legal documents and submit them to relevant state institutions in the form of private pleadings. It was originally anticipated that the Mobile Legal Clinic services would be used by 8 to 10 beneficiaries per month, meaning that at least 160- 200 beneficiaries from vulnerable and deprived social groups would take legal action for violation of their human rights within the Project time frame.
   *Time fram*e: 4th to 24th month of the Project (February 2017 – October 2018)
4. **Mobile Legal Clinic evaluation meeting and presentation of project results at the end of the 1st Project year:** At the end of the first Project year, MLC organized an evaluation meeting in order to present and discuss the results achieved in the first Project year.
   *Time fram*e: 12th month of the Project (October 2017)
5. **Renewal of the protocols of cooperation** with local NGOs and relevant institutions, and selection of a new generation of law students to participate in the MLC project.
   *Time fram*e: 13th and 14th month of the Project (November – December 2017)
6. **Mobile Legal Clinic theoretical and practical training** for 30 law students: the 2nd training in the 2nd Project year. *Time frame:* 15th month of the Project (January 2018)
7. **Preparation and printing of the Mobile Legal Clinic Handbook:** Having in mind the role and significance of practical training in the legal education of future lawyers, the project objectives and the potential beneficiaries of the Mobile Legal Clinic services, the project activities included the preparation and publication of the Mobile Legal Clinic

manual (for students and wider public) which would present the most significant cases and legal problems that students encountered during the Mobile Legal Clinic service. The MLC handbook included several parts: 1) Discrimination of vulnerable groups, 2) Legal protection of vulnerable groups; 3) Mobile Legal Clinic labour standards and procedures for filing complaints and related legal documents.
Time frame: 13th to 24th month of the Project (January – October 2017)

8. **Final promotion of Mobile Legal Clinic project results and manual:** At the end of the Project, MLC organized the final promotion and presentation of MLC project results and MLC Manual to the general and professional public. The event involved the participation of all relevant actors who took part in the Project, including partner organizations/institutions, beneficiaries, law students, local institutions and authorities, donors, local NGOs, media, etc. *Time frame:* 24th month (October 2018)
9. **Visibility, monitoring and evaluation activities:** Different promotional activities were envisaged to be organized both online and offline to secure visibility of the project and greater impact in the local communities. Local or national newspapers, TV and radio stations were contacted to secure the project visibility. Monitoring of the project activities was performed throughout the project cycle in order to secure the implementation of the project activities in timely manner, to ensure the quality of the implementation, and to resolve unexpected problems. Monitoring was conducted by the project coordinator who visited local communities, observed MLC activities, and discussed their implementation with participants; local team also held regular weekly meetings to discuss the progress of the project.
Time frame: 1st to 24th month (November 2016 – October 2018)

PROJECT IMPLEMENTATION AND RESULTS

The general impression at the end of the project "*Mobile Legal Clinic – service for vulnerable and disadvantaged groups*" was that the project implementation exceeded all expectations. The project results prove that the project goals were accomplished in every aspect of the envisaged activities.

The overall goal of the project "*Mobile Legal Clinic –service for vulnerable and disadvantaged groups"* was to develop a local community service for protection of human rights of vulnerable and disadvantaged social groups. On the whole, this goal was achieved since the Mobile Legal Clinic was recognized by potential beneficiaries and all relevant institutions involved in the project. Beside this overall objective, all projected specific goals were achieved as well.

Law students were provided with the knowledge, skills and competences to protect and promote human rights; they were provided with additional educational opportunities that promoted their engagement in their local communities. As the project involved hands-on experience in working with people, the project provided students with the opportunity to discover if they would be able to work in this kind of law practice in the future, once they graduate from the Law Faculty in Niš.

On the other hand, people from vulnerable and disadvantaged groups were supported in obtaining their human rights through free legal aid and *pro bono* assistance, and all of the subjects engaged in the project thus contributed to combating against violation of human rights.

The project results have exceeded the expectations, which can be observed at different levels of achievement. One of the major results is that Mobile Legal Clinic was

established and recognized at the local community as a service for the protection of human rights of vulnerable and disadvantaged social groups.

In the period of project implementation, 60 students of the Law Faculty in Niš were trained and empowered to support vulnerable groups through the knowledge, skills and competences, and enabled to protect and promote their human rights through direct engagement in the local communities. The indicator is that 60 law students admitted to the Mobile Legal Clinic participated in four MLC trainings and were actively involved in the MLC field trips in the local communities. During the MLC theoretical and practical training for 60 law students (1st training in 1st year of the project and 2nd training in 2nd year), students were equipped with knowledge and skills from different areas of law which they would use in the field work, and thus provided with additional educational opportunities. Indicators prove that 60 law students participated in the Mobile Legal Clinic training and that 20 professors/teaching assistants and trainers provided the basic and additional instruction in the field of human rights protection.

Besides the basic theoretical and practical training needed for the Mobile Legal Clinic purposes, the selected groups of law students students also participated in an additional training aimed at sensitizing them for the work with vulnerable and disadvantaged social groups. During 1st and 2nd year of the implementation of the project, a total of 60 law students received additional sensitization training in order to better understand the needs of future beneficiaries and develop not only professional relations but also empathy towards beneficiaries.

In the first year of the project, a total of 113 people reported the problem of violation of their human rights to Mobile Legal Clinic and their cases were processed. In the second year of the project, the Mobile Legal Clinic had 120 beneficiaries. During the implementation of project, legal aid was provided to 233 clients in total. Free legal aid was provided in the form of legal advice and the preparation of appropriate submissions (complaints, petitions, requests, proposals), in the areas of real, administrative, inheritance, criminal, and enforcement law. The methods of providing legal assistance to vulnerable groups were significantly improved in the course of project implementation.

A total of 233 cases were processed since the beginning of the fieldwork within the Mobile Legal Clinic, which speaks about the huge interest of clients in this form of free legal aid. It should be noted that clients recommended the Mobile Legal Clinic to others, which may be substantiated the fact that the beneficiaries stated on several occasions that they decided to contact the Mobile Legal Clinic upon recommendation of previous beneficiaries who were satisfied with the provided services. Considering the great interest among the citizens of Nis and Prokuplje, it can be concluded that the results of the project show that its primary goal to provide free legal assistance to vulnerable and disadvantaged groups in southeastern Serbia was fully achieved.

In view of exercising their human rights before relevant state institutions, the Mobile Legal Clinic teams provided legal advice and assistance to beneficiaries by writing different legal documents (complaints, petitions, requests, proposals), which the beneficiaries subsequently submitted to relevant state institutions: the Protector of Citizens (Ombudsman) of the Republic of Serbia, Police Departments in Niš and Prokuplje, the Ministry of the Interior of the Republic of Serbia, local government and municipality authorities, etc. The provided advice involved a variety of legal issues: social rights and humanitarian aid, compensation for damage, divorce and division of marital property, employment rights, debt collection, registration of claims with the privatization agency, and provision of services for obtaining personal documents.

The Mobile Legal Clinic was also involved in the entire process of assisting a lot of Roma families, which is one of the indicators that one of the goals of Mobile Legal Clinic was fulfilled. The benefits provided to the users of the Mobile Legal Clinic are reflected in the provision of free legal aid which made the beneficiaries aware of their rights and obligations, and helped them exercise the rights which they could not otherwise exercise. The beneficiaries were provided assistance in filing submissions and requests for issuing specific documents and certificates required for the purpose of exercising certain rights, which particularly applies to displaced persons and socially sensitive groups. The provided free legal aid also had a significant educational dimension for the beneficiaries, who were enabled to understand the legal nature of the case and thus empowered to seek solution to their problems on their own, in front of relevant state authority.

In order to help citizens exercise their rights, the Mobile Legal Clinic established good cooperation with the local institutions. In Prokuplje, for example, MLC teams worked in close cooperation with the Municipal Administration, the Social Welfare Centre, the National Employment Service, the Health Centre "Toplica", the parent service, the Prokuplje police department, and the local media. The employees in these institutions often referred the MLC beneficiaries to the Municipal Centre for advice on further procedures, legal forms and requirements that had to be fulfilled. Information on the work of the Mobile Legal Clinic was available to the citizens of the Toplica District. The local coordinator collected information on employment, health care, child allowances, taxes, loans and subsidies for farmers in relevant local institutions. The Mobile Legal Clinic working plan was drafted and its implementation was closely observed according to the plan.

In order to receive feedback on the protection and exercise of the rights of the MLC beneficiaries, the Mobile Legal Clinic staff was in contact with the beneficiaries after the provided free legal assistance. In this way, the Mobile Legal Clinic obtained information on further developments in the specific case, the commitment of state institutions to resolve disputable issues, the treatment of beneficiaries in institutional proceedings, and the actual extent of exercising their rights. The users' feedback on the services provided by the Mobile Legal Clinic is positive in 90% of the cases. The beneficiaries were satisfied because, as they noted, they previously had not had the opportunity to get the necessary information and assistance in one place.

SOME EXAMPLES OF SUCCESSFULLY RESOLVED CASES

In order to illustrate the results of the Mobile Legal Clinic activities, we provide some examples of successfully resolved cases.

In M.E. case, free legal aid was provided to a legally invisible person. She had previously addressed various departments, but state authorities had no understanding for her problem. She lived in Germany as an asylum seeker, where she was born. However, she gave inaccurate information about her name and surname in Germany, as she thought that her surname was Djukatani. As a result, her daughter was entered into different registries in Germany under the wrong name, and thus could not be entered into the birth register in Serbia. As she was a legal invisible person, the mother could not exercise any right for her daughter, including the right to health care and financial social assistance. The Mobile Legal Clinic team helped her collect the necessary documents and initiated the procedure before the Ministry of Foreign Affairs, which was soon resolved favourably.

A.J. from Prokuplje was a victim of domestic violence who contacted the Mobile Legal Clinic because she did not have money to hire a lawyer. Her ex-husband separated her from her child (aged 2) and did not allow her to contact her child. The Mobile Legal Clinic drafted her petition for divorce and helped her file a lawsuit for divorce and a request of child custody. The Mobile Legal Clinic also prepared a private complaint for domestic violence. When the court instituted legal proceedings, the Mobile Legal Clinic provided legal advice to A.J. before each court hearing. In all judicial proceedings, the courts ruled in favor of A.J., who was granted child custody and awarded alimony to be paid by the former husband, who was also order to pay compensatory damages for the physical injury she sustained as a victim of domestic violence.

In the case of M.M., a single father from Prokuplje, who is unemployed, the provided legal assistance was related to child custody of a one-year old infant who was placed in care of the center for abandoned children (Center for the protection of infants, children and youth) in Belgrade. His unmarried wife took the child with her to Belgrade. She was a registered drug addict. After the Center for Social Work in Belgrade found that she had neglected her child, the infant was taken away from her and placed in care of the center for abandoned children in Zvecanska, Belgrade. M.M. did not know the wherabouts of the child, nor did he know how to solve this complicated situation. The Mobile Legal Clinic informed the Social Welfare Center in Prokuplje, which forwarded his request and personal data to the Social Welfare Center for in Belgrade. The Mobile Legal Clinic helped M.M. file a lawsuit for the child to be entrusted to his care. The competent court ruled in his favour. At the same time, the Mobile Legal Clinic helped him exercise the right to financial support and child allowance.

THE AFTERMATH OF MOBILE LEGAL CLINIC SERVICES

The Mobile Legal Clinic Handbook was developed and published in 2017, and 100 copies were distributed to all relevant subjects involved in the project. Local communities in Nis and Prokuplje are well aware of the need for protecting and promoting human rights, and how Mobile Legal Clinic at the Law Faculty in Niš contributes to this idea, particularly considering the wide range of legal issues covered in the course of providing free legal aid within the project. The information about the Mobile Legal Clinic activities was disseminated in more 20 promotional presentations and more than 20 interviews for different media. As a result of these activities, the local communities have started creating a new network of organizations and institutions for the support of vulnerable and disadvantaged social groups.

During the project implementation activities, specifically in the fieldwork, many institutions and organizations learned about the Mobile Legal Clinic for the first time and expressed interest to cooperate with Club for Youth Empowerment 018 (KOM 018) and the Faculty of Law in Niš. For this reason, recognizing the need for including members of vulnerable groups from other local communities, Club for Youth Empowerment 018 expanded the work in the field by establishing cooperation with the Roma organization "*Sa e Roma*" from Vlasotince, whose members received free legal advice and assistance on the premises of KOM 018 in Nis.

Proofreading and copy-editing:
Gordana Ignjatovic

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

34+32

FACTA Universitatis. Series, Law and Politics / editor in chief Miomira Kostić. - [Štampano izd.]. - Vol. 1, no. 1 (1997)- . - Niš : University of Niš, 1997- (Niš : Unigraf-X-Copy). - 24 cm

Dostupno i na: http://casopisi.junis.ni.ac.rs/index.php/FULawPol.
Tri puta godišnje. -
Drugo izdanje na drugom medijumu: Facta Universitatis. Series: Law and Politics (Online) = ISSN 2406-1786
ISSN 1450-5517 = Facta Universitatis. Series: Law and Politics
COBISS.SR-ID 138066439

FACTA UNIVERSITATIS
Series
Law and Politics
Vol. 17, N° 3, 2019

Contents

Co-funded by the
Erasmus+ Programme
of the European Union