

**MEGATREND REVIJA**  
**MEGATREND REVIEW**

**1/2013**



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Megatrend University, Belgrade

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# MEGATREND REVIJA • MEGATREND REVIEW

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## WORD FROM THE EDITOR

Dear readers,

This is the year of two great jubilees, both of our journal, and of Megatrend University.

Starting with the first issue, the whole year of 2013 will be dedicated to the tenth anniversary of our journal “Megatrend revija / Megatrend Review”.

In addition, at the beginning of the year, another jubilee, the 60th birthday of the prominent scholar, the founder and rector of Megatrend University, Professor Mića Jovanović, PhD was solemnly celebrated. And, as it is usually the case on the occasions of great anniversaries of renowned scientists – the editorial board of the Journal has decided to devote this special edition to Professor Jovanović. This issue is in front of you.

The invitation to participate in this issue has been sent to a small circle of prominent scientists from several countries. It is our honor to say that they have accepted the invitation with pleasure. As a result the issue contains the papers by authors from as many as 19 countries! The authors represented (in alphabetical order) are from: Austria, Bulgaria, China, Croatia, Cuba, Czech Republic, France, Germany, Hungary, Italy, Macedonia, Portugal, Russia, Serbia, Spain, Ukraine, United Kingdom, USA, and Venezuela.

We are very proud not only because of the impressive number of the countries represented, but also because of the scientific capacity of the papers and their authors. Among them, the reader will easily perceive the President of the Macedonian Academy of Sciences and Arts, the President of the Academy of Engineering Sciences of Ukraine, heads of departments and other eminent professors from the world's leading universities, such as Oxford, Lomonosov Moscow State University, Free University of Berlin, The University of Freiburg, The University of Nanking, The University of Siena, The University of Valencia, and others.

Speaking about the authors from Serbia, the editorial board has limited their participation to a smaller number of prominent professors of Megatrend University. On the one hand, the reason for such a decision lies in limited space, and on the other, in the intention to avoid hurting anybody's feelings because they have not been invited to contribute to this, in many respects, extraordinary issue.

On preparing this issue the editor-in-chief had a difficult, but a pleasant task of establishing some kind of objective order among plenty of high-quality and interesting papers of leading authors from different scientific fields. The solution was found in ordering the fields in alphabetical order, and ordering the articles within each of them alphabetically by the author's surname. Given that the whole issue is in English, it is the English alphabet in both cases.

Belgrade, March 22<sup>nd</sup>, 2013

Prof. Boris Krivokapić, PhD



## REČ GLAVNOG UREDNIKA

Poštovani čitaoci,

Ova godina je za naš časopis, pa i za čitav Megatrend univerzitet, godina dva velika jubileja.

Počev od prvog broja, cela 2013. godina biće posvećena 10-godišnjici našeg časopisa „Megatrend revija – Megatrend Review“.

Pored toga, na samom početku godine svečano je obeležen jubilarni – 60. rođendan istaknutog naučnog radnika, osnivača i rektora Megatrend univerziteta, prof. dr Miće Jovanovića. Kao što je uobičajeno u prilikama velikih jubileja uglednih naučnika – redakcija našeg časopisa odlučila je da posveti profesoru Jovanoviću svoje specijalno – svečano izdanje. Taj broj je pred vama.

Pozivi za učešće u ovom broju upućeni su uskom krugu istaknutih naučnika iz više zemalja. Čini nam veliku čast da primetimo da su se oni sa zadovoljstvom odazvali, tako da su objavljeni prilozi autora iz čak 19 država! Predstavljeni su (po abecednom redu) autori iz: Austrije, Bugarske, Češke, Francuske, Hrvatske, Italije, Kine, Kube, Mađarske, Makedonije, Nemačke, Portugalije, Rusije, SAD, Srbije, Španije, Ukrajine, Velike Britanije i Venecuele.

Veoma ponosnim nas čini – ne samo impresivan broj predstavljenih država – već još više naučni kapacitet priloga i njihovih autora. Čitalac će i sam lako uočiti da su među njima i predsednik Makedonske akademije nauka i umetnosti, predsednik Akademije inženjerskih nauka Ukrajine, šefovi katedri i drugi ugledni profesori sa vodećih svetskih univerziteta, kao što su Oksford, Moskovski državni univerzitet „Lomonosov“, Slobodni univerzitet u Berlinu, Univerzitet u Frajburgu, Univerzitet u Nankingu, Univerzitet u Sijeni, Univerzitet u Valensiji, i drugi.

Kada je reč o autorima iz Srbije, redakcija je njihovo učešće ograničila na manji broj istaknutih profesora Megatrend univerziteta. Razlog za takvu odluku su, s jedne strane, objektivno ograničeni prostor, a s druge, nastojanje da se izbegne da se bilo ko oseti povređenim zato što nije pozvan da učestvuje u ovom, po mnogo čemu izuzetnom broju.

Uređujući ovaj broj urednik se našao na „slatkim mukama“ – utvrditi nekakav objektivni redosled u obilju kvalitetnih i zanimljivih priloga vodećih autora iz različitih naučnih polja. Rešenje je nađeno u tome da se oblasti (rubrike) izlože abecednim redom, a da se u okviru svake od rubrika članci izlože abecednim redom prema prezimenu autora. S obzirom na to da je čitav broj na engleskom jeziku, u oba slučaja reč je o engleskom alfabetu.

Beograd, 22. 3. 2013.

Prof. dr Boris Krivokapić



PROFESSOR MIĆA JOVANOVIĆ, PhD



PROFESOR DR MIĆA JOVANOVIĆ





**Professor Mića Jovanović, PhD • Profesor dr Mića Jovanović**



## THE BIOGRAPHY AND SELECTED WORKS OF PROFESSOR MIĆA JOVANOVIĆ

Professor Mića Jovanović, PhD, was born in Knjaževac, eastern Serbia, in 1953. He completed high school in Bor (1972) and graduated from the Graduate School of Political Sciences in Belgrade (1976). He got his Master's Degree in the field of Sociology of Work from the same school (1979). Mica Jovanovic received his first PhD degree from the University of London in 1983 (Management and Industrial Relations), and the second PhD degree (Organizational Sciences) from the University of Maribor in 1991. Professor Mića Jovanović started his university career immediately upon graduation in 1976, and became a university professor in 1996.

Between 1976 and 1991, he worked at the University of Belgrade (with interruptions due to his engagements in England), and from 1991 at Megatrend Business School. Between 1997 and 1999, he was the Dean of the Faculty of Management in Zaječar. In 1999 he became Rector of Megatrend University from Belgrade.

In the period between 1983 and 1989 he taught as a visiting professor at various foreign universities: London School of Economics (1983), Bradford University (1983), Portsmouth Polytechnics (1983), Freie Universität Berlin (1987), Okayama University, Japan (1989), University of Tokyo (1991), École supérieure de commerce, Grenoble (1997), Seoul National University (1998).

Between 1983 and 1989 he was a member of the Massachusetts Institute of Technology research team on the project entitled "The Future of Work in the Automotive Industry with a View to an Impact of Robotization of Labour".

Professor Mića Jovanović has been the President of International Expert Consortium in London since 1991. He has also been an Executive Committee member of Euro-Asian Management Studies Association headquartered in Tokyo and Berlin in two mandates. He is the president of the General Cosmology Research Laboratory in Paris.

Professor Jovanović holds the title of *The Knight of the Fleur de Lys*.

He is the winner of the Cultural Community Award of Belgrade (2002) for the book "Intercultural Management".

For extraordinary results in business undertakings, educational projects and contribution to Serbian cultural environment during the years of 2003 and 2004, he was officially nominated (2004 and 2005) *The Businessman of The Year* – positioning himself among the most successful businessmen in the country.

In April of 2006 he was awarded the *Zlatni beočug* award for his continuous contribution to Belgrade cultural development.

In 2007 Professor Jovanović was awarded the *International Socrates Award* by the University of Oxford for the achievements in science, education and culture.

Professor Mića Jovanović was awarded by the Grenoble Ecole de Management for the extraordinary pedagogical achievements in 2007.

In the organization of European Movement and the First European House, Professor Mića Jovanović received the *Best European* award for 2007 for the results in science, culture and education.

At the international awards ceremony organized by *European Assembly* in Vienna, held in December 2008, Megatrend University and Professor Mića Jovanović, its rector, were awarded *European Quality Award* in the fields of education.

In 2009 Professor Jovanović was elected the Expert of the Social and Economic Committee of the European Parliament in Brussels.

A Medal of the President of the Republic of Italy for outstanding contribution to European integration – one of the highest Italian decorations, was awarded to Professor Mića Jovanović in 2009.

In 2010 The Cultural and Educational Association of Serbia awarded Professor Mića Jovanović, Rector of Megatrend University, the *Zlatna značka* award for his contribution to the development of Serbian culture.

In June 2011 Professor Mića Jovanović received the *Manager of the Year* award as a part of the competition organized by the Chamber of Commerce of Belgrade, Faculty of Technical Sciences in Novi Sad and “Media Invent”, Novi Sad.

Professor Mića Jovanović was decorated by King of Spain Juan Carlos I de Bourbon with the Order of Civil Merit in February 2013 at the Institute “Cervantes” in Belgrade.

Professor Jovanović is the author of more than 80 scientific papers and books published in the country and abroad. He has presented his works at more than 30 international and national conferences and congresses.

## Selected works

### *Author's books*

- *Sociologija samoupravljanja*, Tribina, Beograd, 1982.
- *69 lekcija o menadžmentu*, Megatrend, Beograd, 1991.
- *Work Motivation and Self-Management*, Megatrend IEC, London, 2002.
- *Interkulturni menadžment*, Megatrend univerzitet, Beograd, 2002.
- *Biznis kao umetnost življenja*, Megatrend univerzitet, Beograd, 2008.
- *Business as Life Style*, Megatrend International Expert Consortium Limited, London, 2008.
- *Uvod u biznis*, Megatrend, univerzitet, Beograd, 2008.
- *Radna motivacija u prvim godinama sovjetske vlasti – istorijski esej iz XX veka*, Megatrend univerzitet, Beograd, 2008.
- *Um caruje – Istorija Megatrend univerziteta 1989–2009*, Megatrend univerzitet, Beograd, 2010.

### *Co-authored books*

- *What is Behind the Japanese Miracle* (with Sung-Jo Park), Megatrend IEC, London–Berlin–Tokyo, 1992.
- *Organizaciono ponašanje* (with Mirjana Petković), Megatrend / Ekonomski fakultet Univerziteta u Beogradu, 1992.
- *Strategijski menadžment* (with Ana Langović), Megatrend univerzitet, Beograd, 2001.
- *Upravljanje projektima* (with Ana Langović), Megatrend univerzitet, Beograd, 2001.
- *Organizaciono ponašanje* (with Momčilo Živković and Tatjana Cvetkovski), Megatrend univerzitet, Beograd, 2003.
- *Upravljanje ljudskim resursima* (with Živko Kulić and Tatjana Cvetkovski), Megatrend univerzitet, Beograd, 2004.
- *Preduzetništvo* (with Momčilo Živković and Ana Langović), Megatrend univerzitet, Beograd, 2004.
- *Interkulturni izazovi globalizacije* (with Ana Langović), Megatrend univerzitet, Beograd, 2006.

- *Global Cultural and Economic Research* (with Sung-Jo Park), Lit Verlag, Berlin, 2006.
- *System Transformation in Comparative Perspective* (with Lee Dalgon, Oh Yeon-Cheon, Sung-Jo Park, Bernhard Seliger), Lit Verlag, Berlin, 2006.
- *Pre Velikog praska* (with Igor Bogdanoff and Grichka Bogdanoff), Megatrend univerzitet, Beograd, 2006.

### ***The most important articles and conference papers***

- “Reality versus theory in Yugoslav self-management society”, in Brierley, B. (ed.): *Trade Unions and the Economic Crisis of the 1980s*, Gower Press, London, 1987.
- “Yugo-America: A challenge to the self-management organization of labour in Yugoslavia”, in Dankbaar, B., Jurgens, U., Malsch, T. (eds.): *Die Zukunft der Arbeit in der Automobilindustrie*, WZB, Berlin, 1988.
- “Reality versus ideology in Trade Union Organization of self-management society”, *Europa '92: dal micro al macro e ritorno esperienze e problemi di negoziazione – imprenditori, sindacati, e istituzioni a confronto*, Comunita Europea, CGIL, Bologna, 1989.
- “Yugo-America: the first socialist car in the United States – How the Americans made ‘perestroika’ in the Yugoslav car industry – improvement in work motivation and productivity”, *Recontres Europeennes – L’Europe de 1992*, Alpexpo, Grenoble, 1989.
- “What Japanese managers could learn at Yugoslavian business schools”, *INSEAD Conference*, Fontainebleau, February, 1991.
- “The business of the century: the de-coupling of business and self-management”, Park, S. J. (eds.): *Technology and Labour in the Automotive Industry*, Seoul International Symposium, Campus-Verlag, Frankfurt/New York, 1991.
- “Ex-socialist countries: new zones for East-Asian ‘transplant’ companies”, INSEAD, *Euro-Asian Management Studies Association Annual Conference*, Fontainebleau, October, 1991.
- “The Asia-Pacific Region: chance for the recovery of devastated ex-socialist economies (why ex-socialist countries have to establish their ‘transplants’ in the Asia-Pacific Region)”, *INSEAD, LVMH Conference*, Fontainebleau, February 14-15, 1992.
- “Civil war as the strategic response to the New World Order (war managers must be replaced by market managers)”, *EAMSA Annual Conference*, Bradford, November 27-29, 1992.

- “Goeconomics of 2000 and new managerial strategies for growth and development”, *EAMSA Annual Conference*, Nurnberg, November 18-20, 1993.
- “Development of business education in Yugoslavia”, *EAMSA Annual Conference*, Bocconi, Milano, 1995.
- “Research in the Bor Mining and Smelting Corporation – Self-management in contemporary Yugoslav society”, Park, S. J. (ed.): *System Transformation in Comparative Perspective*, LIT Verlag, Berlin, 2006.
- “Intercultural Challenges of Globalization”, *The All China Economics International Conference*, Hong Kong, December 12-14, 2007 (with Ana Langović Milićević).
- “Reflection on Human Resources Management in Globalization: Some Critical Aspects”, *East Asia: Comparative Perspective*, Vol. 9, No. 3, 2010 (with Ana Langović Milićević and Tatjana Cvetkovski).
- “Ma io dico che la guerra silenziosa è tra Europa e Usa”, *Medidea Review*, No. 10, 2011, Roma, Italia.



## BIOGRAFIJA I IZABRANI RADOVI PROFESORA MIĆE JOVANOVIĆA

Profesor dr Mića Jovanović Božinov rođen je u Knjaževcu, istočna Srbija, 28. januara 1953. Završio je gimnaziju u Boru (1972), a diplomirao na Fakultetu političkih nauka u Beogradu (1976). Na istom fakultetu je magistrirao 1979. u oblasti sociologije rada. Prvu doktorsku disertaciju odbranio je na Londonskom univerzitetu 1983. godine (menadžment i industrijski odnosi), a drugu (organizacione nauke) na Univerzitetu u Mariboru, 1991. godine. Univerzitetsku karijeru otpočeo je odmah po diplomiranju 1976. godine, a zvanje redovnog profesora univerziteta stekao je 1996. godine.

U periodu od 1976. do 1991. radio je na Beogradskom univerzitetu (sa prekidima zbog boravka u Engleskoj), a od 1991. godine na Poslovnoj školi „Megatrend“. U periodu od 1997. do 1999, radio je kao dekan Fakulteta za menadžment u Zaječaru. Izabran je za rektora Megatrend univerziteta u Beogradu 1999. godine.

U periodu od 1983. do 1989. predavao je kao gostujući profesor na mnogim inostranim univerzitetima: London School of Economics (1983), Bradford University (1983), Portsmouth Polytechnics (1983), Berlin Frei Univerzitat (1987), Okayama University, Japan (1989), Tokyo University (1991), Ecole Superieure de Commerce, Grenoble (1997– ), Seoul National University (1998).

U periodu između 1983. i 1989. bio je član istraživačkog tima Instituta za tehnologiju Masačusec (Massachusetts Institute of Technology) na projektu „Budućnost rada automobilske industrije sa fokusom na robotizaciji procesa proizvodnje“. Profesor Jovanović je bio predsednik Međunarodnog ekspertskeg konzorcijuma u Londonu od 1991. godine. U dva mandata bio je član Izvršnog komiteta Evroazijske asocijacije za studije menadžmenta sa sedištimama u Tokiju i Berlinu. Predsednik je Istraživačke laboratorije za generalnu kosmologiju u Parizu.

Profesor Mića Jovanović ima titulu oficira – viteza britanskog reda *Fleur de Lus*.

Kulturno-prosvetna zajednica Beograda 2002. godine dodelila je prof. dr Mići Jovanoviću *Zlatnu značku* za knjigu „Interkulturalni menadžment“.

Za odlične rezultate na polju poslovnog preduzetništva, u obrazovnim projektima i za doprinos našoj društveno-kulturnoj sredini u toku 2003. i 2004.

godine, zvanično je nominovan (2004. i 2005. godine) za priznanje *Poslovni čovek godine* – čime se pozicionirao među najuspešnije biznismene u zemlji.

Godine 2006. uručeno mu je priznanje *Zlatni beočug* za trajni doprinos kulturi Beograda.

Godine 2007. poneo je priznanje *Međunarodna Sokratova nagrada* Univerziteta u Oksfordu, za dostignuća ostvarena u nauci, obrazovanju i kulturi.

Takođe 2007, prof. dr Mići Jovanoviću uručeno je priznanje Visoke poslovne škole u Grenoblu (Grenoble Ecole de Management) za izvanredna pedagoška dostignuća.

U organizaciji Evropskog pokreta i Prve evropske kuće, prof. dr Mići Jovanoviću uručeno je priznanje *Najevropljanin* za 2007. godinu, za rezultate u oblasti nauke, kulture i obrazovanja.

Na ceremoniji dodele međunarodnih priznanja organizovanoj od strane *European Assembly* u Beču, koja je održana 8. decembra 2008. godine, Megatrend univerzitet i prof. dr Mića Jovanović, rektor, nagrađeni su prestižnim priznanjem *European Quality Award* u oblasti obrazovanja.

Godine 2009. profesor Jovanović izabran je za eksperta Društveno-ekonomskog komiteta Evropskog parlamenta u Briselu.

Medalja predsednika Republike Italije za izuzetan doprinos evropskim integracijama – visoko italijansko odličje, dodeljeno je prof. dr Mići Jovanoviću 2009. godine.

Godine 2010. Kulturno-prosvetna zajednica Srbije dodelila je svoje priznanje *Zlatna značka* prof. dr Mići Jovanoviću, rektoru Megatrend univerziteta, za doprinos razvoju kulture Srbije.

Junu 2011. godine, prof. dr Mići Jovanoviću uručeno je priznanje *Menadžer godine*, u okviru konkursa koji su realizovali Privredna komora Beograda, FTN u Novom Sadu i „Medija invent“, Novi Sad.

Februara 2013. godine u Institutu „Servantes“ u Beogradu, rektor Megatrend univerziteta, prof. dr Mića Jovanović, primio je visoko odlikovanje *Orden za civilne zasluge*, koje dodeljuje kralj Španije Huan Karlos I Burbonski.

Profesor Jovanović je autor više od 80 naučnih i stručnih radova objavljenih u zemlji i inostranstvu i knjiga. Svoje radove predstavljao je na više od 30 međunarodnih i domaćih naučnih skupova i kongresa.

## Izabrani radovi

### *Autorske knjige*

- *Sociologija samoupravljanja*, Tribina, Beograd, 1982.
- *69 lekcija o menadžmentu*, Megatrend, Beograd, 1991.
- *Work Motivation and Self-Management*, Megatrend IEC, London, 2002.
- *Interkulturni menadžment*, Megatrend univerzitet, Beograd, 2002.
- *Biznis kao umetnost življenja*, Megatrend univerzitet, Beograd, 2008.
- *Business as Life Style*, Megatrend International Expert Consortium Limited, London, 2008.
- *Uvod u biznis*, Megatrend, univerzitet, Beograd, 2008.
- *Radna motivacija u prvim godinama sovjetske vlasti – istorijski esej iz XX veka*, Megatrend univerzitet, Beograd, 2008.
- *Um caruje – Istorija Megatrend univerziteta 1989–2009*, Megatrend univerzitet, Beograd, 2010.

### *Koautorske knjige*

- *What is Behind the Japanese Miracle* (sa Sung-Jo Parkom), Megatrend IEC, London–Berlin–Tokyo, 1992.
- *Organizaciono ponašanje* (sa Mirjanom Petković), Megatrend / Ekonomski fakultet Univerziteta u Beogradu, 1992.
- *Strategijski menadžment* (sa Anom Langović), Megatrend univerzitet, Beograd, 2001.
- *Upravljanje projektima* (sa Anom Langović), Megatrend univerzitet, Beograd, 2001.
- *Organizaciono ponašanje* (sa Momčilom Živkovićem i Tatjanom Cvetkovski), Megatrend univerzitet, Beograd, 2003.
- *Upravljanje ljudskim resursima* (sa Živkom Kulićem i Tatjanom Cvetkovski), Megatrend univerzitet, Beograd, 2004.

- *Preduzetništvo* (sa Momčilom Živkovićem i Anom Langović), Megatrend univerzitet, Beograd, 2004.
- *Interkulturni izazovi globalizacije* (sa Anom Langović), Megatrend univerzitet, Beograd, 2006.
- *Global Cultural and Economic Research* (sa Sung-Jo Parkom), Lit Verlag, Berlin, 2006.
- *System Transformation in Comparative Perspektive* (sa Lee Dalgon, Oh Yeon-Cheonom, Sung-Jo Parkom, Bernhardom Seligerom), Lit Verlag, Berlin, 2006.
- *Pre Velikog praska* (sa Igorom Bogdanovim i Griškom Bogdanovim), Megatrend univerzitet, Beograd, 2006.

### ***Najvažniji članci i konferencijski radovi***

- „Reality versus theory in Yugoslav self-management society“, u Brierley, B. (ed.): *Trade Unions and the Economic Crisis of the 1980s*, Gower Press, London, 1987.
- „Yugo-America: A challenge to the self-management organization of labour in Yugoslavia“, u Dankbaar, B., Jurgens, U., Malsch, T. (eds.): *Die Zukunft der Arbeit in der Automobilindustrie*, WZB, Berlin, 1988.
- „Reality versus ideology in Trade Union Organization of self-management society“, *Europa '92: dal micro al macro e ritorno esperienze e problemi di negoziazione – imprenditori, sindacati, e istituzioni a confronto*, Comunita Europea, CGIL, Bologna, 1989.
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plants' in the Asia-Pacific Region)", *INSEAD, LVMH Conference*, Fontainebleau, February 14-15, 1992.

- „Civil war as the strategic response to the New World Order (war managers must be replaced by market managers)", *EAMSA Annual Conference*, Bradford, November 27-29, 1992.
- „Goeconomics of 2000 and new managerial strategies for growth and development", *EAMSA Annual Conference*, Nurnberg, November 18-20, 1993.
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- „Intercultural Challenges of Globalization", *The All China Economics International Conference*, Hong Kong, December 12-14, 2007. (sa Anom Langović Milicević).
- „Reflection on Human Resources Management in Globalization: Some Critical Aspects", *East Asia: Comparative Perspective*, Vol. 9, No. 3, 2010. (sa Anom Langović i Tatjanom Cvetkovski).
- „Ma io dico che la guerra silenziosa è tra Europa e Usa", *Medidea Review*, No. 10, 2011, Roma, Italia.



PROF. EM. DR. H.C. SUNG-JO PARK\*

IN ACCOMPANIMENT OF THE ANTHOLOGY  
OF CONTRIBUTIONS DEDICATED TO 60<sup>TH</sup> BIRTHDAY OF  
PROF. DR. MIĆA JOVANOVIĆ

Laudatio

MIĆA JOVANOVIĆ AS A PIONEERING SCHOLAR IN  
SYSTEM TRANSFORMATION THEORY AND A CREATIVE  
REFORMER IN CAPACITY-BUILDING

*Hoc primum philosophia promittit: sensum communem, humanitatem et congregationem. A qua professione dissimilitudo nos separabit. Videamus, ne ista, per quae admirationem parare volumus, ridicula et odiosa sint!*

(Seneca)

Dear Mića,

This is an anthology of contributions by your colleagues and friends in commemoration of your 60th birthday. The contributors comprise different nationalities with their expertise encompassing legal studies, economics, management, and international studies. All of them have a sincere wish to pay homage to you with friendship.

Going through your scientific works and practical activities in the past one thing is particularly striking. That is, as you wrote in your book "Business as Art of Living" (2008), that in the 80ties you were planning something really *new* in Serbia: "This is the service *Knowledge for Serbia*". What you had in mind was *explicitation* of knowledge (Nonaka & Takeuchi 1995) which is to manifest itself in education, qualification, and training.

You perceived broadly the concept of 'knowledge' introduced in the 60ties by Fritz Machlup (1962) who understood it as a correlation between industrial production and distribution. But you went with your above-mentioned book far beyond Fritz Machlup and touched on the question of how the tertiary economy

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\* Prof. em. Dr. h.c. Sung-Jo Park, Free University Berlin, Germany; the first President of Megatrend University (1999-2003).

can be combined with knowledge economy, to be more concrete, how the lifestyle-based service economy can reach higher value-creation in knowledge society.

The success you have reached with Megatrend University as a model of capacity building for system transformation (Park 2013) was emblematic of epitomizing the knowledge perceived by you. You conceived of knowledge as a *new lifestyle* in the digital era. Your perception of knowledge is not enmeshed within the Serbian boundary, but should be understood in regional and global ambience. In this regard you thought of ‚*sharing knowledge*’ as an inherent element (Weitzman 1984).

Your theoretical and practical contribution to system transformation in knowledge economy was started with your profound, empirical scrutiny of the Yugoslav self-management. The question you asked seemed to be very simple: how can we make capitalism in an economy which has been bent on socialistic command for a long time? On the top of it, people have been proud of a pronounced special Yugoslav type of socialistic management.

Dear Mića,

Since the 80ties you have dealt with system transformation, of which I shall mention only some selected works as follows:

- *Sociology of Self-Management*, Belgrade 1982
- “Reality versus theory in the Yugoslav self-management system”, in: Briery, W. (ed.), *Trade Unions and the Economic Crisis of the 1980s*, Gower Press, London
- “Yugo-America: A Challenge to the self-management organization of labour in Yugoslavia”, in: Dankbaar, B., Juergens U., Malsch, T. (eds.), *Die Zukunft der Arbeit in der Automobilindustrie*, WZB, Berlin 1988
- “The Business of the Century: The De-Coupling of Business and Self-Management”, in: S. J. Park (ed.), *Technology and Labor in the Automotive Industry*, Campus, Frankfurt/New York
- *Work Motivation and Self-Management*, London 2002
- “Self-Management in the Bor Mining and Smelting Corporation”, in: Mića Jovanović et al. (eds.), *System Transformation in Comparative Perspective*, LIT, Berlin 2007

Social Science has lacked general theory about how to deal with system transformation: the crash theory favored by economists of Harvard University under Jeffrey Sachs presupposing ‚crashing socialist legacies’ as the essential requisite for system transformation (*the crash model*); the German way of combining huge amount of financial resources with the imposition of West German institution and organization models on East Germany (*the imposition model*); lastly, gradual bringing up of transformation actors (*the human resources model*). The first case

applied in Eastern Europe failed in almost all cases; the second model resulted in desultory outcome; the third model in use in some socialist economies of Eastern Europe has been struggling with ambivalent results. Since this attempt requires a long time, a definite evaluation is premature. Nevertheless Megatrend University may be an exception.

The gradual approach based on long term dissemination of knowledge denotes a step-by-step effort, whereby the socialist economy, not being ready to dispense with communist party leadership, is persistently hinging on central command. The case of the People's Republic of China proves this. In the Chinese case, the transformation has been pursued through properly proportioned hybridization of socialist and capitalist economy since the beginning of 1980s. No expert argues that the system transformation in China has been already carried out satisfactorily.

An important reflection on the system transformation approach consists in taking historical, social, political, economic and cultural variables into consideration to change the socialist economy and political system in the country concerned (Seliger 2007), whereby a focus is to be placed on political actors. O'Donnell and Schmitter (1986) drew attention to the fact that it is quite possible to forecast which groups, persons, sectors, and institutions will play an important role in the transition period. However, it is still impossible to foretell what kind of interests will be manifested in those persons', groups' and institutions' behaviors and actions. Therefore, it is not clear at all whether any of them can be expected to exercise a coherent collective action for successful transformation.

According to O'Donnell and Schmitter (1986), the system transformation requires two phases: the first phase is characterized by a change in political regime, the installation of new political procedures, and securing of formal rights and obligations in conjunction with modification of social and economic conditions (Oh 2007). But the time horizon of the shift from the first phase to the second one cannot be specified exactly. However, in the second phase, the economic, social and political integration can be strived for and achieved as a result of the efficiently functioning market economy and democracy. Radošević (2004) propitiously refers to the importance of global aspects, by which the first phase and the second phase are differentiated as 'institutional transformation suitable for functioning market economy', and 'integration into global production and technology network' respectively. Nevertheless, no mention was made on the time dimension of transformation. Particularly, the role of human resources was not referred to either.

Experiences with transformation in former socialist economies indicate that the success is corollary of how much human beings are made amenable to dealing with the market economy. This means human resources are getting familiar with market-relevant consciousness, attitudes, and behaviors in tandem with the transformation of legal, institutional, and organizational infrastructures. Meske

emphasizes the necessity of *synchronic* consideration of all aspects of system transformation, as he states, “the starting point of system transformation lay in the political system but it then unfolded more or less simultaneously in the various subsystems. This gave rise less to simple cause and effect relationships than to a diversity of interrelationships” (Meske 2004, 51).

Besides the appreciation of your achievements in connection with the knowledge-based human resources development, there was one significant reflection on the image of workers. Based on your Dissertation at London School of Economics and Political Science you embraced much doubt about the ‘socialistic human-being’. As regards the self-management in Serbia you expounded as follows: “self-management was introduced in the Yugoslav society in 1949.” Yugoslav economists and politicians... wanted to implement the basic Marxist economic (political) postulate of the so called “free associated producers”. The substance of this is social collective ownership over the means of production, instead of state ownership monopoly which existed... in the socialist states of “real socialism” (Jovanović 1991). You substantiated the image of socialist worker in Yugoslavia by citing Article 13 of the former Yugoslav Constitution “in all self-managed organizations, the worker formally has the right to work with socially-owned means of production... in order to satisfy personal and social needs and to manage his work, work conditions and the results of his labor freely and on equal footing with other workers in associated labor”.

You amplified that in the period of 1949-1979 the general economic condition was favorable which contributed to the change of self-management. With one-sided increase in wealth and educational level, self-managers got estranged from workers and degenerated into bureaucratized ‘officials’ in companies. This was accompanied by decrease in motivation, discipline and productivity of workers.

Referring to the case of “Yugo-America” production line with self-management, You pointed out the discrepancy between non-materialistic, institutionally and legally provided rights and materialistic incentives. In case of the reform of industrial relations, considering self-management as a ‘moral order’ may be plausible. However, tangible productivity increase from the side of workers could be expected, according to your opinion, *only* if monetary incentive was given for self-management. You demonstrated great affinities between self-managers in Yugoslavia and Arbeiter, as it has been described by Hans-Joachim Maaz in his book “Der Gefuehlsstau. Ein Psychogramm der DDR” (1992).

Around the year of 1990, the self-management was suspended by the new government. Critical reflections on self-management were necessitated for the transformation of a socialist into market economy. Here your gorgeous merit manifested itself in concomitance with rekindling discussions on which strategy should be chosen in Serbia: you emphatically stressed at the end of your critical essay on self-management, “Business and self-management are not linked”... “even more business should be going to overwhelm self-management in

Yugoslavia” (Jovanović 1991, 102). You underlined the necessity of influencing workforce by means of calculative rationality.

Dear Mića,

Your notion was, as Kant said, to *rely on ratio* (for enlightenment) instead of accent on workers’ solidarity à la Marx, and then reach a stage where we are grown-up and do not need guardians (Vormundschaft)’. The question for transforming a system is how to raise an autonomous, grown-up personality through education to increase self-confidence in capacity and action.

For substantiating your book “Work Motivation and Self-Management” (Jovanović 2002) you must have had in mind the following features.

- 1) Self-management started to flourish in the period of Tito’s socialism, when the so-called grass roots workers’ management participation was *idealized*. In theory, the self-management’s ideology aligns to a certain degree with Japanese lean management, German co-determination and Swedish Volvo management with regard to how to reduce negative impact on morale and motivation of workforce resulting from *fordistic mass production*. That was the reason why many scholars, especially union-friendly experts in the West, welcomed the self-management system. *In practice*, however, self-management resulted in bureaucratization of intra-organizational decision-making which caused the decrease in workers’ labor motivation and productivity. Your concept, however, aimed at the question of how ‘new type’ of human resources should be developed in conjunction with the system transformation in a country like Serbia. The ‘new type’ of human resources implied *continuous education and re-qualification* (tantamount to the Japanese Kaizen) of young people who were not used to self-management. Since the system transformation in Serbia had to be carried out in cooperation with profit-oriented capitalistic enterprises by means of foreign direct investments, the ‘new type’ of human resources had to be developed as soon as possible in order to meet *the demand for business- and open-minded young people accustomed to western modern managerial principles and methods*.
- 2) In terms of differences in *incentive system*, self-management stressed ‘moral order’ and legal and institutional-political incentives for workforce, while your intention consisted in the development of *learning and creative potential* in knowledge society tailored towards globally operating companies.
- 3) Self-management was created by the central government and practiced by means of strict central regulations and orders. Your concept was true of *private* companies, in near future, mostly of foreign origin in Serbia. In line with this your concept aimed at enhancing *individual creativity*,

whereas self-management regarded *group/collective solidarity* to be more significant.

- 4) Self-management was tailored towards Yugoslav workers. But your concept of Human Resources Development is intercultural and global (Jovanović 2001; Jovanović & Langović 2006), not only in terms of university curriculum, but also by an efficient globalization strategy of your university.

Richard Florida (2002) who coined out the term 'creative class' referred to three requirements for the formation of the creative class in the USA: *technology, talent and tolerance (Florida's 3 Ts)*. Tolerance defined by Florida implies not only multiculturalism, but also acceptance of gays, and hippies, and also the so-called social dissidents and isolated people. The notion of tolerance may further implicate amalgamation of different races and cultures in the Balkan region anyway characterized by the junction of the east-west civilizations and religions.

You loathed the notion inherent in socialism and self-management related to human-being (workforce) as *production factor doomed to efficiency and productivity*. You wanted to contribute to making a "new type of human-being" who at first glance is not perfect, but is capable of reflecting on efficient work and satisfaction as a new life style. Your concept stems from 'imperfect human-being' whose productivity and creativity can be *enhanced by means of knowledge and education*.

For realizing this purpose you needed a university. You spent last two decades establishing it. The most severe impediment was the Bosnian War, the UN embargo policy and NATO bombings. Your country was nearly completely cut off from the outward world, being driven into isolation. Even most of your close friends abroad abhorred to come to Serbia. You perceived the crisis as a *new opportunity*, as the Chinese term says. However, you did not despair, but continued your work by holding management seminars. Hereby you gave premium on local towns, from which seven detachments of Megatrend University emerged later. Despite such enormous difficult constellations, you were enthusiastic to bring new management principles and techniques, as well as most recent globalization-relevant information to local areas in order to keep new teaching programs from being concentrated solely in Belgrade. This practical trajectory was born out of your strategy to *set up something new in Serbia*.

This made you and your university 'unique' in Serbia and the Balkan region. You became soon a spearhead in 'new management theories'.

Your philosophy to accentuate *local* interests and *local* cultures is attributable not only to your local origin, but has recourse to your intensive dealing with legacies of the Western type of industrialization and modernization which culminates in urbanization, concentration of all physical and non-material resources, and undermines local cultures.

Further, your observation on experiences in East Germany taught you that there was a great deal of shortage of experts in handling local development in a

proper way and transforming the socialist into a capitalist economy in local productive entities. The shortage of local experts in East Germany entailed import of western ‚transformation experts’ who did not pay attention to local needs and interests in East Germany. Experiences in former socialist economies, on which we published an extensive analysis entitled “System Transformation in Comparative Perspective” (Berlin 2007), instructed that a structural reform in the socialist economy has to be *gradually* pursued, instead of ‚crash’-strategy, as it has been the case in Russia, Poland, East Germany etc.; lastly, locally spread still-existing small handicraft and industrial small firms should be adapted gradually to capitalistic market behaviors. Above these approaches, the following pre-condition is important: that experts familiar with local sensibility and specificity should be available *on the spot*.

Additionally, you were greatly skeptical of mechanic transfer of Western capitalism to Serbia. You and the author discussed the question of what kind of capitalism could be more suitable for Serbia. Without a concrete answer, both shared the opinion that the Western capitalism, the European or the American, which brought forth enormous success in the past, is not likely to be competitive enough to match future Asian capitalisms and the BRICs. That was the reason why you intended to deal with emerging economies which gave the momentum of establishing Faculty of Geo-Economic Studies. This means, in fact, that the globalization should not be understood as a simple spread of the Western capitalism and American hegemony.

You were greatly interested in the question: what kind of capitalism does Serbia need? You saw that the primary condition for it was to bring up young people by taking into account local cultures and value system tailored towards the Serbian capitalism. Neither the American nor the European capitalism is of relevance. It is already commonsense that the economic hegemony by the USA and Europe would eclipse in a foreseeable future. Unfortunately, Western experts lack ability to see the world development in a rather differentiated and far-reaching way, even though it is obvious that the Asian and Pacific region will be playing a dominant role in the world economy soon. This does not mean that the imitation of the Asian way should be carried out in Serbia. Your position was a *consilience* of different capitalisms based on a variety of cultures and on experiences of capitalism in other countries.

Dear Mića,

As regards the establishment of local detachments of Megatrend University you simply said: “we go to our customers, the students”. This adage you spoke out is of profound significance. You have been aspiring towards a new paradigm as an alternative for educational systems in the West, developed strongly influ-

enced by the industrialization and modernization since the 19th century. How about the new paradigm in the knowledge society that you had in mind?

- *The re-ruralization effect:* thanks to the detachments of Megatrend University in local towns students from the countryside do not need to go to urban areas such as Belgrade. They stay with parents and family at home, help in the household, and take part in community/village activities. This is in contrast with the local towns and villages in industrialized countries of the West.
- *The knowledgization effect:* local towns in most industrialized countries are inhabited mostly by aged people, having neither adult education nor other information activities. A detachment provides chances for re-education and re-qualification in various respects by keeping young people from brain drain.
- *The cost-saving aspect:* students stay at home and do not pay the rent, what happens when they live away from home. All detachments share teaching staff because they travel from one to another detachment. This means every detachment does not need special teaching staff only for that detachment concerned.
- *The continuation of direct communication between professors and students* is possible during the whole week. The traditional way of teaching enables professors to communicate with students only once a week for a short time. Since they stay at one place for one week the one-week intensive communication produces more learning motivation of students. They need emotional reinforcement by professors.

Dear Mića,

It is very understandable that Megatrend Business School was awarded a Special Prize for Contribution to Local Development by the Zaječar City Administration. Here, a new model of higher education institution is being probed in the sense that “teaching staff go to students, not students to teaching staff”. This is a new *,customers satisfaction’!* Here you developed a new model for higher education. This new paradigm was successfully incarnated in Megatrend University as a legendary ascendancy in Southeast Europe.

The following interview aims to look into motivation and strategies in connection with Megatrend University.

**Interview with Prof. Mića Jovanović was carried out on March 28, 2013.**



Professor Mića Jovanović and Professor Sung-Jo Park

*Interviewer (Prof. Park):*

What was your philosophy for establishing a university, even though you were and are a specialist in car industry?

*Mića:*

Yes, I have been at many international car industry-related conferences in foreign countries, presenting papers and making acquaintance with many experts. Especially the year of 1989 was the very important turning point for me. Up to 1989 I was not sure whether I should return to my home country or stay abroad. In August 1989 the Government in Serbia enacted a New Company Law, which provided chances to Serbians for establishing private companies. Thus, I decided to stay in Serbia with the intention of creating something new. The Law made the establishment of over 1000 firms possible. Very soon the number reached more than 100.000 firms. Someone said that the “New Yugoslavia” had begun. “Everybody started their own business”. As you know I first started teaching at The University of Belgrade at the age of 22 in the field of work sociology. I focused on self-management. Very soon my interest went towards the establishment

of a private university in Serbia with the intention of setting up the “top private education completely different from already known universities”. My creed was that “all the people should be educated at my university combined with two visions: decentralization and de-metropolitization”.

*Interviewer:*

What kind of students do you want to bring up?

*Mića:*

When I began with the university I thought the best students must be brought up not only in educational field, but also in cultural field. For realizing this aim the best students should be screened by means of very strict selection procedure. However, my idea has changed in the meantime, because it is impossible to find and keep young talented stars. Now the focus is placed on collecting young men, because, first, the interuniversity competition in seeking young people is getting tight and, second, there is a decrease of 8-10 % of high school graduates year in year out due to the dramatic decrease caused by demographic change. Now the question for private universities is how to reach the standard of break-even-point.

*Interviewer:*

How was it possible to make the most popular university?

*Mića:*

There were several factors.

First: we have the best curriculum among all universities in Serbia.

Second: we have the best professors according to qualification, competencies, and pedagogical achievements.

Third: we use excellent textbooks. All professors are obliged to publish their own textbooks and renew them every 3 years. That is the reason why creative dynamism is looming large in development of textbooks in all academic fields.

Fourth: we are proud of international cooperation and international activity.

Fifth: the introduction of tuition-free system for the first year students. Instead, students are obliged to buy text books.

Sixth: every year we hold several international conferences.

*Interviewer:*

Could you please explain this point in detail?

*Mića:*

I can give you only this year's example.

- April 26-27 together with the Atlantic Council of Serbia we will host an International Conference on Euro-Atlantic Integration and the Security of Serbia within this.
  - June 12-14 Megatrend will host the conference entitled “The Challenges of Globalization” jointly with the Windsor Debates International in Cannes.
  - The last Friday in November there is always our regular conference on “International Business”.
  - Sept. 9-14 Megatrend will organize the 10th Global University Network Meeting
- This year, more precisely on January 28, we already hosted one international conference on “Lifestyle in Globalization” with professors from Oxford, Harvard, Nanjing, Grenoble, and Berlin.

*Interviewer:*

What contribution is your university making to the system transformation in Serbia?

*Mića:*

Yes, we contribute a lot. But I concentrate on innovations pursued at our university. I like to pinpoint some facts in educational field. We innovated the old way of thinking as well as the usual manners in university organization. This concerns also students' behavior which should go in compliance with organizational innovation. As I have already stressed, we do not use obsolete textbooks. Also teaching methods were reformed timely fitting into the demands of students. Especially the interactive teaching has been strongly accentuated. As far as technical facilities and equipment are concerned Megatrend University is, without exaggeration, without competition in Serbia. We used the software ‚clipper‘ which I developed 23 years ago.

*Interviewer:*

Why did you establish so many detachments of the university everywhere in Serbia?

*Mića:*

Just after the university was established we were soon confronted with severe situations such as the UN economic sanctions, the Bosnian War and NATO bombings. The economic situation got worsened. The living standard decreased drastically. Nevertheless, I thought, the spread of (new) knowledge everywhere in Serbia was *ultimo ratio* which necessitated the so called doorstep education. This meant I had to go to students! We mobilized minibuses for driving professors to detachments, and divided Serbia into two educational regions: the north region comprising Novi Sad, Indjija, Sombor, Subotica and the South/Southeast region involving Paraćin, Niš, Zaječar and Negotin, and some years later Valjevo

and Smederevo. The teaching has been carried out on Thursday, Friday, Saturday and partly Sunday in modular form.

*Interviewer:*

What is your philosophy for regionalization and globalization?

*Mića:*

My philosophy is very simple. The ongoing regionalization and globalization reinforce the process of undermining individual country's political, economic, cultural, and social identity. I am not in favor of losing the individual country's identity thanks to market triumphalism. If, for instance, the Serbia's accession to the EU should be conditioned by Kosovo, I am sure that many Serbian people would not agree on the EU membership. At any rate, Serbia should not hurry with the EU accession.

Comparing the Serbian economic situation with that of many EU member countries, our economy is doing quite well, even though we have to overcome so many hindrances. The government is trying to do the best. The banks are stable (2 Serbian banks and 10 foreign banks). Foreign direct investments, especially from Germany are increasing. In the meantime Serbia has developed a stable corporatism built upon the cooperation between the state, banks and the economy (a Serbian type of corporatism). In this situation Serbia should not necessarily try to join the currency union. This would be detrimental for the Serbian economy, considering the cases of Cyprus, Greece, Ireland and Portugal. I am afraid that the European Union currency would collapse sooner or later.

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## GENRE AND STYLE FEATURES OF MIĆA JOVANOVIĆ'S WORK "BUSINESS AS THE ART OF LIVING / BUSINESS – ART DE VIVRE"<sup>\*\*</sup>

In this paper the author deals with genre and style particularities of Mića Jovanović's works on business as the art of living. Jovanović's work is perceived in the light of modern literature theory and its genealogical principles. It has been noticed that the book in question with its peculiar structure and unconventional contents breaks free from the typical genre arrangement because it expands to other areas of creation, although it is basically about the methodic of business. Jovanović's book practically has three skillfully consequent layers – the first consists of interesting lessons on business management, the second portrays belletrization of certain fragments from the author's life, and the third layer includes visual metaphors from the vast illustrative material. In the attempt to enlighten the fundamental characteristics of business style as clearly as possible, Jovanović created a certain kind of para-genre where one functional discourse is cleverly replaced by another, and the combination of genre elements generates one hybrid work representing much more than a play of conventions and styles.

**Keywords:** business, style, language, science, art, documentary tone, para-genre

The theory of literature recognizes language as the means of conveying thoughts while it is implied that the thought must be clearly expressed and fairly motivated in order to be understood properly, and the style indicates basic requirements of the language in each area, hence in the area of business as well. In principle, it is assumed that descriptive-informative style and language are used for communicating information and impressions, whereas propaganda and ideological discourse is canonically related to the purpose of persuasion. Unlike the mentioned, the scientific style is based on facts and evidence, and is significantly present in the area of business, having in mind at all times the empiric cognition of nature and features of business-language, thus words and phrases have sense in theoretical and practical terms.

Style is an instrument of work understanding and denotes the manner of expressing one's thoughts; it is a part of personality and is developed over years

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\*\* The book was published in 2008 in Belgrade in Serbian and in London in English. Italian edition appeared in 2012, and this year the book is published in Paris translated to French.

by means of author's experience, as well as their endeavor to enrobe the contents of work into apposite form. Major share in creating and profiling certain style belongs to individual talent, whereby continuous practice is simultaneously implied, both in sphere of written and oral expression. Within this meaning, style is an individual feature of each person – manner, form and shape of contents interpretation in terms of logic, preciseness, meaning etc. Unlike live everyday discourse, in many fields (science, business, pedagogy, psychology etc.) professional terms are used being part of professional-scientific vocabulary, and are adopted, typically, in their actual meaning and not metaphorical. In other words, professional terminology does not operate with emotions, but rather interprets facts, data and evidence authentically or literally, hence in those spheres there is little space for stylistic creation and is reduced to so called functional styles including business-style.

Logic in oral, and even more expressed in written discourse, proposes that each sentence has clearly formulated message and, as a link in chain, is connected to a statement naturally deriving from the previous one. Otherwise, coherence of discourse/text would be more or less disturbed; thereby the statement itself would be insufficiently functional. According to canon, clarity, preciseness and simplicity of expression are main characteristics of business style. Preciseness of expression in business style enables easier, logical and full comprehension of professional and scientific postulates in this field, being one of the main features of the book ***Business as the Art of Living*** by the author Prof. Dr Mića Jovanović.

This book certainly is one of those works with practical purpose and pronounced theoretical foundation, simultaneously based on vast experience and practice. Therefore this work on business methodic is hardly classified as one of routine genre baselines. Its unusual, quite peculiar structure distinguishes ***Business as the Art of Living*** with a kind of divergence note – in general thematic terms it deals with “the art of business”, but at the same time it spreads to other areas of reality and life. On the other hand, that thematic polymorphism required special type of language imagination as well in order to encompass the entire variety of utterance types – from, conditionally speaking, business style to such forms of statement close to literary artistic style in a kind of literary elevation of one field so complex and uneven as business. Moreover, the author introduces personal confessional discourse to this reading, presenting to the reader all those unexpected situations and problems likely to happen in this sphere and obviously encountered already by the author.

At first sight already it may be concluded that the author drafted and wrote this book as a sort of textbook or *popular guidebook* for business – having chosen an extremely popular strategy, the main principle and aim of which are recognized in the thesis that one complex creative area, with infinite number of unknown terms associated, merging autoreferentiality of modern art and conventional narrative practice, is made more familiar even to a so called common reader.

The book itself is extremely functional and susceptible, intended for beginners in business sphere, but certainly, as well to experts and researchers of this key area in productive organization of human creative industry and human society in whole. Exactly this unusual and uncommon approach to interpreting business phenomenon distinguishes Jovanović from the majority of authors who dealt with this phenomenon in conservative, classical way. Basic style feature, which distinguishes Jovanović from other authors dealing with business practice and theory, publishing complicated and tiring "tattered books" on this topic, may be recognized in the author's idea to introduce one new, more appropriate and "relaxed" language in reflecting on topics from the area of business. Peculiarity and exceptionality of this book is in the author's idea to free the topic from the ballast of academic business speculation and "transfer" it to another plane that would be accessible and susceptible even to the so called common reader, and not only to academic economists and business theoreticians.

Professor Mića Jovanović, in his intention to approximate business as theory and practice to as many educated people as possible, understood that it is not possible to crucially influence understanding of business laws and regulations in today's population wide array merely using academic vocabulary and strictly complying with academic theories and forms. In this effect, his book ***Business as the Art of Living*** – with special attention to be paid to the syntagm ***art of living*** – "encodes" a new insight – approaching business as a kind of art or inner mission. This is, as we know it, the first time in literature to link business to one ontologically important instance as the *art of living* – i.e. figuring life out as the greatest value per se.

Such complex, one would say "awaken" humanist approach to business – that is nothing but action or "activity" – emanated in several important implications in business understanding as conceived by Jovanović. It is already known that the theory of style (stylistics) completed very subtle differentiation of styles, whereby catalogue of so called functional styles was established to appear in everyday discourse as well as in written expression: oral style, written style, poetic (literary artistic style), scientific style and others, everyone of which has strictly determined function (meaning) and sphere of broadening and acting. Jovanović, however, did not primarily deal with theoretic features of certain business styles. As an individual dedicated to business in practice (creatively) and theory, he commenced with the idea that styles cannot be reduced to strictly determined propositions and they do not have to have finally determined and unmovable meaning. His book ***Business as the Art of Living*** specifically in its germ has one relativizing comprehension of style, which apart from its exact nature is not reduced to one meaning and formula, but leaves space for variants as well as for certain stylistic margin in interpretation of canonic or conserved meanings of each style.

Dealing with business practice and theory, as evidenced in this book, Jovanović believed, from practical point of view, but also considering theoretic met-

hodology and understanding the nature of style, it would be desirable for style as civilization phenomenon to step out of its theoretic and canonized frames and in that effect reach a new level of flexibility. Since Professor Jovanović is predominantly occupied with business as practice, but obviously, as methodology and theory as well, in his book *Business as the Art of Living*, on the basis of personal experience, scientific knowledge, and intense practice as well, he came to a kind of realization than nowadays attitude towards style and styles could be recreated in order to absolve the style itself to a certain extent from theoretic “enchantment”. The author relies on personal long-term experience in doing business – and that certainly is one standard giving him the right to introduce a kind of “Copernican Turn” in the sphere of business language. In this effect, the simplicity of the idea promoted by this businessman seems almost stunning: relaxedly, he offered to replace one functional discourse with another and, mixing narrative techniques, successfully integrated different genre elements in hybrid work denoting much more than mere playing with conventions.

Thus in his scientific discourse – in the sphere of business theory and practice – instead of insisting on severe respect for business and administrative style, appear alternatives of other styles and sub styles that, until now, rarely or almost never, appeared in business communication. Hence it is very instructive to look into the structure of his book *Business as the Art of Living* being the topic of our analysis.

The first chapter of this study is entitled *Rain*. Certainly, it is one of the titles not to be expected but exceptionally in the literature concerned with business methodology. Rain as a phenomenon comes under the domain of meteorology and can have merely casual, collateral connections. Such title in this sort of utterance may be expected with very low percentage of probability, unless conditionally speaking linked to agricultural business where meteorological prospective may have extremely significant influence. In the chapter *Rain* those associations do not appear even in remote hints, hence the chapter carrying this title has no correlation with eventual “rain effecting business”. It is certainly about an effective turnover when the author in this short chapter describes one of his journeys to England. The fragment is written in the third person standard descriptive style used with extreme emphasis on documentary speech of facts. The text begins with *in medias res* method already in the first word mentioned identifying the hero of the story named Ron Kirk, who the author shall identify himself with as the story goes on. That type of mystification certainly does not belong to classical business style, but rather to literary artistic expression. The story is placed on “Heathrow” airport, on a foggy day under the rainy clouds. The exact date is given – the fifth of January 1980. It is obvious already from this fragment that the author and the protagonist of the story at the same time aims at documentary expression, trying to substantiate the narration with authentic facts, including the elements of personal, individual experience.

It is followed by several fragments concealing exceptional sentimental charge – and that is transition into another sort of style nominated emotional style, traditionally considered incompatible with business vocabulary: “It crossed his mind that, somehow at the same time, twenty-seven years earlier, he was born in a small place at the hilly east of Europe, in the Neverland. After all, that was the name of the land where Peter Pan took Wendy and Tinker-bell; flying by the Big Ben in London lightened by the moonlight, leaving traces of star dust (...) He was not sure why he came here, but he felt he would not go back soon. Some people *are coming*, but never *arrive*, just as some *are coming back*, but never actually – *return*”.

The quoted fragment ends with short statement that the protagonist put down a small valise, accommodated in a room on the fourth floor of pension and fell asleep “thinking about all he should do, before setting off to more serious ventures.”

Therefore, exactly in line with style rules, the point of this statement reaches the highest emotional bearing in the ending accord that is at its end. Obviously, strong, significant point especially denotes and ascends certain statement, distinguishing not only famous poems and great, worldwide recognized poems, but journey descriptions as well the contents and meaning of which is conquering business. Rich, stylistically refined image of happenings that may accompany one business odyssey initiated on the “hilly Balkans” is also proposed, and shall have its grand finale in the great world and vortex of intense business games. Strong liaisons with our inner being, as claimed by the Professor Jovanović in his writing, are not lost – wherever they may be on this planet. Hence, this fragment is characterized by unusual stylistic energy – *gnomic aspect, paradox, word play, and speech parallelism* – all features clearly indicating primary stylistic ornaments in the corpus of our written and oral literature that reached the highest esthetic extent in world framework.

The introductory story *Rain* in Jovanović's book obviously represents summarized but symbolic description of the protagonist's (Ron Kirk) departure from the country and dwelling in England. From narrative style point of view his story belongs to typical example of confessional and itinerary prose containing abridged but symbolic descriptions of the journey itself, strong openness towards new impressions and knowledge and adjusting to foreign social environment. That sort of discourse has tradition in our literature and overall culture of earlier periods when it symbolized a kind of a mirror that realized and understood the “great world” we strived to gather pace with as ethnos and culture. Some of the most important writers from Serbian literary Pantheon are part of this tradition, including pioneers in establishing fertile connections with the great world, such as Dositej Obradović, Zaharije Orfelin, Protá Mateja Nenadović, Rastko Petrović, Crnjanski and others.

Taking a closer look, it may be concluded that Jovanović's stylistic expression is the closest to the tradition of itinerary genre, greatly featured in the style

of both oral and written Serbian literature. It is not a coincidence that the topic of move – heroes leaving to the big world – is one of the fundamentals of Serbian verbal epos, where an exceptional style presents spiritual and material vertical of our ethnos. The greatest epic works of our modern literature – Ivo Andrić and Miloš Crnjanski, for instance – are based on that topic to a great extent. Journeys, moves, departures to the world with the idea that hero, as in folk tales, comes back with *gold-winged bird*, symbolize the desire for new knowledge and experience. Such stylization of expression is a part of a great, endless story about seeking new experiences and education. Jovanović in his story about the world of business as a certain kind of challenge, at the same time is not far from ancient saga, changing only epoch and garments, but is the same at all times: crossing “over seven mountains and seven seas”, understanding the world and gaining experience of difference, and nobly handing it over “on the benefit” of one’s own nation. That is certainly even nowadays the supreme mission that destiny may possibly endue to an individual.

However, the composition of the book *Business as the Art of Living* after this text continues with one fragment graphically isolated since printed on a different (blue) basis, and begins with the statement: “*Mission’ is the initial phase of every business (...) Setting up a mission of business means “creation” of business, its successful commencement. To know why business is started is crucial for its success (or failure). In order to establish the mission of business, it is necessary to answer three questions (...)*”.

Obviously, sudden change of style took place in narration – confessional style of the narrator in the first person is replaced by new model of functional style, in this case obviously business style. Therefore, on the basis of insight of the text – including visual metaphors from abundant illustrative material, as the third layer of conveyance – it may be concluded that the author demonstrated in this part of expression several stylistic models thus indicating the fact that in the living reality of business, functional styles are mutually intertwined and enchainned, depending on the aim and purpose of the expression. Yet again all mentioned implies correlation between style and personality of the author. Basic experience is that business style, as testified by Jovanović’s book, generates, on one hand, on the traces and within frames of stylistic dominant of an epoch and, on the other hand, every creation has its inner logic if not inner illumination casting light on it. Jovanović’s intention to show business – canonically considered monotonous and “arid matter”, reduced to percentages and profits – contrarily, as imaginative, complex, demanding activity, and as expressly human phenomenon having its special magic, style, ethics and aesthetics.

Striving to illuminate the basic attributes of business style as clearly as possible, *alter ego* of this work, **Ron Kirk** composes a certain kind of *para-genre* combining the topic of business with a form of journal, and new narrative compositions accompany the chapter *Rain*. The author shall join in an interesting and produc-

tive manner the elements of journalist prose with variations on the topic of business. Those chapters are *British Museum, Barkley, Emberstar, London School of Economics, Fall, London by Night, Business I, Life I, Business II, High Risk, 1989., Business as the Art of Living, Life II, Business and Art, Midi - South France, La vita e bella, They Danced*. Each of these chapters shall also have new topic, but, in parallel and different stylistic features that functionally correspond to contents.

Vital message offered by the book ***Business as the Art of Living*** to contemporary recipient is most efficiently recognized in the idea that business language need not be "alienated communication" which would inevitably reject potential recipient. Dr Mića Jovanović proved that business style may be rendered closer to so called common reader, and most certainly young people as well. These stylistic modifications might in certain circumstances cast new, bright light on the phenomenon of business and fundamentally change the standard idea of this exceptionally important area of life and creativity.

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## **ŽANROVSKE I STILSKE KARAKTERISTIKE DELA MIĆE JOVANOVIĆA „BIZNIS KAO UMETNOST ŽIVLJENJA / BUSINESS – ART DE VIVRE“**

### **S a ž e t a k**

U ovom radu autor se bavi žanrovskim i stilskim osobenostima dela Miće Jovanovića o biznisu kao umetnosti življenja. Jovanovićevo delo sagledano je u svetlosti moderne teorije književnosti i njenih genoloških načela. Primećeno je da se predmetna knjiga svojom neobičnom strukturom i nekonvencionalnim sadržajem otima uobičajenim žanrovskim odrednicama jer se, iako je u osnovi reč o delu o metodici biznisa, razastire i na druge oblasti stvaranja. Jovanovićevo delo, praktično, ima tri vešto spregnuta sloja – prvi čine zanimljive lekcije o upravljanju poslovima, drugi predstavlja beletrizaciju određenih fragmenata iz autorovog života, a treći nivo uključuje vizuelne metafore iz bogatog ilustrativnog materijala. U nastojanju da što izoštrenije osvetli osnovne značajke biznis-stila, Jovanović je stvorio svojevrsni paražanr u kome se jedan funkcionalni diskurs vešto zamenjuje drugim, a mešavinom žanrovskih elemenata nastaje hibridno delo koje predstavlja mnogo više od igre konvencijama i stilovima.

**Ključne reči:** biznis, stil, jezik, nauka, umetnost, dokumentarnost, paražanr

CONTEMPORARY SOCIETY

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SAVREMENO DRUŠTVO

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## BALANCING BETWEEN PLUTOCRACY AND ETHICS IN THE GLOBALIZED CONSUMER LIFESTYLE\*\*

The article deals with the issue of lifestyle of a modern man i.e. with the balancing between plutocracy and ethics in the globalized consumer lifestyle. After short introduction, the author turns our attention to the issue whether there is “Megatrend” towards “dynamic system awareness”? To explain his views, the author refers to so-called stakeholder theory and then to cognitive psychology. In order to see the problem accurately in a 21st century, he also asks ourselves if we are going from class warfare or religious nihilism, to „system autism“? In his concluding remarks, the author puts forwards a question: can we consolidate our understanding, from systems-autism to systems-awareness?

**Keywords:** lifestyle, ethics, globalization, religion, Megatrend, stakeholder theory, cognitive psychology, plutocracy

### 1. An interconnected mess of questions

Here is a quotation.

“The pleasures of wealth and greatness...strike the imagination as something grand and beautiful and noble, of which the attainment is well worth all the toil and anxiety which we are so apt to bestow upon it... It is this deception which rouses and deeps in continual motion the industry of mankind. It is this which first prompted them to cultivate the ground, to build houses, to found cities and commonwealths, and to invent and improve all the sciences and arts, which ennoble and embellish human life; which have utterly changed the whole face of the globe, have turned the rude forests of nature into agreeable and fertile plains, and made the trackless and barren ocean a new fund of subsistence, and the great high road of communication to the different nations of the earth.”

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\*\* This paper has been presented at the International Workshop dedicated to Mića Jovanović's 60<sup>th</sup> birthday, titled: *Business as Art of Living: A New Paradigm for "UM CARUJE" Rationality*, held at Megatrend University Belgrade, on January 28<sup>th</sup>, 2013.

A modern American paraphrase of that eighteenth century English language, composed by Harvard psychology professor Daniel Gilbert, goes like this: "... the production of wealth does not necessarily make individuals happy, but it does serve the needs of an economy, which serves the needs of a stable society, which serves as a network for the propagation of delusional beliefs about happiness and wealth."<sup>1</sup>

The quotation is from Adam Smith's *The Theory of Moral Sentiments*.<sup>2</sup> Smith was a man who - if you actually read him, or pay attention to the correct commentators on him - was an early modern post-Christian moralist who accepted all sorts of regulatory assumptions and qualifications about economic life. He was hardly a twentieth-century economic neoliberal<sup>3</sup>. Adam Smith presumed that in its *existential totality* economic life is a multi-dimensional phenomenon.

Economics is not the main topic of the academic work of this visitor - I focus on East Asian religious topics - but like anyone else who reads the newspapers, I am anxious about all kinds of matters related to our human economy and society. In preparing for this gathering in Belgrade, I have re-read a short article I contributed to a Festschrift for Prof. Park published several years ago<sup>4</sup> and also my notes for a lecture which I had an opportunity to deliver at Megatrend University in 2002. This made me remember that my personal concerns about the globalized economy as a "layman" have not changed much in the past decade.

In my old article, I was interested in how it might be possible to think about some kind of moral, or even existential, integration in what appears to be the confusion of modern economic life. In hopeful tone, I surveyed several relevant kinds of intellectual and moral issues well known (if not always enacted) among the economic powers of our world: the importance of corporate ethics; the crucial need for environmentalism and sustainability; recognition of the somewhat ambiguous and indirect relationship between wealth and happiness once a certain level of material sufficiency has been achieved (the ambiguities of consump-

<sup>1</sup> Gilbert Daniel: *Stumbling on Happiness*, Knopf, New York 2006, 219.

<sup>2</sup> In Part 4: "Of the Effect of Utility upon the Sentiment of Approbation".

<sup>3</sup> "Though our effectual good offices can very seldom be extended to any wider society than that of our own country; our good-will is circumscribed by no boundary, but may embrace the immensity of the universe. We cannot form the idea of any innocent and sensible being, whose happiness we should not desire, or to whose misery, when distinctly brought home to the imagination, we should not have some degree of aversion. The idea of a mischievous, though sensible, being, indeed, naturally provokes our hatred: but the ill-will which, in this case, we bear to it, is really the effect of our universal benevolence. It is the effect of the sympathy which we feel with the misery and resentment of those other innocent and sensible beings, whose happiness is disturbed by its malice." *Theory of Moral Sentiments*, Part 6, Chapter 3, "Of Universal Benevolence".

<sup>4</sup> Amstutz Galen: "From Scarcity to Insatiability: Globalization, Lost Variety and the Levelling of Cultural Differences," in: Holzhausen Arne (ed.): *Can Japan Globalize? Studies on Japan's Changing Political Economy and the Process of Globalization in Honour of Sung-Jo Park*, Physica-Verlag 2001, 307-319.

tion and “utility”); the dangerous role played by status competition; fears about cultural homogenization via globalization; and how, if one defines “religion” or “spirituality” in a certain way, the overall issue can be seen as religious or spiritual. But in spite of an effort to be cheerful, my thought then was also that “...the globalized leadership culture has a paradoxical relation to the anthropological, religious and psychological facts: it knows about cultural relativity, but subverts it; it knows about the traditional disciplines enforced by religious traditions, but undermines them; and it knows about the evils of status and prestige competition, but it accelerates and exaggerates them.”<sup>5</sup>

Then, in my lecture a decade ago at Megatrend University, I touched on several other issues as well: the contemporary consensus that an adequately successful economy has to be based on *some* form of capitalism but under some kind of serious ethical *regulation*; the destructiveness of inequality; the ambiguous appeal of the Western (especially American?) consumer lifestyle; the need to regulate the over-dominance of *either* self-interest or communal interest; why the United States is a bad model in spite of its history of imaginative appeal; how “work” has achieved an excessive existential centrality for modern life in part because fueled by contradictory religious visions; how some European countries have partly, but only partly, dealt with these problems better than America; and how both market failures and government failures have provided only poor preparation for adapting to economic scarcity.

In this paper I have an opportunity again to comment on economics, under a title pointing at something about balance. However, as a scholar primarily of East Asian religions, can I say anything meaningful in this venue? Besides, we now live in an information environment replete, thanks to the internet, with all kinds of data, and crowded with so much familiar ideology and conflict about economics... It is likely that I have nothing to say! But since I am nevertheless responsible for saying something today; and since we are at Megatrend University; and since this university in Serbia has some relationship with the works of the American researcher and author John Naisbitt; I would like to recommend one wide-ranging, optimistic interpretive idea about our present situation in the world. I believe this idea should be more familiar than it is. Probably my vision is too ambitious; yet I wonder if this idea could even be considered another “megatrend,” some worth adding among the other megatrends observed and proposed by John Naisbitt and his school.

## 2. Is there a “megatrend” towards “dynamic systems-awareness?”

What I’d like to propose, in the future-oriented spirit evoked by the term “megatrend,” is that there exists now, in the early twentieth century, a more and more noticeable movement - in philosophical terms, fundamentally an episte-

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<sup>5</sup> *Ibid.*, 315.

mological and ontological trend - to a greatly enhanced perception of the complex interconnectedness of phenomena in flux.

Of course, a broad “systems-awareness” is hardly a new phenomenon. In any society it has always been possible to find some people - gifted politicians, artists, philosophers, maybe university rectors? - who have had a natural, or intuitive, complex grasp of the world around them as an interactive, or interacting, or interdependent flow of events. And there is a long, long human history of mapping the world as something organic (if often too statically). But I think today it might be argued - though I am speaking now especially of “the West,” i.e. Euro-American civilizations - that in the nineteenth, the twentieth, and now the twenty-first centuries, there has arisen a greater sophistication in understanding more explicitly how our worlds, and our knowledge of them, are created by dynamic relations of interconnection and interdependency.

Earlier I already noted some themes that relate to this problem of interconnection and interdependency, when I mentioned potential paths to some kind of better moral integration in the economy, such as corporate ethics or environmentalism and sustainability. But one can go significantly further, and suggest it is possible, and increasingly visible even in general-interest journalism over the past decade, to identify numerous other, additional themes which point towards a stronger underlying transition - that is, to an expanding mode of perception and imagination bent towards a common denominator of interconnection and interdependency. In some respects it may be coming surreptitiously, almost at a subconscious level.

That looks like a vague and perhaps banal claim, but I maintain that the observation is substantial and can be sustained from many kinds of concrete evidence.<sup>6</sup> Let me list some specifics very briefly:

- many shifts in academic philosophy and intellectual traditions, ranging from De Saussure and the linguistic turn, Heidegger, Wittgenstein, and American pragmatism, to hermeneutics, critical theory, and postmodernism;
- the enormous body of thought that has grown up around environmentalism and sustainability;
- the field of epigenetics in biology, which studies how the genetic expression of organisms is shaped by complex nature-nurture interactions which go far beyond any “mechanical” unfolding of DNA;
- biome theory in ecological studies, which examines the incredibly complex relations among living things in biological communities (did you

<sup>6</sup> This is perhaps a hypothesis about consilience. In science and history, the term consilience (also referred to as convergence or concordance of evidence) means that “evidence from independent, unrelated sources can ‘converge’ to strong conclusions.

That is, when multiple sources of evidence are in agreement, the conclusion can be very strong even when none of the individual sources of evidence are very strong on their own. Most established scientific knowledge is supported by a convergence of evidence...

The principle is based on the unity of knowledge; measuring the same result by several different methods should lead to the same answer.” (Wikipedia, “Consilience”)

- remember this morning in your bath that any human body is actually a huge cooperative bacterial colony?);
- in comparative economics, the study of contextual varieties of capitalism (Peter Hall and David Soskice);
  - the whole broad field of information science and information theory;
  - the economic theories, sometimes called social capitalism, which propose that capitalist regimes, because of inherent interconnectedness, be controlled and managed in the interests of larger social and moral goals (Kees van Kersbergen, Robert Corfe);
  - in social action theory, the idea of social entrepreneurship;
  - in feminist ethics, the development of care ethics (Carol Gilligan and Nel Noddings);
  - in evolutionary theory, theories of altruism and cooperation (Sober and Wilson 1998);
  - in political theory, ideas of communitarianism (ideology that emphasizes the intrinsic, ontological interdependence of individual and community); or, conceptions of negotiated democratic pluralism (multiple actors and participants can reach consensus via dialogue);
  - in sociology, conceptions of social capital (Robert Putnam, James Coleman);
  - in social psychology, recognition of the social construction of the self.

Or, reaching in another direction:

- quantum and string physics.

Or, even, reaching into popular culture:

- the worldwide spread of Asian martial arts, which sometimes serves as vehicle for alternate kinds of philosophical ideas.

None of these topics is esoteric; most of them can be tracked from ordinary journalism. What I want to contribute here is the suggestion of a certain overview, a certain level of generalization: if we cluster the above themes in a group, and view them from a slightly more elevated level, we might be able to perceive a common quality among them: an expanded awareness of interconnectedness, interactivity, and interrelatedness.

Now, since our context today probably has something more to do with business management than with quantum physics, among such possible themes we might focus on two additional items in slightly more detail: stakeholder theory and cognitive psychology.

### 3. The example of stakeholder theory

Stakeholder theory (ST) is usually presented as a kind of economic idea, even as a “technical managerial theory, but it is also philosophically fascinating, because of its “ecological” implications, pointing towards a background philosophy of deep interconnection and interdependence among economic actors. As a lineage of managerial concepts, stakeholder theory begins with the American R. Edward Freeman in the 1960s (shouldn't it have been someone from Europe?) Sometimes it is explicit that its foundational issues are ethical behavior and knowledge.<sup>7</sup> So ST is permeated with moral argumentation, both classical and innovative, about *why* cooperative interaction should be taken seriously. (And the theory is part of the extensive body of discussion about “corporate social responsibility” (CSR) or CR (corporate responsibility). The formal positions range from Kantian arguments about protecting absolute individual dignity; to feminist arguments about care; to Rawlsian arguments about fairness and the veil of ignorance<sup>8</sup>, but what is not in question is that the notion of a fundamental cooperativeness must be conceived as intrinsic to the economy.

While simplistic caricatures of capitalism exist - both as image and reality - somewhat “under the radar” of public journalism, ST and CSR interests have spread within major parts of the business world since the 1960s. In the opinion of some commentators, this may amount to a significant reorientation of capitalism, becoming a pervasive element of contemporary corporate consciousness, even if corporations do not necessarily have a clear idea of how the stakeholders are reacting, or how the fortunes of the corporation are being affected.

...a company's long-term success, and sometimes even existence, is inextricably tied to its stewardship of not just its own well-being but also that of the natural and social environment in which it operates.<sup>9</sup>

<sup>7</sup> See: Zakhem Abe J., Daniel E. Palmer, Mary Lyn Stoll: *Stakeholder Theory: Essential Readings in Ethical Leadership and Management*, Prometheus Books, New York 2008 (all three editors are academic philosophers)

<sup>8</sup> Phillips (2003) elaborates a whole theory of “stakeholder fairness” based on Rawls but also introduces how many different ways the moral issues can be handled. He argues that modern organizations require a somewhat different treatment than in earlier classical political theory. The relationship between ethics and economics can be analytical but is affected by how certain values commitments go deeper than questions of profitability or material success: a natural environment, or even a whole human community, can be treated as a stakeholder. - Phillips Robert: *Stakeholder Theory and Organizational Ethics*, Berrett-Koehler, San Francisco 2003, 63-64, 136-46.

<sup>9</sup> Bhattacharya C. B. et al.: *Leveraging Corporate Responsibility: The Stakeholder Route to Maximizing Business and Social Value*, Cambridge 2011, 8.

#### 4. The example of cognitive psychology

Another highly influential perspective on interconnectedness arises from the broad field of cognitive psychology, which has evolved empirical experimental methods to study the interactions of mind, body, emotion, environment and society which produce human consciousness. The details are still being developed, but the general conclusions are clear:

- consciousness, including “selfhood,” is an evolutionarily emergent property of complex, dynamic interactions among body and total environment<sup>10</sup>;
- the self is not a homunculus but rather a distributed second-order phenomenon of various parts of a bodymind brain, which is in a continuous process of reconstruction (a preconscious primitive self leads to a conscious self based in autobiography);
- enormous amounts of brain and bodymind functioning are preconscious or unconscious; enormous amounts involve emotion and feeling; and these “non-rational factors” are intrinsically integrated with the rest of the brain.

While this kind of human mind seems to have developed for purposes of biological survival, contemporary psychologists have also spotlighted the fallible side of such an interconnected mental structure. Inseparably linking conscious and unconscious, rational and emotional dimensions, the brain can be a wayward display of vanity, passion, immoral urges, inattention to truth, stubbornness, prejudice, and weakness of willpower<sup>11</sup>. In an exceptionally witty book, Harvard psychologist Daniel Gilbert has discussed how human beings commonly fail to understand and predict the conditions of their personal happiness.<sup>12</sup> Since the 1960s these questions have branched into a field called behavioral economics which has attracted a great deal of attention.<sup>13</sup>

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<sup>10</sup> See Damasio Antonio: *The Feeling of What Happens: Body and Emotion in the Making of Consciousness*, Harcourt Brace, New York 1999; or see Damasio’s definition in: Damasio Antonio: *Self Comes to Mind: Constructing the Conscious Brain*, Pantheon, New York 2010: “a dynamic collection of integrated neural processes, centered on the representation of the living body that finds expression in a dynamic collection of integrated mental processes” (p. 9). For an outstanding overview of “human nature” as a complex system with elements of both continuity and discontinuity, see: Pinker Steven: *The Blank Slate: The Modern Denial of Human Nature*, Viking, New York 2002.

<sup>11</sup> In cognitive studies, the extent to which the surface conscious brain can obtain “control” over the deeper unconscious parts is still being evaluated, but is clearly far less than exaggerated ideas about rational control would claim. - Fine Cordelia: *A Mind of Its Own: How Your Brain Distorts and Deceives*, Norton, New York 2006.

<sup>12</sup> Gilbert Daniel: *Stumbling on Happiness*, Knopf, New York 2006.

<sup>13</sup> Daniel Kahneman, Dan Ariely and numerous others.

**5. Seeing our problems accurately in a 21<sup>st</sup> century way:  
from class warfare or religious nihilism, to “systems-autism?”**

Now, if a person had been offered a chance to comment on the problem of plutocracy versus ethics in Belgrade about twenty-five years ago, one might have decided to pay homage, at least formally, to Karl Marx. Marx of course is still with us - one of his most famous current exponents lives nearby in Slovenia, in Ljubljana. Alternatively, in the Western tradition, one might have referred contrastingly to the huge body of religious critique of unjust economics, conspicuously from the organized Christian traditions. But I do not understand either Marxian thought or Catholic thought, not to mention neoliberalism, as being on quite the same track as the megatrend to dynamic systems-awareness that is being proposed here. Awareness of hyper-complex issues of complex interdependency, of ecological interrelationship among multiple interests, is something different from conventional political divisions between “left” and “right.” The key issue instead is interrelation. In such a context, hyper-individualism is not a good idea, but simplistic communalism is not adequate either, and frozen religious morality also does not work. According to a sharp vision of interconnectedness, the traditional constructions, whether class conflict, religious ethics, or liberal neoconservatism, are out of date.

To describe our failings instead - economic, political, moral - in an interconnectedness context, perhaps we need to add a new term to our vocabulary. Though it is perhaps not quite politically correct, I would suggest that “autism” makes a good metaphor. Autism is generically summarized as “a disorder of neural development characterized by impaired social interaction and communication, and by restricted and repetitive behavior” (Wikipedia). If perhaps we can replace the word “neural” with “philosophical-moral” in that definition, we have: “a disorder of philosophical and moral development characterized by impaired social interaction and communication.” In other words: “systems-autism.”

I would like the word “balancing,” as in the title of this paper, to be understood in a manner which suggests dynamism, change, interconnection, interdependence, or above all awareness of multiple interests and actors who mutually create each other.

**6. Is it helpful to talk about this proposed *Megatrend* as somehow  
a “religious” or “spiritual” issue?**

At a different level of rhetoric, is it useful to consider this proposed kind of wide-scale, fragmented, creeping shift in perception as a matter which is “religious” or “spiritual”? For the present purposes, by “religion” or “spirituality” I don’t mean any particular theology or doctrine, but rather something more

like a “high-level imaginative grasp” on the human condition; perhaps even any subconscious, profound intuition which reaches people on “mythic” levels deeper than what we usually think of as rational analysis. “Religious” language operates in a dimension outside that of ordinary empirical science, and provides a “push” towards existential intelligibility that is not provided by other forms of thought. Yet what I would like to point out is that even when they seem to be circling around a broadly similar, perhaps consilient notion of how reality works, the philosophers, linguists, environmentalists, biologists, ecologists, economists, information scientists, ethicists, businesspeople, political scientists, psychologists and physicists mentioned earlier are usually hesitant to recognize “complex systems thinking” as a kind of “religious” or “spiritual” task of imagination.

In thinking about this paper, I too consequently hesitated to inject the term “religion”. Then, however, I was intrigued to discover that the language of “religion” or “spirituality” has been a persistent background interest in the works of “Megatrend” author John Naisbitt. This interest was not clearly revealed initially in his popular writings: the first *Megatrends* books, published in 1982 and 1990, pointed to various shifts in the informational structure of our perception of the world, but did not treat these as a “religious” issue. Indeed, his original book was marked by its inattention to most of the interdependence or interconnectedness themes which have been suggested in this paper (stakeholder theory, environmentalism, ecology, happiness theory, etc.); and the first book promoted an American-flavored version of individualism. Still, some of its rubrics might nevertheless be reinterpreted in the light of increasing interconnectedness (from centralization to decentralization, from institutional help to self-help; from representative to direct participatory democracy, from hierarchies to informal networking, or from binary options to multiple options).

Yet in Naisbitt’s book *High Tech High Touch* of 2001 a different tone appeared: the author was skeptical and critical of “intoxication” with technology, sounding suddenly like various critics of technology from a more humanist tradition. Perhaps unexpectedly, even Asian religions including Buddhism are mentioned several times in this book. Then, in *Mind Set!*, published in 2006 Naisbitt, opened with a discussion of his own Mormon upbringing, and the tone of the text became more conservative, cautious, and continuity-oriented than in his earlier *Megatrend* books. For a religious historian, it is easy to see the taste of Mormonism both in Naisbitt’s earlier combination of individualism, social conservatism and capitalist futurology, and in the flavor of re-thinking in his later writings.<sup>14</sup>

One wonders if this means that that American Mormonism (Mitt Romney!?) has had an unexpected influence in Serbia? At any rate, I speculate that we can

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<sup>14</sup> And in the Naisbitt sphere more broadly, there seems to have been quite a bit of variation in ideas about religion. A 2005 book by Naisbitt’s former wife which appropriated the title *Megatrends* (Aburdene 2005) peculiarly combined the promotion of a familiar socially-conscious capitalism with a blatantly unproblematized prosperity gospel rooted in a murky New Age consciousness.

see in changes in Naisbitt's thought over the course of time a distinct shift both to greater concern with religion and increased awareness of the systemic inter-connection of the world.

### 7. The trouble with entirely evading some kind of “religious” dimension

So from the point of view of the author of the *Megatrends* books, it would seem to be all right to talk about this proposed megatrend towards dynamic systems-awareness as somehow a “religious” or “spiritual” issue. On top of that, there are other reasons not to evade the religious dimension. But there are major obstacles to addressing it as well.

From the point of view of religious history, shifting patterns of such “high-level imaginative grasp” ought to be understood as exerting a greater background influence in economic life than is often acknowledged by the omissions produced by secular history, but the well-known obstacle in deciding such influence is that in terms of specific economic behaviors, any distinctive role played by such a religious “imaginative grasp” is hard to identify with empirical precision (this has been one of the problems with Max Weber's famous suggestions about capitalism and the some elements of the Protestant Reformation).

In another, not so visible, reversed way, however, a more important kind of obstacle to addressing religion is that - speaking here especially of European history - much of the religious pressure has operated in the direction of actually producing evasion. Much energy in the past few centuries in the West has been expended in running away from, or at least struggling with, the older high-level religious imaginative grasp inherited by European civilizations - primarily statist Christianity.

The challenge is that a high-level grasp like that of Christianity provides, in its own ways, an indispensable recognition of interdependence and interrelationship in the economic life of both individual and community - a point that applies not only to Western or Eastern European statist Christianity, but to other civilizations as well such as Islam. In the past several centuries, the West has distanced itself from Christianity, but unfortunately has not been able to locate any real replacement for all of the functions of Christianity. For example, background Christian assumptions were actually deeply implicit in Adam Smith. But Smith's thought, for example about the “invisible hand,” has been greatly abused by secular neoliberalism which ignored the background. Contemporary lines of thought like shareholder theory and cognitive psychology are powerful and important but they are not full-strength substitutes for religious imagination either.

Indeed, Steven Pinker's book *The Blank Slate* has suggested that in the course of counter reacting to Christianity, a considerable portion of Western thought became hostile to any kind of complexity and became instead enamo-

red of certain kinds of simplifications of experience. Pinker famously identifies these dogmas as the blank slate of empiricism (the mind has nothing innate), the noble savage (corruption only comes from society), and the ghost in the machine (mind/body dualism in which the mind is free of biology). According to his argument, the complexities reintroduced into our worldview by the field of cognitive psychology make people who are committed to such Enlightenment simplifications fearful of inequality, imperfectability, determinism, and nihilism. Pinker argues that there is not good reason for these fears: but does his defense of complexity have by itself a powerful enough quality of countervailing imaginative vision?

And I might mention, since I have come across the ocean, that a final problem with evading the religious dimension is that it blocks understanding of the all-too-influential Americans. While the complexity of the USA should not be caricatured - after all, we just had a major election - it is true that US life is distinctly influenced, differently than in almost all European countries, by relatively strong ideas about comparatively isolated, psychologically interiorized individualism, which is associated with peculiar kinds of resistance to social thinking. Historically this is a kind of high-level imagination that comes out of the USA's different, non-secular past reactions to statist Christianity - reactions which emerged in terms of radical Protestantism rather than secularism, and which in some important contexts have had the effect of undermining the ability to see complex interconnections and interdependencies. Secular or not, American neoliberalism and libertarianism are loaded with all kinds of pre-rational and quasi-religious assumptions and convictions about the comparatively isolated quality of "the individual". Perhaps each cultural tradition has its own variation on "autism."

### **8. Balancing and/or wobbling forwards: Can we consolidate our understanding, from systems-autism to systems-awareness?**

I have stated very briefly one, I hope somewhat plausible, view of our current situation. We find ourselves located somewhere between plutocracy and ethics; at the same time we are full of extraordinarily rich new ideas about interconnection and interdependence, which may be a "megatrend;" but as yet this megatrend is still fragmented, without any sufficiently effective imaginative consolidation or coherence.

There is no doubt that many troubles of the modern economy and lifestyle arise from "technical" matters like commodity prices, changing technologies, financial systems, mafia politics, and so on and on. But this does not make the high-level imaginative issue go away. A good secular, liberal magazine like the

*Economist* would much rather talk about banking or shipping than high-level imagination. Does it work?

So, to restate it once more: I want to leave you with the somewhat optimistic claim that our knowledge has moved forward rapidly to a position where we have, in some ways at least, a much better understanding of interconnectedness, of systems, than ever before in human history. But we don't have any sufficient consensus on forms of imagination that reach deeper, to unconscious and emotional levels about our interconnectedness. The mass of new knowledge we have about dynamic interrelationship as our fundamental reality principle has not yet fully penetrated the high-level imaginative narratives that retain most of the hegemony in our world. Can we move forward from here? To something that would begin to look like consensus on the basis of interconnectedness and systems-awareness?

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## **BALANSIRANJE IZMEĐU PLUTOKRATIJE I ETIKE U GLOBALIZOVANOM POTROŠAČKOM STILU ŽIVOTA**

### **S a ž e t a k**

Članak se bavi pitanjem životnog stila, tj. balansiranjem između plutokratije i etike u globalizovanom potrošačkom stilu života. Posle kraćeg uvoda autor usmerava našu pažnju na pitanje da li postoji „megatrend“ u pravcu postizanja „dinamičnog sistema svesti“. Da bi objasnio svoje stavove, autor se oslanja na takozvanu teoriju stejkholdera, a zatim i na kognitivnu psihologiju. Da bi precizno sagledao problem u 21. veku, on se takođe pita, da li se mi krećemo od klasne borbe ili religioznog nihilizma do „sistemskog autizma“? U zaključku autor postavlja ovo pitanje: možemo li konsolidovati svoje razumevanje od sistemskog autizma do sistemske svesti?

**Cljučne reči:** životni stil, etika, globalizacija, religija, megatrend, teorija stejkholdera, kognitivna psihologija, plutokratija

## INNOVATIVE LIFESTYLE: TOWARDS THE LIFE OF FUTURE - AN EXPLORATORY ESSAY\*\*

This article is an exploratory investigation on innovative lifestyles as perceived in the field of economics of innovation and strategic management. It is based on an extensive critical review of academic peer-reviewed literature and a survey of a limited number of case studies which have been already published. The article deals with definitions and various approaches to these concepts and with three foreseen sets of lifestyles: e-lifestyles, smart lifestyles and knowledge-based lifestyles. It concludes that if there is a consensus amongst scholars regarding forthcoming changes in dominant lifestyles due to technological and organizational innovations, further research is deeply needed in order to formulate more scientifically the validated scenarios.

**Keywords:** lifestyle, innovation, strategic management, knowledge-based cities

### 1. Introduction

Innovation and lifestyle are two of the current buzz words in management science, in particular in marketing, technology and innovation management and strategic management. This article aims at presenting an exploratory investigation in order to identify if dealing with the issue of innovative lifestyle, associating these two concepts together, is worth the interest of scholars in management science as well as practitioners, when engaged in creating innovative businesses, and policy makers when promoting innovative or knowledge-based clusters. The article will first address the insights derived from the literature in management disciplines and then develop the key foundations and characteristics of the selected case studies of future innovative lifestyles.

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\*\* This paper has been presented at the International Workshop dedicated to Mića Jovanović's 60<sup>th</sup> birthday, titled: *Business as Art of Living: A New Paradigm for "UM CARUJE" Rationality*, held at Megatrend University Belgrade, on January 28<sup>th</sup>, 2013.

## 2. Insights from the academic literature

### 2.1. Definitions

The two concepts need first to be defined.

On one hand, according to the business dictionary, lifestyle is a way of living of individuals, families (households), and societies, which they manifest in coping with their physical, psychological, social, and economic environments on a day-to-day basis<sup>1</sup>.

Lifestyle is expressed in both work and leisure behavior patterns and (on an individual basis) in activities, attitudes, interests, opinions, values, and allocation of income. It also reflects people's self image or self concept, i.e. the way they see themselves and believe they are seen by others. Lifestyle is a composite of motivations, needs, and wants and is influenced by factors such as culture, family, reference groups, and social class. The analysis of consumer life styles (called psychographics) is an important factor in determining how consumers make their purchase decisions. Lifestyle is also reflecting the attitudes and values of a person or group<sup>2</sup>.

Referring to a particular lifestyle became popular in the fifties and many scholars considered the concept as "vaguish and superficial", perhaps because it appeared to elevate habits of consumption, dressing, and leisure to true categories in a system of social classification. In practice, the concept has proved durable and useful, since it in fact figures importantly in the representation people commonly invoke when dealing with social values and behavior. The concept of lifestyle brings cultural anchoring, subjectivity and psychological processes to the fore (Riley, 2000).

On the other hand, innovation has attracted an enormous academic literature since the seminal contribution of Schumpeter (1911).<sup>3</sup> A universally accepted definition postulates that a new product, a new process, a new market, a new organization, a new business model or a new resource is an innovation when it gets market acceptance and success and is economically viable.<sup>4</sup> The official OECD definition is also interesting: "the implementation of a new or significantly improved product (good or service), or process, a new marketing method or a new organizational method in business practice, workplace organization or external relations" (OECD, 2005).

<sup>1</sup> <http://www.businessdictionary.com/definition/lifestyle.html>

<sup>2</sup> The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company.

<sup>3</sup> Chanaron J. J., Metcalfe S. M.: "Schumpeter's Innovation Theory", in: Carayannis, E., Ziemnowicz, C.: *Re-Discovering Schumpeter: Creative Destruction Evolving into 'Mode 3'*, MacMillan-Palgrave, New York, 2007, 52-67.

<sup>4</sup> Chanaron J. J.: *Innovation technologique et développement économique*, DGES, Collection Economie Appliquée, Université Pierre Mendès France, Grenoble, 1991; Chanaron, J. J.: *Managing Innovation in European Small and Medium-Sized Enterprises*, Nijmegen Lectures on Innovation Management, Nijmegen Business School, Maklu-Uitgevers, Antwerpen, 1998.

2.2. *Associating innovation and lifestyle*

Such association could be done following two paths:

- 1) The relational vision in which innovation and lifestyle are mutually dependent.

**Figure 1:** *A mutual dependency*



In other words, innovations contribute to change existing lifestyles or to shape new lifestyles (technology push) and existing lifestyles call for innovations (technology pull).

As an example, from the prominent cases of Kartell and Luceplan Furnitures, Dell’Era, Marchesi and Verganti (2010) demonstrated that they introduced radical design-driven innovations through incorporating extensive studies about emerging lifestyles and societal values and managed amazing performances.

The concept of lifestyle is sometimes associated to specific industries when products are considered as important in the definition of a given lifestyle such as textile and clothing and wood product and furniture.<sup>5</sup> The authors postulate that such industries have changed towards adding value through innovation, design and branding at both upstream and downstream value chain levels. Innovation and thus knowledge are becoming crucial assets for such traditional sectors.

Another approach is the concept on lifestyle innovators or entrepreneurs. Innovations are developed by early and active participants or lead users who create innovative artifacts for themselves or for their friends, and then build businesses focused on producing such products in order to appropriate benefit from their innovations. Lifestyle entrepreneurs start new firms to support a desired lifestyle or even establish a specific lifestyle. They are involved in activities they

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<sup>5</sup> Dilling-Hansen M., Jensen S.: “Lifestyle production: Transformation from manufacturing to knowledge based production using innovation”, *International Journal of Economic Sciences and Applied Research*, 4, 1, 2011, 35-54.

enjoy.<sup>6</sup> Examples are sport equipment<sup>7</sup>, home-based consulting<sup>8</sup>, tourism, hospitality and leisure-attraction industry.<sup>9</sup> Saleilles pinpointed that most neo-rural innovators are lifestyle entrepreneurs.<sup>10</sup>

Lifestyle industry is sometime opposed to scientifically-driven industry, with an implicit assumption that the so-called lifestyle industry is badly managed or at least managed with out-of-date methods and leading with poorer performances.<sup>11</sup>

- 2) The fissional vision which postulates that innovative lifestyles can be identified.

Marketing scholars merged the two concepts of lifestyle and innovation into a specific dimension: innovative lifestyle. They argue explicitly that lifestyles can be either traditional or innovative.

As pinpointed by Krishnan<sup>12</sup>, a lifestyle perspective recognizes that people can be grouped on the basis of the goods (products and services) they like to purchase and the activities they like to do with their disposable income. Each group has a style and expects “to develop it, sustain it, show it and make it a coherent and visible thing that other people can recognize”.<sup>13</sup> Early adopters of mobile devices have been an example of innovative lifestyle since they used to show up their total mobility and Apple played with their expectations. Other examples of innovative lifestyle are vegetarianism and organic food consumption. Pei-Chen Tsai and Shang-Hui Lin identified emerging innovative, so-called smart lifestyle models such as smart cities, healthy cities, low-carbon cities, and eco-cities.<sup>14</sup>

<sup>6</sup> Peters M., Frehse J., Buhalis D.: “The importance of lifestyle entrepreneurship: A conceptual study of the tourism industry”, *Pasos, Revista de Turismo y Patrimonio Cultural*, 7, 3, 2009, 393-406.

<sup>7</sup> Shah S.: “Sources and Patterns of Innovation in a Consumer Products Field: Innovations in Sporting Equipment”, Sloan Working Paper #4105, MIT, March 2000, 27.

<sup>8</sup> Henderson J.: “Building the Rural Economy with High-Growth Entrepreneurs”, *Economic Review, Federal Reserve Bank of Kansas City*, Third Quarter, 2002, 45-70.

<sup>9</sup> Ateljevic I., Doorne S.: “Staying within the Fence”: Lifestyle entrepreneurship in Tourism”, *Journal of Sustainable Tourism*, 8, 5, 2000, pp. 378-392; Peters M., Frehse J., Buhalis D.: “The importance of lifestyle entrepreneurship: A conceptual study of the tourism industry”, *Pasos, Revista de Turismo y Patrimonio Cultural*, 7, 3, 2009, pp. 393-406; Weidenfeld A., Williams A. M., Butler R. W.: “Knowledge Transfer and Innovation among Attractions”, *Annals of Tourism Research*, 37, 3, 2010, 604-626.

<sup>10</sup> Saleilles S.: “Les trajectoires des entrepreneurs néo-ruraux”, *Journal of Social Management - Revue Européenne des Sciences Sociales et du Management*, 8, 2, 2010, 137-160.

<sup>11</sup> Aylward D. K., Turpin T.: New wine in old bottles: a case study of innovation territories in ‘New World’ wine production, *International Journal of Innovation Management*, 7, 4, 2003, 501-525.

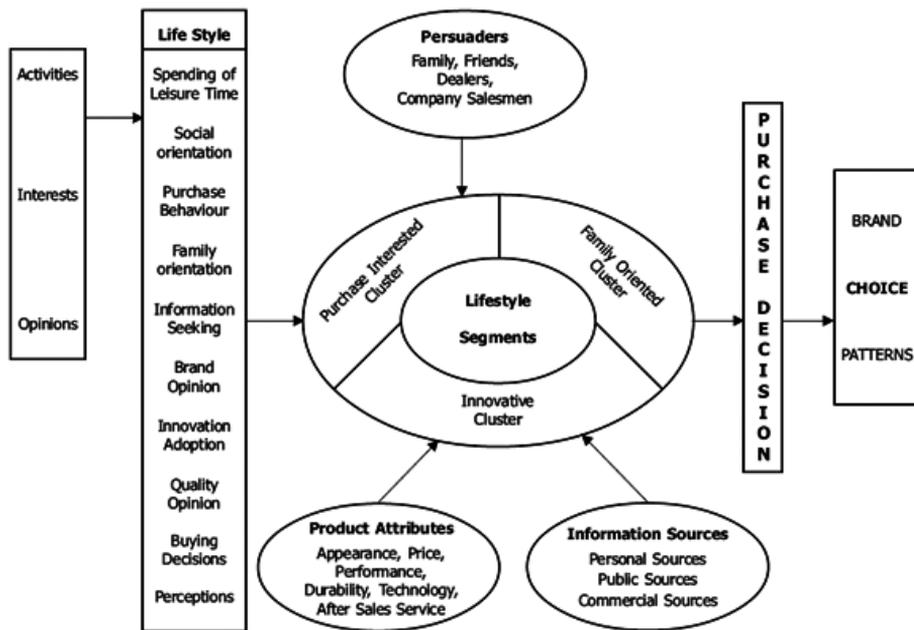
<sup>12</sup> Krishnan J.: “Lifestyle – A Tool for Understanding Buyer Behavior”, *International Journal of Economics and Management*, 5, 1, 2011, 283-298.

<sup>13</sup> Boyd & Levy, 1967, quoted by Krishnan, *ibid.*

<sup>14</sup> Pei-Chen Tsai, Shang-Hui Lin: “Taiwan’s Path to Innovative R&D and Applications: Technology-Driven and Location-Driven Pilot Programs”, *International Journal of*

Scholars developed several instruments to assess lifestyle groupings such as activities-interests-opinions (AIO)<sup>15</sup> and value-attitude-life styles (VALS)<sup>16</sup> rating scales. Innovative lifestyle is a specific segment of a given population. Following Krishnan, the members of this group are highly involved in trying and purchasing new products and services.<sup>17</sup> They want to be seen as trendsetters, being among the first to try new fashions. They usually belong to very active communities. Yu expressed the need for an e-lifestyle instrument dedicated to analyze lifestyles linked to ICT-enabled products and services.<sup>18</sup>

Figure 2: Customer behavior – lifestyle and purchase decision model



Source: Krishnan J., Murugan M. S. (2007): “Lifestyle Influence on Purchase Decision”, Proceedings of 2<sup>nd</sup> IIMA Conference on Research in Marketing, January 3-5, Indian Institute of Management, Ahmedabad, 217-222.

*Automation and Smart Technology*, 2, 1, 2012, 7-10.

<sup>15</sup> See in particular Wells & Tigert (1971) and Plummer (1974).

<sup>16</sup> Developed by the Stanford Research Institute in the early 80s.

<sup>17</sup> Krishnan J.: “Lifestyle – A Tool for Understanding Buyer Behavior”, *International Journal of Economics and Management*, 5, 1, 2011, 283-298.

<sup>18</sup> Yu C. S.: “Construction and validation of an e-lifestyle instrument”, *Internet Research*, 21, 3, 2011, 214-235.

Another variant of innovative lifestyle is the artistic lifestyle which has emerged since the nineteenth century and differs significantly from lifestyles in other societal segments. This so-called bohemian lifestyle is marked by egocentrism and a deliberate contradiction of bourgeois norms and values.<sup>19</sup> Such people emphasize artistic creativity for its own sake and could be entrepreneurial when integrating art into business. They favor eccentric behavior and libertine attitudes and favor enjoyment over work.<sup>20</sup>

A specific lifestyle might characterize entrepreneurs and innovators: informal, anti-bureaucratic, alternative, individualistic, etc.<sup>21</sup> Lee & Wong state that they prefer to be on their own to set their own work pace and schedules so that work fits their lifestyles and habits.<sup>22</sup> This seems to be particularly true for self-employed individuals and many small family innovative businesses.

According to Berthon, Hulbert and Pitt, there are two philosophies guiding organizations, i.e. business leaders, influencing strategic management:

- 1) "Innovation orientation" which postulates that customers always prefer innovative products and services and that technological superiority is crucial to business performances;
- 2) "Market orientation" which states that identifying and satisfying needs and wants are key to attain the best business performances.

If needs and wants are key components of lifestyle, then when dichotomizing the two dimensions, four strategic management options can be defined:

- 1) Isolation when no customer orientation and no product/service development are occurring. Such "organocentric" strategy usually leads to failure and bankruptcy;
- 2) Follow mode when driven by customers who define the product or service they need or desire; This is a well-accepted strategy in mature markets<sup>23</sup>;
- 3) Shaping the market through breakthrough innovation, when creating or generating new expectations or needs;
- 4) Interacting when there is a formal and close communication between lifestyle knowledge and innovation.<sup>24</sup>

<sup>19</sup> Eikhof D. R., Haunschild A.: "Lifestyle Meets Market: Bohemian Entrepreneurs in Creative Industries", *Creativity and Innovation Management*, 15, 3, 2006, 234-241.

<sup>20</sup> Florida R.: "Bohemia and economic geography", *Journal of Economic Geography*, 2, 2002, 65-71.

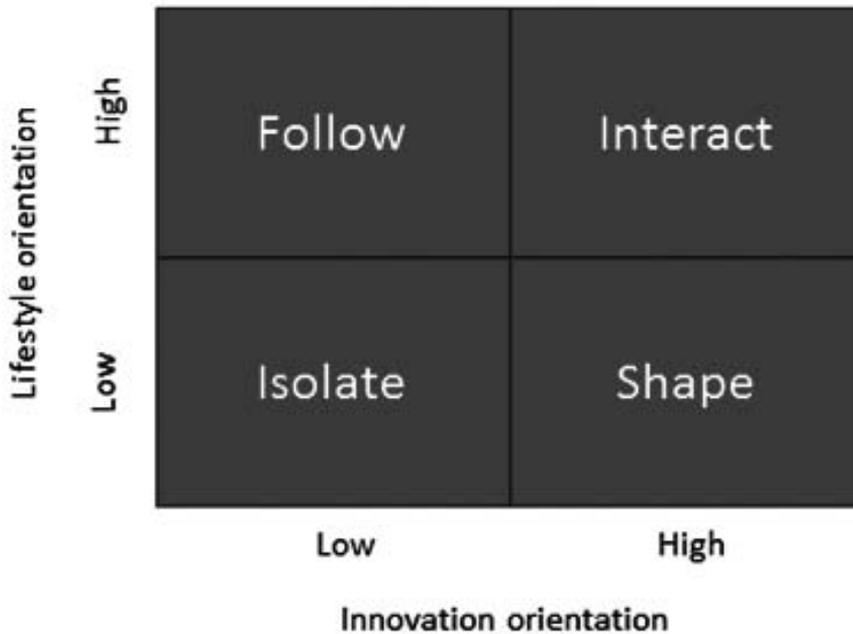
<sup>21</sup> Gray C.: "Absorptive capacity, knowledge management and innovation in entrepreneurial small firms", *International Journal of Entrepreneurial Behaviour & Research*, 12, 6, 2006, 345-360.

<sup>22</sup> Lee S. H., Wong P. K.: "An exploratory study of technopreneurial intentions: a career anchor perspective", *Journal of Business Venturing*, 19, 1, 2004, 7-28.

<sup>23</sup> Such as automobile (Toyota-Lexus) or tourism (Marriott-Courtyard).

<sup>24</sup> Berthon P., Hulbert J. M., Pitt L. F.: "To Serve or Create? Strategic Orientations toward Customers and Innovation", *California Management Review*, 42, 1, 1999, 37-58.

**Figure 3:** Innovation, lifestyle and strategic management



**Source:** Adapted from Berthon P., Hulbert J. M., Pitt L. F.: “To Serve or Create? Strategic Orientations toward Customers and Innovation”, *California Management Review*, 42, 1, 1999, 37-58.

Obviously, the choice of a particular strategy might be highly influenced by several key factors:

- 1) Business environment and in particular the nature of the industry, the level of stability or volatility of the expectations and needs or the technological context, national cultures, etc.
- 2) Economic bargaining power of customers or clients;
- 3) Competitive factors such as the level of globalization and regulation, level of market and technology competition within the industry, etc.
- 4) Political factors such as labor unionism, governmental or international regulatory pressures, etc.

Marketing and strategic management literature is then supporting the assumption that an in-depth knowledge of existing as well as potential future lifestyles is crucial for the wealth of businesses.

### 3. Methodology

According to Easterby-Smith, Thorpe & Lowe<sup>25</sup> and Yin<sup>26</sup>, the case study methodology is well-suited to this research since it is by nature an exploratory investigation. Such research methodology allows to explore such social phenomenon in its complexity and to identify the key elements which should deserve further research in the future. There is then no pretention to “exhaustivity” and obviously to full “replicability” and generalization.

The case studies have been conducted through in-depth applied literature survey and with a limited number of interviews.

### 4. Case studies

Several potential new lifestyles are emerging thanks to current or foreseeable innovations. This article will deal with e-lifestyle, smart urban lifestyle and knowledge-based lifestyle.

#### 4.1. E-lifestyle

Scholars define this specific and recent lifestyle as the result of the convergence of the internet and mobile communications which generated the proliferation of ICT-enabled artifacts and services.<sup>27</sup> Consumers are overwhelmed with an increasing amount of innovations – new devices and new services – with shortening lifecycles and success or failure which is highly unpredictable.<sup>28</sup>

In the literature, scholars identified five segments for innovation adoption - innovators, early adopters, early majority, late majority and laggards – with different sets of attitudes towards new technologies. Innovators and early adopters demonstrate a specific lifestyle with very different and clear preferences when compared to other adopters such as technology effectiveness (easier life), “tangibility” (appealing and differentiating design) and indeed lifestyle compatibility (fit with a “busy” lifestyle). These two groups are and intend to remain opinion leaders and put high expectations on new devices and services regarding their

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<sup>25</sup> Easterby-Smith M., Thorpe R., Lowe A.: *Management Research: An Introduction*, Sage Publications, London, 2001<sup>2</sup>

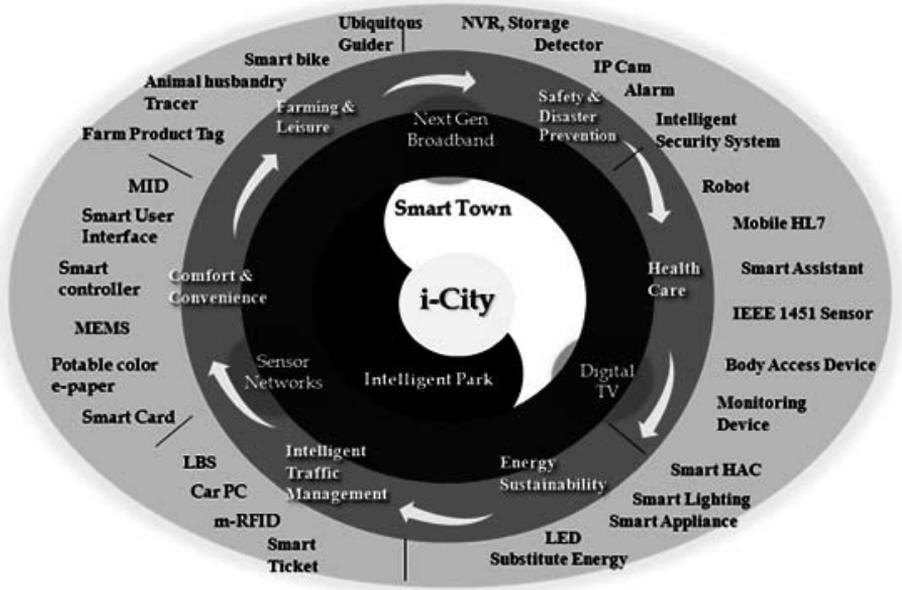
<sup>26</sup> Yin R.: (2008<sup>3</sup>), *Case study research: Design and methods*, Sage Publishing, Beverly Hills

<sup>27</sup> Yu C. S.: “Construction and validation of an e-lifestyle instrument”, *Internet Research*, 21, 3, 2011, 214-235.

<sup>28</sup> De Marez L., Vyncke P., Bedrte K., Schuurman D., De Moor K.: “Adopter segments, adoption determinants and mobile marketing”, *Journal of Targeting, Measurement and Analysis for Marketing*, 16, 1, 2007, 78-95.

image prestige. Using new technologies is also “fun” and enjoyable but should be tried before buying.<sup>29</sup>

Figure 4: E-lifestyle products



Source: Pei-Chen Tsai, Shang-Hui Lin: “Taiwan’s Path to Innovative R&D and Applications: Technology-Driven and Location-Driven Pilot Programs”, *International Journal of Automation and Smart Technology*, 2, 1, 2012, 7-10.

The most well-known example is certainly Apple. From communications to entertainment, Apple products have profoundly changed the way people around the world obtain information and use technology. The majority of customers explicitly name “lifestyle products” Apple’s easy to use devices. Apple’s retail experience stores contribute to keep such image sustainable<sup>30</sup> and to generate this feeling and attitudes<sup>31</sup>. Apple’s cofounder, Steve Jobs, when returning to the company in 1996, decided to base his strategy explicitly on “making the Mac the hub of digital lifestyle” and later introduced *iLife* in 2002 incorporating in a suite

<sup>29</sup> *Ibid.*

<sup>30</sup> Jones P., Comfort D., Clarke-Hill C., Hiller D.: “Retail experience stores: experiencing the brand at first hand”, *Marketing Intelligence & Planning*, 28, 3, 2010, 241-248.

<sup>31</sup> Lee E.: “Apple’s Key to Success: Turning Tech into Lifestyle”, *Voice of America*, October 6<sup>th</sup>, 2011.

applications such as iPhoto, iMovie, iTunes, iPod, etc.<sup>32</sup> Coget claims that people visiting Apple stores “seem to be living the Apple lifestyle”... and that “the Apple Store has become the physical embodiment of the Apple lifestyle”.<sup>33</sup> Obviously, Apple’s intent is clearly to put the accent “on them living the Apple lifestyle and acting as brand emissaries”.<sup>34</sup>

E-lifestyle can be compared to the so-called American a-lifestyle (standing for automobile-based lifestyle) which emerged in the United States between the two world wars and became massively dominant during the “Glorious Thirties” (i.e. the thirty post-war boom years) and which is currently booming in the BRICS countries (Brazil, Russia, India, China, South Africa). Lee et al. demonstrated that lifestyle attributes – fashion consciousness, leisure orientation, internet involvement and e-shopping preference – are key determinants<sup>35</sup> for the adoption of high-technology products.<sup>36</sup>

#### 4.2. Smart lifestyles

Directly inspired by the dominating high-technology lifestyles, scholars and public bodies are currently investigating<sup>37</sup> the so-called forthcoming “smart lifestyles” which are associated with foreseen trends in private as well as social ways of living. They are linked to the deployment of technologies and new philosophies such as sustainable development, ecological concerns, etc. which might dramatically impact many if not all aspects of life such as education (smart classroom, e-learning), energy distribution (smart grid), leisure and sports (smart recreation), healthcare (smart medical care, smart hospital), home (smart home), transportation (smart transport, smart car) but also work (smart workplace), shopping (Internet shopping, e-tailing), government (e-government), banking (e-banking), etc.

It is hypothesized that “smart cities” will probably encompass most of these specialized applications.

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<sup>32</sup> Chapman R., Hoskisson R. E., Christian G.: *Apple Inc.: Keeping the “I” in Innovation*, Cengage Learning, Arizona State University, 2012.

<sup>33</sup> Coget J. F.: “The Apple Store Effect: Does Organizational Identification Trickle Down to Customers?”, *Research Brief*, *Academy of Management Perspective*, 25, 1, 2011, 94-95.

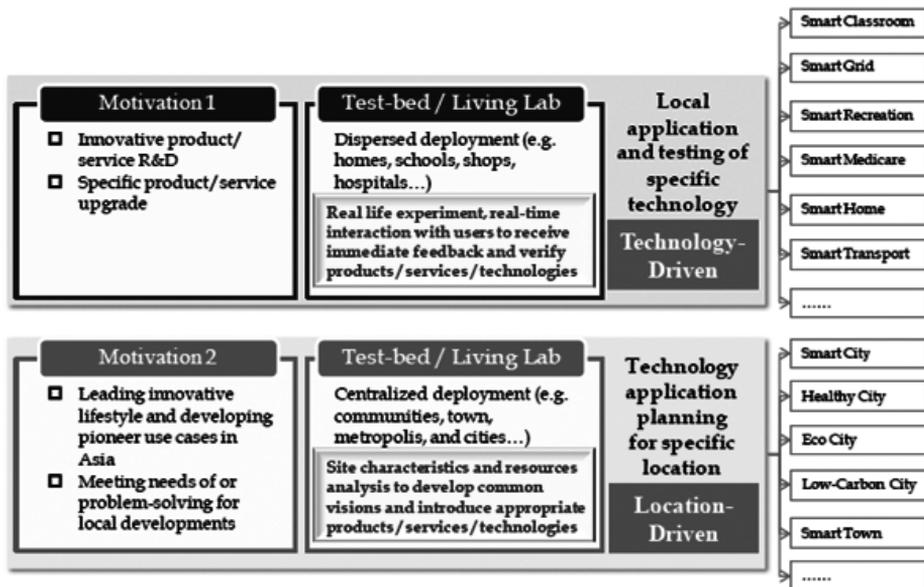
<sup>34</sup> Jones P., Comfort D., Clarke-Hill C., Hiller D.: “Retail experience stores: experiencing the brand at first hand”, *Marketing Intelligence & Planning*, 28, 3, 2010, 241-248.

<sup>35</sup> Having high ( $p < 0.01$ ) and very high ( $p < 0.001$ ) significance.

<sup>36</sup> Lee H-J., Lim H., Jolly L. D., Lee J.: “Consumer Lifestyles and Adoption of High-Technology Products: A Case of South Korea”, *Journal of International Consumer Marketing*, 21, 2009, 153-167.

<sup>37</sup> Some practical experiences are already deployed in Taiwan and Australia.

Figure 5: Smart lifestyles



Source: Pei-Chen Tsai, Shang-Hui Lin: *ibid.*

It is supposed that smart living will be associated to new innovative and sustainable products and services as well as business models.

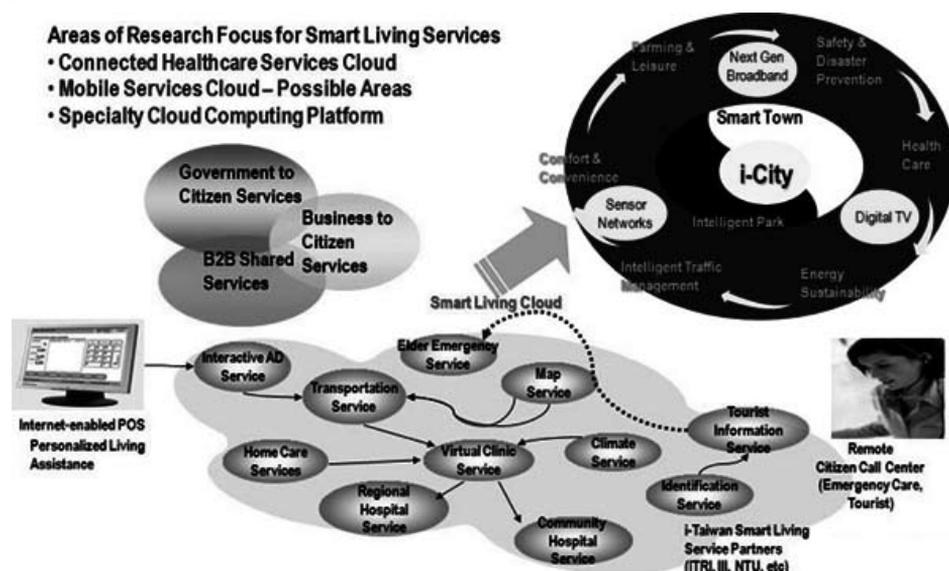
Such future lifestyles are deliberately targeted by Taiwan’s government within the agenda of the Science and Technology Advisory Group published in 2008, suggesting that Taiwan should set up “Smart Living Industrial Technology Promotion Strategy” to realize “Intelligent Taiwan” in order to enhance Taiwan’s global competitiveness as well as the quality of life of one million Taiwanese through transforming service, enriching experience, and enabling eco-systems in dedicated zones.

Another practical experience is based on the case of Melbourne (Australia). Yigitcanlar et al. emphasized the knowledge city as a new concept of urban life associating knowledge-based businesses (science park) and civic and residential functions.<sup>38</sup> They consider a successful knowledge-city as an existing city that has undergone regeneration, fuelled by creativity, innovation and lifestyle. Developing science and innovation cities seems to attract large attention in Australia.<sup>39</sup>

<sup>38</sup> Yigitcanlar T., O’Connor K., Westerman C.: “The making of knowledge cities: Melbourne’s knowledge-based urban development experience”, *Cities*, 25, 2, 2008, 63-72.

<sup>39</sup> Couchman P. K., Mcloughlin I., Charles D. R.: “Lost in translation? Building science and innovation city strategies in Australia and the UK”, *Innovation: Management, Policy & Practice*, 10, 2-3, 2008, 211-223.

Figure 6: Areas of Research for Smart Lifestyles



Source: Pei-Chen Tsai, Shang-Hui Lin, *ibid*.

Many scholars in medicine and physiotherapy suggest that smart lifestyles could also be associated with healthy lifestyles, i.e. giving priority to eliminate lifestyle-related risk factors such as smoking, drinking, overweight, physical inactivity and unhealthy food.<sup>40</sup> This is close to the so-called “active lifestyles” which promote sports, active and healthy behavior at the core of specific cities or regions. In Australia, the touristic area of the “Gold Coast” created different institutions to generate such lifestyles.<sup>41</sup>

### 4.3. Knowledge-based lifestyles

Along with the concept of knowledge-based economy which is very popular, the concepts of knowledge-based society and knowledge-based lifestyle can be introduced.<sup>42</sup>

Looking at high-technology areas such as the Silicon Valley in California and analyzing key success factors of these experiences suggest the importance

<sup>40</sup> Straker L.: “Prevention needs to be a priority”, *Journal of Physiotherapy*, 58, 2012, 5-7.

<sup>41</sup> O’Hare D., Bajracharya B., Khanjanasthiti I.: “Transforming the tourist city into a knowledge and healthy city: Reinventing Australia’s Gold Coast”, *IFKAD-KCWS 2012 joint conference - Knowledge, innovation and sustainability: Integrating micro and macro perspectives*, 2012, 1-31.

<sup>42</sup> Gyurjyan A., Yeghiazaryan B.: “Principles of Transition to Knowledge Economy”, Государственное управление. Электронный вестник, *Выпуск*, 18, Март (Governance. Electronic Bulletin), 2009.

of lifestyle characteristics in emergent “knowledge-hubs”<sup>43</sup> or smart cities. Singapore is advertising its “Biopolis” biomedical engineering precinct with the following arguments: Imagine an environment bounded only by imagination itself where you can work, live and be inspired by leading scientists, researchers and *technopreneurs* from around the world, where anything is possible! A vibrant place and a lifestyle choice for the most creative minds of the new economy.<sup>44</sup> Singapore intends to transform itself into a knowledge-hub with a specific set of lifestyles, using the National University of Singapore as the global knowledge enterprise and attracting talents from all over the world as staff, faculty, students and entrepreneurs.<sup>45</sup>

Many cities and regions around the world are attempting to build up competitive advantage in terms of investment, tourism and lifestyle perspective by generating knowledge- and innovation-based economic and social development. Such initiatives place innovation as a crucial goal, presenting the innovation approach as aspirational for all residents and organizations.<sup>46</sup>

As pointed out by Baylis<sup>47</sup>, cultural amenities, entertainment and lifestyle are moreover seen as essential if a city is to use the “wow factor” to attract educated, talented and professional people and the firms in which they work. Creative cities such as Copenhagen need to provide creative people with such an environment. In a very recent article, Alizadeh (2012) pointed out the joyful lifestyle that introduces “playing alongside living, working and learning as four key aspects of information workers life/work style”.

Knowledge-hubs are also cited as very useful for traditional industries, such as the wine industry<sup>48</sup> and even for tourist industry.<sup>49</sup> Since the Gold Coast City

<sup>43</sup> Mohannak K.: “Innovation networks and capability building in the Australian high-technology SMEs”, *European Journal of Innovation Management*, 10, 2, 2007, 236-251.

<sup>44</sup> Sidhu R.: “The ‘brand name’ research university goes global”, *Higher Education*, 57, 2, 2009, 125-140.

<sup>45</sup> Sidhu R., Ho K.-C., Yeoh B.: “Emerging education hubs: the case of Singapore”, *Higher Education*, 61, 1, 2011, 23-40.

<sup>46</sup> City of Wollongong, Australia. Garrett-Jones S., Gross M., Kerr G., Kotevski S., Zaeemdar S.: “Cities of innovation: exploring the role of local community organizations”, in: Chapman R. (ed.), *Constructing Advantage, 21<sup>st</sup> ANZAM Conference 2007: Managing our intellectual and social capital*, University of Wollongong, 2007.

<sup>47</sup> Baylis D.: “The Rise of the Creative City: Culture and Creativity in Copenhagen”, *European Planning Studies*, 15, 7, August 2007, 889-903.

<sup>48</sup> Aylward D. K., Turpin T.: “New wine in old bottles: a case study of innovation territories in ‘New World’ wine production”, *International Journal of Innovation Management*, 7, 4, 2003, 501-525; Hall M. C.: “Small Firms and Wine and Food Tourism in New Zealand: Issues of collaboration, clusters and lifestyles”, in Thomas R.: *Small Firms in Tourism-International Perspectives*, Elsevier, London, 2004, 167-181.

<sup>49</sup> O’Hare D., Bajracharya B., Khanjanasthiti I.: “Transforming the tourist city into a knowledge and healthy city: Reinventing Australia’s Gold Coast”, *IFKAD-KCWS 2012 joint*

Council (GCCC) is seeking to diversify the city's economy, lifestyle and culture, they have launched a number of initiatives such as the Pacific Innovation Corridor, the Gold Coast Health and Knowledge Precinct, the Gold Coast Cultural Precinct. They explicitly embarked into the building of a healthy city benefiting from knowledge based urban development (KBUD) as suggested by Yigitcanlar et al.<sup>50</sup>

Many scholars recognize the specificity of this "creative class". As noted by Baylis,<sup>51</sup> it is lifestyle rather than occupation though that seems to distinguish the Creative Class as identified by Florida (2002b): "a group of people whose creativity permeates every aspect of their lives, who thrive on diversity and change, who collect experiences rather than possessions, and for whom the ability to express individuality and find an outlet for creativity is more important than any material gain". Critical visions deny any scientific and universal meaning to the concept of "creative class" and approaches stating that innovative elites, hypermobile elites or bourgeois-bohemians, nicknamed "bobos", are generating a specific set of lifestyles thanks to their knowledge-based competence.<sup>52</sup>

There are indeed obvious limitations to the diffusion of such knowledge-based lifestyles: indeed emerging technologies are transforming business, communication and lifestyle. They are enhancing lifestyles but only for those who can access them.<sup>53</sup> There is huge challenge if one wants to enhance lifestyles for all citizens of the world thanks to ICTs. Tan et al. noted that limited access as well as limited knowledge and inter-organizational conflicts are obstacles to institutional attempts to diffuse the e-lifestyle concept into society.<sup>54</sup>

Some scholars are even challenging the hypothesis that lifestyle is attracting creative people in specific knowledge-hubs, cities or regions. Leibovitz carried out a research in Scotland showing that 'soft' location factors in the form of Scottish identity and the image of Edinburgh and Glasgow as vibrant places (i.e. lifestyle factors) are apparent, although it is hard to estimate their precise significance, compared to other factors such as external linkages, financing,

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*conference - Knowledge, innovation and sustainability: Integrating micro and macro perspectives*, 2012, 1-31.

<sup>50</sup> Yigitcanlar T., O'Connor K., Westerman C.: "The making of knowledge cities: Melbourne's knowledge-based urban development experience", *Cities*, 25, 2, 2008, 63-72.

<sup>51</sup> Baylis D.: "The Rise of the Creative City: Culture and Creativity in Copenhagen", *European Planning Studies*, 15, 7, August, 2007, 889-903.

<sup>52</sup> Cannon T., Nathan M., Westwood A.: "Welcome to the Ideopolis, The Work Foundation", Working Paper, May 2003.

<sup>53</sup> Damodaran E.: "Human factors in the digital world enhancing life style: the challenge for emerging technologies", *International Journal of Human-Computer Studies*, 55, 4, 2001, 377-403.

<sup>54</sup> Tan C-W., Pan S-L., Kuan Lim E. T., Lai Chan C. M.: "Managing Knowledge Conflicts in an Inter-organizational Project: A Case Study of the Infocomm Development Authority of Singapore", *Journal of the American Society for Information Science and Technology*, 56, 11, 2005, 1187-1199.

infrastructure, labor market issues, etc.<sup>55</sup> Wolfe and Bramwell show that people are attracted by employment opportunities more than consumer, lifestyle, and social amenities.<sup>56</sup>

## 5. Conclusion

From the very beginning, the statute of this article remains very clear: an exploratory investigation in emerging innovative lifestyles through an extensive literature survey and a limited number of case studies. It is relatively obvious that such innovative lifestyles are gaining importance not only for academic scholars, but also for managers and policy makers since new technologies and new organizations are currently affecting all aspects of human life on earth.

The literature is quite consensual on such issue and many practical experiences driven by governmental institutions at local, regional or national level confirm that preparing for innovative lifestyles is considered as very important.

Further research is indeed highly desirable for many reasons linked to tremendous knowledge and methodological gaps. But one reason is particularly sensitive: when looking at innovative lifestyle of the future, we analyze characteristics and factors in their infancy at best. Such lifestyles do not exist yet. Our visions are then purely speculative. And as we all know, futurology is not a science, not even an art. It is usually closer to guessing and gambling or even to profession of faith than to scientifically validated statements or predictions.

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<sup>55</sup> Leibovitz J.: "Embryonic Knowledge-based Clusters and Cities: The Case of Biotechnology in Scotland", *Urban Studies*, 41, 5/6, May 2004, 1133-1155.

<sup>56</sup> Wolfe D. A., Bramwell A.: "Innovation, creativity and governance: Social dynamics of economic performance in city-regions", *Innovation: management, policy & practice*, 10, 1, 2008, 170-182.

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## **INOVATIVNI ŽIVOTNI STIL: KA ŽIVOTU BUDUĆNOSTI – ISTRAŽIVAČKI ESEJ**

### **S a ž e t a k**

Ovaj članak predstavlja rezultate istraživanja o inovativnim stilovima života, uočenim u oblasti ekonomije inovacija i strategijskog menadžmenta. Zasniva se na širokom kritičkom osvrtu na akademsku recenziranu literaturu i istraživanje ograničenog broja studija slučaja koje su već objavljene. Članak daje definicije i različite pristupe ovim konceptima posmatranim kod tri predviđena skupa životnih stilova: elektronskih stilova življenja, pametnih stilova življenja i onih zasnovanih na znanju. Rad zaključuje da, ako postoji konsenzus među naučnicima u vezi sa predstojećim promenama u dominantnim životnim stilovima usled tehnoloških i organizacionih inovacija, dalja istraživanja su prekopotrebna u cilju naučnog formulisanja potvrđenih scenarija.

**Ključne reči:** životni stil, inovacije, strategijski menadžment, gradovi zasnovani na znanju

## CORRUPTION – A NECESSARY OR SURMOUNTABLE EVIL

*No city is impregnable as long as there is  
a hole in the wall whose size allows a donkey  
with a sack of gold to get through.*

**Philip of Macedon**

*Where nature has discontinued its abundant profusion  
and cluttered the road with stumbling blocks stands  
the boundary between corrupt and uncorrupt societies.*

**The author**

This article presents a new approach to a “popular” phenomenon – corruption. It did not focus its research and conclusions on common questions like: „Who is corrupted?” and “How does it occur?”, but mostly on the question “What is the main reason?” The lack of interest in the causes and effect means abdication from the intention to cope with corruption, while the concern with the technology shows an effort to disseminate ‘expertise’...As a result, society developed resistance and apathy towards corruption while the public order incorporating corruption is becoming a routine, a regular fact of life. What is more, higher institutions (ministries, agencies, customs offices) have created a favorable environment for the existence of this order.

The present study has an aim to explore the ‘semi-tonal’ boundary between the commonly known formative factors determining the existence and continued spread of corruption, specifically Bulgarian complex of factors and conditions which shape its ambiguous and unpredictable character. Rather than delve into taxonomies or benchmarks, the study proposes evidence in favor of the thesis that corruption is conditioned by broad philosophical framework created in the interplay of family upbringing, education, religion, socio-economic circumstances and political culture.

The author affirms the following: the large-scale corruption on the low level of society is a kind of public distribution of prosperity in the amorphous pseudo-democratic country. The corruption on the high level of society is a disturbing sign of the lack of public interest for governing process.

**Key words:** corruption, society, public interest, Bulgaria

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The question: 'What is the oldest profession on Earth?' more often than not evokes associations with prostitution. It is not entirely clear why this rather than a job of a hunter, builder or a councilor. People probably wanted to link the first occupation with risk-taking and pleasure, and not with responsibility or firm regulations...

A more thorough anthropological analysis of the late Paleocene reveals that one of the most ancient professions – that of the religious official called 'shaman' – also involved an allegiance to the chieftain or governor, whatever the title was. The governor would delegate certain rights to the shaman and administrative responsibilities contingent to accommodating the wishes of the leader. This justifies the conclusion that the first professional entrusted with public duties was none other than the religious official, who was later reborn, or rather cloned, into the public servant.

It is not a particularly flattering chronology that a primeval religious official (public servant) stands in rivalry with the prostitute. However, inasmuch as they both satisfy specific public needs, an impartial and objective analogy through time facilitates the search of the correct answer... And if the unfathomable depths of the fifth century BC obfuscate the answer because veritable data are hard to find, the time when historical records began – the fourth century BC - provides ample evidence that the official who occupied himself with public affairs (classifying him as a public servant would be premature yet) used to play a significant role in a social organization. For example, in Ancient Egypt the qualification acquired through special training by the vizier and his ministers made them equally venerable to the Pharaoh himself. The public administration of those times would often seek recognition by appointing distinguished figures from the realm of the arts to high administrative posts. The professional officials at the emperors' court – the clergy – in ancient China were in fact leading philosophers and poets. It was even the case that during the reign of the Han Dynasty (206 BC – 220 AD) the principle of meritocracy became institutionalized, whereby verbal merits were ranked higher than any technical competences. Being famous in society for one's giftedness and moral rectitude used to be, as it transpires, a basic ethical prerequisite when recruiting for public service.

In fact, public servants performed a rather significant function, interpreting the ambiguous directives issued by their governor. In this respect it was up to them

to determine what the state policy would be and what needed to be understood and carried out. This turned them into a noteworthy factor in human history and they left their imprint depending on whether they made their interpretations in the interest of society, of the governor or of themselves... This particular choice classifies them from the present-day point of view as either honorable supporters or morally bankrupt egotists. The option to interpret directives in one's own interest gave rise to the ancient Roman saying: "The slave is a master of disguise."

The concurrence of interest took shape of flattery - for the master - with which he was showered and - in the privilege to command the opportunity he was given - for the slave.

The Balkans region with its heady mix of closely knit ethnic groups, mores and borrowed but substantially modified concept of rectitude contributes significantly to the spread of corruption.

As Rumen Daskalov writes in *The Bulgarian Society of 1878-1939 – Governance, Policies, Economics* (PH Guttenberg, Sofia 2005), quoting a British traveler, "Balkan bureaucracy is rooted in the Byzantine and Turkish concepts with their innate waywardness and dictatorialness, but their rigor is weakened by inefficiency and corruption. Petty corruption (among the lower ranks) is not so pernicious and it is even instrumental in meeting certain necessities of the clerk who would otherwise be unable to support a family at such low rates of pay without an additional income; however, among the higher ranks and the upper classes corruption is really serious." This is the reason why in 1895 a law was enforced for prosecuting unjustly enriched clerks (with retroactive force)<sup>1</sup>.

The hasty conclusion that the transition is already over and a new social reshuffle is in order set in motion an enormous investment of social energy and external (foreign) funds to subsidize the so-called '*fight against corruption*'. In fact, what happened was a rash legitimization of the habit to systematically violate the law, which came to be disguised as perfectly legal under the cynical and captivating refrain coined by the deceased wrestler Ilia Pavlov: "The time has come for the lizard to bite off its tail".

The language structures that used to describe the problem reveal gaps in thinking about it. The fact that the process is commonly referred to as 'uprooting corruption' reveals not simply an unfulfilled gardening impulse, but also a lack of understanding for the inherent stages of the social conflict generating corruption as a phenomenon; it also leaves unanswered the basic question: ***Can corruption be uprooted or is it a kind of 'necessity' of fluctuating size and intensity?*** With a view of this, less misleading and more adequate qualifications would be 'decreasing the level of corruption', 'leveling off the peaks and shifting the balance among the different types of corruption' etc.

It is in this period that anti-corruption discourses turned into a shield behind which the most corrupt proponents of Bulgarian democracy united to camouflage

<sup>1</sup> State Gazette 13/18.01.1895

their promulgated faithfulness and chastity. A 'chastity' which later surfaced as a series of ostentatious and selective trials, meant to gratify the social expectations but resulted in nothing more than appeasing the overexcited social consciousness...

The transition quickly split the society: on one side stood the disloyal guardians of the former regime and the secret police officers, the leaders of the communist party and the communist youth superiors, in whose pockets huge amounts of corruption money had ended, as if they were money's safe haven; on the other side was the stunned and completely unprepared population of the country, holding on to bank accounts in the banks which no longer existed. The former, who had previously never had the courage to even look at the pictures in front of 'western' embassies but secretly bribed air hostesses to get western brands of cigarettes from the restricted shops which sold for foreign currency, now took it upon themselves to initiate the new business class of the country, which was to manage not only the internal but also external economic relations. The latter, stuck in miserable *cul-de-sacs* or city ghettos called 'housing complexes' turned into a small-time flea-market type redeployment of funds, most of which – of shady origin. From that point on, the circumstances determined the mechanism for settling bigger and smaller accounts between the two sides, in tune with the Latin saying: "The strong come and collect their dues while the weak talk of justice." The dramatic spread of behavior based on the ideology behind this saying prompted analysts of the transition to democracy in Central and Eastern Europe to claim: "The difference between Western Europe and Central and Eastern Europe is the same as the difference between a chair and an electric chair."

It so happened that the very forces which were supposed to prevent unlawful and unwarranted enrichment during the time of socialism, under the conditions of the transition benefited from unlawful and in effect - unwarranted incomes, which later created the welfare of the structures who had called them into existence. This caused a large-scale profaning of the value system and made us look odd and incomprehensible in terms of European values and morals. It was at that moment that the most substantial case of corruption in the last 50 years took place, which changed the technology of corrupting and the face of corruption. The guardians of the political and social order, already corrupted *en masse* by access to privileges and power, were **corrupted again** financially with the promise to regain their lost privileges and power later, which some of them eventually did (although not entirely).

The existence of corruption transformed the system totally by enhancing the role of money in politics. In this way a political career became not only a means of upward progress in society, but also a way to earn a living. The benefits from it were mainly material and remained a secret, if not forever, at least for a certain period of time.

Exercising authority was transformed into the art to manage self-interest. Corruption led to the lavish squandering of state funds at the time when they

were particularly needed: to reduce the heavy repercussions of the transition effort and to invest in future development. The morally ill-equipped *nouveau riche* politician saw it as their priority to master the skill of ‘milking’ profits from the institution they were to manage and by distributing the respective proceeds, to increase their armies of supporters and accomplices. In this way, alongside the structures of central and local government, a parallel formation evolved – a pyramid of an illicit order, which was gradually gaining ground. The advent of this order turned the small thank-you present into an obligatory form of ‘gratitude’ for each sanctioned public service.

Corruption got the new politicians firmly together. Most of them came from poor backgrounds, and their political allegiances in effect came to legitimize corruption, rewarding those who practiced it and penalizing the others who had the courage to display reproachful integrity.

The situation described above reminds of Feddersen’s formula for the development of systems whose five stages have a tragicomic note of warning for the hopeful and untainted democratic aspirations of Bulgarians: 1. Wild enthusiasm 2. Disillusionment 3. Total confusion. 4. Search for the guilty 5. Punishment of the innocent 6. Honors and praise for the non-participants.

We live in a time when the intensifying public zero tolerance to corruption, although mostly manifested as curiosity, has called forth a timely investment in research and various eradication blueprints, all of which, however, superficially and cash-thirstily focus on classifications and benchmarks, thus deflecting the attention from the sources of corruption. In this way the interest of the general public and the media is sidetracked towards the questions ‘*how exactly*’ and ‘*who*’ runs the corruption schemes, and away from the more noteworthy question: ‘*why?*’ The lack of interest in the cause and effect means abdication from the intention to cope with corruption, while the concern with the technology shows an effort to disseminate ‘expertise’... As a result, society developed resistance and apathy towards corruption while the public order incorporating corruption is becoming a routine, a regular fact of life. What is more, higher institutions (ministries, agencies, customs offices) have created a favorable environment for the existence of this order.<sup>2</sup>

In this way many of those who were supposed to fight corruption turned into its unwitting accessories; through the pressure to join the ‘fight’ in principle and at any stage, some of them – unaware of its roots, others – in denial, enhanced the power of corruption to resist the familiar methods of treatment.

Unfortunately, when investigating ethno-cultural causes of social phenomena, unconditional reliance on the results of quantitative analyses, which are so readily and by inertia resorted to, does little more than endorse, in compliance

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<sup>2</sup> The scandal connected with the ‘implementation’ of financing from the European structural funds is a clear illustration of the transition from civil to corporate-institutional corruption.

with long-established and upheld by the media renditions, the most-corrupt strata. That was the method by which the completely ungrounded and improbable conclusion that University lecturers are more corrupt than politicians and customs officers was drawn.

Corruption is a type of service which damages the existing opportunities and undermines the established social order. It emerges at intersections where interests converge. In a manner of speaking, it does not differ significantly from business relations. This explains why more often than not the two seem to co-exist. Frequently, the false impression is created that they are inseparable. The crucial distinction lies in the word '*unlawful*', which, in the general lack of lawfulness, can be ascribed to any type of relation with sufficient justification. In this sense every single economic or social relation can be eroded, degenerated and targeted, completely subjectively, as 'corrupt'.

Corruption is a virus which resides in the body of an individual or society but becomes manifest when the immune system is weakened, that is, when the social or political order is destabilized, the rule of law is jeopardized, at the time of economic and military crises and with particular vigor – in transition periods, when the conditions arise for the emergence of all the above-mentioned factors, almost simultaneously.

*The main cause* of the rise of corruption lies in the fact that the system of the primary, secondary and higher education does nothing to encourage people to establish and develop their own personal skills and ambitions. There is nothing at these stages to make a child seek answers to the questions like: "Who am I? Where am I headed? What are my real abilities? Are my personal abilities up to the level of the aims and ambitions I have set to myself? Finding the correct answer to these questions should be the main aim of the educational policies and the primary concern of the schooling system. The objectives are:

- To have an accurate and realistic picture of oneself;
- To be able to perceive others in an objective way;
- To assess the mutual benefits and drawbacks of the relationships one creates and maintains precisely, correctly and without bias.

As the first lesson of compatibility, try to stand in front of the mirror, analyze your image and answer the question: "Is the step I tread well-suited to my height? Could it possibly be bigger than my height allows for, or is it too small?"

It is incredibly important to answer this question and amend the gait, if a disparity is established, because before one can display any of the knowledge gained in the course of one's education, upbringing and self-improvement, one is assessed on the basis of one's body language. Should the grade for that fail to satisfy, there may be no interest in other values...

Each time the ambitions strike higher than the personal ability allows for, the ground is ripe for corruption. That is why corruption does not thrive in the

cultures where statements like these can be heard: “I can’t afford that. This is quite beyond my means.” Or: “This consumption is not on a par with my professional or social status”.

This type of awareness has turned into a major hallmark of behavior in societies with accomplished class structure, which distinguishes them from societies where the unlimited range of ambition compromises the whole educational system, family, religious upbringing and morality. The drive to satisfy impossible ambitions leads to a rise in the crime rate, undermines the loyalty to country and community, institutions and individuals and in general demoralizes civilization as a whole, because it tends to be based on trust and publicly approved standards of what can be done and what cannot...

Communities or individuals whose material progress outpaces their social growth and even worse – where the high level of financial security is sought as a proof of an equally high social and cultural development – appear quite confused, or even absurd and ridiculous.

The fact that cultural and educational accomplishments (knowledge and skills as a result of qualification courses or self-improvement) have ceded ground to genetic endowments (figure, voice) has led to remunerations quite disproportionate to the respective social status in the fields of pop-folk and sports (mainly football), compared to those in the field of philosophy, history, philology and administration. This debasement, through profaning the value system, has brought about the destruction of moral standards and opened a wide avenue for corruption aimed at reducing the effort needed to achieve accomplishments which only education can give. This has led to the accumulation of disproportionate wealth in the sphere of entertainment, at the expense of research and applied science. Society has started scuttling backwards like a crab while devious politicians try to present this movement as a progress towards European values. However, Europe proves to be not so much a topographic destination, but a whole new mentality...

It was the endorsement of illegal ways as the norm, because they are so painless, and the large-scale spread of such practices that branded our country as a paragon of corruption in which inept democrats of the *perestroika* type breed.

A common but quite inaccurate claim is that corruption was not widely spread under socialism. In fact, in those times the spread of corruption consisted in illegitimate and unlawful services, because money had no real significance. Even those who had the respective sums of money, needed to wait no less than 15-20 years to buy a flat or a car. Private and business relations were subsumed by natural exchange of goods and services. The fact that corruption affected the service sphere made it even more elusive, because the network of services required proximity between those who entered such relations. Corruption was more of a political nature and was institutionalized to a great extent through the system of privileges and the distribution of privileged access to public resources. It was

a specific projection of the way resources were diverted to those favored by the political establishment. The private was completely swallowed up by the public by revoking the legitimate status of private property and reducing it to goods for domestic purposes. A citizen felt doubly alienated from the state: firstly, through the expropriation by nationalization and secondly, through transferring this nationalized, already considered 'belonging to the nation' property to the factual and jurisdictional ownership of the communist party and its elite.

Before 1989 corruption was realized through a network of connections for the exchange of services. It was based on barter trade, non-monetary exchange and draped in the rhetoric of friendship, but each time ended in the same effect – abuse of social status for private purposes. With the shift towards a monetary order over the past few years, the motto of yesteryears 'do me a favor' changed to 'pay me a bribe'.

Today corruption practices present paid access to citizen rights, to the political arena, to justice, education, health services, i.e. – the spheres defined in the constitutions of the countries in transition as zones of guaranteed access to rights and public services. This broadens the circle of those marginalized into deprived social groups. At the same time conditions of upward mobility of other social strata have been created. This called into existence novel and modern forms of corruption ('white-collar' corruption), forms of trading in influence, profiteering, corruption networks based on family or other relatives etc. This is how the 'necessity' for corruption is satisfied in a spontaneous reaction of society to the incompleteness of state organization, with a devastating effect.

Socialism, which induced petty pilfering (the abundance of items in a house was indicative of the job of the owner) and fake ideological pledges of allegiance gave way to capitalism which, in its turn, spawned 'whole-sale' thefts and cynical rebuffs at any attempt to expose foul play.

Following November 10<sup>th</sup> (when a political change has been made), in the atmosphere of an allegedly emerging democracy, corruption began to snowball due to the following reasons:

- Value crisis, when the old values have been rejected as impractical while the new ones have not yet evolved or been approved, accompanied by organized and controlled impoverishment of the majority of the population.
- Undermined trust among members of society, which eroded and rendered inaccessible major components of European morality, such as integrity, uprightness and solidarity.
- Increasingly polarized stratification of society, which doomed large swathes of people to despondency or isolationist tactics of survival, most of whom deviated from the public interest and morals.
- Havoc in the legal system, including the sphere of privatization, the relationships among political, public and market forces, the distribution of subsidies from the structural funds of the European Union.

- Creating a populous, bureaucratic, hefty and non-transparent state administration characterized by ill-disguised political bias and lack of co-ordination among its branches.
- Organized crime has infiltrated into state institutions and integrated into their structure, which helps increase its murky influence and illegal access to state resources, while the government fails to perform its main function in a market economy – the guarantee of competition and security.
- Lack of effective co-operation among the state, private business and non-governmental agencies. Violations of the requirements of transparency and publicity of the public-private partnerships.
- Civil society failed to evolve and civic control over the functioning of the central and local administration is practically non-existent. Immunity from punishment prevails in the cases of abuse of public resources.
- Attempts to control corruption using only the prerogatives of the law-enforcement system.

Does modern society confirm the ancient belief that morals and ethics in public service depend on national specifics of temperament and sensibility? More sensuous (that is, artistic and patriarchal) ethnic groups, where the Bulgarians belong, strive to implement the requirement for morality as a cliché providing assurance that ‘this is the way things happen’, rather than as a benchmark for the assessment of actual performance. In effect, instrumentalities and legal means get the upper hand over Jackson’s view of democracy, which puts perfunctory decorum on the pedestal. The computer generation of administrators seeks a more tangible balance for its ethics – not in the broad field between the administrator and society but in the much narrower and concrete space charted by political pressure and bureaucratic limits, the issued directives and accumulation of data.

Globalization unleashed the power of quantities to impress, while keeping in check the qualitative profundity of individual experience, which is materialized in controlled and ethical behavior. That is why wakeful consciences seek refuge in retro-traditions, so that they can preserve relics of a critical analyticity and the standards of exemplary behavior.

It would hardly tarnish or degrade Bulgarian society, history and tradition to speak not only of *creating and emulating* anti-corruption practices but also of *reinvigorating* the earlier ones. One such practice is religious education which tries to reduce corrupt proclivities in a person’s conduct. The Ten Commandments – e.g. *You shall not steal* and *Neither shall you bear false witness against your neighbor* etc. – and the principles communicated through them provide good ground for reaching a public consensus, without debate, on such unequivocal questions of life and character; their acceptance as part of the religious canon only shows the unremitting *faith* in their truthfulness. In this case God signifies

the absolute power over what comes between birth and death and which power cannot be corrupted in any way. This is also the principle which legitimates the necessity to link cleric and civil authorities and upgrades the latter with the idea of innate incorruptibility...

In societies where atheism was forcefully imposed – societies of fake religious belief – religion is but a kind of exoticism rather than a means to raise the spirit and teach sympathy, altruism, self-sacrifice... Eastern Orthodoxy proved too meek and liberal, compared with Catholicism and Protestantism, by obviously failing to discipline its flock into compliance with what has come to be recognized as European morals...

The Bible gives a clear indication of the strength and significance of corruption, where Christ epitomizes integrity by the limits he sets to his desires and the shield of self-restraint. It is fairly obvious that he will not be corrupted with sex. He will not even be corrupted with knowledge because he possesses the ultimate knowledge of his time. His conduct cannot be undermined by the allure of services or other tempting joys, because his demands are minimal. Despite all this, he falls victim to a corrupt disciple. Judas betrays him for 30 pieces of silver... This detail is evidence that the inevitable existence and the power of corruption were both foreshadowed in the Bible. There is another noteworthy symbol with a view of Christ's mission – the catastrophic and momentous consequence of this act of corruption for mankind, manifested in the terminal and irreparable loss.

The recognition of the inevitability of corruption derives from the unattainable standards of the ideal image of Christ. Highly moral, deprived of emotions (sexless), with a zero-level of consumption. Seated at the table, he distributes (*This is my blood, drink it, this is my flesh, eat it*) rather than consumes bounties. Christ's civil equivalent in history, because of the similarity of features, is our national symbol Vasil Levski.

Developing (family-emotional) societies with immature market economies breed corruption every day. They generate and sustain this type of relationship as a means of giving vent to the social energy when the social and individual environment is uninspiring and fails to provide alternative opportunities for valuable (creative or productive) employment of the generated person-specific social energy. The funds for creating and sustaining a pleasurable exterior are negligible, while maintaining order is seen as an unnecessary intrusion. What is more, disorder and chaos are associated with the freedom of an individual and his ability to entertain himself and follow his natural instincts. This type of 'entertainment' has come to be recognized by an increasing number of people and is largely tolerated as such. The number of people who park where they should not, cross the street against red lights, receive illegal services at prices different from those established, etc. is on the increase. The opportunities to create order under such circumstances are no greater than those of a teenage boy par-ent trying to convince him to tidy up his room or help with household chores.

The prosperity of a nation is built upon three sequentially linked but simultaneously manifested processes: creation, arrangement and utilization.

The *creation* stage includes: the relations necessities – resources – production (services).

The *arrangement* stage includes: the process of distribution and exchange, the inherited and acquired life styles and administrative culture of the society, the legal basis, the relations between the governmental and non-governmental institutions, as well as the relation leisure – self-improvement. In this respect the strongest impact comes from the sub-systems education, health care, culture, religion etc. The increase in the levels of corruption is indicative of the underdevelopment of precisely these subsystems.

The *utilization* stage is related with the organization of consumption and preserving the consumer rights of each individual or organization.

The crisis in society called corruption originates in the middle stage of the social organism – the arrangement – and destroys everything positive produced at the stage of the creation, but also compromises the utilization as early as the stage of distribution.

Corruption is given a strong impetus at times when society is undergoing reorganization, that is – transition periods. At times like these society faces a difficult yet quite straightforward choice – either to step up into a higher (in terms of civilization) order of material and spiritual values, which implies reducing corruption tendencies disparaged by the higher ethics and greater clarity of the new social rules and aims, or to withdraw steadily from rules and regulations of social behavior approved and recognized by the world-wide community.

Our country tacitly chose the much coveted higher social order, but the achievement of this goal was profaned as well because while we all voted for the higher-order society, the transition implied mass withdrawal from law and order. In such a model corruption is taken for granted as a minor drawback, to which we have grown accustomed, we know what it is all about and it complies with the general principle of equality, where we all have to pay according to our purchasing power...

Corruption in itself presents a *re-negotiation* outside legal boundaries of the established rules of socio-economic behavior; it supplants the ecstasy of the Asian *bargain* where the interests of the two sides, freely negotiating the prices of goods or services, are strictly catered for.

In effect, the Bulgarian transition has imposed corruption as an integral part ('a must' would not go too far as a qualification) of the technology of social rearrangement, which speeded up an otherwise slow political and social factor – synchronizing the new political status of a person with the newly expected respective economic status.

As it is known, political change happens 'overnight', when the institutional structures of power are passed on to the political party-winner in a lawful (fair, or

displaying a degree of fairness) election. The abrupt need of parliamentary attire for the election winners in Bulgaria made it expedient that they owned or at least made a display of rented basic symbols of affluence. For the Bulgarian transition the standard set included: a house in Boyana with a high-walled yard, a Jeep and property in America, and for the 'less-affluent' – in Greece. The expediency of this type of *clearance for the elite club* definitely forced the *nouveau-rich* politician to sell their soul to the devil, that is – conclude corrupt deals. Having left their uniform flats in the housing complexes Lyulin, Drujba, Mladost, or similar humble quarters in provincial towns, and got rid of their twenty-year-old *Ladas*, they all mounted state-owned *Mercedes 600* and took residence in the expensive outskirts Dragalevtzi and Boyana, due to no other merit than political role they assumed. They obviously misunderstood the price of the transformation or perhaps they refused to accept at the outset. The very thought that they may have to go back to where they came from and drive their ancient *Ladas* again made them an easy prey and ardent devotees of corruption practices. The mostly communal and pervasive corruption came to be regarded as a natural mechanism for 'democratic' re-distribution of mainly tax-free funds. This process gave rise not only to the proliferating street trade with human flesh but also to a political type of prostitution; in addition, it alienated the increasingly impoverished population from the vigor of the political life normally associated with carrying out a transition. The steady decrease in the number of those who take part in elections over the past 10 years is evidence for this.

As the Grand National Assembly, due to the 'necessities' of our transition, included former communist *apparatchiks* (therefore – quite affluent), side by side with artists (actors, musicians, poets), selected to simulate a wide representation, and to some extent - blue and white-collar workers (outstanding workers and administrators), the need to level off the economic status of the new parliamentarians, according to international standards, called for speedy political measures.

'Loaning' a standard until a higher one was achieved started the first corruption series among the economically unstable but highly aspiring political climbers (the new class of politicians and administrators) and the economically super-solvent but politically unsound 'donors' – the economic groups. The two parties supported each other in a double act, which shaped the political economy of the transition, where corruption formed an integral part. The media portrayed the process for society in a game of Chinese whispers, where among the distorted content and the deliberate jamming, a fragment of the truth could be laboriously made out. The truth, however, became known internationally through *Transparency International*, whose research and rankings popularize the degree of corruption in different countries, as well as the propensity to corruption.

According to TI statistics, an average bribe paid by Bulgarians is 200 Euro. These findings emerged from an annual survey conducted in the middle of

2008 among 55 thousand people from 69 countries. A survey on a representative sample of 1,024 people was carried out in Bulgaria in May 2005 by Gallup. For the sake of comparison, the survey shows that an average bribe ranges from 160 Euro in Romania, to 350 Euro – in Russia. A typical bribe in Bulgaria is about 60 Euro, which has been paid by 46 % of those who admit to engaging in such illegal practices, 15 % have paid between 60 and 120 Euro, 10% between 400 and 600 Euro, while 9 % have bribed high-ranking officials with sums exceeding 800 Euro. In the table where the countries have been ranked according to the bribes paid during the past 12 months, we feature in the third row – from 5 to 10 %, the countries such as Romania, The Czech Republic, Serbia and Montenegro and Greece, where more bribes have been paid. The average rate of bribes paid in Bulgaria shows that:

- 1) It is compatible with the rate of an average salary.
- 2) It is the monetary equivalent to the missing diversity in the consumer basket of a Bulgarian with an average income and in this respect it presents the **necessary** average salary at the time of conducting the survey – 750-800 leva.
- 3) Such payments decrease the standard of living by 50 %, which makes the payer seek compensation by either theft or asking for bribes of a similar amount, thus perpetuating and spreading corruption practices, while lowering the pace of development.

The greatest increase in corruption practices has been in the sphere of health services. Last year 77 % of respondents have indicated that corruption exists in this sphere, while this year the percentage rose to 83.

5,500 interviewed people from 69 countries indicate that political parties are hit by corruption the most, indexed by 4 ('very corrupt'), followed by the law-makers (Parliament) with grade 3.7, the police – with 3.6 and the judiciary – 3.5.

Bulgaria is no exception to this ranking, a similarity which is obviously pleasing to many ears and consciences, judging by the institutional and personal reactions to the latest report of the European Commission. This fact, however, is connected with a great delusion, which, if maintained, can lead to a great waste of public funds, energy and time – that the incessant urge to open new and controlling institutions can reduce corruption pressures. The state is sinking in the bog of such restructuring that can only have a superficial effect, precisely because of the imposed understanding that applying force should prevail over the so-called 'soft' measures, part of which is prevention. Corruption is fluid. It particularly affects the branches which threaten it with sanctions.

It is expedient to be convinced that fighting corruption is a process which includes by default the following: more stringent rules of social ethics as well as mechanisms for prevention and monitoring and only as the last resort - more

efficient sanctions. The correlation between those factors is a matter of national specifics and depends on the awareness of historical and administrative experience, the national culture, mentality and acquired knowledge.

The hopeless and unstoppable deepening of the degree of corruption in Bulgaria and its wide sway, which place us in the group of the second most corrupt countries according to the ranking of *Transparency International* raises a reasonable question: "Is corruption a necessary evil or can it be tackled?"

When a phenomenon seems to be rigidly ingrained in society, it implies at least two conclusions. First, that the political will to diminish this evil is professed rather than effective and second, that a significant and objective counter-balance exists for the evil.

A questionnaire that circulated among sixty-seven leading administrators in the central and local governance reinforces the opinion that corruption is seen as an irretrievable and necessary evil in Bulgaria. The answers are summarized in the following table:

Question	Answers
<p><b>1. What, in your opinion, is the difference between corruption before and after November 10<sup>th</sup>?</b></p>	<p>Before November 10<sup>th</sup> transparency was entirely lacking, everything was covered in secrecy, no public debate was held, much the way it is now, and the degree of corruption may well have been higher.</p> <p>After November 10<sup>th</sup> corruption increased significantly and entered new spheres of application. Now corruption affects higher levels of governance and the bribes paid and expected stand at higher rates.</p>
<p><b>2. Which factors give rise to corruption?</b></p>	<p>Low efficiency of the judiciary; the lack of civil society, law and order, justice and fairness; the fact that state institutions desist from tackling the problem; society does not seem to show zero tolerance to corruption, it rather approves it; the negative example set by high ranking state officials; the perpetrators remain unpunished; the increasing cost of living combined with the decreasing living standard; low control on the part of the administration; immature social structures; low intellectual level of those paying bribes and frequent financial problems on the part of those accepting them; greed; transforming state and municipal property into private; access to larger sources of financing through the European funds</p>

<p><b>3. What makes corruption an integral part of all the social orders in history, except for primitive communism?</b></p>	<p>Human nature, socioeconomic development itself; the needs people have and the efforts to meet them; the struggle for power and domination; the place of monetary relations in the hierarchy of the social and political life; greed and envy; human desire to get more goods at lower prices and with less effort; the difference in the abilities of individuals; the lack of principled integrity and acts of opportunism; the domination of material over spiritual values; the opportunity to achieve faster significant material success through power; the regime of licensing; the increasing significance of external symbols; recklessness</p>
<p><b>4. What four measures would you propose to reduce corruption?</b></p>	<p>Building up an active civil society with zero tolerance to corruption; introducing stimuli for those immune to corruption; bigger salaries for employees; decreasing the red tape; prevention; harsh sentences for the proven convictions; breeding respect and deference for law enforcement agencies; developing zero tolerance to corruption practices in the young generation; publicity for the established cases of corruption; creating a system encouraging anti-corruption behavior in society; developing electronic services to avoid direct contact with the officials; building up a system for analysis and revision of rules; integrating anti-corruption lessons into civic education; reducing licensing regimes</p>
<p><b>5. Do you think corruption can be eradicated or is it inevitable in every society?</b></p>	<p>Corruption is an inevitable corollary of every society and political system; it is completely unavoidable, especially in our climes; it exists in both developed and developing societies, but to a different extent; corruption can be overcome as long as there is a will on the part of government; it is unnecessary but cannot be overcome; it is difficult to oust corruption because this would imply a complete transformation of the mentality, followed by significant shifts in the value system; it can be kept within certain limits until it starts to be recognized an exception to the rule; it cannot be abolished although it is not innate to society.</p>

The results of the survey reveal that:

- On the whole, there is an awareness of the phenomenon, but only as something which exists outside the control of the respondents. None of them prefaces their statements with the phrase: "My experience of corruption shows that ..." The reaction would be similar, if the question was: "What do you think of extramarital relations?"
- All respondents unanimously agree that the social order based on law and social security is deeply undermined by the acceptance or even acquiescence of corruption.
- The reasons which encourage corruption are well familiar but in spite of the direct question, the answers digress to the result rather than to the causes of the phenomenon. The suggestions for punishment outnumber those for prevention by thousand, steering clear of the impact sought with the African proverb: "Do not look where you fell but where you tripped..."
- None of the respondents mentions improving the selection and training of the civil servants in the central and local administration as a major means of decreasing corruption.
- No mention is made of an option to resist consumption which is above the social status and the lawful income of the citizen, which means that wishes still override internal self-asserted reference.
- Only one respondent refers to education and upbringing in the family as a means of limiting corruption.
- Particularly noteworthy is the contradiction in the opinion that corruption is inevitable but unnecessary. It implies that corruption fails to be perceived as the result of an accumulation of errors in the political and socio-economic management, as its objective counterbalance.
- Another conclusion which springs to mind is that the effort to act precedes the effort to learn, which is not indicative of great intelligence. A bribe is preferable to an effort to acquire knowledge of the laws and civil rights. It is only fair to admit that over the past few years the attempts in the media to stimulate this effort have increased dramatically.
- The increase in corruption adds vigor to the unpopular conclusion that it is an integral part of this particular society, which renders corruption untouchable. This circumstance emphasizes the need to seek answers to the long overdue questions concerning the direction and management of the transformation, its costs and the division of responsibility between those in power and the electorate.
- Power as a 'reward' which we bestow in elections, often - without a sufficient degree of responsibility, according to most definitions of corruption, is a blatant case of corrupting the recipients of this 'gift', expressed in the unwarranted hope for prosperity. Such cases provide a brilliant illustration of the statement above that the very act (the choice itself)

precedes the knowledge (who the candidate is, where they came from, what their education and experience are, what makes them trustworthy for the electorate, what opportunities they bring for changing our lives...) The outcome of such behavior, we ardently hope, will **finally** come to be recognized.

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## KORUPCIJA – NEIZBEŽNO ILI SAVLADIVO ZLO

### S a ž e t a k

Ovaj rad predstavlja novi pristup „popularnom“ fenomenu – korupciji. Fokus istraživanja i zaključaka nije bio na uobičajenim pitanjima kao što su: „Ko je korumpiran?“ i „Kako dolazi do korupcije?“, već uglavnom na pitanje „Šta je glavni razlog za korupciju?“ Nedostatak interesovanja za uzrok i posledice znači izbegavanje namere da se izbori sa korupcijom, dok zaokupljenost tehnologijom izražava napor za širenje „stručnosti“... Kao posledica toga, društvo je razvilo otpor i apatiju prema korupciji, i postalo je uobičajeno da je korupcija uključena u javni red. Štaviše, visoke institucije (ministarstva, agencije, carine) stvorile su povoljnu sredinu za postojanje ovog reda.

Ova studija ima za cilj da istraži granicu između opštepoznatih formativnih faktora koji određuju postojanje i neprestano širenje korupcije, posebno bugarski kompleks faktora i uslova koji oblikuju njenu dvosmislenu i nepredvidivu prirodu. Umesto analiziranja taksonomija ili merila, ova studija iznosi dokaze u prilog tezi da je korupcija uslovljena širokim filozofskim okvirom nastalim kao posledica vaspitanja u porodici, obrazovanja, religije, društveno-ekonomskih okolnosti i političke kulture.

Autor potvrđuje tezu: korupcija širokog obima na niskom nivou razvoja društva predstavlja neku vrstu društvenog prosperiteta u amorfnoj pseudodemokratskoj državi. Korupcija na visokom nivou društva je uznemirujući znak nedostatka javnog interesovanja za proces upravljanja.

**Ključne reči:** korupcija, društvo, javni interes, Bugarska

## COMPETITION FOR HIGH SKILLED MANPOWER IN KNOWLEDGE GLOBALIZATION: FOCUSING ON POLICY AND INSTITUTIONAL APPROACHES - HYPOTHETICAL DISCOURSES

Advanced countries facing increasing shortage of highly skilled manpower have been concurring with each other especially in the recent time (competition in brain gain), whilst less developed countries suffer the outflow of skilled manpower (brain drain). These countries seem to have no capability to prevent brain drain. The strongest competitiveness in attracting skilled manpower is noticeable with the US, compared with Western Europe and Japan. How about the future? It is striking that China and Korea will undertake considerable efforts at public and corporate level. Lastly, the trend toward “intelligence divide” between advanced and less developed countries appears to be inevitable.

**Keywords:** brain drain, brain gain, immigration law, green card, blue card, return home policy

### 1. Theoretical approach

J. Salt<sup>1</sup> coined out the expression ‘global competition for skills’ implying current severe competition on global skilled manpower market. James Wickham spoke even of *a global war for talent*.<sup>2</sup> The title of my paper is slightly changed in the sense that countries have concurrently been ‘searching for skilled people worldwide’. To substantiate my notion, I use the term ‘international competition’ which has manifold connotation. It concerns quality, price, delivery time of service and products. The question of what is behind them can be answered with: organization and managerial efficiency, labor relations, marketing skills, etc. However, in the recent time experiencing an accelerated global competition, especially due to information and communication technology, *one factor* has been increasingly

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<sup>1</sup> Salt J.: “Global Competition for Skills: An Evaluation of Policies”, 201-243, in: DIMIA (ed.): *Migration; Benefiting Australia*, Department of Immigration and Multicultural and Indigenous Affairs, University of Sydney 2002.

<sup>2</sup> Wickham James: “Attracting and Retaining High Skilled Migrants: European Lessons and Problems”, Paper presented at the 7th Europe Asia Young Leaders Forum, Seoul, Sept. 4-7, 2008.

gaining weight. This is unlimited flow of *human intelligence* manifested in migration of highly skilled manpower. Even though the number of migrants cannot be estimated,<sup>3</sup> experts say it may amount to 150-200 million people.

In concrete sense highly skilled manpower as well as unskilled labor force move from underdeveloped countries to advanced countries. But on the other hand the notion is valid that the low-wage labor production based on unskilled manpower is still dominating in less developed Third World countries, whilst the highly sophisticated, knowledge-intensive production and R/D activities concentrate in advanced countries. This scenario has changed meanwhile, for instance, in China, India, etc., that the production of knowledge-intensive products and software development can be possible also in less developed countries. This paradigm change implies that currently the new type of *segmentation of global knowledge market* has already emerged.<sup>4</sup>

How can we grasp this phenomenon theoretically? The neo-classical approach is not suitable for explaining this. Other theories such as dependence theory or imperialism theory, or 'world city' theory,<sup>5</sup> or knowledge-based economy theory<sup>6</sup> do not provide sufficient insight.

The author thinks of the *labor market segmentation theory* as an instrumental approach. Bauder<sup>7</sup> raised the thesis of North-South segmentation conditioned by migration. Other scholars such as Gordon<sup>8</sup> and Asimokopoulos<sup>9</sup> represented that the neo-liberal globalization is contributing to dualization of global labor market, for which the dualism of global consumer society, for instance, those products produced in low-wage countries such as China, India etc. are consumed in advanced countries. However, by considering the current situation of High Tech production and High Tech R/D the notion inherent in (traditional) labor segmentation theory can be supplemented or revised by *knowledge market segmentation*. Nowadays underdeveloped countries also produce highly sophi-

<sup>3</sup> Docquier Frederic, Rapoport Hillel: "Skilled Immigration. The Perspective of Developing Countries", 247-284, in: Bhagwati and Hanson (eds.): *Skilled Immigration Today*, 2009.

<sup>4</sup> Cf. Asimakopoulos John: "Globally Segmented Labor Markets: The Coming of the Greatest Boom & Bust, without the Boom," *Critical Sociology*, vol. 35, 2/2009.

<sup>5</sup> Sassen Sakia: *The Global City: New York, London, Tokyo*, Princeton 1991.

<sup>6</sup> Salt J.: "High-level Manpower movements in Northeast Europe and the Role of Careers: an explanatory framework", *International Migration Review*, vol. 17, 1983, 633-652; Beaverstock, J. V.: "Re-thinking skilled international labour migration: world cities and banking organizations", in: *Geoforum*, vol. 25, 1994, 323-338; Findlay A. M.: "Skilled International Migration: A research agenda", *Area*, vol. 21, 1989, 3-11.

<sup>7</sup> Bauder Harald: *Eine empirische Studie zur bindenden Wirkung von Sozialintegration*, Göttingen 2006.

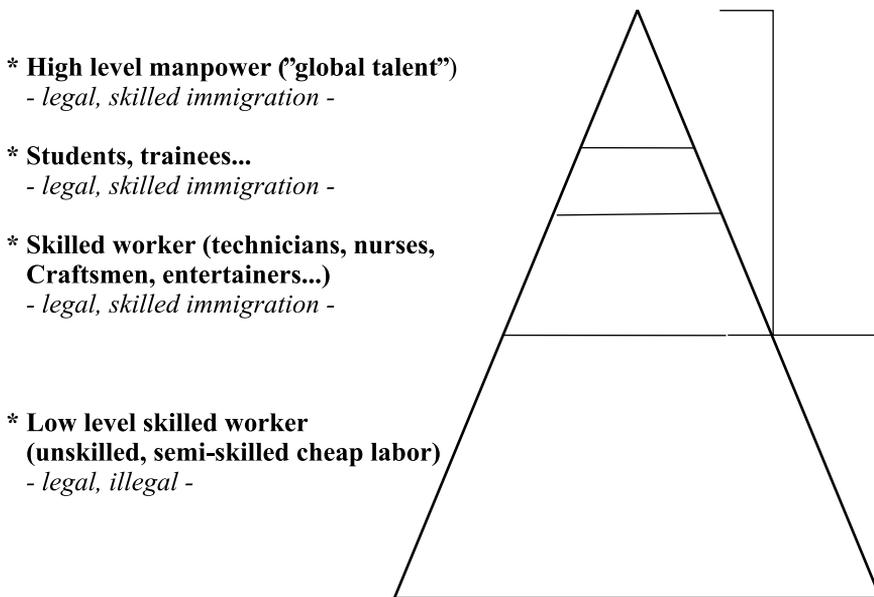
<sup>8</sup> Gordon David M.: *Theories of poverty and underemployment: Orthodox, radical, and dual labor market perspectives*, Lexington Books 1971.

<sup>9</sup> Asimakopoulos John: "Globally Segmented Labor Markets: The Coming of the Greatest Boom & Bust, without the Boom," *Critical Sociology*, vol. 35, 2/2009.

sticated, knowledge-intensive products by securing and developing high level manpower. This implies that we have to overcome the Ricardian division labor which is still persistent in the theory by Bauder, Gordon, etc.

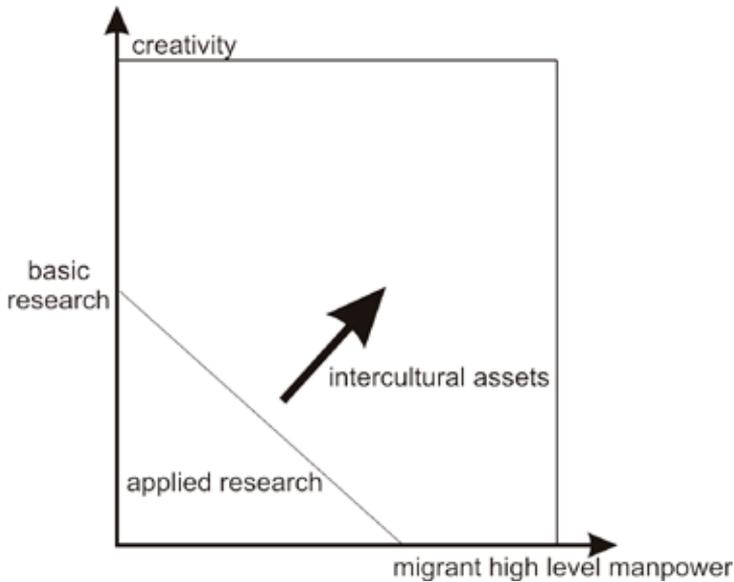
Let us look at the current manpower migration. The following picture shows a rough idea of global manpower mobility: at the top of the triangle there is a high level manpower (engineers, medical doctors, lawyers, professors etc.), which is relatively small in size and composed of legal immigrants; the next group comprises students and trainees in companies or institutions; the third group involves skilled workers (technicians, nurses, craftsmen, etc.) These three groups belong to the legal immigration. The last group, large in size, is partly legal or partly illegal immigration, and comprises unskilled or semi-skilled cheap labor.

**Graph 1.** Verticalization of labor mobility



The high level manpower and the group of students and trainees are supposed to engage in either applied or eventually later basic research. The importance of third group not engaged in research lies in skill accumulation in those fields in which they are engaged.

Graph 2.



To specify the concept of *intercultural assets* the question is in which field out of applied research and production or basic research, migrant manpower is engaged. Especially that high level manpower working in basic research *with a long term engagement is likely to increase and accumulate their tacit knowledge*.

The imported skilled manpower is thought to play a *complementary* function or in some special cases pioneering role in basic research. Especially in the latter case particular efforts and measures are needed to induce excellent foreign capacities, as the Korean Government has done with the “Return 500” Program (to be touched on later).

In former time people moved from a poor continent to a rich one for a better life. Nowadays people equipped with skills and knowledge do the same for a better job. However, this mobility is now systematically planned and organized. It was also said that young people from the Third World after their training in advanced countries should go back to their home country in order to contribute to its development. Nowadays these people are in most cases held in advanced countries for their own industry, and research and development. Formerly there was a kind of ethic and morale weighing in international relations. Today countries apparently place more accent on individual country’s interest than ‘altruistic’ ethic and morale.<sup>10</sup>

<sup>10</sup> Bhagwati Jagdish: “Overview of Issues”, 3-11, in: Bhagwati & Hanson, Gordon (eds.): *Skilled Migration Today, Prospects, Problems and Policies*, Oxford 2009.

## 2. Flexibilization of push and pull factors

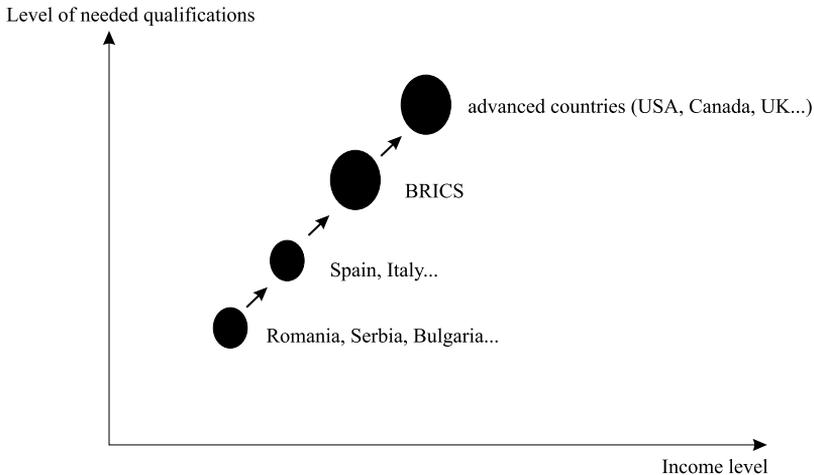
Earlier the flow of manpower went from less developed countries to advanced countries (uni-linear mobility). Nowadays the migration is characterized by *multiple directions* of migration: every country can induce high level manpower from foreign countries which are termed *pull factors*. In contrast, the country from which manpower goes away is regarded as depressive and de-motivating, i.e. is the one with *push factors*, as follows.

**Graph 3.** *Mix of brain drain and brain gain: a taxonomy*

- **Formerly: one direction**
- less developed countries (A) → to advanced countries (B)
  
- **Currently: multiple directions**
- 1A → B1, B2 (less – advanced)
- 2B1 → A1, A2 (advanced – less)
- 3A1 → A2, A3 (less – less)
- 4 B1 → B2, B3, B4 (advanced - advanced)

The flexible use of pull and push factors is reflected in verticalization of global high level manpower as follows: migrant manpower usually attempts to fulfill less difficult requirements in countries, and after having collected certain experience to try to meet more difficult conditions of employment in other countries at higher development level just like climbing a ladder. It is very possible that experts from Romania, Bulgaria and Serbia first go to Spain, Italy, etc., then after some years further to BRICS, and finally reach advanced countries. In most cases the goal of those experts is the United States.

**Graph 4:** Change of global market through brain drain/brain gain:  
verticalization of high level manpower



However, some issues arise when dealing with push and pull factors. The push factors are found usually in underdeveloped countries. In reality even some advanced countries such as Japan, Korea and Germany are suffering higher degree of unemployment of academicians, lacking chances of higher qualification and recognition. Germany introduced for example the so-called Junior Professorship system in order to keep highly qualified manpower from brain drain.

*The Push Factors involve:*

underemployment, economic poverty, social and political insecurity, low wage/income, over production and little possibility to use high level manpower, shortage in R/D possibility, lack of freedom, discrimination in appointment and promotion, poor working conditions, lack of scientific tradition and culture, suitable situation, desire for better life quality, desire for higher qualification and recognition, better career expectation

*The Pull Factors are:*

better economic prospects, higher wage, income, better standard of living and way of life, better R/D possibilities, modern education system and chance for better qualification, prestige of foreign R/D and training, political and social stability, better life quality, abundance in experienced and qualified people, better recreation, technology gap, chances for better education of children.<sup>11</sup>

<sup>11</sup> <http://education.nic.in/cd50years/z/8t/H3/HTH301102.htm>

### 3. Definition of 'high level manpower'

Even though the exact statistics on migration are very rare, above all, the US statistics by the Immigration and Naturalization Service is said to provide useful and detailed data based on visa issues. The OECD and EUROSTAT worked out the so-called Canberra Manual, according to which the following persons can be regarded as 'skilled migration': 1. a person who successfully completed the third level study in any Science and Technology field; 2. a person belonging not to the above category, however, currently engaged in Science and Technology activity that required the above-skills. The Canberra Manual includes skills and occupation criteria. The term Science and Technology is containing a wide range of skills even in the field of humanities and social sciences.

In Europe, for defining the so-called 'skilled migrant' it is necessary to consider the perspectives as follows: according to the indicators (economic, political, religious etc.); and to the duration (permanent or definitive, transitory, pendular, circular movements). To be more precise, according to the German Residence Act the 'highly skilled' refers to 'scientists with special technical knowledge', 'scientific personnel in prominent positions', specialists with specific professional experience and at least twice the earnings ceiling of the statutory health insurance scheme' by which the health insurance is of crucial importance for regular employment in Germany.

According to the International Institute for Labor Studies, Geneva dealing with "high skilled labor migration",<sup>12</sup> the skilled labor is defined as 'professional, technical, and kindred and related (PTK), those who have education or specialized knowledge that takes time to acquire, the equivalent of a four-year post secondary education'.<sup>13</sup>

In sum, consensus among experts consists in experiencing several years' formal education and, this is probably more important, also several years' professional experience, which may be equivalent to the qualification of *Third Preference* for US Government's granting permanent residence and work permit to foreign nationals.

This paper does not persist on expounding this definition, but deals with high-level manpower, especially IT-experts. Further, what is absolutely significant is to grasp what kind of occupations the person concerned has been exercising since most recent years, not sticking to formal education record. By not considering *current data* on occupation, irrelevant data of no practical use can be registered, as was the case with the US President's Scientific and Technical

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<sup>12</sup> Martin Philip L.: *Highly-skilled Labor Migration: Sharing the Benefits*, Geneva 2003.

<sup>13</sup> *Ibid*, 1.

Personnel Data System before the 1990s. For instance, ‘taxi drivers with advanced degrees in physics were officially classified as physicists’.<sup>14</sup>

#### 4. From brain drain to brain gain

The international migration was studied after the Second World War primarily under the perspective of brain drain, which was for the first time applied for the case of the migration of British scholars to the USA. However, at the beginning of the 60s the this terminology was more practically and substantially used in dealing with flow of high level human resources from the underdeveloped countries to the advanced ones. The recipient countries of those human resources were the USA, Canada and the UK.<sup>15</sup> Giannoccolo speaks of *Brain Drain Competition*.<sup>16</sup>

This subject was of particular interest for development experts and economists insofar as the brain drain as *human capital* would bring about negative effects on economic growth in the Third World. The question which interested experts was how to create incentives for that high level manpower to return to underdeveloped countries. Further, higher education institutions which brought up that manpower, as well as foundations and other institutions which supported them with scholarships felt morally and ethically obliged to persuade that manpower to return to native countries.<sup>17</sup>

In the 80s the focus was shifted from development policy for the Third World to recruiting high level manpower for advanced countries. It was particularly Salt and Findlay who dealt with migrant high level manpower from the standpoint of labor market segmentation in close connection with diversified operation of multinational corporations.<sup>18</sup>

<sup>14</sup> Godin Benoit: *Highly Qualified Personnel: Should we Really Believe in Shortages?*, Project on the History and Sociology of S&T Statistics, Working Paper No. 15, 2003.

<sup>15</sup> Hunger Uwe: *Vom Brain Drain zum Brain Gain. Die Auswirkungen der Migration von Hochqualifizierten auf Abgabe- und Aufnahmeländer*, Friedrich Ebert Stiftung, Muenster 2003.

<sup>16</sup> Giannoccolo Pierpaolo: “*Brain Drain Competition*” *Policies in Europe: A Survey*, Working paper No. 20060201, University of Milan Bicocca 2006.

<sup>17</sup> Bhagwati Jagdish: “Overview of Issues”, 3-11, in: Bhagwati & Hanson, Gordon (eds.): *Skilled Migration Today, Prospects, Problems and Policies*, Oxford 2009.

<sup>18</sup> Bhorat Haroon et al.: *Skilled Labour Migration from Developing Countries: Study on South and Southern Africa*, International Migration Papers 52, ILO 2002; Salt J.: “High-level Manpower movements in Northeast Europe and the Role of Careers: an explanatory framework”, *International Migration Review*, vol. 17, 1983, 633-652; Findlay A. M.: “Skilled International Migration: A research agenda”, *Area*, vol. 21, 1989, 3-11; Peixoto Joao: “Migrants trafficking and individual strategies: the formation of dynamic channels in international migration”, *Migration Letters*, vol. 3, 1/2005, 1-9.

Further, the focus was placed on the process of *knowledge accumulation*, in particular the process of gaining company-specific knowledge in various fields. This kind of knowledge accumulation and its utilization in foreign operations of multinational corporations became virulent in the set-up and operation of R/D activities abroad.<sup>19</sup>

One very interesting research orientation was created by P. Ladame<sup>20</sup> who pointed to the fact that a definite evaluation on the brain drain in the 50s and 60s could be made later, assuming that migrants from underdeveloped countries were sooner or later likely to return to their home countries. If so, the return of high level manpower could imply a positive effect on development in those backward countries, for which Ladame introduced the new concept of *circulation des elites (brain circulation)*. Consequently one can argue that the brain drain would lead to positive effects for the recipient as well as delegating countries. Also further migration research disclosed positive repercussion for underdeveloped countries out of 'brain network' in form of Diaspora or out of returnees in underdeveloped countries. However, the recipient home countries were not in a situation to absorb and utilize those capacities. As a result, the brain waste emerged which was the case in most underdeveloped countries.

## 5. Characteristics of global labour market

### 5.1. Standardized or specialized qualifications

It is well known that all industrialized countries have insufficient supply of manpower in specific science and engineering specializations, e.g. information and communication technologies as well as in health-related fields.<sup>21</sup> How these countries cope with the situation of demand and supply: on the demand side the computerization, work optimization, automation, and work redesign are made instrumental or manpower demand is reduced. On the supply side the best measure is found in migration of high level manpower.<sup>22</sup>

<sup>19</sup> Peixoto Joao: "International Firms, National Managers: The Obstacles to Migration of Highly Skilled Labour in Transnational Corporations", Paper presented to ESRI Thematic Research Workshop on Economic Actors, National Systems and International Contexts, Sept. 21-24, 1999; Park S. J.: "Cooperation or Competition in the Electronic Industry in China: Segmentation and Concentration Strategy with regard to R&D and Human Resources Development", Paper presented at the Leeds Forum on Asia-Pacific, Spring 2006 (unpublished, PPT version; available by the author).

<sup>20</sup> Ladame P.: "Contestée: La Circulation des Elités", *International Migration Review*, vol. 22, 1/2, 1970, 39-49.

<sup>21</sup> Pellegrino Adela: "Reflections on Skilled Integration", *International Migrations in Latin America and the Caribbean*, No. 65, May/August 2002.

<sup>22</sup> Manpower Inc.: *Talent Shortage Survey*, 2008.

How many migrants are there in the world? In the year 2000 the migration affected about 150-200 million persons, making up 2.5 % of the total world which has increasingly aging population and stagnant population growth rate. This entails the necessity of replacement by migration which will be the case with the following eight nations such as Germany, France, Italy, Japan, South Korea, UK, USA and the Russian Federation.

In line with the ongoing globalization entailing factor mobility the global labour market has emerged. This can be characterized by the following peculiarities:

*First*, increasing homogeneous job-profile and required qualifications brought out by especially fordistic or post fordistic mass production system;

*Second*, huge amount of high level manpower potential is available from India, China and East European countries which emphasize development of heavy and chemical industry, which in turn entails huge amount of manpower;

*Third*, utilization of low wage level and demand for specific know-how enable multinational firms to exercise overseas operations with high flexibility.

*Fourth*, increasing competition in research and development activities by MNC has been intensifying demand for highly qualified manpower.<sup>23</sup>

Pethe<sup>24</sup> referred to the fact that about 15 OECD countries had undertaken active measures to alleviate strict regulations of migration control high level manpower, because the perceivably increasing shortage of skilled manpower in ICT threatened to impede development of ICT and to weaken essentially the concurrent position of these countries. Especially the German Green Card and EU Blue Card systems provide evidence for this tendency.

### 5.2. Shortage of high level manpower: "Talent shortage survey (2011)"

40,000 employers from 39 countries from South and North Americas, Asia-Pacific, Europe and Middle East and Africa were surveyed in 2011 as regards to which extent the *talent shortage* is affecting current labor markets. The result has indicated that 34 % of employers worldwide are actually having difficulty in filling vacant positions on account of lack of suitable talented persons. Japan, with 80 %, is ranged at top position followed by India with 67 %, Brazil with 57 %, Australia with 54 %, and the USA with 52 %. In previous surveys Romania was ranged at the top position and countries in Asia-Pacific such as Hong Kong, Singapore, Australia also had difficulties. It is well known that Japan, a rapidly aging society with a low birth rate, has been in economic stagnation since two decades. On top of it, the Japanese Government has not undertaken

<sup>23</sup> Park S-J. et al., 2003; Boes Andreas et al.: *Development Scenarios of Internationalization in Software and IT Services. First Results of an Empirical Inventory*, ISF Muenchen, 2006.

<sup>24</sup> Pethe H.: "Un-restricted agents? International migration of the Highly Skilled revisited", *Social Geography Discussion Papers* 3, 2007, 211-236.

active immigration of foreign manpower. Further, the Japanese society has been greatly apprehensive of import of high level manpower. The situation has not changed yet, as has been extensively reported in the latest Weekly "Die Zeit" (Dec. 6, 2012). Even though Korea is not found in this category, it is suffering a serious shortage of manpower.

This Survey has shown that countries such as China, Netherlands, Ireland, India and the UK have relatively less difficulty. Extremely interesting is that India, known for being the most important IT-experts exporting country, has difficulty in filling vacant positions. It would be worthwhile to study why and how those countries known for being strong in IT faced this shortage of IT experts.

The top 10 jobs that employers had difficulty with filling in 2008 compared to previous years are (ranked in order): when comparing the previous years and the year of 2008 there was no substantial change. It is obvious that the categories of 'skilled manual trades', 'sales representative', 'technicians', and 'engineers' are mostly demanded for.

#### 2008 Hot Jobs:<sup>25</sup>

- 1) Skilled Manual Trades
- 2) Sales Representatives
- 3) Technicians
- 4) Engineers
- 5) Management/Executives
- 6) Laborers
- 7) Administrative Assistants / PAs
- 8) Drivers
- 9) Accounting & Finance staff
- 10) IT Staff

The EU is facing a shortage of 20 million skilled employees over the next two decades especially in engineering and computer technology. Recently the EU Commission proposed the Blue Card scheme to make it easier for skilled migrants to move to Europe. At present there are 27 different visa regimes in place. The card would act as a work and residency permit for 2 years and can also be renewed. Family members will also be allowed into the EU, whilst individual countries would be able to decide for themselves how many skilled migrants to admit. By way of comparison the US Green Card allows permanent residency for 10 years and allows people to work and travel freely in America. (see further details later in this paper)

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<sup>25</sup> Manpower Inc.: Talent Shortage Survey 2008 Global Results.

The tendency in Europe is striking in contrast with the top 10 in the USA. The Bureau of Labor Statistics (2011) reported the following ranking of demand for skilled manpower:<sup>26</sup>

- 1) Registered Nurses
- 2) Home Health Aides
- 3) Customer Service Representative
- 4) Food Preparation and Serving Workers
- 5) Personnel and Home Care Aides
- 6) Retail Sales Persons
- 7) Office Clerk, general
- 8) Accountants and auditors
- 9) Nursing and Psychiatric Aides
- 10) Post secondary Teachers

The social welfare-and medical care-related services are top-ranked which is less serious in Europe.

### 5.3. Searching for high level manpower: „Borderless workforce survey (2008)“

Manpower Inc. surveyed more than 28.000 employers in 27 countries as regards the question of to which extent companies are utilizing foreign manpower in order to fill vacant positions requiring skills. This Survey addressed various important questions such as the fields for which the lack of skilled domestic manpower is significant, the countries of origins of foreign skilled manpower and further which countries can be regarded as competitive threat.

Top 10 jobs filled with foreign skilled manpower (ranking):

- 1) laborers
- 2) engineers
- 3) production operators
- 4) technicians
- 5) IT staff
- 6) sales representatives
- 7) administrative assistants/PAs
- 8) customer service representatives
- 9) senior executives/board members
- 10) accounting & finance staff

Even though the terminology ‘laborer’ is not specified it can be assumed that the laborer is manpower without any skill. Further it is very likely that demand for ‘unskilled’ laborer particularly in service sector of advanced countries is to a

<sup>26</sup> <http://brighthub.com/office/career-planning/articles/86776.aspx>

large extent significant. No doubt other types of manpower, in fact, skilled manpower presumably with specific expertise are highly demanded for.

The above survey made clear that 31 % of employers worldwide are concerned about loss of skilled manpower in favor of those countries providing better working and earning conditions. Most seriously affected are those countries which are striving for pursuing their own industrialization, such as Peru, Argentina, South Africa etc. (see the following table)

This fact may give rise to arguments in favor of ‘protectionistic measures’ to prevent domestic high level manpower from outward migration or to introduce the so-called Bhagwati Tax.

**Table 1:** *Concern about loss of skilled manpower to another country (ranking)*

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Most concerned countries

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Peru 82%  
 Argentina 66%  
 South Africa 65%  
 Taiwan 64%  
 India 57%

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In contrast to this, China, Ireland, Japan etc. are not concerned about the loss of skilled manpower. If this survey had included the case of Korea it would be very likely that it might have been greatly concerned about loss of skilled manpower which has been continuing for two decades.

By looking into details related to the concern of the countries in the Asia-Pacific it is striking that India known for sending IT-experts worldwide is extremely concerned (57 % of all surveyed employers). The country which is more concerned is Taiwan. It is presumable that Korea may align with these countries as regards concern about loss of skilled manpower to other countries. As to the question “do you think government and business are doing enough to slow the outward migration of talent and attract these people back to your country?” except India and New Zealand employers in most countries think that the government as well as the business do not undertake sufficient measures against the increasing outward migration and attract skilled manpower to return to home country. (see the following table) Very striking is that those advanced countries such as Australia, Japan and New Zealand especially stress the necessity for the government and the business to curb the brain drain.

**Table 2:** Detailed information about the concern of those countries losing skilled manpower to another country and about measures aimed at slowing the outward migration in countries of the Asia-Pacific (%)

Do you think government and business are doing enough to slow the outward migration of talent and attract these people back to your country? (%)

	yes	no	do not know
Australia	15	65	20
China	35	8	57
Hong Kong	35	57	8
India	21	32	47
Japan	3	70	27
New Zealand	12	79	9
Singapore	24	41	35
Taiwan	20	67	13

Are you concerned about the impact on the labor market from talent leaving your country to go and work in another country? (%)

	yes	no	do not know
Australia	24	69	7
China	1	12	87
Hong Kong	20	73	7
India	57	43	0
Japan	12	42	46
New Zealand	52	45	3
Singapore	22	52	26
Taiwan	64	30	6

**Source:** Manpower Inc.: *Borderless Workforce Survey*, Global Summary 2008, p. 3.

#### 5.4. Searching for IT-Experts'

Since 1990s advanced countries have been very keen to enhance global competitiveness in IT industry. First of all, emphasis was placed on bringing up the IT-related local talents. This local policy is accompanied by importing IT-experts from abroad in order to maintain the balance between demand and supply. That is the so called *synchronized strategy*, by which most advanced countries prefe-

rably try to recruit IT specialists from underdeveloped countries, such as India, Romania, Bulgaria, Serbia etc.

The most practical and realistic way in this regard was the import of qualified foreign IT-experts. Till now two approaches are in use.

- Foreign nationals are entitled to enter the recipient country on the basis of a *concrete job offer* which ensures sojourn and longer stay.
- A concrete job offer is not precondition for entry into recipient country. Special system such as a *points system* is applied for assessing qualifications of the person concerned. In this case the points system enables permanent residence.

The first case *job offer*-oriented immigration is in use in those countries such as Japan, Korea, Singapore, Hong Kong. The reason for this limitation may consist in a relatively high population density, high degree of availability of local experts and tightly regulated labor market. Australia, Canada, USA, etc. such as larger countries prefer to use both systems. The third category of countries with extremely severe labor regulations shifted to liberalization of labor immigration by means of introducing special systems, such as Germany with the *Green Card*.

#### 5.4.1. Green card in Germany

Around the year 2000 the IT industry in Germany was experiencing an enormous surge. In this industry the number of employees increased to 1.7 Million by 10 % compared with the previous year. BITKOM (Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.; Federal Employers Association of Information Economy, Telecommunication and New Media) announced that 75.000 vacancies were available claiming to be filled soonest in order to catch up with the advanced IT-countries. (Focus migration, no.3. nov. 2005).

The following table shows how serious the situation of vacancies for IT jobs was in Germany.

**Table 3:** Labor market for IT specialist 2002-2006

	2002	2003	2004	2005	2006
open positions	23870	20343	20265	25340	26865
after filling still vacant	4069	3005	3513	4767	6340

**Source:** Bundesagentur fuer Arbeit (2007): Arbeitsmarkt Kompakt 2007 Informationen fuer Arbeitsgeber/innen. IT-Fachleute, p. 2

The Prime Minister Gerhard Schroeder initiated the Green Card system to induce foreign IT-experts (non-EU citizens) and measures to enhance level of education and training conditions for IT-experts in Germany. This initiative was largely welcomed by the business world. What was interesting was the reaction of the conservative political angle, especially, Christ-Democratic Party. The prominent figure was Juergen Ruetters, Minister President of North Rhein Westfalia State who voiced protest under the title *Kinder statt Inder* denoting 'bear more German children than import Indian experts'.

The Green Card of Germany was modeled after the American one in the sense that it granted 5 years' sojourn visa to foreign experts. In this regard the Green Card is comparable to the American 'H-1B' - visa. The planned number for the first import of foreign experts amounted to 10,000, however, enhanced soon to 20,000. The requirements are university and college education in the field of communication and information technology. Further, the Green Card was to be granted to foreign students with the above major who were expected to embark on an offered job soon after finishing their studies. The amount of earning per year was limited to 50,000 euro. Especially the governmental agencies were solicited to simplify the process and formality of getting necessary work permit.

From August 2000 to July 2003 only 14,876 foreign IT-experts came to Germany which was strikingly low under the level of expectation with 20,000 per year. As far as the author can recall the Federal Government spoke of 5,000 IT experts to be imported, however, in reality, the average number for the period 2000-2003 was registered only with 3,418, for the time-being decreased to the level of 2,000-2,500 persons.

**Table 4:** Result of green card-used IT foreign experts in Germany

2000 : 4341	2001 : 6409	2002 : 2623	2003 : 2283	2004 : 2273
2005 : 2300	2006 : 2845	2007 : 3411	2008 : 3906	2009 : 2465

**Source:** Bundesagentur fuer Arbeit, BITKOM

Many grounds for this unsatisfactory result were as follows: first, the expected growth in the field of IT was stagnant in 2000-2003; second, the insufficient marketing of IT-experts recruitment abroad and especially substantially improved working and social benefit conditions for these experts; third, the worldwide spread of chauvinistic attitudes by right conservative political groups and parties in Germany.

Holger Kolb<sup>27</sup> referred to a paradoxical situation in Germany by making juxtaposition between big 20 IT firms (such as SAP, Deutsche Telekom, IBM, Siemens, Sun Microsystems, Microsoft, Intel, Vodafone etc.) with 70% of the total

<sup>27</sup> Kolb Holger: "The deutsche Green Card", in: *Focus Migration*, 3/2005.

turn-over in the German IT and their relatively low recruitment of IT-experts. Kolb argued further that this relatively low rate of recruitment can be regarded as a failure, as far as big firms are concerned. He argued further that big firms were presumably too selective in recruiting foreign manpower. What this implies is not clear. The author thinks instead that those big multinationally operating companies are likely to have access to IT-talents everywhere and also especially at places where their operation is in full swing.

Nevertheless, one could speak of an 'unintended support for small and medium-sized firms' ('nicht intendierte Mittelstandsfoerderung'), because a large number of small scale industries lacking IT-experts could be helped.<sup>28</sup> As regards the regional distribution of IT experts the federal state Bayern was most strongly provided with IT experts. However, the city with most IT experts is not Munich, but Frankfurt, which is largely dependent on the imported IT-experts, whilst Muenchen recruits to a relatively great extent from the German local market.<sup>29</sup>

Much mention was made about how to integrate foreign IT-experts in Germany. Very interesting is that IT-experts themselves organized the so-called *chat rooms* as a kind of 'self-help organization' to communicate with each other as regards diverse problems in Germany, such as language, intercultural communication, family, children's education, etc. According to a study on „Germany, the right place for immigration. Think of the economical situation, the language and other facts compared to other countries” it has been shown that those with 'good-very good' made up 26 %, with 'bad' 71 %, which means conditions for social integration in Germany are regarded to be 'bad'. Most of those disappointed IT-experts are ready to leave Germany as soon as possible.<sup>30</sup>

Apart from this unsatisfactory integration at individual level Pethe<sup>31</sup> pointed to the fact that foreign high level manpower were scarcely integrated by means of company relocation programs. They had rather to organize their resettlement themselves. This implied that the monetary incentives did not play such an important role as it was assumed. Accordingly, experts were of opinion that the accent of the research has to be shifted from the company to the actor-centered research.<sup>32</sup>

How about the current situation of IT-experts demand in Germany?

BITKOM announced very recently that there are 43 000 vacancies in IT industry. The tendency is increasing. The Federal Agency for Labor (Bundes-

<sup>28</sup> Kolb Holger: "Die Green Card: Inszenierung eines Politikwechsels", *Aus Politik und Zeitgeschichte*, 27, 2005a.

<sup>29</sup> Schreyer Franziska, Gebhardt Marion: "Green Card, IT-Krise und Arbeitslosigkeit", IAB Werkstattbericht, Ausgabe no.7/20.5.2003.

<sup>30</sup> *Ibid*, 19.

<sup>31</sup> Pethe H.: "Un-restricted agents? International migration of the Highly Skilled revisited", *Social Geography Discussion Papers* 3, 2007, 223.

<sup>32</sup> Schreyer Franziska, Gebhardt Marion, *ibid*.

gentur fuer Arbeit) presented a report on 'IT-Experts' in 2010 saying that the number of vacancies for IT-experts in the year of 2006 amount approximately to 27 000 which means an increase by 6 % compared with the previous year. Interesting development is that at the moment the peak of demand was perceived in the year of 2000 the number vacancies amounted to 56 575. After then the number decreased. After a brief consolidation phase on the years of 2003/2007 the demand surged again. Stemming from the usual estimate of demand for foreign IT-experts with 5-6 % of the total demand in Germany the realistically estimated demand foreign IT-experts could be about 2000-2500 persons.

#### 5.4.2. Indications for USA's strong competitiveness vis-a-vis Europe

It has already been mentioned that the terminology 'brain drain' was first used for the case of migration of highly skilled manpower from the UK to the USA. Better working conditions and much higher salary in the USA attracted many a European young engineer and scientist. Still now there is no exact statistical data about the number of European manpower working in the USA.

Especially Germany seems to have been affected by a great number of German experts and scientists working in the USA having no intention to return home. The former Federal Minister of Science and Technology Mrs. Buhlmann came to the idea to appeal to these experts with 'patriotic parole' to come back. Instead, these experts have claimed 'real job opportunities in Germany instead of patriotism'. As a matter of fact, Germany has been still sticking to obsolete, inefficient bureaucratic systems in education, scientific labs, corporate organizations, etc.

In the following one can confirm very easily more advantage of the US immigration law and regulations attracting foreign skilled manpower than European solutions.

The US Government has been becoming increasingly liberal to allow foreign nationals to live and work permanently in the USA. The following is 5 preferences of granting work permit to foreign nationals. How progressively the US is dealing with the immigration law can be demonstrated by the following preference system, which is typical of lowering the immigration qualification standard by widening the concept of PTK (professional, technical, kindred or related) workers.

The first preference concerns those foreigners possessing extraordinary ability, outstanding professors and researchers, and those with excellent managerial skills and experiences; the second preference is to be given to those exercising professions based on advanced degrees and exceptional ability in the science and arts; the third for those with at least 2 years experiences in work necessitating skills, and professionals with baccalaureate degree; the fourth preference is reserved for those expected to work in religious vocation or occupation. They

must have been a member of religious denomination for at least two years and lastly those expected to work in commercial business. For the immigration in the US the 'skill', what it may be, seems to be *ultimo ratio*.

The US government provides even to those wishing to temporally work in the US a non-immigrant entry permit. Professionals from Mexico and Canada profit from the NAFTA-scheme. They can be also non-immigrant entry permit by showing minimum education requirements or eventually relevant credentials.

Further, by comparison between the US Green Card and the EU Blue Card the American system seems to be more advantageous.

*ad Permanent residency*

EU Blue Card does not give permanent residency

US Green Card gives holder permanent residency

*ad Validity period*

EU Blue Card: valid up to two years, renewable

US Green Card: valid for 10 years, renewable

*ad Permissions included*

EU Blue Card allows holders and families to live, work and travel in EU

US Green Card allows holder to live, work and travel in the US

*ad Application requirements*

EU Blue Card: Applicant must have one-year EU job contract with the salary of three times minimum wage

US Green Card: Five channels to seek a card: employment, family links, a lottery, investment, or resident since 1972

*ad Permanent residency / citizenship*

EU Blue Card: Permanent residency automatic after five years

US Green Card: Holders can become US citizens after five years

The comparative advantage of the US is not confined to the legal and institutional dimension, but also consists in an efficient utilization of network of migrants among themselves by way of family, friendship and alumni relationships which enable new migrants to accede to relevant information and data. These migrants are under much better circumstances than those who do not have any established network. Relatively big ethnic communities such as the Indian community, Korean community and some European communities are also very instrumental for those migrants in all respects.

#### 5.4.3. The case of failure in brain gain efforts: the "Return Korea" project

- Trend toward brain gain for the USA?

Korea has a long tradition of sending young students and workers abroad, and since recent years to recruit foreign workers, and even highly skilled experts as well. Further, the Korean government has tried to persuade Koreans trained abroad,

especially in the US to return to Korea for which their patriotism was expected to play constructive role. However, this return-home policy by the Korean Government failed. It does not make any sense with this appeal, as long as local research conditions in Korea are not drastically improved to receive these people and place into those work places the returnees desired. Also by way of material incentives, for instance, with much higher salary, housing and working conditions etc. the policy to bring those talented Koreans home seems to be not fruitful.<sup>33</sup>

In the recent time the Korean Government apprehensive of shortage of skilled manpower evidenced by decreasing Brain Drain Index to 3,65 in 2011.

How the situation with securing high skilled manpower in Korea could be shown by a very recent Survey of the Daily Choongang on 226 America-resident Korean scholars and 293 Korean scholars: 72% of the respondents are going to leave Korea because of bad research condition and low pay in Korea. 62% are interested in going abroad simply because of better research conditions, 26% favoring the higher quality of life. 55% of the questioned America-resident Korean scholars do not intend to return to Korea because of bad research conditions and low pay (Choongang Daily of sept.18, 2012).

70% of the local scholars regard the Korean Science and Technology Policy as not-promising. The following reasons are mentioned: complicated regulation, bureaucracy, increase of researchers without regular work contract and last but not least general tendency toward dislike of natural sciences in favor of law and medicine. The case of Korea shows that the theory by Gibson and McKenzie (2011) that the migrations decisions are strongly contingent on improvement of migration laws, administration, etc. of the home country is correct.

In 2011 the Government launched an ambitious project called „Brain Return 500”. The aim of this project is to scout 500 *world class* scientists irrespective of nationality up to 2017. Scholars work at the newly established Korea Institute of Science and Technology with excellent technical infrastructures and financial support. The Korean Government which saw Korean scholars resident abroad interested in return changed its policy toward even foreign high level manpower instead of persisting on Korean scholars resident abroad. In this sense the word ‘return’ is inappropriate. Until now a relatively small part of engaged scientists returned from abroad.

The plan is to scout 500 world class scientists, but in the first year only 16 scientists signed contract. It has been already said that this Policy would sooner or later fail, because the planned financial commitment by the Korean Government will not be realized, as it has been in similar situations in former time.

<sup>33</sup> Kim Sunwoong: *Brain Drain, Brain Gain, and Korean Global Brain Network. A Critical Literature Survey and Research Agenda*, Dept. of Economics, University of Wisconsin-Milwaukee, 2006; Ammarsari Savina, Black Richard: “Harnessing the Potential of Migration and Return to Promote Development: Applying Concepts to West Africa”, Sussex Migration Working Papers, 2001.

Since the globalization has been accompanied by the unlimited and uncontrolled desire for talents there is no alternative for Korea to look for realistic strategies. Sure, furthering local training and education of talented people in Korea is supposed to be *conditio sine qua non* which has to be flanked by the strategy to invite foreign talents to Korea (Kim 2006) which we can learn from other Asian and pacific countries such as Singapore, Australia, New Zealand, etc.

This is necessary, especially in IT industry. A very interesting strategy is the one of *outsourcing* based on utilization of skilled migrants. For instance, Korean firms established IT-related institutes in China which are dependent on North Korean migrants and researchers on temporary contract basis. (Park 2005, 2006) Further, one of the most recent research trends is focusing on emergence of segmented labor market based on skilled migration in the field of high-quality health care, educational and medical outsourcing, etc.<sup>34</sup>

A study by KLI (Korea Labor Institute) and KIPA (Korea Invention Promotion Association) (2003) cleared that the reality of demand and supply of IT experts does not look so rosy as it has been described since some years, even though Koreans are proud of being a 'strong IT power.'

This Survey of over 2570 IT-related firms in Korea brought many facts into light: first, the IT industry will grow steadily in next years with the growth rate of 2.19-4.40 % per year of IT specialists calculated on the basis of 475.005 IT specialists for the year of 2002 which means qualitative and quantitative aspects. One estimated about demand of 20.000, out of which SW/SW development and architecture has highest demand followed by H/W development and architecture, and then system management and maintenance. This Survey does not mention an exact number of detailed demand. There is no doubt that Korea suffers enormously shortage of IT specialist in software development and consultation, as it is the case in other advanced countries. In order to upgrade the quality of IT manpower supply situation of IT industry the survey proposed, first of all, to utilize foreigners' expertise in addition to other suggestion such as improvement of English knowledge of It experts, especially in small scale industries. In this regard one could ask how IT specialists from other countries could be recruited. Korea which has had long extended experiences with foreign workers on unskilled manpower market should be easily able to combine with this experience with skilled migration into Korea.

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<sup>34</sup> Skeldon Ron (2005): "Globalization, Skilled Migration and Poverty Alleviation: Brain Drains in Context", Sussex Working Paper T 15

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## 6. Conclusion

According to the Manpower Inc.'s Talent Shortage Survey, *about one in three were unable to find the right skill*. This is very serious in case of high level manpower. In 2020 the countries such as the USA, Canada, China, the Western Europe, Korea, Japan and Australia are supposed to have considerable difficulty with filling vacancies of high level manpower. Even the countries such as Indonesia, the Russian Federation, etc. will have the same difficulties. It is doubtful whether South Africa, Thailand, Brazil and Argentina will be able to provide surplus manpower.

In future there will be a severe trilateral competition between North America (the USA and Canada), Western Europe (Germany, France and the UK) and Asia-Pacific (China, India, Japan and Korea), by which the USA has competitive advantage in the tradition of employing high level manpower from foreign countries as well, and having alleviated immigration regulations coupled with various incentives. Some West European countries such as the UK and Germany have chosen the same path towards recruiting foreign high level manpower by means of the Green Card and Blue Card. It seems that the expected result has not been reached yet. The countries in the Asia-Pacific like China and Korea have for the time-being the problem to improve local research conditions and local pay system. However, the perspective of these countries does not look so rosy.

The rest of the world, especially the Third World will not have any solution to keep their high level man power from brain drain to advanced countries. The *de-knowledgization* of the Third World will get worse.

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## **KONKURENCIJA ZA PRIDOBIVANJE VISOKOKVALIFIKOVANE RADNE SNAGE U GLOBALIZACIJI ZNANJA: FOKUS NA POLITIKU I INSTITUCIONALNE PRISTUPE – HIPOTETIČKI DISKURSI**

### **S a ž e t a k**

Napredne zemlje koje se suočavaju sa sve većim nedostatkom visokokvalifikovane radne snage, takmiče se jedne sa drugima u poslednje vreme (konkurencija za priliv mozgova), dok manje razvijene zemlje doživljavaju odliv kvalifikovane radne snage (odliv mozgova). Čini se da ove zemlje nisu sposobne da spreče odliv mozgova. Najjača konkurencija za privlačenje kvalifikovane radne snage uočljiva je u SAD, veća u poređenju sa Zapadnom Evropom i Japanom. Kako će to izgledati u budućnosti? Uočljivo je da će Kina i Koreja preduzeti značajne napore na javnom i korporativnom nivou. Na kraju, trend u pravcu stvaranja „podele inteligencije“ između razvijenih i manje razvijenih zemalja, izgleda neizbežan.

**Ključne reči:** odliv mozgova, priliv mozgova, imigracioni zakon, zeleni karton, plavi karton, politika povratka u matičnu zemlju

## IS THERE A SPECIFIC POLITICAL LIFESTYLE IN ASIA AND EUROPE, WITH SPECIAL REFERENCE TO JAPAN AND THE UNITED KINGDOM?\*

The article deals with the issue of specific political lifestyle in Asia and Europe. The author focused his attention to the special reference to Japan and the United Kingdom.

Having in mind modern, democratic societies, the author seeks to answer the following questions: 1) How does the profession of politicians differ from other professions? 2) What motivates and drives politicians? 3) What types of pressure affect the lifestyle of politicians? 4) How deeply is the lifestyle of politicians affected by the type of political system in which they operate? 5) Is there an Asian (or Japanese) political lifestyle that differs fundamentally from a European (or British) political lifestyle?

After answering these issues, in his Conclusion, the author concludes that politics is messy, untidy, imperfect, subject to competing pressures that politicians, and especially political leaders, have to manage somehow, making snap decisions with all too little time for reflection, facing both political opponents and probing mass media that seek constantly to uncover a politician's weak points. It is a Darwinian world in which the fittest survive, for a time at least. Admittedly, power-hungry, unscrupulous and bigoted individuals do sometimes succeed even in democratic politics. But what this shows is that democracy is not a perfect system.

**Keywords:** politician, political lifestyle, democratic societies, Japan, United Kingdom

Like many in Britain, my wife and I are enthralled by the Danish political thriller *Borgen*, being broadcast on the BBC, which is the story of a fictional woman prime minister of Denmark, Birgitte Nyborg, who has to manage the double strains of political and family life. She has no time to attend to her marriage sufficiently and it ends in divorce, while in her political role she learns to become more and more assertive in controlling a chaotic coalition government in which personal ambition, clashes of personality and diverse viewpoints pose new challenges as each day dawns. It is a brilliant portrayal of political lifestyle in a European country, and I recommend it to you all if you have not already seen it.

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\*\* This paper has been presented at the International Workshop dedicated to Mića Jovanović's 60<sup>th</sup> birthday, titled: *Business as Art of Living: A New Paradigm for "UM CARUJE" Rationality*, held at Megatrend University Belgrade, on January 28<sup>th</sup>, 2013.

What I want to attempt in this brief lecture is to examine political lifestyle from a general perspective, and see what differences there might be in the ways politicians behave in Asia and in Europe, concentrating in particular, but not exclusively, on Japan and the United Kingdom.

The political systems I am concerned with are all democratic, in a broad understanding of that term. It is not my intention to discuss dictatorships or anarchic states. Neither North Korea nor Somalia will figure in this presentation.

I shall seek to answer the following five questions:

- 1) How does the profession of politics differ from other professions?
- 2) What motivates and drives politicians?
- 3) What types of pressure affect the lifestyles of politicians?
- 4) How deeply is the lifestyle of politicians affected by the type of political system in which they operate?
- 5) Is there an Asian (or Japanese) political lifestyle that differs fundamentally from a European (or British) political lifestyle?

### 1. How does the profession of politics differ from other professions?

If we compare politicians with executives in commercial firms, officials in the public service, or professionals in medicine, architecture, law or education, it is immediately obvious that nearly all politicians are organised in political parties that compete with each other in elections, whereas that is hardly the case with the other occupations I have mentioned. Elsewhere there will of course be conflict, and probably factions, but it would be hard to find any real equivalent of a political party. Moreover, democratically elected politicians are responsible to the electorate, in the sense that their electors can dismiss them at the next election. In business there are mechanisms, such as takeovers, for replacing one leadership group with another, and businesses are formally responsible to their shareholders, but in practice this is hardly equivalent to the whole team facing re-election every five years or less. In addition, the responsibilities of politicians taken as a whole tend to be broader than those of businessmen or other professionals, since the task of governments of which they are a part is to govern a nation-state as a whole. (Admittedly many business organisations now operate across national boundaries, but not across the range of human activities).

### 2. What motivates and drives politicians?

I have compiled a list which, though not comprehensive, seems to me to cover most actual motivations: power, ambition, public service, ideology, policy preference, party loyalty, loyalty to the constituency (or district) represented, money

and professional pride. Let me extract one item from this list, that of money. It is difficult to imagine that many politicians enter politics to become rich. The salary of the British Prime Minister is currently £142,500 (178,100 euros), plus perks and expenses. But top business executives count their remuneration in millions, and even tens of millions, of pounds, not hundreds of thousands of pounds – at least in the British case, and this incidentally, has become a controversial issue. The British parliamentary expenses scandal that was exposed in 2010 originated in the fact that it had been politically very difficult to raise basic pay for politicians, so a lax regime was introduced in relation to expenses, and some politicians exploited this. The salary of a British MP is now £65,700 (82,100 euros), or about the same as the salary of a University professor. When we look at the other motivations listed, we see that they encompass a wide variety of human variations. Power is often considered to be the foremost reason why people enter politics. Max Weber, in his renowned essay *Politics as a Vocation*, wrote: “He who is active in politics strives for power either as a means in serving other aims, ideal or egoistic, or as ‘power for power’s sake, that is, in order to enjoy the prestige-feeling that power gives’”. In the same essay he also colourfully noted that power-seekers entering politics felt they were “putting their hand on the wheel of history”. In respect of ambition, politics is perhaps not so different from other careers: the most ambitious have an urge to get to the top; so we do not need to dwell on this.

Being motivated by power and ambition does not exclude a concern to engage in public service, and it would be wrong to deny that many politicians have high ideals in this regard. Ideology and policy preference are also important motivations, in the sense that most politicians, irrespective of party, come to politics wishing to move policy in one direction or another, although this may in time be tempered by the experience of actually trying to do so. The extent of party loyalty crucially depends on the degree to which parties are firmly institutionalised in the system. In the United Kingdom, for instance, it is extremely rare and exceptional for a candidate to be elected to Parliament as an Independent, without party backing. In Japan, most parliamentarians are affiliated with parties, but in each general election a handful of unaffiliated candidates are also elected, largely because in Japanese electoral conditions local candidates typically build strong personal machines at district level, and in a few cases these deliver enough votes to elect the candidate without party backing.

The reverse side of the coin of party loyalty is loyalty to the constituency, and here again there is some difference between the British and Japanese situations. In the United Kingdom, party loyalty is strongly embedded, and though members of Parliament mostly work hard in the interests of their constituents, it is rare for an issue specific to a particular electoral district to override loyalty to party in the sense of voting against the orders of the party whips. Indeed, one Labour parliamentarian told me that in his constituency work he mainly acted

as a post office, directing enquirers to the agencies most appropriate to solving their problems. Europe is not uniform, however, and I would like to mention an example from France. The French Communist Party is in decline and is now a minor party. But a particular Communist *député*, in an area of the Massif Central I happen to know well, after being first elected to Parliament about ten years ago, has increased his majority at each subsequent election. He has achieved this by his diligent attention to the interests of his constituents, particularly those who run small businesses. He has helped so many local people that many of them, even those of devout Catholic faith, now vote Communist at successive elections. Rather similarly, in Japan, I once had the following revealing experience. I was visiting a parliamentarian in his offices next to the Parliament building. Our interview was repeatedly interrupted by groups of petitioners from his electoral district wishing to speak with him. At the end of the interview he said to me: "You see what life is like for a parliamentarian in this country". Not an easy lifestyle, I guess.

Finally, let us examine professionalism and professional pride, as a factor motivating politicians. Now in most countries the reputation of politicians, like that of journalists, is rather low, and far below that of medical doctors (the most popular) and several other professions. This seems to be based on the assumption that politicians are in politics in order to satisfy essentially selfish aims. In Britain, the parliamentary expenses scandal dealt a severe blow to the reputation of politicians, irrespective of party, and despite a tightening of the rules on expenses since then, the popularity of politicians has been slow to recover. In Japan similarly, politicians in general are far from popular, particularly during the recent two decades of relatively poor economic performance. Money scandals abound in Japanese politics also, although in Japan too the rules have been tightened since the 1990s. Nevertheless, it is clear that there are many politicians throughout the world who take enormous pride in the professionalism with which they conduct what Max Weber called the 'Vocation' of politics.

### 3. What types of pressure affect the lifestyle of politicians?

It seems to me that entry into democratic politics almost inevitably means a life subject to many and often severe pressures. Politics in dictatorships involve pressures too, but these differ substantially from those experienced by politicians in democracies. A well known phrase in English is 'uneasy lies the head that wears the crown', but this applies essentially to a dictator who fears that even his life may be in danger because of his despotic exercise of power. In democratic politics, by contrast, a fundamental principle is accountability. Mechanisms are (or should be) in place to ensure that there are checks and balances in the exercise of power. The nature of these checks and balances differs from a political

system to a political system, but for excellent reasons they impose pressures upon politicians. A politician (and especially a political leader) is accountable to the electorate, to the electoral district he represents, to his party, to his government (in coalition governments this is not the same thing as his party), and increasingly perhaps, to the mass media. It is not of course entirely accurate to say that politicians are 'accountable' to the media in any formal sense. But particularly in the current era of twenty-four hour news, the Internet, social media and multiple channels whereby the media seek to test and 'expose' politicians, politicians have to concern themselves constantly with pressure the media pile upon them. (In a television interview given by Sir Anthony Eden, British Prime Minister in the mid-1950s, the interviewer deferentially asked: "Is there anything else you would like to tell us, Prime Minister?") How things have changed.

In the United Kingdom, the role of the media in politics (as well as in other walks of life, such as the police) has become intensely controversial over the past several years. General outrage at the practice of phone hacking in several newspaper organisations led to the closure by its proprietor of one large-circulation national newspaper, and media regulation has become a widely and intensely discussed issue following the recent Leveson enquiry into media standards. In Japan nothing on that scale has occurred, but it is worth noting that press activities have a degree of control placed upon them through the institution of 'press clubs', whereby a certain degree of uniformity is imposed on press reporting of politics. This falls far short of the kinds of media control applied by the Communist regime in China, but the media in Japan is not the kind of semi-anarchic set of enterprises it sometimes appears to be in the United Kingdom.

#### 4. How deeply is the lifestyle of politicians affected by the type of political system in which they operate?

Even though in a broad sense one might argue that the practice of politics has common features wherever it occurs, at the same time, different types of political system have contrasting impacts on the lifestyle of politicians. Comparing the UK and Japan does not bring this out with much clarity, because in form at least the British and Japanese political systems are rather similar to each other. Both are 'cabinet within parliament' systems, and thus very different from the 'separation of powers' system operating in the United States. There are, however, significant differences and it is also important to understand that neither system is static. In regard with this last point, let me just point out that the British system was not supposed to produce coalition government, but we now have a relatively stable coalition government. The Japanese system was not supposed to allow opposition parties to replace in power the ruling Liberal Demo-

cratic Party, but in September 2009 that party was replaced by the opposition Democratic Party, which in December 2012 had to cede power back to the LDP.

I will, however, mention two important differences between British and Japanese politics that impact differentially the lifestyle of politicians. One is the greater influence and responsibility of the government bureaucracy in Japan than in the UK. The other is the existence of more extensive obstacles to the exercise of power by the prime minister in Japan than in the UK. Somewhat paradoxically, the checks on prime ministerial power in Japanese politics, which has been characterised by the dominance of a single party, have been considerably greater than in British politics, where there have now been seven complete changes of the party in power since 1945. The Japanese prime minister can expect a short tenure. Indeed, between the end of the war in 1945 and 2013 there have been 34 Japanese prime ministers (plus two come-backs: Yoshida and now Abe) as against 13 British ones (plus one comeback: Wilson).

The impact of this on the lifestyle of political leaders is complex to assess. I am assuming that politicians and especially political leaders care about the judgement of history, and that the nature of that judgement affects their satisfaction with themselves, and thus their lifestyle in a broad sense. Arguably in the United Kingdom, where political leaders, rather than government officials, take responsibility for policy decisions and have sufficient time to map out integrated policy programmes, it will be fairly easy to work out how far they have succeeded and how far they have failed. In Japan, by contrast, with short leadership tenure, judgement on success or failure will be spread out between successive leaders, and thus particular leaders (specifically prime ministers) may escape a clear judgement. On the other hand, in the Japanese case it may actually be easier to pin blame, or give praise, to the combined leadership of the political party that dominated the political scene for so long. In the United Kingdom it is not always entirely clear which party is responsible for the long-term development of policies in various spheres of activity.

### **5. Is there an Asian (or Japanese) political lifestyle that differs fundamentally from a European (or British) political lifestyle?**

Here I would like to assert with force and conviction the view that just as there is no such thing as a discrete European or Asian political system, so there is no such thing as a discrete European or Asian political lifestyle. Europe is often seen as the crucible of democracy, but it produced Napoleon, Mussolini and Hitler (also Stalin, but some might argue that he was not truly European). Asia used to be dismissed as incapable of democracy because of longstanding cultural traditions favouring levels of hierarchy and unquestioning subservience to authority as well as, especially in the case of the Confucian tradition in China,

a stern preference for social stability and order over human rights and freedoms. But contemporary Asia boasts a number of functioning democracies which, though they all have problems, are not qualitatively different in the problems that they have from democracies in Europe. That most complex country called India has a vigorous democratic tradition going back to independence from the UK in 1947. Apart from Japan, which has been democratic in form and rather convincingly also in substance (with backslidings admittedly) for more than 60 years, the Republic of Korea, Taiwan and Indonesia have emerged in recent decades from various kinds of autocratic system to be functioning democracies. China continues to run an autocratic system but one that promotes economic development, the ultimate effect of which is likely to erode autocratic structures, even though that process still has a long way to run. Malaysia has a kind of democracy but ethnic problems inhibit its development, while Singapore is the most unusual and surprising example of a highly advanced economy that still resists democratic pressures. Burma (Myanmar) seems now to have begun the task of constructing democratic institutions after decades of numbing military dictatorship.

A counter-argument to my assertion about the lack of a discrete Asian (or European) political system and lifestyle was the so-called 'Asian model of democracy' that had some currency during the 1990s, following speeches made by the Malaysian Prime Minister, Mahathir Mohamad. Mahathir made a distinction between 'procedural' and 'economic' democracy. But in my opinion the main thrust of the 'Asian model of democracy' was that the best way of running a State was through some form of benevolent dictatorship, and examples of that particular model seem rarely to have been particularly benevolent.

## 6. Conclusion

Returning to my starting point, which was the Danish political thriller 'Borgen', I believe that although the politics it portrays is fictional, it is remarkably true to the way politics operates in political democracies around the world. First of all, it shows politics as messy, untidy, imperfect, subject to competing pressures that politicians, and especially political leaders, have to manage somehow, making snap decisions with all too little time for reflection, facing both political opponents and probing mass media that seek constantly to uncover a politician's weak points. The strain that this imposes on politicians is immense, and the greater the responsibility the greater the pressure and strain. It is a Darwinian world, in which the fittest survive, for a time at least. As Disraeli famously said when he first became British Prime Minister in 1868: "I have climbed to the top of the slippery pole". But at the same time, it also functions as a complex web of mechanisms enabling policy and policy-makers to be scrutinised and checked. It has a real chance of enabling power-hungry or unscrupulous or bigoted indi-

viduals to be sidelined or even removed if they will not reform their behaviour. Admittedly, power-hungry, unscrupulous and bigoted individuals do sometimes succeed even in democratic politics. But what this shows is that democracy is not a perfect system. Systems portrayed as perfect are actively dangerous since they place the illusion of perfection as propaganda to mask what are often deeply corrupt and despotic ways of ruling a country.

The lifestyle of a democratic politician reflects the endemic but essential imperfections of democracy as a way of mediating the complex needs and conflicts of any society.

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## **DA LI POSTOJI SPECIFIČAN ŽIVOTNI STIL POLITIČARA U AZIJI I EVROPI, S POSEBNIM OSVRTOM NA JAPAN I UJEDINJENO KRALJEVSTVO**

### **S a ž e t a k**

Rad se bavi pitanjem specifičnog životnog stila političara u Aziji i Evropi. Autor se posebno osvrće na Japan i Ujedinjeno Kraljevstvo.

Imajući na umu moderna demokratska društva, autor pokušava da odgovori na pitanja: 1) Kako se profesija političara razlikuje od drugih profesija? 2) Šta motiviše i pokreće političare? 3) Koje vrste pritisaka utiču na životni stil političara? 4) U kojoj meri tip političkog sistema u kome političari funkcionišu utiče na njihov životni stil? 5) Da li postoji azijski (ili japanski) životni stil političara koji se fundamentalno razlikuje od evropskog (ili britanskog)?

Sudeći prema odgovorima, autor zaključuje da je politika haotična, neuredna, nesavršena i podložna različitim pritiscima koje političari, naročito lideri, moraju nekako da podnose, donoseći brze odluke kada ima malo vremena za promišljanje, suočavajući se istovremeno i sa političkim protivnicima i masovnim medijima koji stalno nastoje da pronađu njihove slabe tačke. To je darvinovski svet u kome najjači opstaju, bar za neko vreme. Istina, beskrupulozni pojedinci gladni moći i puni predrasuda ponekad zaista i uspevaju čak i u demokratijama. Ali to samo pokazuje da demokratija nije savršen sistem.

**Ključne reči:** političar, životni stil političara, demokratska društva, Japan, Ujedinjeno Kraljevstvo



## THE REVIEW AND ANALYSIS OF THE CHANGE OF NEW CHINESE PEOPLE'S LIFESTYLE\*\*\*

People's lifestyle is closely related to social politics and economics. Both social politics and development of economics have significant impact on the social lifestyle. After the foundation of the People's Republic of China (PRC), historically significant changes have emerged in the Chinese lifestyle, particularly after the reform and opening-up. The lifestyle changes have happened across several aspects, such as living concepts, living contents, living standards, and living environment. The changes have implications for the reform and development of China's politics and economy.

**Keywords:** new China lifestyle, change, connotations, analysis

Lifestyle changes are inevitable along with the development of the society. The history of the human society shows that the space that people live in and the time people spend in their homes will be increased with the development of scientific technology and productivity, which leads to more initiative in the social development and enhances the status of people's lifestyle in social production and reproduction and its influence on social production and reproduction. Since the foundation of PRC, the lifestyle of Chinese people has undergone tremendous changes. During the span of 60 years of change, some historical periods have left their marks.

### 1. The review of the changing process of new Chinese people's lifestyle

#### 1.1. The first phase (1949-1978)

##### a) Political and economic environment

During the 30 years between 1949 and 1978, China embarked on institutional reform including socialist transformation and the establishment of soci-

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alist political system. Meanwhile, China started an extensive social campaign. Those conspicuous reforms had a number of positive and negative effects on people's values. The traditional values and social psychology still had influence on Chinese people in some way. The development module of the China's economic system was learned from the former Soviet Union, and the economic ownership structure experienced the transition from the coexistence of various forms of ownership to one and only socialist public economy. The economic system underwent the transition from market economy to the highly centralized planned economic system. The living standard was hardly improved due to the emphasis on the development of heavy industry, speed and accumulation.

During this stage, China implemented a long-term employment policy of "centralize allocation of labor" and carried out the permanent workers system. These measures had significant impact on addressing the urban unemployment problems in the early time of the New China. At the same time, this system brought problems including the waste of talents, overstaffing and difficulties in motivating the workers, as the change of the social economic environment. The medical cost of the urban workers was paid by their companies, which was called "free medical service". However, this service burdened the company and resulted in enormous waste of resources.

b) The change of lifestyle

**Clothing:** Due to the effect of politics and economics, people admired "simplicity". Farmers' clothes were always homemade usually from coarse cloth. In urban areas, the adult men wore cyan blue Chinese tunic suits, and adult women wore Lenin suits. Workers would wear specific clothing when they were at work.

**Food:** At the beginning of 1950s, there was a shortage of grains. The State Administration of the Council of the Central People's Government published the order in October, 1953, which stated that the country would implement a planned food supply, and barter vouchers for food. In October, 1955, immediately after the implementation of food rationing, the Ministry of Food issued the "national food coupon". Eight kinds of subsidiary foodstuff, including cooking oil (even containing sesame), pork, beef, mutton, eggs, brown sugar and white sugar, bean vermicelli, and cakes were under food rationing.

**Living:** City residents historically lived in a small space with poor facilities. The tenement yards in Northern China and the garrets in the South were always cluttered and space was limited. The rooms were often so small that individuals living in the closed small spaces would feel difficult to breathe. In the countryside, peasants in the North lived in adobe houses or cave rooms, and the southern peasants lived in thatched cottages. The facilities were dilapidated and sometimes dangerous. It was common that people and livestock would share the same space. China let the cities take the lead in housing renovation projects. For

example, Beijing government first renovated the Luxu Gou and Heping Li residential areas. The government built new residential areas in those cities, replacing the housing in the new block with single occupancy, and each apartment covered 50 square meters of construction area. The so-called “apartment” (like dormitory) did not have separate kitchens, washrooms and other living areas. Usually, one floor level in the residential area would share one public water tap; the sanitary conditions were very poor.

Transportation: traffic infrastructure in China at that time was not well-developed. Highway, railway, and airports were miles away or not accessible for most people. Generally speaking, the traffic networks in cities were underdeveloped. The only two vehicles for transportation on land were bikes and buses, otherwise people walked. The bicycle was the most preferred means of transportation, and it became the symbol of that time.

c) The change of living values

At this stage, Chinese people’s attention was in rigid or semi-rigid state, and the spirit and the ability of innovation were limited. Especially, the culture revolution created a unique value system, in which simplicity was admired most. People were proud of poverty, and they did not dare to talk about riches, let alone to pursue wealth. Life values were endowed with strong political sense. At the same time, people rejected and boycotted the Western thoughts and culture. People believed them to be “poisonous” and represented decadent bourgeois ideas.

*1.2. The second phase (1978-1992)*

a) Political, economic, and cultural environment

In the Third Plenary Session of the 11<sup>th</sup> Central Committee, held in 1978, the second generation of CPC collective leadership, led by Deng Xiaoping, put forward boldly the strategy of “Reform and Opening-up”, bringing China back to the track of “taking economic construction as the center”. China achieved the great transition from single public ownership to public ownership as majority with the co-development of various ownerships. China actively explored other forms of public ownership. The government allowed the development of foreign-invested enterprises (e.g., foreign-funded enterprises, joint ventures, and Sino-foreign cooperative enterprises), encouraged private capital investment, and recognized private sector and other non-public economy’s positions as a part of China’s socialist economy, which was confirmed and protected by law.

In 1980, the implementation of all revolutionary measures on economy included establishing the contract responsibility system in rural areas, the contracting system of state-owned enterprises and joint-stock system, encouraging the township enterprises, making the commodity prices market-oriented and introducing foreign capital. These measures greatly stimulated the enthusiasm and

creativity of market players, which contributed to the first high-speed growth of New China's economy. However, due to the limitations of the reform of the state-owned enterprises, and the discomfort brought by the tremendous reform, China's economy showed troubling signs at the end of 1980s. After the "1989 political turmoil", the ideology argument "socialist or capitalist" emerged.

In terms of employment policy, the government decided to abandon the turnkey system in order to establish the new system guided by the strategy of "Under the plan and guidance of the labor department, integrate job recommendation, voluntary organization of employment and self-employment". Meanwhile, the government implemented the "two-way choice" policy, meaning merit-based hiring and employment. Additionally, the authority put forward the idea of setting up the labor contract system and the pilot project was implemented at the beginning of the 1980s.

b) The change of lifestyle

**Clothing:** At the beginning of the 1980s, wearing sunglasses and bell-bottoms became a typical fashion and invincibly broke the "unified" state. The leaders of the party and the state took the lead in wearing the suits which had not been seen in China for decades. The color and style of clothes diversified along with the change of fabric and texture.

**Food:** The food supply gradually became market-oriented. The types of available foods increased. However, the vouchers still existed. The national projects of "food bag" and "basket" enriched people's table. In terms of the residents' nutritional intake, the proportion of non-vegetables, such as meat, eggs and milk increased significantly. As a result, the dietary nutrition showed continuous improvement.

**Living:** For urban workers, housing still depended on welfare housing distribution. The monotonous style bungalows replaced the dilapidated houses. Patches of scaly tiles replaced the dilapidated roofs, and the lime brick flat white walls replaced the stone brick ones. However, the interior decoration continued to be quite simple. The furniture in homes was basic including beds, tables, and chairs. The room was simple and clean, filled with harmonious quiet.

**Transportation:** In the late 1980s transportation was not readily available for the general public. Due to the lack of trains, the railway passenger capacity was overloaded by 50%, even by 100% at peaks. More than 800 thousand people in China had to stand on trains, because seats were not available on for all passengers. In December 1984, Shanghai began to build the Shanghai-Jiading Expressway. The Expressway was opened to traffic on October 31<sup>st</sup>, 1988 and was the first highway in China. Civil air routes and flights were rare and the price for air tickets was high. For the majority of people, traveling by plane was only a dream.

c) The change of values of life

Boosted by the main forces of Reform and Opening up, the concept of seeking wealth and daring to be wealthy were generally recognized. Many Chinese people, especially young people, came to accept the modern values and social attitudes. They began to become actively involved in economic life and social affairs. The enthusiasm of the people was motivational and the concept about employment changed. The conventional concept of “attaching importance to state-owned enterprises, thinking little about the collective and despising the private sector” gradually faded away. People could choose their jobs at their will as long as they could demonstrate their talents and personal value in the jobs. People gradually accepted the Western culture and values. “Time is money”, “Efficiency is life” and “Keeping abreast of time” became popular topics.

1.3. The third phase (1992~Now)

a) The change of political and economic environment

In 1992 Deng Xiaoping's southern tour calmed the ideology argument. In the same year, the CPC Congress pointed out that the goal of economic reform is to establish the new socialist market economic system. In November 1993 the Third Plenary Session of the 14<sup>th</sup> Party Congress adopted the “*The Decision of the CPC Central Committee on Several Issues Concerning the Establishment of a Socialist Market Economic Structure*”. The Decision pointed out that the current focus of cultivating market system is developing the financial market, the labor market, the real estate market, the technology market and the information market. The government set out a campaign of “breaking the iron bowls (the permanent job, fixed wage and long-time leadership)” among state-owned enterprises. The government also began the joint-stock reform and stripped the bad assets of banks. Those measures contributed to an overall modern enterprise system to complete the construction of the market system. Meanwhile, the implementation of the strategic reorganization of state-owned enterprises promoted the development of private enterprises. More importantly, the enormous pressure from China joining the WTO was transformed into a powerful driving force to promote domestic reform. China's economy experienced another high-speed development period.

The construction of the labor market brought great changes to the employment system and social security system. The national laws protected the people's right of choosing their own jobs and the enterprises' rights of hiring the people they select, which brought the construction of the labor market back. It also reformed the social labor insurance system, making China establish an initial unified unemployed, pension and medical insurance system which covered all the urban workers. As a result, China gradually eliminated the difference in labor insurance system among different regions, industries and enterpri-

ses, which enlarged the range of labor mobility. With the establishment of the modern enterprise system, China furthered the implementation of the enterprises' autonomy right of hiring the people they need.

b) The change of lifestyle

**Clothing:** People became more open-minded about clothing. The style of clothes changed rapidly and people cared more about individual features and diversity. It is impossible to describe one style or color to summarize the fashion trend. What's more, keeping one's individual characteristics and not following the fashion has already become acceptable. Chinese awareness of daily clothes underwent a dramatic revolution. People began to pay attention to the brand, instead of only price and style. The brand of the clothes became the symbol of social status and taste. The clothes people wear, especially the top-end luxury clothes, have keep abreast of the international fashion trend. "Extravagant", "luxurious" and "expensive" are no longer the special words used to criticize the Western lifestyle. That shows people could pursue their life goals and the luxury brands stand for great taste in some way.

**Food:** Food bazaars, supermarkets and hypermarkets provide all types and quantities of food. People's requirements for food have become more and more demanding. People not only want to have "good food", they would also like to have healthy food. Science and health concepts are deeply rooted in people's minds. People pay attention to nutritional balance. To keep healthy, people have begun eating coarse grains in certain proportions and they insist on eating less salt and oil. People also like to eat more fruits and vegetables instead of high-calorie and fat food. The wild vegetables and coarse grains which were used to allay one's hunger in the previous periods are considered healthy food on the table now.

**Living:** As the reform in the housing system, the real estate market was activated. People now have more available options. There are several real estate products in the market, such as high-rise residential areas, penthouses, the Garden District, and even villas with unique characteristics. With the improvement of people's living standards, the interior design and decoration became a hot topic. Various decoration styles enrich life and reflect the improvement of the quality of people's life.

**Transportation:** The rapid development of high-speed railway, subway, airport and highways, along with the spread of family cars, greatly expands the Chinese people's living space. People's concept of transportation has changed dramatically. People travel more during their holidays. Both domestic travel and outbound travel have started changing from only sightseeing to leisure. Travelling abroad has also become common as people enjoy more choices of travel destination and routes. The traditional sightseeing no longer meets people's needs. Now people enjoy personalized travelling, and use their vacation to relax and have fun.

c) The change of life values

Chinese people's values and social attitudes now keep abreast of the international standard. The features of globalization in spiritual life become increasingly obvious. The risk awareness, the environmental awareness, the sense of integrity, the sense of equality, the sense of public service and other cultural tolerance consciousness are gradually being cultivated.

2. The analysis of the connotations of the change of people's lifestyle since the foundation of new China

**The continuous upgrading of the consumption structure reflects the rapid development of the economy.**

Since the founding of new China, especially after the reform and opening up, Chinese material life has been greatly enriched and its connotations achieve a qualitative leap. "Dress warmly and have one's fill" has already become the history. Eating nutritious food, wearing clothes from well-known brands, living in a comfortable house, and traveling fast and conveniently have become the new fashion of consumption. The change of lifestyle is actually the upgrading process of the consumption structure.

a) The change of "the big four" reflects the fact that the quality of people's life continues to improve

The "Big Four" in the First Phase: During the time between 1949 and 1978, China went through the historical transition from an agricultural country to a preliminary industrialized country. The beginning period of the construction of socialism is a very typical high accumulation with low consumption level period. The country took over all the consumption of urban residents. All Chinese people lived a unified "voucher" life. At that time, people saved money on food and other expense to pursue their "big four", the dream of wealth. The "big four" were bicycles, radios, watches and sewing machines.

The "Big Four" in the second phase: Marked by the Third Plenary Session of the 11th Central Committee, China began the reform and opening up. The year 1984 is an important historical turning point. The time period before that year can be called the consumption quantity expansion phase, and the time period after that year can be called the consumption increasing period. The latter was a significant period for Chinese residents to achieve a better-off life leap. Televisions, refrigerators, washing machines and air recorders were the "big four".

The "Big Four" in the Third Phase: In the 21<sup>st</sup> Century, China entered a new independent economic growth cycle. The upgrading of the residents' consumption structure and the increase of consumption became the two driving forces of the economic development. That all depended on the production from medium

income group; city investors gradually came to the surface since investing in the real estate, financial products and insurance had become a fashion.

b) The diversification of consumption structure

People's consumption concept has shifted from basic food consumption to the rational consumption pursuing good quality. The Gini coefficient of China shows that people spend decreasing amounts of money on food and clothes and increasing amounts of money to improve the quality of their life.

Tourism has gradually become a leisure life style. Traveling on holidays has become commonly accepted by the people. With the development of transportation and vehicles, people's available area to travel during holiday is expanded. Traveling abroad becomes a hot-spot issue; traveling around the world is no longer just a dream.

The investment in education has increased substantially. As the competition in the society became tougher, people have realized the importance of knowledge. As a result, they continue to invest more in education. The expenditure on education has gradually become the core content of human capital investment. It has also become the most important expense in the family. Chinese make full use of leisure time to take part in various lessons to learn more professional skills. Parents pay more attention to their children's education and cultivation. They use their children's spare time and vacations to participate in various interest classes, competition training classes, and educational expenses have increased dramatically.

The concept of health and wellness is generally accepted. At the beginning of the reform, the expense on medical treatment is limited due to the free medical service system. In 1992, China implemented the reform among medical institutions to make the medical service market-oriented. With the improvement of living standards, the self-health care consciousness is continuously enhanced. From people's willingness to have the disease treated by the hospital to the attention paid to disease prevention and health care, from the regular physical examination to a reasonable diet and more exercise, all those phenomena show that people care more intensely about health status.

The culture life has been enriched. At the First Phase, the primary entertainment for people included playing cards, playing chess and listening to radios. At the Second Phase, television programs and movies became the most important entertainment. Now, people's cultural life is colorful including restaurants, bars, Karaoke, cafes, Internet bars, chess rooms and other places of entertainment that are available to the common people. People seem to have endless options to enrich their cultural life.

**The upgrading of Chinese people's life values reflects the great social progress.**

Since the founding of the PRC, China's political and economic system has experienced several major extensive and profound changes, especially the reform and opening up. It not only brings unprecedented change to the material life experiences, but also to the people's concept of life.

a) The consumption concept became more mature

In China, people have become accustomed to the traditional habit of keeping expenses within their income. People do not want to borrow money for shopping. However, the concept of "excessive consumption", which has been evident in the Western world for a long time, has been generally accepted so that the Chinese now will apply for mortgages, loans for purchasing cars and educational loans. The idea that "Enjoy first and then think about the money!" is generally shared. The maturity of the consumption concept reflects the fact that people make rational decisions in a complex and complicated cultural and theoretical background.

b) Breaking of the restriction of the traditional employment concept

In the planned economy system, the only form of ownership is the state ownership. There are two subsidiary categories under the state ownership, the whole people ownership and collective ownership. The enterprises whose ownership is the whole people ownership would give every worker a package of welfare benefits. As a result, the workers in those enterprises would enjoy a higher social status and admiration. On the other hand, the people who work in the collective ownership enterprises would feel that they are inferior to others. This phenomenon has substantially changed with the further implementation of the reform and opening-up, the establishment of the socialist market economic system and the coexistence of various kinds of ownership. While removing the unified distribution system, the government gradually established and improved the employment guiding system. Local governments around the country set up labor markets and employment centers. Private employment agencies have also emerged. People can obtain employment information from newspaper and magazines, TVs, and the Internet. Job hunting on the Internet has already become common. Now people can sign the labor contract with employers using the Internet. The world is getting smaller and smaller! Self-occupation has been widely accepted. People can bear more pressure of unemployment now.

c) The tolerance of different aesthetic concepts

Before the Reform and Opening up, especially in the "class struggle" days, people were restricted and creativity was stifled. At that time, people's dress, concept and interests were highly unified and predictable. Now, the people's personalities can be fully expressed. This phenomenon is related to the changing

lifestyles and relaxation of restrictions. People's aesthetic standards have become more mature and they make decisions and choices in how to dress according to their individual personalities. With the improvement of living standards, people's appreciation for distinguishing personalities, pursuing fashion trends, paying attention to practicability, and making product and food choices have become widely accepted and practiced.

d) The aggrandizement of competition consciousness, efficiency consciousness and law and democracy consciousness

As self-sufficient natural economy has enjoyed a dominant position in China's society for such a long time, people are often afraid of revolutionary change and are comfortable with traditions. This conventional concept was further enhanced by the highly centralized planned economic system. The development of the socialist market economy encourages the appearance of divergent interest groups, making the social competition unprecedentedly fierce. People's working attitudes and achievements are related to the personal interests as well as the enterprises interests. There is a difference in awards between the people who work more and the people who work less, forcing people to become competitive and up-to-date.

In the traditional planned economic system, the enterprises followed the distribution policy from the government, and the workers followed the order from the enterprises. As a result, from raw material purchasing and products sales, actions were done according to the plan made by the state. The production activities engaged in extensive management. Therefore, the problem with enterprises and workers' not attaching importance to benefit and efficiency was quite severe. To meet the needs of highly developed economy and tough social competition and enterprise survival, people began to pay close attention to the problem of input and output ratio. Gradually, people formed the sense of "Time is money and efficiency is the key to survival".

In terms of the democracy and legal consciousness, the Old China is a country that lacks democracy and legal system. Since the founding of the New China, China established a highly centralized politic system to meet the needs of highly centralized planned economic system, which was adverse to the development of democracy and legal system. The development of the market economy makes many members of the social community together support the social life. People gradually become equal in the economic activities. Therefore, people have begun to have the desires of the democratization of politics, and they ask for certain political rights. Market economy is also legal economy. Legal regulations and guidance are essential to economic activities. People's consciousness of democracy and law is strengthened continuously with the perfection of legal system.

Looking back at the course of change in the last more than 60 years, since the foundation of the New China, particularly the time after the reform and opening

up, the most profound change lies in the people, the most fundamental benefits belong to the people and the great driving forces come from the people. The achievements of reform and opening up are attributed to the emancipation of people, the respect to the people and full realization of people's role of social affair participants. From the original concept of "Don't dare to be rich" to "Allow some people getting rich first" to today's conception of "Make the cake big and distribute the cake well". The government cares more about justice and fairness, and promotes social harmony. With better understanding of people and profound understanding of how to reform and promote the all-round development of people, China regards "All for People" as the core value of the society and the state.

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## **PREGLED I ANALIZA PROMENA NOVOG ŽIVOTNOG STILA KINEZA**

### **S a ž e t a k**

Životni stil ljudi tesno je povezan sa politikom i ekonomijom. Društvena politika i razvoj ekonomije značajno utiču na društveni životni stil. Posle osnivanja Narodne Republike Kine došlo je do istorijski značajnih promena u životnom stilu Kineza, naročito posle otpočinjanja reformi i otvaranja. Te promene u stilu života odigrale su se u različitim aspektima poput životnih koncepata, životnih sadržaja, životnog standarda i životnog okruženja. Te promene utiču na reforme i razvoj politike i ekonomije u Kini.

**Ključne reči:** novi kineski životni stil, promena, konotacije, analiza

ECONOMY

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## OBJECTIVE AND SUBJECTIVE INDEXES OF DEVELOPMENT FOR LATIN AMERICA – REVISION AND COMPARISON –

Since the economic development has arisen as a model, some critical positions have emerged, both from theoretical aspects and in its terms of measurement. A non worthless set of indexes and indicators, so called alternatives, has been produced, building up an important basis of quantitative information. Examples of them are: Genuine Progress Index, Social Progress Index, Human Development Index, Basic Capacities Index, Gender Inequality Index, and Happy Planet Index. Each proposal contains innovative elements: new approaches or social components as gender and environmental issues, and more recently include also subjective aspects. This paper contains a critical systematization of indicators and indexes of objective/subjective nature. A comparison is made and also statistical correlation for Latin-American countries.

**Keywords:** alternative indexes, social indicators, welfare measurement, human development

### 1. Introduction

Since the idea of economic growth as a model was conceived, many arguments have emerged against it, both theoretically and concerning its measurement. As a result, different approaches have arisen along with their respective indices and indicators, known as alternatives, comprising a solid base of qualitative and quantitative information for its analysis. For example: the Genuine Progress Index, the Human Development Index, the Basic Capabilities Index, and the Happiness Index, among others. This work offers a methodological review of a set of alternative development indices. Moreover, it comprises a first comparative and exploratory analysis of a selection of alternative development indices conducted with objective and subjective indicators for Latin American countries, with the aim of assessing the relation between the objective measurements and the perceptions of development or welfare. Some Latin American countries show objective progress of their living conditions but, at the same time, the population

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in these countries does not seem to perceive this progress. Nevertheless, in some cases the opposite may occur. There is a perception of satisfaction and compliance even when the objective measurements reveal the opposite.

## 2. Development and its measurement

Enough empirical evidence has shown that there is no automatic relation between economic growth, poverty reduction and social welfare. Economic growth alone does not necessarily guarantee social development. It has recently been claimed that countries with high development rates do not guarantee happiness among their population. A good part of the traditional economic indicators (GDP per capita) suggested that globalizing processes contribute to prosperity. On this claim, widely accepted, different reactions and arguments have emerged whilst problems such as unequal distribution of achievements and, in many cases, the deepening of inequalities, remained hidden.<sup>1</sup>

The approach of critical voices points toward the concept of development to be conceived from different perspectives which lead to the incorporation of diverse dimensions both in its conceptualization and its measurement. The critics on poverty, social inequality, unemployment and the role of institutions, were integrated in the term Social Development rendering evidence of the deficiency of the indicators --currently used-- as well as the need to close the north-south gap and disparities within nations. Many were the indicators and measurement mechanisms incorporated in this regard: poverty line, measurements of extreme poverty, unemployment rates, underemployment, minimum wage/ basic food basket, Gini coefficient, among many others.

Development with a Human Face (UNICEF) and Productive Transformation with Equity (ECLAC) were the new taxonomies of development programs that posed a broader approach, highlighting the multidimensionality of the social problems. These, in turn, contributed to the identification of another set of determinants and requirements, expressed at the World Bank's Comprehensive Development Framework.

The critics linked to the progressive deterioration of the environment and the depletion of non-renewable resources were integrated in the term Sustainable Development, highlighted for considering future generations as beneficiaries of development projects. Thus, it can be noted that, although the process of globalization lets us feel its impact on the conceptualization of development, these perspectives do not turn out to be satisfactory; on the contrary, they increase the difficulties in important sectors of society. Any local or national resolution goes

<sup>1</sup> Levy Carciente Sary: "Del motor del progreso al la sensación de felicidad", in: Guillén A, Phélan M. (Comp) (eds.): *Construyendo el Buen Vivir*, Universidad de Cuenca and PyDLOS, Ecuador 2012.

through the requirement of its viability or global acceptance, rendering evident the need to undertake a review of the concept and the measurement of development within the current context.

Alternative approaches lie along with the measurement of development, for which some concepts must be revised for their transformation – from its one-dimensional and concrete definition, integrated at a macro level and with a predominantly objective measurement - to a multidimensional conceptualization with particular emphasis on its micro-determinants and a measurement that must include subjective aspects.

### 3. Alternative Indices

A good number of indicators and alternative indices have been produced in recent decades, whose list may be long since they have been developed at a local, regional, national and global scale.

According to Quinti & Abruzzini (1997) development indicators have gone through different generations. The first generation is predominantly comprised by the use of economic indicators such as the GDP and the per capita income. In the second generation, characterized by the combination of social and economic indicators, those related to health, education, housing, environment and basic services emerge. Such combinations look for a greater relation between the different aspects of social life. Emphasis is mainly placed on the measurement of quality of life, and mainly, on the measurement of welfare. A good example of these grouped indicators is the Physical Quality of Life Index (PQLI) which associates life expectancy with infant mortality and literacy. A third generation is characterized by the construction of aggregate indices, which encompass the Human Development Index and its associated indices. More recently, they have incorporated aggregate indices with subjective indicators that measure happiness and life satisfaction. Some alternative indices with a brief description of each one are listed below divided into two large groups: the indices constituted by objective indicators and the indicators with subjective information.

#### *3.1. Group of Indices with objective information*

Based on the periodization proposed by Quinti & Abruzzini, the majority of these indices are part of the third generation. The most significant indices are the following: Genuine Progress Index (GPI); Physical Quality of Life Index (PQLI); Social Welfare Index (SWI); Human Development Index (HDI) and the Basic Capabilities Index.

### 3.2. Group of Indices with subjective information

These are the most recent indices, thus they may be considered a fourth or new generation following the proposal of Quinti & Abruzzini. In the past few years, there has appeared an interest in subjective measurements of quality of life and happiness. The initiative of the Kingdom of Bhutan with the development of Gross National Happiness (GNH) has been followed by international agencies, European and Latin American countries. The University of Michigan, for instance, has deployed the World Value Survey for many years. The Earth Institute at Columbia University has also released an important subjective study known as World Happiness Report. The Erasmus University located in Rotterdam under the leadership of Ruut Veenhoven has published a copious amount of information on happiness. The same case is in Latin America with the work of Manfred Max Neef and the Human Scale Development.

## 4. Indices analysis

### 4.1. Indices with objective indicators

#### A. Genuine Progress Index (GPI)

The GPI is an index that has been implemented worldwide since the 1950s. It is an index that takes into account ecological values and sustainable development essential to social welfare. The GPI —designed to replace the highly criticized Gross Domestic Product (GDP) — is an index used to measure the economic welfare and social progress of a country. The GPI widens the traditional accounting framework including net investments in capital and labor factors, incorporating aspects of the non-monetized or non-market economy. It incorporates non-paid activities such as non-paid domestic work, volunteer work and family care giving; and subtracts environment degradation (pollution), natural resources depletion, income inequalities, external debt and crime. The GPI identifies more than 20 indicators of economic growth, separating welfare enhancing benefits from welfare detracting costs. This index provides common citizens and politicians with more accurate values regarding the health of the economy and its actual impact on society with the passage of time. No data of this index was found.<sup>2</sup>

#### B. Physical Quality of Life Index (PQLI)

The Physical Quality of Life Index (PQLI) was developed by M.D Morris in the mid-1970s in contrast to the GDP as synthetic measure of development. It

<sup>2</sup> Talberth, J. *et al.*: *The Genuine Progress Indicator 2006. A Tool for Sustainable Development, Redefining Progress*, Canada 2007.

aims at a direct measurement of welfare. The Physical Quality of Life is an unweighted average of the index of infant mortality (per 1,000 live births), index of life expectancy at age one, and rate of adult literacy (%). This index was an attempt to incorporate social and economic indicators in the quantification of welfare as an alternative concept. This proposal, however, did not find its place within the political and academic sphere and the GNP prevailed as the most important indicator for 20 more years (Griffin, 2001). No related data was found.

### **C. Social Welfare Index (SWI)**

The South Commission in the 1980s was an important initiative. This Commission was comprised by some pioneers of the new alternative models of development such as Mahbub ul Haq, Max Neef, Dharam Ghai, Meghnad Desai, Hazel Henderson, among others. It seeks to redefine the definition of development, from its economic conception to a more human and social conception. This Commission suggests a “more efficient” set of social indicators and the establishment of the Social Welfare Index (SWI). In 1989 The South Commission took place in Caracas, Venezuela with the support of the former president Carlos Andrés Pérez and the UNDP’s local office with the aim of finding agreements complemented by the proposal for parameters to measure the quality of life in such aspects as poverty, the biological condition of infancy, health, education, nutrition, employment and income, pollution and the destruction of natural resources. The work of this Commission contributed to raising awareness of the importance of the social indicators for both the understanding of social reality and for defining public policies (South Commission 1989). In 2005 the Venezuelan National Statistical Institute began the construction of the SWI with data from the Household Sampling Survey defining this index as a synthetic quantitative indicator that provides a multidimensional measure of social welfare, allowing comparisons between different territorial spaces during a certain period of time.

The SWI is composed of 4 dimensions and 9 indicators. These dimensions are: Health, Education, Income and Employment. The calculation of this index is performed using the geometric average of the 9 indicators; its value ranges from 0 to 1, increasing according to the degree of social welfare. The SWI is calculated only for Venezuela’s federal agencies and has been provided with information since 1995 (Salinas, 2005).

### **D. Human Development Index (HDI)**

The Human Development Index (HDI), published over 20 years ago, is based on the work of an economist Mahbub ul Haq (1995) followed by an economist Amartya Sen (1999) as an alternative to the conventional approaches to economic growth. Human Development is introduced as an approach focused on people, the improvement of their quality of life and their participation both in the productive sphere and in the promotion of their own well-being. This is a

multidimensional vision of development which harmonizes and integrates relevant economic and social dimensions. Human Development is the process of increasing people's capacity; this, however, does not lead to an increase of utility and economic satisfaction. This concept is measured through the Human Development Index (HDI) which seeks to quantify "the average level" of some human capabilities in a society. The HDI has gone through several modifications and adjustments regarding its calculation methodology since its inception in 1990 until the present day. The last and most recent modification made to this index took place in the 2011 Human Development Report, in which the HDI has become a summary measure for assessing the average progress achieved by a country in three basic dimensions of human development.

It is constructed by means of geometric measurement of standardized indices that measure the achievements in three dimensions, derived from the fundamental opportunities to achieve a good quality of life. These dimensions are: living a long and healthy life (measured by Life Expectancy at Birth), access to education measured by social indicators such as the Average Years of Schooling and the Expected years of schooling, and finally, the dimension of a decent standard of living measured by the Gross National Income which encompasses economic opportunities. This HDI index values range from 1 to 0, in which number one offers a sketch of an ideal situation providing people with a good number of opportunities. The zero, in contrast, reflects the kind of situation that needs to be overcome or, in many cases, avoided (UNDP 2011). Data is available for all Latin American countries; however, the 2011 HDI are not comparable to previous reports.

### **E. Basic Capabilities Index (BCI)**

The BCI is an index inspired in the Capability Poverty Measure proposed by Amartya Sen. This index was developed by Social Watch based on an idea first developed as "Quality of Life Index" by Action for Economic Reforms for the Social Watch coalition in the Philippines. The BCI consists of three indicators: healthcare, education and reproductive and sexual healthcare. A BCI value close to the maximum (100) is an indication of the "dignity for all" that the Universal Declaration of Human Rights has proclaimed and signifies the fulfillment of basic social rights as starting point to achieve social welfare.

The BCI is composed of basic social indicators easily accessible by most countries which ensure the monitoring of performance of each one. The index makes it possible to assign a score to each country and compare it with other countries, or assess its evolution over time. The BCI's maximum value is 100 and the minimum is 0. This index distinguishes five levels: acceptable (more than 97), medium (from 90 to 97 points) – the countries, region and municipalities that have progressed and now satisfy most or all the population's basic capabilities are integrated within these two categories – low (from 80 to 89 points), very

low (from 70 to 79 points), and critical (below 70). International data from 2007 with information for all Latin American countries was provided.<sup>3</sup>

#### *4.2. Indices with a combination of objective and subjective components*

##### **A. Gross National Happiness (GNH)**

The Gross National Happiness (GNH) measures the quality of life in more holistic and psychological terms than the indicator GDP. It was proposed by Jigme Singye Wangchuck, king of Bhutan, in 1972 in response to the critics to the poor economic conditions of his country. This concept applies to the peculiarities of Bhutan's economy, whose culture is based on Buddhist spiritual values. Whilst the main objective of the conventional economic models is the economic growth, the GNH's concept is based on the premise that the real development of human society entails mutual reinforcement of the material and spiritual development. The four pillars of GNH are the promotion of sustainable development, preservation and promotion of cultural values, conservation of the natural environment, and establishment of good governance.

The Gross National Happiness is a synthetic index based on measures of subjective wellbeing which are considered to be as important as the objective measures of the GDP are. The happiness and wellbeing of a given population are analyzed through nine domains: Psychological Well-Being, Health, Education, Time Use, Cultural Diversity and Resilience, Good Governance, Community Vitality, Ecological Diversity and Resilience and Living Standard. The GNH Index is constructed based upon a multidimensional methodology known as the Alkire-Foster method (2011). The pursuit of happiness is a universal human goal. The data for GNH is collected from a survey administered to a representative sample taken at district and regional levels. There is no data for other countries since no country other than Bhutan has adopted the GNH measure.

##### **B. Prosperity Index (PI)**

The Prosperity Index was developed by the Legatum Institute and explores prosperity defined as happiness, health and freedom. This index shows that in addition to economic success, a society's prosperity is based on Strong families and communities, religious and political freedom, education opportunity and healthy environment. Prosperity is understood from a double perspective: individual and collective. This Index offers a holistic combination of material wealth and life satisfaction. It generally assesses how well nations promote both economic growth and quality of life in a multidimensional conceptualization.

The measurement of prosperity integrates qualitative elements not captured by the GDP per capita variable. The measurement consists of eight sub-indexes with 89 different variables in which 28 are subjective. These sub-indexes are:

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<sup>3</sup> <http://www.socialwatch.org>

Economy; Education; Entrepreneurship & Opportunity; Governance; Health; Personal Freedom; Safety & Security; and Social Capital. The weight assigned to each variable is determined by a regression analysis with different levels of accuracy. For its calculations it gathers different data from the Gallup Company, the World Bank, UNDP, OCDE and other institutions. Prosperity Index is an annual ranking that covers 110 countries. All Latin American countries are assessed. Statistical data from 2007 was provided.<sup>4</sup>

### C. Happy Planet Index (HPI)

The Happy Planet Index was introduced by the New Economy Foundation (NEF); it is an innovating measure that rends evident the ecological efficiency in which welfare is distributed worldwide. The HPI does not intent to show how happy a country is but the relative efficiency of how countries transform natural resources into long, healthy and happy lives for their citizens. This index shows that it is possible to achieve long and happy lives without compromising natural resources. The HPI intends to demonstrate that the high consumption of non-renewable resources does not necessarily produce high levels of welfare and, on the contrary, that it is possible to achieve high levels of welfare with a low consumption of non-renewable resources. This index shows that the development model in western societies, even though it makes achieving long life and good levels of welfare possible, entails a high cost of natural resources.

The Index combines three dimensions and three indicators which are: Life Expectancy at Birth, Experienced Well-being (subjective measurement of Well-being) and Ecological Footprint. The maximum value is 100 and the minimum is 0. Indicators and index for all Latin American countries were provided.<sup>5</sup>

## 4.3. Subjective indices

### A. Subjective well-being or life satisfaction

Among the different measurements and studies on happiness, the studies conducted by The Gallup Organization across the years 2005–2009 in 155 countries were selected. This study encompasses the perception of well-being, the sense of individual vitality, the opportunity to undertake entertaining and meaningful activities that increase feelings of competence and autonomy, as well as possessing internal resources that allow them to cope with difficult situations. It inquiries about daily experiences such as feeling well-rested, being treated with respect, living without physical pain, feeling intellectually stimulated and having friends to count on in case of emergency.

The study consists of four dimensions: Thriving, Struggling, Suffering and their Daily Experience. It employs a tool called “ladder of happiness” with steps

<sup>4</sup> <http://www.prosperity.com/default.aspx>, Legatum Institute 2011.

<sup>5</sup> <http://www.happyplanetindex.org/>

numbered from zero at the bottom to ten at the top. Data for all Latin American countries was provided (<http://www.gallup.com/se/social-economic-analysis.aspx>).

## 5. Comparative analysis

The comparative review of the alternative indices listed above and their dimensions and variables expose their diversity in terms of their number, dimensions and indicators incorporated in the measurement of the multidimensional perspective of development. Different kinds of indices were found; from those with a single dimension to those with over ten dimensions, moving from simplicity to complexity.

The review of indices such as: OECD Better Life Index (BLI), Gross National Happiness (GNH) and the Prosperity Index (PI), draw attention to the incorporation of dimensions and variables that measure people's daily life conditions which, in some cases, are fundamental to life. The dimensions are: housing, community, governance, safety, work-life balance and freedom.

Decent *housing* has been considered a fundamental right and one of the greatest aspirations in most of the contemporary societies. This dimension encompasses other aspects such as prosperity, space, services, environment and materials. In the case of the BLI, this dimension includes overcrowding and the provision of healthiness services. In the case of the GNH, in addition to overcrowding and sanitation, this dimension includes roof materials. *Community* is also included as the recognition of the relevance of life in society, in which support networks and the sense of collectivism, have a great importance beyond individual life. Another dimension that complements the perspective of community is governance; it tackles the efficiency of institutions, the respect for the law and the participation of people in political life.

In a more individual perspective, time use as an expression of well-being is dedicated to the productive use of time, rest and recreation. Freedom, only addressed by PI, is a fundamental dimension which is seen from the individual right and the recognition of the other from the tolerance.

Lastly, another dimension that has been incorporated into the multidimensional measurement of the revised indices is the *environment*. Although this dimension as an important part of development approaches begins to be taken into account, it is with the Ecological Footprint, Happy Planet Index and Better Life Index (BLI) that it is incorporated into the alternative measurements.

Among a variety of dimensions, the incorporation of subjective indicators and their combination with objective indicators is worth noting. The joint or combined use of objective and subjective indicators makes it possible to have a more complete approximation of the phenomenon to be measured, in this case, development or welfare. In the analyzed cases the objective indicators are those

that reflect the socio-economic conditions of a society taking as parameter the “state of things”. With these indicators the territories to regional, national or local level along with their growth or gaps are classified and compared. Regarding the subjective indicators, they reflect the perceptions and assessments of people in relation to their own well-being and in regard to the “state of things” (ECLAC 2010). The approximation based on the combination makes it possible to have a double gaze both from the public and the individual sphere, especially for those dimensions that take implicitly the concept of quality, satisfaction and use. Community, for example, already presented in three of the revised indices (PI, GNH, BLI), measures social networks formed by relatives, neighbors and friends as support in case of calamities. It also addresses other aspects such as volunteer work, donation, sense of belonging or roots in the community and trusting other people. In another case, the Health/Demographic dimension is also studied using a combination of objective and subjective indicators in these three indices.

### *5.1. Source and information*

The main limitation in the construction of indices is obtaining permanent information and, if possible, with certain levels of disaggregation in terms of gender and territory. The objective information of the indices is generally taken from national and international agencies, official institutions, censuses, household sample surveys and administrative records. There are much statistical data and sources of information with a clear tendency to extend its availability and facilitate the access to information. Nevertheless, subjective information is not abundant and does not have the same coverage. In most cases, the information is obtained from surveys related to values or specific topics such as satisfaction, victimization, perception, among others. Qualitative studies such as focus group sessions are also employed. For the construction of subjective indicators in the analyzed indices there have been employed other studies or ad-hoc surveys carried out by the same institutions. The example of Bhutan is worth nothing as it launched a representative sample of 7142 people. In the case of the BLI or HPI, the information is obtained from companies such as Gallup and World Values Survey that conduct opinion polls on a frequent basis. Separate mention is presented for comparative analysis of indices for Latin America.

### *5.2. Quantitative comparison*

The comparative analysis of the indices for Latin American countries faces some limitations difficult to overcome. These limitations will reduce the number of indices employed in this work. The first limitation is the availability of information. Not all indices provide complete information for all countries since these indices are calculated at local or regional scale or for a group of countries.

A second limitation is the modification made to the calculation methods, which hinders carrying out a longitudinal analysis and interrupts the comparison over time. The indices described below were selected from available data.

The following table covers the revised alternative indices for the 19 Latin American countries<sup>6</sup>.

**Table 1:** *Countries and alternative indices*

Countries	Human Development Index (HDI) 2011	Basic Capacities Index (BCI) 2011	Prosperity Index 2011	Happy Planet Index (HPI) 2009	Gallup 2009 (Thriving)
Argentina	0.797	97.88	0.545	58.95	44
Bolivia	0.663	86.30	-0.934	49.35	34
Brazil	0.718	95.44	0.401	61.01	58
Chile	0.805	98.11	1.100	49.72	41
Colombia	0.710	93.99	-0.322	66.10	46
Costa Rica	0.744	97.04	0.906	76.12	63
Cuba	0.776	98.94	s/i	65.68	24
Ecuador	0.720	89.98	-0.841	55.46	34
El Salvador	0.674	90.79	-0.721	61.46	42
Guatemala	0.574	80.44	-0.847	68.37	40
Honduras	0.625	86.37	-1.053	60.99	37
México	0.770	95.69	-0.040	55.58	52
Nicaragua	0.589	83.83	-1.020	60.54	30
Panama	0.768	93.55	0.708	57.37	58
Paraguay	0.665	93.52	-0.206	47.80	32
Peru	0.725	91.65	-0.469	54.37	25
Dominican R.	0.698	90.48	-0.580	71.78	35
Uruguay	0.783	97.73	1.204	37.24	41
Venezuela	0.735	95.42	-0.586	52.49	50

**Source:** HDI 2011, Social Watch, Gallup, Legatum Institute, HPI

The countries are grouped according to their respective position in each of the analyzed indices. The following table shows the position of each country.

<sup>6</sup> For the comparison of the four indicators used by Gallup (Thriving, Struggling, Suffering and Daily Experience), the first indicator was taken as it measures the perception of progress.

**Table 2:** Ranking for countries based in alternatives indices

Countries	IDH	BCI	PI	HPI	Gallup
Argentina	2	3	5	10	7
Bolivia	16	17	16	17	14
Brazil	11	7	6	7	2
Chile	1	2	2	16	9
Colombia	12	9	9	4	6
Costa Rica	7	5	3	1	1
Cuba	4	1	*	5	19
Ecuador	10	15	14	13	15
El Salvador	14	13	13	6	8
Guatemala	19	19	15	3	11
Honduras	17	16	18	8	12
México	5	6	7	12	4
Nicaragua	18	18	17	9	17
Panama	6	10	4	11	3
Paraguay	15	11	8	18	16
Peru	9	12	10	14	18
Dominican R	13	14	11	2	13
Uruguay	3	4	1	19	10
Venezuela	8	8	12	15	5

**Note\*:** From Cuba data is not available

**Source:** HDI 2011, Social Watch, Gallup, Legatum Institute, HPI

The value of different indices for Latin American countries is compared through the Spearman's rank correlation coefficient. The results are shown in Table 3.

**Table 3:** Spearman's coefficient of rank correlation between alternatives indices

		HDI	BCI	PI	HPI	Gallup
IDH	CC Spearman	1.000				
	N	19				
ICB	CC Spearman	0.902	1.000			
	N	19	19			
IP	CC Spearman	0.837	0.899	1.000		
	N	18	18	18		
HPI	CC Spearman	-0.256	-0.109	-0.218	1.000	
	N	19	19	18	19	
GGallup	CC Spearman	0.323	0.374	0.567	0.203	1.000
	N	19	19	18	19	19

A brief analysis of these indices suggests that:

- There is a strong correlation among composite indices and objective indicators.
- There is no correlation among composite indices (objective and subjective indicators)
- Objective indicators had a high correlation with one of the composite indices –the Prosperity Index (PI)- but they do not correlate with the Happy Planet Index (HPI).
- The index with subjective components (Gallup) has no correlation with indices that combine objective and subjective indicators such as Prosperity Index (PI) and HPI.

The comparison shows that countries with lower values in subjective measurement – in the case of progress (*Thriving*) – do not necessarily reflect fewer opportunities, capabilities or objective welfare. Nor does the opposite: countries with high perceptions of subjective life satisfaction do not portray optimal conditions in terms of welfare. Perceptions in general can be dissociated from the objective conditions that guarantee the enjoyment of fundamental rights. The gap between what is perceived and facts finds its explanation in cultural, social and psychological patterns that are decisive in the perception of the individual of themselves and of the society.

Since there is no automatic relation between economic growth and objective conditions of well-being in a society, it seems that there is no automatic relation between well-being and the perception that people have of this dimension. This is better explained by the Aspirations Paradox, “When it comes to the percep-

tions about the living conditions and the policies of a country, the poor tend to have a similar or even more benevolent opinion than the rich”.<sup>7</sup>

## 6. Final considerations

The search for new trends and the good use of the existing indicators and indices is an aspect that must be shown as a first consideration to be taken into account in the measurement of development, well-being or quality of life. It is very important to look for new social indicators with good attributes and make good use of the traditional indicators. At least three aspects should be considered in this search: multidimensionality, objective - subjective approaches (*Epic-Emic*) and territorial disaggregation.

Among all the indices assessed throughout this work, those who offer more elements to be considered in the measurement of multidimensional development include: Prosperity Index, Better Life Index and specifically the Gross National Happiness (GNH) developed by the Kingdom of Bhutan. The GNH has three main characteristics: firstly, its multidimensional perspective; secondly the use of objective and subjective indicators to address the study of these dimensions including, for instance, habits, customs, beliefs that are associated with individual and collective welfare aspects of everyday life that renders evident the subjective conditions of well-being and, in third place, the application of the Alkire-Foster Method (2011) in the creation of the index. The adoption of this method makes it easy to organize items in groups and dimensions while satisfying the axiom of dimensional monotony. This method speeds up the path towards the disaggregation of indicators and indices in territory, social groups and population.

In methodological terms, it is important to note that in order to measure development or welfare, it is essential to calculate them beyond national standards. The disaggregation by groups, gender or territory is a way to highlight the inequalities; so the efforts to obtain more efficient indices and indicators for public policies should emphasize this perspective. The subjective measurement that seems to be gaining space in discussions in the academic sphere should be carried out taking into account cultural and psychosocial factors, especially when combining this measurement with objective indicators.

Finally, a recommendation for foundations, organizations and institutions responsible for the elaboration of indices and indicators is to make an effort to guarantee statistical series that allow professionals and specialists to conduct spatial and temporal comparisons.

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<sup>7</sup> Lora E.: “Cómo los indicadores subjetivos pueden contribuir a la medición del progreso de las sociedades”, in: Rojas Mariano (Coord.) (ed.) *Midiendo el Progreso de las Sociedades. Propuesta desde América Latina*, Foro Consultivo Científico y Tecnológico, Mexico 2011, 47.

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## OBJEKTIVNI I SUBJEKTIVNI POKAZATELJI RAZVOJA LATINSKE AMERIKE – REVIZIJA I POREĐENJE

### S a ž e t a k

Budući da je ekonomski razvoj nastao kao model, pojavile su se neke kritičke pozicije, kako s teorijskih aspekata, tako i s aspekta merenja. Stvoren je ne bezvredni skup indeksa i pokazatelja, tzv. alternative, gradeći tako važnu osnovu za kvantitativne informacije. Njihovi primeri su: indeks stvarnog napretka, indeks društvenog napretka, indeks ljudskog razvoja, indeks osnovnih kapaciteta, indeks rodne neravnopravnosti i indeks srećne planete. Svaki predlog sadrži inovativne elemente: nove pristupe ili društvene komponente, kao pitanja pola i životne sredine, a odnedavno su uključeni i subjektivni aspekti. Ovaj rad sadrži kritičku sistematizaciju pokazatelja i indeksa objektivne / subjektivne prirode. Napravljeni su poređenja i statističke korelacije za latinskoameričke zemlje.

**Ključne reči:** alternativni indeksi, društveni pokazatelji, merenje blagostanja, ljudski razvoj

## REFORM OF THE CONTENT AND FRAMEWORK FOR ECONOMIC GOVERNANCE OF THE EUROPEAN UNION\*\*

The European economic and monetary union is currently undergoing one of the most important and most complex reforms of its structural architecture, as well as of the governance of its economies as a whole. These changes would have had to take place even in the absence of the world financial and economic crisis. The current reforms within the EU are necessary in order to ensure that all its markets of goods and factors of production will function well, thus increasing the efficiency of its economies.

In addition to this general problem, this paper also analyzes current and planned elements of the mechanism for the governance of the economies of the EU and the European Monetary Union, followed by a detailed consideration of the stronger and weaker aspects of the financial, including fiscal, system of the EU and the EMU, and an analysis of the monetary system and policy.

**Keywords:** European economic and monetary union, system for governance of the EU and EMU economies, financial and fiscal system, monetary system and policy, fiscal union, banking union

### 1. The optimum currency area today

Scientific literature on the optimum currency area has existed since the publication of Robert Mundell's work of the same name in 1961.<sup>1</sup> In accordance with the then characteristics of the global economy and international economic relations, the author sought to identify conditions under which a group of countries could form a common currency area that would optimally contribute to member countries' stability and development. That was still the time of the gold standard, with fixed exchange rates and the US dollar as the key global currency, although there was a general sense that the system was not going to last much longer.

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\*\* This paper is a part of a broader piece of the authors' research written and distributed as a manuscript only to a small number of researchers on the research project Political Economy of the E.M.U. at [www.jeanmonnet-emu.eu](http://www.jeanmonnet-emu.eu)

<sup>1</sup> Mundell R.: "A Theory of Optimal Currency Areas," *American Economic Review*, 51, 1961.

According to Mundell, the best candidate for an optimal currency area would be a group of neighboring countries that were already significantly linked through transportation and merchandise trade. This precondition made more sense at a time of high transport costs, but it has since become relativized, due to the sharp decline in the cost of transporting goods.

Nevertheless, it is still desirable today for potential member countries of a monetary union to be significantly interlinked in standard transactions within their economies' goods and financial sectors. A homogenous, multi-state economic area should also possess total freedom of movement of factors of production, labor and capital. Competition without customs and other barriers equalizes merchandise prices expressed in the common currency, while freedom of movement of factors of production provides for their optimal allocation within the entire currency area.

It was expected that the ensuing result would be a reallocation of production in accordance with member countries' comparative advantages, which would, however, require much time, i.e., several investment cycles. Even so, today's conditions are more conducive to the realization of this advantage than they were in the past.

Experience within the European Economic Community showed that a more efficient allocation of production was not achieved by the closure of entire economic branches, i.e., their relocation in accordance with competitive advantages, to other countries within the currency area. What occurred instead was specialization *within* certain industrial and other branches in the production of component parts. Wherever final products were manufactured, their components would become cheaper than when the entire product had been manufactured at a single location. Such intra-branch specialization in production and exchange makes up about two thirds of today's merchandise trade within the EU.

Taken as a whole, due to the reduction in transport and transaction costs in the real and financial sectors, the conditions for forming an optimal currency area are more favorable today than in the past. Still, there are two problems that all monetary unions must resolve to an adequate degree if they wish their currency areas to function optimally.

Naturally, Mundell does not even pose the first question, while De Grauwe<sup>2</sup> rightly brings it up. We are here referring to the realization that a common currency area is not optimal if it is not, to a certain extent, also a political union. Let us leave aside the question of whether each political union, a federal state, is an optimal currency area.

The fact that an optimal currency area today should also possess elements of a political union does not mean that it must be a federal state. Monetary union assumes that, in certain segments of their economic systems and policies, member countries will transfer their competencies, in part or wholly, to the organs

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<sup>2</sup> De Grauwe P.: *Economics of Monetary Union*, Oxford University Press, New York 2009.

of the monetary union. The European Union has elements of a political union: the European Parliament and its executive organs, the European Commission, the Central Bank and a “constitutional” court. Still, the EU possesses only those political elements that its national member states voluntarily transferred to the Union organs. Through their deputies in the European Parliament, the member states control how the EU carries out the functions and competencies delegated to it by its member states. Referenda on the proposed EU Constitution failed in France and Holland, leading to the adoption of the Lisbon Treaty that is in place today. The financial and economic crises that have hit the world, including the EU, have revealed the EMU’s construction problems, which cannot be adequately and wholly resolved through the current constitutional arrangement and, thus, require amendments of the Lisbon Treaty. This will be discussed in greater detail in the following sections of this work.

The second issue that impedes optimal resource allocation and the resolution of the EMU’s acute problems was already mentioned at the beginning of the introduction: true labor force freedom and mobility throughout the EU. The citizens of the Union’s member countries are, in principle, equal, and possess EU citizenship, but the relocation of workers and their families from lower wage countries to higher wage ones (for the same qualifications) does not function well, due to financial and other costs.

## 2. System and policy of governance and guidance of economic flows

The main goal of the Rome Agreement on the formation of the European Economic Community was the creation of a customs union and a single internal market over the entire EEC area.

The binding clauses of the Agreement mostly pertained to this subject matter and complementary aspects. Customs between the member states were abolished in less than ten years time, while regulations developed with the goal of achieving basic economic freedoms: the issues of movement of people, goods and services, labor and capital were significantly lagging behind. The EEC budget made up about 1% of the Community’s gross domestic product, and there was no central bank.

When, on the basis of the Maastricht Treaty, the present Economic and Monetary Union was formed, together with the Central Bank and a single currency (the Euro), questions regarding the direction of economic and development policy over the entire EMU space gradually, inevitably came up. In order to prevent divergent monetary and fiscal policies of the member states from disrupting the stability of the currencies, convergence criteria as conditions for entry into the Monetary Union were introduced. They continue to apply today, regarding the maximum rate of increase in prices, interest rates, exchange rates,

annual budget balance and the cumulative public sector debt relative to member states' gross national product.

The newly established Central Bank took over the responsibility of running the common monetary policy. Countries that did not immediately join the Euro zone also had to respect the convergence criteria, having taken on the obligation of joining the Monetary Union once they fulfill the conditions. The abolishment of customs and other limitations, along with the strengthening of competition, was supposed to equalize price levels on the EMU market. The exchange rates of the countries that did not enter the Euro zone were harmonized in relation to the Euro by agreement.

EMU organs did not have at their disposal instruments for controlling budgets and the consequences of their imbalances – neither after Maastricht nor after the Lisbon Treaty, other than those already contained in the Maastricht Treaty in the form of two convergence criteria: that the annual member country deficit does not exceed 3% of GDP, and that it does not cumulatively exceed 60% of GDP.

It was on these foundations that the first binding EMU document concerning stability and development in the entire EU came about.

The Stability and Growth Pact was adopted in 1997. Its present basis is contained in articles 121 and 126 of the Treaty on the Functioning of the Economic and Monetary Union. It grants supervisory rights over member states to the European Commission and the EU Council of Ministers. Amendments (of 2005 and 2011) were necessary, as the original Pact was rarely adhered to.

The European Central Bank (ECB), an important EMU complementary institution, has for years pointed to the inadequacy of the instruments of fiscal policy coordination within the EMU. The ECB is also conscious of the fact that further transfer of member states' competencies to the EMU is not possible without changes to the Lisbon Treaty, which would require much time. However, even the current institutions may be able to achieve better fiscal coordination. In the process of budget preparation, they could apply the following additional elements. Any planned annual budget deficit greater than 3% of GDP would have to be unanimously approved by all member states. All planned deficits above the mid-term goals would be approved by a qualified majority. An obligation of covering excessive deficits from previous periods should also be introduced, in the projection for the following period. Member states should accept full automatization of penalties and sanctions even if they are outside the bounds of the Stability and Growth Pact regulations.

Independent budget institutions that would provide impartial evaluations should be set up in all the states. Within the Euro zone, a single independent institution would evaluate member country policies. Such a budget institution

might be set up within the European Commission, eventually developing into a European finance ministry.<sup>3</sup>

Once it was both essentially and formally accepted within the EMU that it had to have macroeconomic coordination of (monetary and fiscal) policy, the most acceptable thing to do, on the basis of the Stability and Growth Pact and around it, was to build a detailed mechanism and system of indicators for that purpose.

The addition of six, and then two more instruments for control and governance of economic flows to the Stability and Growth Pact resulted in the adoption of principles and methods of economic flow governance in the EU and EMU countries. Six of the solutions pertain to all the EU states, while two are applicable only for Monetary Union members.

These regulations, along with another directive, provide the legal basis for four segments of macroeconomic policy. The first two segments regulate the preventive measures from the Stability and Growth Pact. Member countries are obliged to establish mid-term budget goals. In addition to structural budget balance projections (nominal balance for each year, cleared from economic cycle effects), budget expenditure projections are also to be used, all with the goal of seeing to what extent the budget balance converges toward the set mid-term projection.

Besides this controlling portion, the system also has its preventive and corrective mechanism. Member countries that do not meet specified budget balances shall pay a deposit in the amount of 0.2% of their GDP. The corrective part of the mechanism stipulates that all the countries' cumulative public debt shall not be greater than 60% of GDP. A precise procedure is used for determining excessive deficit (Excessive Deficit Procedure, EDP), relative to a numerically defined indicator. Failure to achieve a certain goal and to adhere to recommendations for corrective action is penalized by way of an interest-free deposit of 0.2% of GDP, which increases in subsequent years.

Two other macroeconomic policy areas that were also introduced on December 15, 2011 are 1) minimal demands for the creation of national budget frameworks and national multiyear fiscal planning, in order to reliably achieve the projected budget goal, and 2) prevention and correction of macroeconomic imbalance and lack of competitiveness. A new method of monitoring will seek to prevent and correct such macroeconomic imbalances. It will have its own imbalance warning system and will apply the stipulated Excessive Imbalance Procedure.

All the above-mentioned mechanisms of annual and mid-term EU and EMU macroeconomic policy are packaged within a common work methodology popularly referred to as the Sixpack. The end of 2012 will see the conclusion of the first complete annual cycle of the package's implementation, which is realized in two parts each year, in two half-year semesters.

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<sup>3</sup> Schuknecht L. *et al.*: "The Stability and Growth Pact – Crisis and Reform", *ECB Occasional Paper Series*, No. 129, September 2011, 17-18.

In the first semester, in January, the European Commission issues an annual report on development, which sets priorities for the upcoming year, for growth and employment stimulation. In March, chiefs of state or government issue Guidelines for national policies on the basis of the Annual Development Report. In April, member countries submit their plans for sound financial policy (Stability and Convergence Programs), and for intended reforms and measures dedicated to intelligent and comprehensive and sustainable development (National Reform Programs).

During June, the European Commission analyzes these programs and gives country-specific recommendations. At the end of June or the beginning of July, the European Council formally adopts the country-specific recommendations. All the said documents are prepared in accordance with a minutely prescribed methodology.<sup>4</sup>

At the end of 2012 and the beginning of 2013, two more agreements will come into force. They will substantially beef up the body of regulations of the EU and EMU economic policy instruments. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union has been signed by all the EMU countries and the remaining EU countries, with the exception of Great Britain and the Czech Republic. It will come into force on January 1, 2013, if twelve EMU countries ratify it.

The Treaty obliges all the signatories to adhere to the principle of balanced or surplus budgets, and to apply the deficit elimination mechanism. A balanced budget is considered to be the one where the highest structural deficit does not exceed 0.5% on the annual level. At the beginning of the Treaty's implementation, member countries establish a mid-term policy of harmonizing budget balances. Countries with a starting deficit of more than 3% of GDP produce the necessary documentation and submit a project for eliminating excessive deficits to the EU organs, within the European Semester. After the first year of implementation, if the planned deficit reduction has not been achieved, an application for excessive deficit approval is submitted according to a set procedure.

If a country's total cumulative public debt exceeds 60% of GDP, it is obliged to reduce it by 1/20 annually. A country under an excessive deficit procedure is obliged to create a program for economic and budgetary partnership, with a detailed description of reforms it will undertake toward the goal of eliminating the excess deficit. All the signatory countries are obliged to submit their programs of borrowing for the coming years to the EU Council and the European Commission. If the Commission finds that a country is not meeting its obligations, it submits a report to the EU Court of Justice. The Court's decision is binding and

<sup>4</sup> EU: "Specifications on the implementation of the Stability and Growth Pact," Ecofin Council, 2012, update, 24.01.2012; EU: "Guidelines on the format and content of Stability and Convergence Programmes," Ecofin Council, 2012, update, 24.01.2012; "Alert Mechanism Report," Council of the European Union, 2012; [www.consilium.europa.eu/documents](http://www.consilium.europa.eu/documents)

must be executed within the stipulated time period. If, in the course of time, the Court finds that a country is not meeting its obligations from the judgment, it may impose a penalty, in an amount not greater than 1% of the country's GDP.

In its fourth section, the Treaty affirms the obligation of economic policy coordination and the convergence of member countries' economic flows. The countries are to undertake the necessary measures so that all the segments necessary for the sound functioning of the Euro zone promote the achievement of their goals, while increasing their competitiveness and employment rates. Towards the goal of promoting best practices, they shall harmonize some of their plans in advance and, as needed, engage in mutual coordination in the course of implementation. In the wake of numerous critiques that the newer EU policies, especially in the monetary and fiscal areas, are highly restrictive, and do not offer short-term help in tackling the economic crisis, the chiefs of state and government in the European Council adopted the Compact for Growth and Jobs on June 29, 2012. This agreement obliges all EU and EMU member countries to strengthen their efforts for realizing the goals of the Europe 2020 economic strategy. They are now able to use a new arsenal of mechanisms for economic and financial governance.

### 3. Fiscal system and policy

The European Union has a single market, a monetary union, and will form a banking union as well. The question is why it doesn't have a fiscal union, since it inevitably must have a fiscal policy. Issuances of money and tax collection are the basic attributes of a state, which does not readily renounce them. The single currency within the EMU is as sound and strong as the economy in the single market. An important EU achievement is the fact that most of the member countries have accepted monetary union with a single central bank.

In the EU's fiscal system and policy, a common system of instruments exists only in the area of customs tariff rates and customs policy vis-à-vis countries outside the EU. The formation of uniform business conditions is impeded by differences in tax rates and other fiscal system instruments. The most important tax, the value added tax (VAT), has different rates for different bases (products and services, which differ significantly by country). Company income taxes vary even more, not only by tax rates but also by tax base definitions.

When issuing government bonds on the financial markets, Germany pays 0% interest to its creditors, while Spain pays more than 7%. This fact has a history of its own. When individual EMU countries began to issue Euro-denominated government bonds, the financial markets expected that the EMU would de facto guarantee repayment of the sovereign debt with the quality of the Euro. The interest rates were low and equalized. When some countries became over-indebted

according to EMU criteria, the financial markets began to distinguish between them. Some solutions to this problem have already been proposed, although they have caused controversy.

For now, a limited, trial issuance of “project bonds” is being prepared, for financing investments in projects that are agreed within the EMU. Some of those projects will be taken from the recently adopted agreement on growth and jobs. All the funds used by the ESM in helping a country in financial distress are given under precisely defined conditions, most often on the basis of a program of adjustment and reform, similar to the IMF’s condition-based programs. Thus, the ESM has become the EMU’s version of the IMF.

At the end of June 2012, a summit of chiefs of state and/or government decided to cut the rather uneasy tie between countries’ public debts and commercial banks’ private debts. Namely, up till now, in order to meet the needs of bank rehabilitation and recapitalization, countries borrowed and increased their public debt. It was decided that, upon the request and with a guarantee of an EMU member country, the EFSF and the ESM would in the future be able to directly approve recapitalization loans to banks, thus avoiding increases in countries’ public debts. This decision is also justified from the standpoint that banks will soon have to begin applying the Basel III standard regarding banks’ capital adequacy levels, which is something that banks’ current shareholders would not be able to secure on their own. This solution is now also accepted by authors who previously advocated that the EU’s central bank should take on the functions reserved for sovereign countries’ central banks [10] p. 5. Namely, the unified EFSF and ESM are practically carrying out the function of creditor of last resort, which is not allowed to the European Central Bank. This has indirectly resolved a problem without whose solution the maintenance of economic balance and stability would be impossible.

Since solutions in the field of fiscal system and policy require a certain amount of time to get their footing, it is natural that other potential public finance revenue sources are being sought. The idea known in the field of economics as the Tobin tax is gradually approaching some form of implementation, because, among other things, there have never been more reasons for it. Tobin himself had noticed the huge acceleration of complex financial transactions that reap additional profits for banks and other financial middlemen from uninformed clients. Today, they come in the form of financial derivatives, which caused the financial crisis in the US in 2008 and, subsequently, in Europe. When the speculative bubble burst in the US, 14.5 trillion dollars worth of companies failed throughout the world (the US GDP at the time was 13.8 trillion dollars, while the amount spent on saving banks in the US alone equaled 9.7 trillion dollars – [www.globalissues.org](http://www.globalissues.org)). Until order is restored to the world’s banking systems in this field, the least that can be done is to introduce some form of a Tobin tax – to at least gain some benefit from the whole situation. Most of the EU countries are open to such

a tax being introduced in Europe. Since not all the countries agree, Germany, France and others will introduce it on the basis of a provision contained in the Lisbon Treaty, by which a group of countries can mutually agree on solutions that will not be applied in the entire EU. It is estimated that tax rates between 0.01 and 0.1% could bring billions of Euros of revenues to state budgets.

Some characteristics of the fiscal system allow a substantial increase and stabilization of the GDP, with the use of automatic and discretionary tools of fiscal policy. For example, the automatic fiscal stabilizer is a progressive tax on wages or company profit. It moderates excessive expansion through automatic tax increases and moderates depression by decreasing tax rates. There are other discretionary instruments of the tax system as well, which may yield even more favorable results.

An IMF study<sup>5</sup> gives recommendations regarding different models of fiscal stabilizers, which allow the stabilization of the social product and employment, without special investments. If the economic cycle were to be synchronized within the EU and the tax system sufficiently harmonized, the EU would achieve better results with the same resources.

Everything that has been considered in this paper thus far is related to what and how economic policy organs of the EU and its member countries can contribute to the creation of favorable conditions for the work of corporations in the real and financial sectors of the EU countries as a whole.

One remaining issue is the contribution or sacrifice that companies will have to make in order to preserve their competitiveness and, thus, the social product and employment. In a system of floating exchange rates, lack of competitiveness is addressed (in addition to real adjustments) by changing the national currency's exchange rate, through depreciation. Since this is not possible for individual states in the EMU, due to their common Euro currency, the only possibility left to them is to perform a real rather than a nominal depreciation. De Grauwe<sup>6</sup> calculated the percentages of internal devaluation in EU countries with big financial problems. He measured competitiveness with the labor cost index in Italy, Spain, Ireland, Portugal and Greece. In all these countries, internal devaluation (fall in labor unit costs) began in 2008-2009, and has continued to this day.

Measured relative to 1999, internal devaluation in the 2008-2009 years equaled 23.5% in Ireland, 11.4% in Greece, 8.9% in Spain, 3.2% in Portugal, and 0.6% in Italy. If the labor cost indices were to be measured relative to the average for the 1970-2010 years, the results would be quite similar. According to both methods, the rate of internal depreciation in Ireland, Greece and Spain is quite significant. Unfortunately, it has been accompanied by a fall in production and employment.

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<sup>5</sup> "Alert Mechanism Report," Council of the European Union, 2012, [www.consilium.europa.eu/documents](http://www.consilium.europa.eu/documents)

<sup>6</sup> De Grauwe P.: "In Search of Symmetry in the Eurozone," *CEPS Policy Brief*, No. 268, 2012.

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#### 4. Monetary union, system and policy

As circumstances have it, the Monetary Union is being upgraded during one of the deepest post-war recessions, caused by the debt crisis that has spread from the US to Europe. Carrying out substantial reform, while at the same time trying to avoid stopping economic growth in the course of attempts to resolve the debt crisis, is a highly complex task, subject to certain principles and methods.

We shall first consider the ongoing process of upgrading the Monetary Union, and then the conditions that must exist so that efforts to reduce over-indebtedness do not halt economic development.

The existing monetary union already has some key mechanisms of functioning, but not all that are necessary. There is a common currency, the Euro, as well as the European Central Bank, in charge of monetary policy. EU countries that are not members of the EMU, i.e., the Euro zone, are obliged to keep their exchange rates within a certain range relative to the Euro and to, through their economic policies, gradually fulfill the convergence criteria for entering the monetary union.

At present, two types of upgrades of monetary union institutions and rules of functioning are being planned or concluded within the EU. One set of solutions is being introduced on the basis of already accepted international obligations, while the second set represents a voluntary upgrading of the monetary union on the part of the member countries.

On the basis of an international agreement on bank control (Basel III), one regulation and one directive that applies for the entire EU will establish the norms for banks' base capital (increased from present levels) and introduce special capital reserves for an anti-cyclical fund or buffer. The norms for bank liquidity will also be regulated, as well as the ratio between approved loans and banks' own capital (leverage). The given directive also regulates the conditions for deposit collection.

One directive will regulate the rehabilitation and liquidation of banks. It allows the monetary authorities to also undertake preventive measures against banks in hardship, to either rehabilitate or liquidate them. Bank rehabilitation will also include the partial sale of banks, choice of a bridge institution to which the healthy portion of the bank's capital can be transferred, while the contaminated assets are transferred to an asset management institution, and a portion of the losses is passed on to the shareholders. The directive also regulates the process of bank liquidation, including those that operate in several countries.

The monetary union reforms that are being prepared are often introduced under the name of a banking union. Up to now, banks and other financial organizations in the Monetary Union mostly did business in accordance with different national regulations. It would be natural for these organizations to operate

on the EU's single goods and financial market under equal conditions and regulations.

The formation of a banking union would eliminate the responsibility of states to perform bank rehabilitation at the expense of the public debt, which is ultimately repaid by the citizens themselves. Banks should have reserves for bank rehabilitation, which would be created out of their profits. Bank rehabilitation and liquidation would be performed from such banking union funds.

The banking union should be supplemented by a single institution for the control of banks, a fund for bank rehabilitation and liquidation, a general system of deposit guarantees and, eventually, with the possibility of the EMU issuing EU bonds on the financial markets (common, backed by a joint guarantee of all the member states).

The prevailing opinion is that the single institution for the control of all EU banks should be the European Central Bank. The Central Bank would control only large cross-border and systemically important banks, while the others could be left to the control of the present European Banking Authority (EBA) or some other agency.

A bank rehabilitation fund would be formed by setting aside a portion of bank profits. Decisions regarding bank rehabilitation would be brought under very precise conditions.

Deposit guarantees would be regulated throughout the banking union, under the same criteria. Guarantees would be secured only in the case of banks authorized to accept deposits. Investment banks and other financial institutions would not have the right to state guarantees of their clients' claims.

Even Nobel Prize winner Paul Krugman<sup>7</sup> has felt compelled to explain this to the general public. Deposit banks should not engage in investment banking, which deals in quite risky transactions. Losses on such deals are not rare, and they would negatively affect citizens' deposits. Whoever decides to make risky investments should also face the consequences.

The idea of the European Monetary Union issuing euro bonds that would be jointly guaranteed by the member states continues to be controversial. Its main advantage lies in the fact that the common Euro bonds would be issued at similar interest rates as those in Germany.

Despite the fact that the participation of certain countries in the issuance of such Euro bonds would be limited until the fiscal union was functioning perfectly (by limiting borrowing), it is thought that this cheaper possibility of bond issuance would encourage some countries to resume excessive borrowing, just like at the time of their entrance into the Euro zone, when they issued Euro bonds themselves, since the market had not yet formed different interest rates for individual country bonds, as is the case presently.

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<sup>7</sup> Krugman P.: "Why We Regulate," *New York Times*, 14.05.2012.

The risky deals of investment banking greatly contributed to the financial crisis in the US and other parts of the world thereafter. The over-the-counter trading volume of derivatives equaled 640 trillion dollars during the 2007-2009 crisis years. Derivative products (e.g., housing construction mortgages approved to non-creditworthy clients) were packaged into a new product that offered a yield from the mortgage repayments. Since most of the mortgage borrowers went bankrupt, the owners of the derivatives took losses.

Other parts of the world, as well as the EU now, regulate over-the-counter trading of derivatives. The standard liquidation of counterparty obligations in over-the-counter derivative trading is performed by way of Central Counterparties (CCPs), which must have the necessary funds to conduct transactions. Brokers submit data on completed transactions to data collection centers, which publish them. The European Securities Markets Authority (ESMA) will supervise the Central Counterparties, i.e., issue or revoke their licenses.

On international financial markets, creditors often request the issuers' credit rating. When it comes to states and public sectors that issue bonds, their credit rating is set by only a very small number of large rating companies, mostly from one country. Besides their expert influence, these agencies have monopoly power, since they are practically in an oligopolistic position. Objectively speaking, they cannot be error-free – but their errors always have negative consequences for either bond issuers or their buyers.

When several years ago Dubai “unexpectedly” declared bankruptcy to the tune of some 50 billion dollars, the rating agencies had not seen it coming. In order to improve the impression, these agencies quickly lowered the credit ratings of a number of smaller countries. Jurgen Klute, a deputy in the European Parliament, explained much of what happened during the great global financial crisis.<sup>8</sup> Commenting the negative role played by the rating agencies during the Euro crisis, he said: “It is a loss for Europe that the political majorities are still not prepared to draw conclusions. They (rating agencies) can play a constructive role only if they perform serious technical work, instead of abusing their power and stimulating pro-cyclical flows on the markets. Another deputy, from Portugal, Marisa Matias said that the “proposal for regulating the status of rating agencies is a lost opportunity to act effectively regarding the harmful role that the rating agencies have played and continue to play in the sovereign debt crisis in Europe.”

There is one more regulation and one more directive that the European Parliament should adopt by the end of 2012. The goal of changing the previous rules is to reduce investors' overreliance on external credit ratings, to reduce the risk of conflict of interest in rating agency activities and increase competition between them. Changes are going to be made to directives dealing with activities of collective investments into transferrable securities, as well as of managers of

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<sup>8</sup> “Credit rating rotation diluted by MEP,” *EurActiv*, 20.06.2012.

alternative investment funds, with the goal of reducing their reliance on external credit rating agencies in assessing their own assets' creditworthiness. The regulation stipulates that the fact of ownership of more than 25% of shares in more than one rating agency has to be published. Investors will have the right of compensation from a rating agency if the latter caused them damage through infringement or extreme negligence. A rating agency can rate the same institution for 5 years at the most, after which another should take its place. Sovereign country ratings will have to be updated biannually.

When the issuers are sovereign states, more complete publicly available information could substantially reduce investors' reliance on rating agencies. Another thing that would help would be international standardization and verification of data, including those on issuers' financial risk, so that investors do not need to turn to rating agencies for this.

The question for all the states that are going to reduce their external debt is: how to avoid stopping economic activity in the process? All states that have successfully reduced their debt have had to fulfill certain conditions. Reduction of the general populace's debt and recession are mostly unavoidable at the start. What should follow, together with state measures supporting financial sector activities, is a gradual coming out of the recession. Such a policy is possible if the banking sector is healthy. A second condition is the existence of a reliable program of long-term financial sustainability. The necessary debt reduction in the first phase may slow down the process of exiting recession. It is also necessary to carry out the needed reforms in the real sector as well. Some countries were able to do this by entering the EU and receiving an inflow of foreign direct investments. Other countries might be aided by really significant and profitable investments in infrastructure, as well as increased exports. Exit from recession also needs to be supported by increased private sector investments. Accelerated private sector investment in Finland and Sweden in the previous time period was twice as rapid as consumption during recovery. Of course, it is also important for the real estate market and housing construction to stabilize, to be a factor of real growth revival rather than of disruption.

## 5. Conclusion

All federal states in the world have come about through civil wars, foreign conquest or the decentralization of large unitary states. Europe will not and cannot create its federation in such a way. The federal elements in the EU can come about only through the consent of states that have already united their markets and those who wish to join. That is the basic goal of Europe's further unification. The fact that the EU hasn't secured the functioning of its factor markets has

resulted in its current problems: insufficiently efficient allocation of all resources over its entire territory, and differences in the costs of labor and capital.

On the other hand, such a situation also occurs in *lege artis* federal states. All that needs to happen is for the three social elites, or at least some of them, to fail to work for the general good but, rather, to work for their own partial good. If the political and military elites do not control the financial elite, the latter's unscrupulousness will generate periodic financial crises and recessions. This is especially likely if there is a constantly functioning circular revolving door between the political and the financial elite. There is no guarantee that crises and recessions that come about in such a way will not repeat. Europe does not need such federal financial elite.

Europe does not have another option except to patiently, on an equal basis, construct a functional federation (including a fiscal and a banking union), in which those that would control others (to their own benefit) will themselves be controlled. With the Euro as the single currency, with a central bank that functions both in the countries that are part of the monetary union and those that are not, it is possible to complete a system of governance over money, the banks and the financial markets.

The EU fiscal system has the same problems as those in most other countries, difficulties that are a consequence of the financial crisis of 2007-2009, which spread from the US to Europe and the rest of the world. Budget deficits in Europe have become excessive due to the fact that states drew funds for bank rehabilitation from their budgets (by increasing deficits), instead of letting their owners do that. However, budget deficits and excessive state debt are not just a European problem.

The latest OECD study<sup>9</sup>, for example, reveals that the cumulative US budget deficit (the government's total financial obligations) for 2011 came to 100% of the GDP, while only 4 out of 27 EU member countries had a proportionally larger deficit.

Alternative scenarios for reducing the US government debt show that this is not something that can be resolved in one election year. During the last three years, the annual deficit has reached 10% of GDP. A reasonable goal (also proposed by the OECD) would be to reduce the annual deficit to 3%, and the government's cumulative debt to 50% of GDP.

Differently from the US, a "fiscal agreement" is being adopted in the EU, limiting budget deficits to 3% during the economic cycle, or 0.5% of GDP for the structural deficit (amount of deficit corrected for the effects of the economic cycle). Pressure on state budgets will also be reduced because the process of bank rehabilitation and recapitalization will take place within the banking union, drawing on funds collected from banks for that purpose, from the crea-

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<sup>9</sup> "Fiscal Consolidation: How much, how fast and by what means," OECD Economic Policy Papers, No.1. OECD Paris, April 2012.

ted European Stability Mechanism (ESM), which will have at its disposal up to 500 billion Euros for the purposes of approving credits to states and banks, as well as from the remaining EFSF funds.

All the concepts for upgrading the mechanism of governance of EU and EMU economies with a fiscal and banking union will be completed by the end of the 2013 calendar year. Agreement will also be reached on changes that require amendments to the Lisbon Treaty over the next several years. The adoption of the 2013 budget and of the EU multiannual financial framework up to 2020 will make available some more funds for development and employment stimulation.

With all these measures for improving governance of the EU and EMU economies, Europe will preserve its rightful place in the global economy. With a population of 500 million and a developed economy that produces much of the world's trade it will remain a needed and respected partner to the BRIC countries, the US and the emerging economies.

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## **REFORMA SADRŽAJA I OKVIRA ZA EKONOMSKO UPRAVLJANJE U EVROPSKOJ UNIJI**

### **S a ž e t a k**

Evropska ekonomska i monetarna unija trenutno prolazi kroz jedan od najvažnijih i najsloženijih procesa reformi svoje strukturalne arhitekture, kao i upravljanja svojim ekonomijama u celini. Ove promene bi morale da se dogode čak i u odsustvu svetske finansijske i ekonomske krize. Sadašnje reforme unutar Evropske unije su neophodne kako bi se osiguralo da sva njena tržišta roba i faktora proizvodnje funkcionišu dobro, čime se povećava efikasnost njenih ekonomija.

Pored ovog opšteg problema, ovaj rad takođe analizira postojeće i planirane elemente mehanizma za upravljanje privredama Evropske unije i Evropske monetarne unije, dajući zatim detaljno razmatranje jačih i slabijih aspekata finansijskog, uključujući i fiskalni sistem Evropske unije i Evropske monetarne unije, kao i analizu monetarnog sistema i politike.

**Ključne reči:** Evropska ekonomska i monetarna unija, sistem za upravljanje privredama Evropske unije i Evropske monetarne unije, finansijski i fiskalni sistem, monetarni sistem i monetarna politika, fiskalna unija, bankarska unija



ENVIRONMENT

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ŽIVOTNA SREDINA

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## REENGINEERING OF TRANSBOUNDARY WATERBODIES MANAGEMENT OF INTERSTATE IMPORTANCE

The paper deals with conceptual issues of the formation of normative-legal basis for transboundary water bodies management. Expediency of basin approach, based on frame directives concerning the activities of EU members in the sphere of water policies, when solving the problem of maintenance of stable development of the region is presented. Requirements as to the points of water quality control when carrying out transboundary transfer which is an important element of the monitoring system and early disclosure of environmental dangers are formulated.

**Keywords:** environment, management, transboundary water bodies, Ukraine

According to UN predictions, the world's fresh water supply available for human use will reduce by 30 %. Thus, water consumption problems will become global and affect interests of the majority of countries in the world community.

As a rule, water arteries flow through the territories of several countries and preservation of the quality of water environment is a common goal for them. Taking into account the fact that water is used by neighboring countries that share river basins, issues of creating necessary conditions which can provide preservation of natural hydrochemical balance of water supply are of great importance.

As for transboundary water bodies, management of their ecological status is fraught with difficulties concerning differences in the regulatory framework for water use and water protection in different countries which is particularly distinctive in the absence of a single standing coordinating center. The legal basis for ecological management of the status of transboundary water objects in Ukraine is the Convention on the Protection and Use of Transboundary Watercourses and International Lakes concluded in Helsinki on 17<sup>th</sup> March, 1992.<sup>1</sup>

The main objective of the Convention is to protect water environment by preventing transboundary negative effect on water objects of interstate impor-

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<sup>1</sup> Закон України: "Про приєднання України до Конвенції про охорону та використання транскордонних водотоків та міжнародних озер" від 1 липня 1999 р. № 801-XIV// Відомості Верховної Ради України (ВВР), 1999ю - № 34ю - С. 282.

tance. To achieve this goal the Convention provides the development and implementation of legal, economic, financial and technical measures among which regulation of discharges of hazardous substances, as well as determination of water quality criteria are of vital importance.

The analysis of the requirements of the Convention in Helsinki shows that their implementation is feasible within the framework of basin system of ecological status management of water objects. On this basis, the water policy accepted by the majority of UN countries enables the creation of national and international River Basin Districts. The task of management in these systems is to attain environmental goals formulated in the framework directive on the activities of the countries under the water policy.<sup>2</sup> Its essence can be outlined by the following objectives:

- analysis of the characteristics of the state of surface water objects;
- identification of human impact and estimation of its influence on the state of water objects;
- economic analysis of water use.

An important component of this program includes issues concerning monitoring of condition of waters and protected zones, as well as methodology of combined approach towards estimation of influence of hydrosphere point and diffuse sources of pollution. The program requires implementation of procedures directed at active participation of all parties involved in decision-making processes and monitoring of their implementation. Besides, development of a strategy and the timing of action directed at reduction of water pollution substances which pose a significant risk for the environment are of vital priority.<sup>3</sup>

Compulsory compensation of costs of all the services to meet the water needs including ecological and resource payments according to the principle “those who pollute have to pay twice” must form the basis for economic dimension of environmental policy. Thus, by the year 2010 a lot of effort must be put in the water pricing policy to provide adequate motivation for effective use of water resources which, in fact, will contribute to the achievement of ecological objectives. The major problem, whose solution will affect efficiency of basin management, is the creation and legislative support for the functioning of such financial mechanism which would guarantee the interconnection between payments for water use and financing of priority water protection measures within a river basin.

The realization of the benefits of basin system management would provide consideration of interests of the states that share natural resources of a river

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<sup>2</sup> Directive 2000/EC of the European Parliament and the Council of establishing a framework for Community action in the field of water policy, PECONS 3639/00, 53 p., Annexes I-V

<sup>3</sup> Трансграничный диагностический анализ бассейна р. Днепр (Беларусь, Российская Федерация, Украина): Объединенный отчет по проекту ГФООС. – Харьков, 1997. – 165 с.

basin. Coordinating the actions with the help of interstate agreements, national governments will be able to adopt and follow coherent policies, programs and strategies which will enable them to reach mutually accepted goals and seek mutually accepted water quality criteria at borders between the states.

Development of integrated management in the sphere of the use of nature is a common stage in the creation of the improved management systems. Integration of management can be exercised at different levels – from integration of management of economics and use of nature to intersphere the integration and interdepartmental integration of management.

At present, methodological basis for the creation of integrated system of ecological norms has almost been formulated. The latter has two components – the norms of “environmental safety” which reflect the objectives of safe and effective use of nature and environmental norms of “the quality of natural objects” which reflect the objectives that ensure the well-being of a natural object and its ecosystem. Besides, the major problem of norm establishment is to harmonize the norms stated as the basis for sustainable economy and use of nature development.<sup>4</sup>

An attempt to solve the problems of transboundary transport of pollution faces an information problem. It appears that there is no representative information which is accepted by both participating countries. Besides, pollution levels which are presented by the country that receives waters are, as a rule, significantly higher than the quantity which is presented by the country that gives waters. There is no doubt that the problem of representativeness and reliability of water quality control is the first and one of the most important problems of transboundary cooperation of the countries in the sphere of prevention of pollution transmission.

The necessity to create integrated monitoring systems is defined by the possibility to substantially increase reliability of evaluation of the condition of a water object and parameters of anthropogenic impact without increasing the number of measurement points and number of samples taken. Reliability of evaluation can be increased by combining the results of measurements performed according to different monitoring programs by organizations that represent the states concerned.

The highest level of data integration is connected with combining the results of measurements of the condition of water objects, data on wastewater discharge (point sources), and data on the impact of diffuse sources on the condition of water objects. Information on the impact of diffuse sources, as a rule, is calculable and the value of such parameters can be defined by monitoring data on other environments. Hence, there are basic requirements for automatic stations

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<sup>4</sup> Сухоруков Г. А.: База знаний и система экологических нормативов // Проблемы охраны окружающей природной среды: Сб. Науч. тр. // УкрНЦОБ. – Харьков, 1996. – С. 53-61; Концепція екологічного нормування / Міністерство охорони навколишнього природного середовища та ядерної безпеки України. – Київ, 1997.

that monitor water quality when effecting transboundary transfer. These stations have to perform the function not only of a measurement system, but also of alarm. They are to work in a wide range of change of basic pollutants concentration: from standard value – Maximum Permissible Concentration (MPC) to high levels of pollution (HLP) and extremely high pollution (EXP) (as a rule, 10 MPC). Alarm on detection of HLP and EXP is of great importance because it indicates the danger of potential occurrence of environmental emergency (when HLP is detected) and the fact of its occurrence (when EXP is detected). If such function exists it gives the station the status of a basic element not only in monitoring system but also the system of early warning of environmentally hazardous situations. Time factor is in many cases crucial in development of activities aimed at elimination of consequences of environmental disasters.

The major policy objective in this sphere is to provide balanced water use, environmentally safe conditions for water resources which will contribute to sustainable development of regional socioeconomic zones in each of the states – members of a basin ecosystem.

For water management systems of Ukraine's boundary zones the efficiency of cooperation with neighboring states regarding the use of transboundary watercourses is of vital importance. It will provide a vast potential for attracting significant investment resources for modernization of water protection infrastructure and ecologization of water use in these territories. This problem, taking into account the lack of realization of the declared priorities of Ukraine's foreign economy strategy, is of multiple character.

Intensification of bilateral cooperation between regions which border the Republic of Poland is of key importance. Here we have the difference between EU water legislation and Ukraine's regulatory support of rational water use. Establishment of joint ventures for environmental improvement of Western Bug River watershed and closed reservoirs in the transboundary area might, in the future, become a priority area of cooperation. It would be advisable to use positive foreign experience in the national practice of water management with united efforts of the government and business structures while modernizing water management infrastructure of territorial and local objects.

Transboundary regions of Western Ukraine have a high recreational potential due to the healing properties of water resources which is a basis for successful realization of investment projects in spa and tourist-recreation facilities. However, local and regional water management authorities enact a rather passive policy to bring the parties concerned with realization of projects of economic development of recreational potential of transboundary water ecosystems as well as their reconstruction.

Climate and natural resource conditions of western regions of Ukraine and the states that border them make it possible to implement business projects of integration of water industry, forestry and agriculture which will provide

strengthening of agricultural landscapes, reduce the risk of floods and enhance the ability of natural ecosystems to resist man-made disasters. Such projects will result in social and economic progress of boundary territories.

Within the system of economic relations, the processes of denationalization of water facilities which are to be implemented via stimulation of rental use do not prevail. One should create favorable conditions to form a competitive private sector in the sphere of water services and modernize the present-day water supply system due to inconsistency of the existing water facilities.

Extension of the list of forms of international cooperation in the sphere of transboundary watercourses use will provide the following:

- establishment of joint ventures for environmental rehabilitation of the basin of transboundary watercourses (it would be advisable to realize a pilot project in the basin of Western Bug River);
- attempts to attract external investment sources to conduct works aimed at strengthening the banks of transboundary watercourses;
- development of a unified scheme to realize the projects of general investment for the integration of water industry, forestry and agriculture in the area of transboundary cooperation;
- intensification of the development of small business sector on the basis of usage of artificial water bodies in boundary areas.

Ideally, one should seek the formation of a common interstate policy in the sphere of ecologization of water use system which is to be implemented by influencing water management system in each of the states on the territory where there is a river basin.

## Conclusion

Taking into consideration the growing acuteness of the problem of fresh water provision, international community devotes constant attention to the problem. The main objective of the programs that are conducted under the aegis of UNESCO is to form a concept of civilized intergovernmental relationship in the sphere of defense and rational use of natural water resources. Inclusion of integration basin model which contains the data on automated control of hydrosphere in a transboundary zone, as one of the elements of the system of ecological-economic management, into this concept will generate the necessary prerequisites for defense of strategic interests of the countries which are the users of regional water resources and will ensure elimination of conflicts connected with unsanctioned pollution and excessive water use.

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## **REINŽENJERING MENADŽMENTA PREKOGRANIČKIH VODA OD MEĐUDRŽAVNOG ZNAČAJA**

### **S a ž e t a k**

Rad se bavi konceptualnim pitanjima u vezi sa pravnim uređenjem prekograničnog upravljanja vodnim resursima. Polazi od koncepta basena, a u skladu sa direktivama Evropske unije u oblasti politike voda, u cilju obezbeđenja održivog razvoja regiona. Formulirani su zahtevi neophodni za kontrolu kvaliteta voda kada se vrši prekogranični transfer vode, što predstavlja važan činilac sistema monitoringa i ranog otkrivanja opasnosti po životnu sredinu.

**Ključne reči:** menadžment, prekogranična vodna tela, Ukrajina



INFORMATION SOCIETY

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INFORMACIONO DRUŠTVO

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## THE POTENTIAL IMPACT OF INFORMATION TECHNOLOGY ON THE RESTRUCTURING OF THE SERBIAN ECONOMY

The role of information is transformation of the character of economy and society on the whole. Information technology and activities are considered as a key factor for necessary revitalization and modernization of Serbian economic structure at the beginning of the 21<sup>st</sup> century. Information sector is not only a sector of Serbian economy structure that is supposed to increase its share in the GDP and employment more and faster. The role of information and the complex of surrounding activities is to influence the changes of nature of economic and social life in Serbia as a whole and, as soon as possible, successful transition from an industrial towards the information society and economy.

**Keywords:** information technology, information economy, information society, techno-economic paradigm, network

### 1. Introduction

Technology revolution and information-technology paradigm, together with the whole of science and information activities as a hard core, have changed the foundations of the growth modes dominant in the 20<sup>th</sup> century until the early seventies, in global dimensions, with the industrial activity as the base. The premises have emerged for a new mode of growth and civilization content, most frequently known as knowledge society or information society.<sup>1</sup>

The impact and economic importance of information technology (IT) cannot be limited either to any individual sector or economy, groups of industrial or non-industrial activities, or any particular segment of human activi-

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ties. The role of information is transformation of economy and society characters on the whole.

The potential of information technology to have impact on the changes of the fundamental characteristics of an economic system, that is on the conditions and operating rules and development of all economic entities in the global economy, from the basic unit of production to the global economy, is of special importance. The growing importance of information activities is manifested in a growing share of information sector activities in the creation of gross domestic product and a growing share of the employed in the information sector in the total number of the employed.

Information technology restructures intellectual space and time, widens and develops intellectual possibilities and conceptual and operational management of means and processes and influences the essential changes of character of business and human activities. A person is very often not aware of real dimensions of that change, but he can notice its usefulness in each segment of his activity: at work, in education, at home, in leisure time and entertainment. Equipment and things that a person is surrounded with, regardless of their purpose, are more and more equipped with information technology components that make the supply cheaper, the use less complicated and the servicing easier.

In developed countries, being among the first in the process of realization of information economy and society, the process of developing the information infrastructure is very intense, strongly supported by government and a great financial share of business sector.

The countries in transition, such as Serbia, during the first phase of that process, considered problems of institutional adjustment more important, with the change in property structure (privatization) as a priority. The most important technology aspect in the transition process from industrial to information society within the framework of necessary and urgent process of structural adjustment in these countries, as well as in Serbia, is the heavier and more effective use of information technology. The circumstances under which all in Serbia functioned and the resolution of the problems resulting from them made the situation in Serbia even heavier (the disintegration of SFRY, wars, economic crises, economic sanctions...). This paper deals with the very information activities as a key factor for the necessary revitalization and modernization of Serbian economic structure at the beginning of the 21<sup>st</sup> century.

## **2. The change of techno-economic paradigm and significance of economic sectors**

Interrelations between sectors of national economy in the sense of their classification into a primary (agriculture), secondary (industrial) and tertiary (services) having in mind the concepts of change in new techno-economic paradigm

(TEP) are the permanent subject of growth and development in economic theories.<sup>2</sup> The role in creation of gross domestic product, employment, international trade transactions more obviously differentiated between economic sectors and their segments, even between individual firms having high energetic and resource intensity of their inputs and outputs, from those sectors of national economy, their sectors and firms who base their competitive positions on domestic and international market, on high intensity of inputs and outputs by the facts from R&D (Research and Development) complex. The different structural configuration of national economies and global economy with emphasized functional dimensions has been created.

Industrial civilization crises by the beginning of 1970s that spared only the services, servicing and the sector engaged in processing, distribution and use of information have had twofold replies.<sup>3</sup>

For the first phase, the main characteristic was segmenting of a reproduction process into narrow, simple, work intense segments that are both/or standard capital goods intense and/or low or middle profile technology and/or intense environment pollutants and therefore suitable to be performed by unqualified and low skilled labor. Through the systems of transnational corporations (TNCs) these segments or entire plants of factories are dislocated from developed countries into the undeveloped ones with the aim of using the advantages of cheap labor, energy and raw materials, as well as the absence of strict regulations and measures for protection and preservation of environment. It used to be one of the ways and modes of direct externalization of world economy model in which industrialization is dominant, trying to sustain the competitive positions of global market as a result of such externalization of systems negativity. This is the phase when free customs zones and offshore transactions intensively develop.

In the second phase, besides the externalization of negative effects, developed countries try to internalize positive effects from the environment. Systemization<sup>4</sup> processes become more important, not only in the reproduction value chain of certain semi finished or finished products, but in the whole societies, what is different in comparison with the previous phase of segmentation, disarticulation and disintegration of economic and social systems. All technology, production and social functions became highly interdependent and national econo-

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<sup>3</sup> Freeman Christopher, Perez Carlota: "Structural Crises of Adjustment, Business Cycles and Investment Behavior", 38-66, in Dosi Giovanni et al. (eds): *Technical Change and Economic Theory*, Pinter Publishers, London 1988.

<sup>4</sup> Freeman Christopher, Perez Carlota: "Structural Crises of Adjustment, Business Cycles and Investment Behavior", 38-66, in Dosi Giovanni et al. (eds): *Technical Change and Economic Theory*, Pinter Publishers, London 1988.

mies wishing to achieve competitiveness of its entities at global level and to develop characteristics of global integral competitiveness, had to work on this goal on high level of integration and intensity of mutual articulations and interactions. In comparison with the previous period during which many of the functions in the reproduction process and related to that process existed as separate functions, independent and unconnected, in this phase, using the potentials of the new TEP, they appear connected in integral entirety. Not only the production functions, but also the production entities themselves, connect on horizontal and vertical integration lines.

The entire production and each individual production unit draws its success' characteristics from the successful and territorial system to which they belong, as well as from the harmony and uniformity in functioning and developing of all activities directly connected to the production process, but also from pre-production and post-production activities, particularly from those activities that take place in R&D complex and in relation with it.

The paradigm moves, as it moves through the production sphere, transforms the existing and makes new branches and segments of national economies, changing already established sector limits. It can veil the distinctions between goods and services production, what actually happened in reality of modern global economic system, and contents of vertical and horizontal integration. The dynamism of technology changes, particularly in planning, designing, forecasting and defining the strategic orientation of production units, is a very important factor that has to be kept in mind, particularly in industrial production of capital goods. This production, besides the strong impact that it has on the level and rate of productivity growth in the users industry, also makes the central point in radical transformation of its resulting products and technology means and processes that it uses in global dimensions.

### 3. The role of information technology in the revitalization of the Serbian economy

By analyzing the main features and degree in which Serbian economy is adjusted to the new techno-economic paradigm, new mode of growth and changed conditions of functioning and development that are based on universal use of IT, the information activities per se are regarded as a key factor of the necessary revitalization and modernization of Serbian economy in 21<sup>st</sup> century.

At the end of the 20<sup>th</sup> century and early 21<sup>st</sup> century the worsening of the functioning and development of economic and technology characteristics of Serbian economy took place. The technology level in both economic and non-economic activities was relatively low, with further lagging behind the developed countries. Imports of equipment and purchase of licenses have brought technology transfer

in the conditions of undeveloped market, first of all. The imported technologies were not used for achieving the higher levels of development and independence in technology development. The high price, costs and currency disparities, as well as low and decreasing rate of technology progress gave the following results: structural inadaptability and inflexibility, inertia in transformation and development, decrease of competitiveness and inefficient use of factors from R&D complex. All these reasons, helped by parallel imports of technologies, capital intensive investments and a low level of mass economy, led to a low level of competitiveness of economic entities and Serbian economy as the whole with the constant tendency to its financial and reproductive breakdown.

These processes correlate, in the long run, with ten-year stagflation (1979-89), four-year recession (1990-94), inflation unregistered in recent economic history (1993-94), recession caused by the global financial and economic crisis (2008-10). In addition, more negative incentives to these processes came from disintegration of the SFRY, ethnic conflicts and the civil war on the territory of former Yugoslavia, economic sanctions by UN against the FRY, NATO intervention against the FRY.

The low economic efficiency and the development performances of many economic entities determined their inferior role in technology and economic development on the homogenized European market and in wider dimensions, and their inadequate level of development of the potentials for fast and efficient involvement into most propulsive, most dynamic, continually changing and sharpened up standards and criteria of integral competitiveness and the global market competition. This situation can be changed only if both the government and economic entities act fast, more radically and entirely on the trace of tendencies which have profiled as dominant within the world economy, in technology, financial and nominal sense.

The restructuring and revitalization of the whole economic environment and the business activities of all economic and non-economic subjects in Serbia, with the universal use of IT, is of extraordinary importance in the 21<sup>st</sup> century. The changed features of the international economic transactions require much faster, universal and more intense changes of the economic system, the conditions of performing the economic activities and the action of economic entities within it. IT has an extraordinary importance in structural change in national economy of Serbia. Together with other necessary measures and activities, it makes the only bases that could provide for a short-term stabilization of business activities and a long-term economic growth and development in accordance to the new techno-economic paradigm and mode of growth.

Information technology has the potential to change and improve the structure and the characteristics of Serbian national economy. IT includes the greatest and the most important part of technology restructuring and revitalization of Serbian economy. The velocity and quality of production and services, diffusion

and implementation of the new IT are, therefore, a key variable of restructuring and the increase of competitiveness of economic activities on both domestic and international market.

The more intense production and the implementation of IT may have a great number of possible implications in the area of the functioning, development and competitive position of Serbian economy.

- The full implementation of the IT is not dependent only on the implementation of a key technology factor of the new techno-economic paradigm. In Serbian case that is the level of electronic industry development, but first of all, it depends on the expansion of a new paradigm and the mode growth as a whole, a new business philosophy.
- The implementation of IT will depend on the understanding of its importance by economic subjects and in wider dimensions, on undertaking of such measures of developing policy on different levels that would lead to the structural change that Serbian economy must face sooner or later.
- IT is able to encourage the global optimization of the production process that is on a very low level in Serbian enterprises. The raw materials stocks' management and components, intermediaries and those of finished products are of an experience type, without enough understanding and implementation of modern management principles.
- IT disposes with the potentials of intensifying the articulation and interaction between R&D, design, engineering and industrial production that in this moment is unsatisfactory. Most of these activities now work autonomously, by their internal logic.
- Unsatisfactory and inadequate connection between R&D activities and industrial production has been for a long time one of the weakest links of national innovative system.
- By implementation of IT the more active and indirect connections between producers and consumers are created (furniture and house ware equipment, textile industry, tourism, transport...). This, with very few exemptions, was not an important trend between the producers in Serbia. Also in the previous period the dominant place in Serbian economy was held by the supply and producer. The trend was changed to certain extent at the beginning of 21<sup>st</sup> century parallel with more intense opening up of the national economy to foreign competition.
- The implementation of IT enables the improvement of quality process, product and services, by the imperative of introduction of standards and quality system. The introduction of quality system and the standards of ISO 9000 group (and others) are not a goal per se. This is supposed to be a synthetic indicator of an inclination to accept a new business philosophy and management paradigm as well as the ability for dynamic modifications of behavior in accordance with the registered changes in

the relevant environment. The adoption of international standards is a presumption of more successful business activity on domestic and international markets and involving into cooperative relations with partners from the developed countries. In the circumstances of higher level of economic openness, Serbian economic subjects will be imposed by more severe technology competition which should become an integral part of their business strategy if they want to sustain and improve the traditional competitive advantage and achieve and develop new competitive advantage and position on international and global market. In some industrial areas Serbian producers used to have a substantially high quality of products, but the costs of achieving that were also very high. Most other producers have relatively low quality in combination with high cost of production. The examples of the high quality of products and services achieved with the low costs of production were very rare. The achievement of the new, and the renewal and improvement of the old competitive advantages of Serbian economic subjects and national economy as a whole, will depend on capability to create elements of the competitive advantages in new segments of industry and services that would intensively use the potentials of information-technology paradigm.

- The implementation of IT enables the change in centralized management system in reproduction value chains that is still dominant in Serbian enterprises. The horizontal coordination, networking, long-term and cooperative subcontracting are the organization and management concepts just emerging, with the help of IT, in Serbian economy.
- IT stimulates the exceeding of economic irrationalities that came from the absence of joint cooperative strategies of research, development, creation and designing in the group of producers who produce the same or similar products and services (strategic alliances). That would enable the achievement of the critical mass of researchers and financial funds, as well as the success and economic justification in the phase of precompetitive research and development of products and services. This behavior became a common way of action not only between the producers within national economy, but on the global level too. The hierarchical barriers in Serbian enterprises are still very strong. The examples of reducing the division of labor in its volume inside the firm and the organization of labor in teamwork and on the network base are very rare.
- More widespread implementation of IT will influence the increase of productivity of all factors of reproduction process and reduction of capital, energy, resources and energy consumption in all economic activities. The reduction in quantities and volume of electrical, electronic and mechanical components will enable material and energy savings in the new economy. In the case of IT we cannot talk about the incli-

nation to savings of only one of the factors of production. It would be a great challenge for technology restructuring and competitive capability of Serbian traditional industries. In some of them the capacities for new employment will be substantially limited, with the exemption of high-qualified personnel. The structure of the employed will have to be substantially changed, with possible losses of some jobs in certain traditional industries, and the increase of employment in some others (revitalizing modern manufacturing sector, production of electronic components and systems, different services, information activities), in order to achieve, sustain and increase the level and rate of growth of successfulness and competitiveness of Serbian enterprises<sup>5</sup>.

- IT requires more intense advancement and training during the whole working life of all employees on their work and substantially more developed system of business training in concrete business activities than it is the case in Serbian economy at present.
- The high level and increasing rate of change in computer, electronic and communication activities is a foundation for the competitive position of these segments of Serbian economy. Establishment and operation of increasing number of firms from the category of small enterprises characterize these segments of Serbian economy. With their predominantly assembling and trading strategy as dominant activity in the previous period, those firms would probably develop in the direction of production of some specific electronic parts and devices, and providing of a wide range of information services for local and global use. The different forms of cooperation with foreign partners, for whom Serbian information market is interesting, would become more important. As these segments of national economies represent sectors of a new economic concept and the entire system, it is very important for Serbia to achieve the high level of their competitiveness because that would have the substantial consequences for the competitiveness of the whole economy.
- Owing to its ability for fast and voluminous (actually unlimited in time, place and quantity) collection, processing and storage of information, IT will enable to Serbian enterprises faster and more complete adoption of relevant information from the domestic and international market and greater velocity, efficiency and flexibility in decision-making and its implementation. The velocity, reliability and low costs of use of great quantity of information concerning market requirements, sales, stocks and financial transactions have become the necessary precondition for better quality of market action.

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<sup>5</sup> Schwab Klaus (ed.): *Global Competitiveness Report 2012-2013*, World Economic Forum 2012.

- The growing share of services in the gross national product and the increasing of service content in the industrial products are understood as a strengthening of servicing component in industrial sector and development of services' and information segments as an autonomous one. The creation of an economic environment, which is stimulated by an autonomous development of a wide range of services or their integration into product of industrial sector, will have a direct impact on the competitiveness of Serbian economy.

#### 4. Conclusion

The information technology and information sector within the modern global economy have become a hard core of successful functioning and development of strategies of all entities in economic and social life.

The development of information infrastructure of universal type and facilitating the simplest, fastest and cheapest use of different products and services from the IT area in business, education, entertainment... is a goal on which the developed parts of world economy work very intensely and particularly rely.

The lagging behind of Serbian economy in development and implementation of IT is very important. There are more and more examples of changing role of IT activities in Serbia: a) development and implementation of computer controlled machines; b) development and use of different education, business and services; c) more and more intense process of development of local networks and their connecting to internet by the providers; d) development and implementation of software and hardware solutions for certain specific purposes – local and global; e) development of databases for different purposes...

The analyses of information part of Serbian economy have pointed to the general features of IT role and the related activities in the changing structure of economically active population and the creation and consumption of gross domestic product:

- the functioning of Serbian economy takes place mostly in the framework of techno-economic paradigm of material and energy intense and traditional industrial production;
- the change and modernization of economic structure is slow compared to the share of sectors in creation and consumption of GDP;
- the share of primary information sector in GDP is significantly low;
- the growth of the information occupations can be expected in future, not only in industrial sector, but also in the first place, in activities from the service sector.

The growing share of information occupations increases the capability of substitution of labor by modern electronic and communication technologies. Economic strategy based on the reduction of employment in agricultural sector and in manufacturing industry could be seriously challenged if the supposed alternative occupation stops growing or even starts falling down - representing the total anti-theses to the previous experience, especially in developed countries as carriers of that process in global dimensions. The significant and growing share of information activities in the very industrial sector and the partial substitution by occupation of the new TEP could be one more reason of an important decrease in employment of that sector.

Therefore, the information technologies are a key component of revitalization and restructuring of Serbian economy at the beginning the 21<sup>st</sup> century. Other components of structure also have their importance in functioning of Serbian economy, but in terms of development, they are very far from their previous importance. The development must be adjusted to the local labor too, as well as to the resources, but in Serbian economy the base, i.e. the infrastructure for these processes must lie in technologies and activities related to key factor of a new techno-economic paradigm characterized by information intensity – information-technology paradigm.

A new techno-economic paradigm is a base for a review of the potentials for functioning and development of the existing industries, their restructuring and recomposition, diminishing of the old and emerging of the new industries, activities and occupations.

Information sector is not only a sector of Serbian economy structure that is supposed to increase its share in the GDP and employment more and faster. Although it is necessary, it is at the same time an infrastructure for the successful use of the new TEP in Serbian economy as a whole. Therefore, the role of information and the complex of surrounding activities is to influence the changes of the nature of economic and social life in Serbia as a whole and, as soon as possible, the successful transition from an industrial towards the information society and economy.

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## **POTENCIJALNI UTICAJ INFORMACIONIH TEHNOLOGIJA NA RESTRUKTURIRANJE SRPSKE PRIVREDE**

### **S a ž e t a k**

Uloga informacija je da transformišu karakter privrede i društva u celini. Informacione tehnologije i aktivnosti se smatraju ključnim faktorom za neophodnu revitalizaciju i modernizaciju srpske ekonomske strukture na početku dvadeset prvog veka. Informacioni sektor nije samo sektor srpske ekonomske strukture, koji treba brže i više da poveća svoj udeo u BDP-u i zaposlenju. Uloga informacija i kompleksa aktivnosti koje ih okružuju je da utiču na promene prirode ekonomskog i društvenog života u Srbiji u celini, i što je pre moguće, na uspešnu tranziciju od industrijskog prema informacionom društvu i privredi.

**Ključne reči:** informaciona tehnologija, informaciona ekonomija, informaciono društvo, tehno-ekonomska paradigma, mreža

## INFORMATION SOCIETY INFRASTRUCTURE AND COMMUNICATIONS WITHIN THE NATIONAL BOUNDARIES

The Information society is the modern structure of the society and could be possibly considered and analysed in different practical and detailed manners. The objective of the paper is to present the approach of the author, to show and document the model structure of the digital economy (being treated as a complex system with the large number of potentially interacting components) and to present, as an analogue, the part of the functionalities that network structure and communications of the political system may have within the national boundaries.

There is a certain level of ICT integration within the digital economy environment in Serbia, but today it is not sufficient to cover the necessary business, political and social data and information processing and communications. The paper is trying to prove and document the following questions: how is the society dealing with the Information society development, and is it a basic framework designed and prepared to provide the entire electronic traffic and exchanges at all institutional, political, business and social instances.

**Key words:** information society, knowledge society, network society, ICT, SWIFT technology, PKI, digital economy, Internet, digital divide, Facebook, Twitter, Youtube, RTGS

### 1. Information society as a complex environment

Observing our environment on macro scale or micro scale, we are literally surrounded by complex systems (*Public enterprises, international markets, national market, state administration-local governments, state government*), telecommunication companies, software applications production and implementations, network topologies, security issues and wide variety of the organizational and business forms working within the body of the digital economy.

These systems have a huge number of different states depending on market dynamics, international financial and mail exchanges (*all based on messages exchange between the financial institutions, e.g. SWIFT messages exchange supported with the messages formats over the swift network between the sender and receiver Bank: MT103, MT202, MT300, MT700, MT950, etc.*) environmental changes and the global network presence and products generated.

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Common characteristics of complex systems are (McDermid, 2000; Ottino, 2004): a large number of potentially interacting components (*a number of components and the volume of transactions and messages exchanges that are generated in the digital economy businesses and market environment, figure1-Digital economy infrastructure and information flow*), a high number of possible states, and heterogeneous system entities.

Examples of various complex systems can be found in almost all sciences. In *social sciences*, complexity is connected with the dynamics of social processes (Aladejana, 2007; Liu, 2007; Neumann, 2007; Pabjan, 2005). In *economic sciences*, a huge number of parameters used for the simulation of economic processes impose high complexity (Gilanyi, 2005; Hoekstra et al, 2007; Westerhoff, 2005)<sup>1</sup>. In all areas of *computer science*, complex systems can be found: business informatics (Joseph, 2005), software engineering (Terry, 1995), computational intelligence (Broks, 2008), formal methods (Bob, 2005), distributed systems (Gagliardi and Grey, 2006) or technical informatics (Barrientos et al, 2004; Bracessi et al, 2004). In computer science, software systems are open systems evolving in a dynamic complex environment, designed as sets of interacting components highly distributed both conceptually and physically.

Complex software systems are characterized by a huge number of heterogeneous, distributed, unreliable components, as well as dynamic changes in the environment (Šešum-Cavic and Kühn, 2010a). A repeated execution of a software application might lead to different results due to changed environmental conditions. The growing complexity of software systems (*RTGS payment system of European union countries-Target 2, i.e. complex financial networks and interlinkings, huge volume of transactions exchanged, different software integration and application included, various security system integration applied*) and their large scale distribution make the use of traditional approaches, i.e., approaches based on hierarchical functional decomposition and centralised control, no more applicable (Kühn and Šešum-Cavic, 2009). New paradigms, mechanisms and techniques are needed, endowing these systems with the capacity to autonomously manage their functioning and evolution. Complex systems are difficult to handle; they are *unpredictable* and *unreliable* (Heylighen, 2001). In the field of computer science, recommendations to handle these systems exist, e.g. simplicity, abstraction, decoupling or decomposition.

An interesting question is whether there is an approach that can be applied ubiquitously in any complex system? In this regard, Heylighen (2001) refers to the *concept of self-organization* as a potential candidate to strive for an ubiquitous approach and defines self-organization as “...*a process where the organization (constraint, redundancy) of a system spontaneously increases without this*

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<sup>1</sup> Šešum Čavić Vesna, Tuba Milan, Rankov Siniša: “The Influence of Self-Organization on Reducing Complexity in Information Retrieval”, <http://www.emcsr-conference.org/2012/paper/view/210>

increase being controlled by the environment or an encompassing or otherwise external system...". Self-organization is basically the spontaneous creation of a globally coherent pattern out of the local interactions between initially independent components (Camazine et al, 2001; Heylighen, 2001).

An example of a typical complex, dynamic environment is the *Internet (Complex network<sup>2</sup>)*. Internet technologies have had an explosive development during the recent years. Today, the Internet is a public way of communication over the *global network*; it covers all sorts of information and different types of data. The highly dynamic nature of the Internet, characterized by a huge number of information often expressed as complex data, imposes the necessity for new and advanced ways of locating and retrieving of information. The number of web search engines trying to meet user's requests is increasing.

The dynamic nature of the web (*Web 1.0, Web 2.0*) imposes the problem of efficient Internet search. On the one hand, new *URLs* are being added every day. On the other hand, there is a certain amount of *invalid links* that correspond to old, discarded pages (Filman and Pant, 1998; Greenberg and Garber, 1999; Knoblock, 1997). Search technologies need constant improvements and adaptations to harmonize their capabilities and user's requests (*the number of internet users has rapidly grown, the new virtual environment like social networks, e.g. Facebook, Twitter, YouTube, have generated a huge volume of data and information exchanges*).

## 2. Information society supported by digital economy

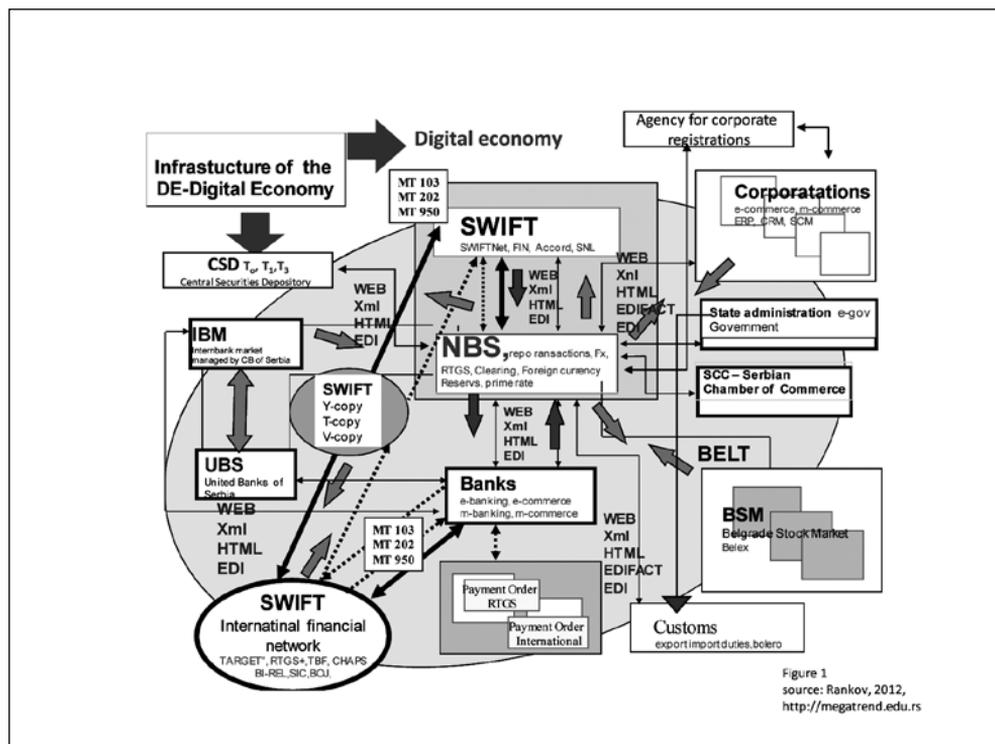
The **digital economy**<sup>3</sup> (*slide presentations given for the lectures in Electronic business, S. Rankov, PhD*) is the economy based on ICT resources, producing different approaches to the productive use of the national resources (*digital economy infrastructure is being used to interpret the national complex environment all in order to present the various layers and communication pairs that is functioning within the DE*).

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<sup>2</sup> [http://en.wikipedia.org/wiki/Complex\\_network](http://en.wikipedia.org/wiki/Complex_network)

In the context of network theory, a *complex network* is a graph (network) with non-trivial topological features—features that do not occur in simple networks such as lattices or random graphs but often occur in real graphs. The study of complex networks is a young and active area of scientific research inspired largely by the empirical study of real-world networks such as computer networks and social networks.

<sup>3</sup> <http://www.megatrend.edu.rs/fps/obav.php?o=5394&i=1&g=4>



There is a certain level of ICT integration within the digital economy environment in Serbia, but today it is not sufficient to cover the necessary business, political and social data and information processing and communications. How is the society dealing with the *Information society development*, is it a basic framework designed and prepared to provide the entire electronic traffic and exchanges at all institutional, political, business and social instances?

*How does the society react to so different local and regional capabilities in fulfilling the common needs of the citizens?*

If we try to portrait the everyday situations, *figure 1*, at the national levels (looking the *Information society infrastructure and all software based applications created to support the real life of the society*), we may conclude that we deal with the *digital divide*, so many improvised solutions for the same problems, a lack of the national electronic services integration, insufficient network support, absence of the society effort to change the present situation, still not having the *Information society (Inf\_soc)* strategy and the steps to achieve the result.

But, we have to admit that there have been some incentives and initiations in, through the action of *digital agenda*, to change the passive look on the *Inf\_soc* development, to push the part of technical intelligence to accept and target some of the activities towards the strategy/tactics implementations. At some point, we may be able to accept the framework for *Information society development* that

the EU is delivering and requiring, and to copy some of the results and technologies that have already been developed and applied in *Nordic countries, EU countries, USA, UK, Australia* in order to implement our Information society development, to optimize the workflow and achieve the results.

The modern approach to the society structure and functionalities is closely connected with the various types of the definitions with regard to the society infrastructure, society relations, society functions and layers.

When observing the digital infrastructure of the society (*for better understanding the Serbian digital economy infrastructure is considered and discussed*) one may consider the different interrelated layers and the number of the relations that is generating the complex traffic within the society, i.e. *CB-Central bank of Serbia → Commercial banks (RTGS payments and Clearing in favour of Corporate clients and entities), Commercial banks → Corporate clients (payments in domestic market and international payments over the SWIFT network), CB → CSD (Central Securities Depository in covering the securities trade), BSM-Belgrade Stock Exchange → Corporate clients (servicing the market trade)*, the portions of messages exchange of the day to day operations, the traffic connected with the non financial exchanges within the political system and the state administration, between the local and state government and the citizens (*model G2C*).

A number of trials have been made to define the Information society, to document the nature of the society which is based on ICT and on a step by step basis to reform the entire life within the society, bringing the new types of collaborations, relations, communications and behavior of the participants.

An information society<sup>4</sup> is a society where the creation, distribution, use, integration and manipulation of information is a significant economic, political, and cultural activity. The aim of the information society is to gain competitive advantage internationally, through using information and communication technology (ICT) in a creative and productive way. The knowledge economy (*the similar terms used to define the Information society: network society, knowledge society*), is its economic counterpart, whereby wealth is created through the economic exploitation of substance, workforce, technology and understanding.

### 3. Information society in the form of network society

People who have the means to partake in this form of society are sometimes called *digital citizens*. This is one of many dozens of labels that have been identified to suggest that humans are entering a new phase of society. The markers of this rapid change may be technological, economic, occupational, spatial,

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<sup>4</sup> Beniger James R.: *The Control Revolution: Technological and Economic Origins of the Information Society*, Cambridge 1986.

cultural, or some combination of all of these<sup>5</sup>. Information society is seen as the successor to industrial society. Closely related concepts are the post-industrial society (*Daniel Bell*), post-fordism, post-modern society, *knowledge society*, tele-matic society, liquid modernity, and *network society* (*Manuel Castells*)<sup>6</sup>.

At the end of the twentieth century, the concept of the network society gained importance in information society theory. For *Manuel Castells*, network logic is, besides information, pervasiveness, flexibility, and convergence, a central feature of the information technology paradigm (2000a69ff). One of the key features of informational society is the networking logic of its basic structure, which explains the use of the concept of '*network society*' (*Castells 2000:21*). As a historical trend, dominant functions and processes in the Information Age are increasingly organized around networks (*social networks: Facebook, Twitter, YouTube*, financial networks: *Target 2 of the EU, SWIFT network, EBA network, RTGS of the NB of Serbia, RTGS + of the BundesBank, FedWire*, etc). Networks constitute the new social morphology of our societies (*more or less integrated within the society*), and the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power, and culture (*Castells 2000:500*). For *Castells* the network society is the result of informationalism, a new *technological paradigm*<sup>7</sup>.

There is currently no universally accepted concept of *what exactly can be termed information society and what shall rather not be termed so*. Most theoreticians agree that a transformation is seen to have started somewhere between the 1970s and today, and the way that societies work is changing fundamentally. *Information technology goes beyond the internet*, and there are discussions about how big the influence of specific media (*radio, TV, electronic media*) or specific modes of production really is.

Some people, such as Antonio Negri<sup>8</sup>, characterize the information society as one in which people do immaterial work. By this, they appear to refer to the *production of knowledge or cultural artifacts*. One problem with this model is that it ignores the material and essentially industrial basis of the society. However it

<sup>5</sup> Webster Frank: *Theories of the Information Society*. Cambridge 2002.

<sup>6</sup> Castells Manuel: *The Rise of the Network Society. The Information Age: Economy, Society and Culture*, Volume 1, Malden 2000<sup>2</sup>.

<sup>7</sup> The *Oxford English Dictionary* defines the basic meaning of the term *paradigm* as "a pattern or model, an exemplar". The historian of science Thomas Kuhn gave it its contemporary meaning when he adopted the word to refer to the set of practices that define a scientific discipline at any particular period of time. In his book *The Structure of Scientific Revolutions* Kuhn defines a scientific paradigm as: "universally recognized scientific achievements that, for a time, provide model problems and solutions for a community of researchers."

<sup>8</sup> Hardt Michael, Negri Antonio: *Multitude. War and Democracy in the Age of the Empire*, New York 2005.

does point to a problem for workers, namely how many creative people does this society need to function?

Jan Van Dijk defines the network society as a social formation with an infrastructure of *social and media networks enabling* its prime mode of organization at all levels (*individual, group/organizational and societal*). Increasingly, these networks link all units or parts of this formation (*individuals, groups and organizations*).<sup>9</sup> For Van Dijk networks have become the nervous system of a society. While Castells links the concept of the network society to capitalist transformation, Van Dijk sees it as the logical result of the increasing widening and thickening of networks in nature and society.

The world may never have been freer, but it has also never been so *interdependent* and *interconnected*. At the individual level the use of networks has come to dominate our lives (*typical interconnection between the network and the individuals is the internet network, this gives the fundamental relation man-computer vector and explains the nature of the network communications and the achievements due to the network products and services associated*).

Counting the time spent on broadcast networks, telephony and the Internet we can add between five and seven hours of leisure time a day on average in a developed society. Not to mention the hours spent with them at work and at school. Observing social networking by individuals we could add several hours spent in all kinds of meetings. Individualization and smaller households packed with technology to make us more independent from others have not made us less social human beings. Almost every organization in the developed world has become completely dependent on *networks of telephony and computers*. When they break down, the organization simply stops working, e.g. the network failure in line with the banking operations produces losses for Banks and Clients. Long before they became so dependent on these media networks organizations had already split in separate organizations, departments and teams that still worked together. With little exaggeration, we may call the 21st century the *age of networks*.

Networks are becoming the nervous system of our society, and we can expect this infrastructure to have more influence on our entire social and personal lives than the construction of roads for the transportation of goods and people did in the past. In this sense *information highway* is an appropriate term. The design of such basic infrastructures (*counting on the principles of the data exchanges, transactions volume over the network, business initiations made, administrative businesses done, in general the paperless communication involved and cost savings produced*) is crucial for the opportunities and risks to follow.

*Digital code* is a technical media characteristic only defining the form of new media operations (*digital code may be called upon to define the smallest unit of data, to present the programming code, to be connected with the compress data, to qualify the certain digital form used in musical exchanges, and etc.*). However,

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<sup>9</sup> Van Dijk Jan: *The Network Society*, London, 2006<sup>2</sup>, 20.

it has great substantial consequences for communication. Digital code means that in using computer technology, every item of information and communication can be transformed and transmitted in the form of *strings* of ones and zeros called bytes, with every single 1 being a bit. This artificial code replaces the natural codes of the analogue creation and transmission of items of information and communication (e.g. *by beams of light and vibrations of sound*). The first substantial effect of the transformation of all media contents in the same digital code is the uniformity and standardization of these contents. Form and substance cannot be separated as easily as many people think they can. Digital code is not a neutral form (see *Chapter 8<sup>10</sup>*). It starts with initially cutting into pieces a number of undivided analogue items of information and communication (*signs*) and then recombining them in the digitized forms of images, sounds, texts, and numerical data. These forms are produced by using not only the same basic code but also the same languages, such as *HTML* (*hypertext markup language*), a graphic code for pages of the World Wide Web (*www*), the data presented and read by the browser (*IE, Mozilla Firefox*) on web pages.

#### 4. Information society development in line with the electronic business models and security

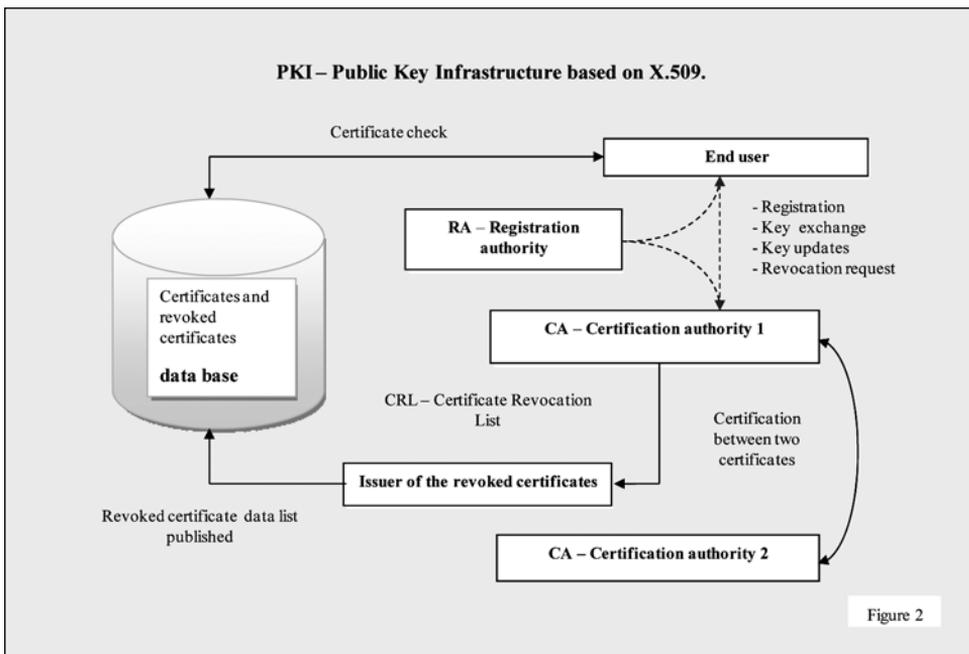
The Information society development and benefit is in general in line with the infrastructure industries and the electronic business models applied to optimize the ICT resources, communication traffic, and the messages exchange, and to stimulate the software applications development and implementations. The key element of the Information society is the basic relation based on the logic of *man* → *computer* and all the products and services that were generated for the members of the society in order to create the prosperous, productive and profitable life.

In recent decades, there have been considerable changes on the international transport market (*water, rail, air, road*). These changes refer to infrastructure, methods of documents recording, document control, authentication and authorization, documents flow management, on-line information of the documents authentication in the transport and traffic flow, i.e. Public Key Infrastructure (*PKI*)<sup>11</sup>, *figure 2*, spread in chains of different information flows for different processing, control and management processes.

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<sup>10</sup> *Ibid.*

<sup>11</sup> Jovanović M., Rankov S.: *Primena elektronskog poslovanja u upravljanju složenim sistemima*, Beograd 2012.



Production of goods is internationalized.

The market has grown from local, regional and national levels to an international level. A lot has been done to improve liberalization and regulation in the area of international trade and transport. Various conventions relating to the international transport market have been adopted. A new production technology and more complex relationships among modern transportation systems have imposed the adoption of new regulations in this area.

The transportation techniques and technology are improving, as well as the transport logistics in order to reduce the delivery time (*door-to-door, JIT-just in time*), the inventory management systems, distribution, communication with clients, demands management, traffic and transport planning, etc. The conventions regulate issuing of transport documents, the rights and obligations of the contract parties in a contract of carriage, either for the conventional way of issuing and transfer of the documents (where the paper documents travel with the goods), or for the electronic data exchange (*where the transmission of documents is through the electronic means and the documents arrive at the destination before the goods*)<sup>12</sup>.

Analogue, and later, digital technique and technology is very quickly accepted and applied in the field of traffic and transport because of its suitability for

<sup>12</sup> Milanović Z.: "Elektronsko poslovanje u planiranju saobraćaja zasnovano na modularnoj primeni mikrosimulacionih modela", *doktorska disertacija*, Fakultet za poslovne studije, Megatrend univerzitet, Beograd 2012.

the business improvement. At the beginning, each transport mode (*water, rail, air, road*) has developed the ICT separately.

Firstly, the electronic data interchange was applied in water transport in large ports, with the aim of improvement of the transport documents management (*in the processes of receiving goods for transportation, loading, unloading, re-loading, storage, delivery of goods to recipients, statistics and transport planning*). The development of ICT has enabled networking and transmission of electronic documents (*Bolero project technology, where each created transport document has a public key, passes through the document certification and validation, avoiding the paper traffic, authentication, repudiation and verification*). The new activities appeared in order to solve problems in electronic data exchange for the international transport. Such infrastructure industries brings new models in implementation and influence the growth of the capacity of the Information society [*key elements (the aim is to simply consider that the information society is primary a structure having the different shapes, implementations and results) of the Information society are: infrastructures, products and services which constitute basics for different forms of society functionalities, capacity, relations, communications and management*].

## 5. Network structure of the political system

In the age of networks, the relationship between citizens and the body politic (*may be used as analogue of e-government infrastructure, i.e. models like: G2C, G2E, G2G, G2B*) competes with the *infinite number of connections (figure 3) that citizens make outside this body*<sup>13</sup>. Politics is far from being the prime organizer of the life of people and society; instead it appears as a second-rate activity, an artificial construction no longer able to solve practical problems in a changing world.

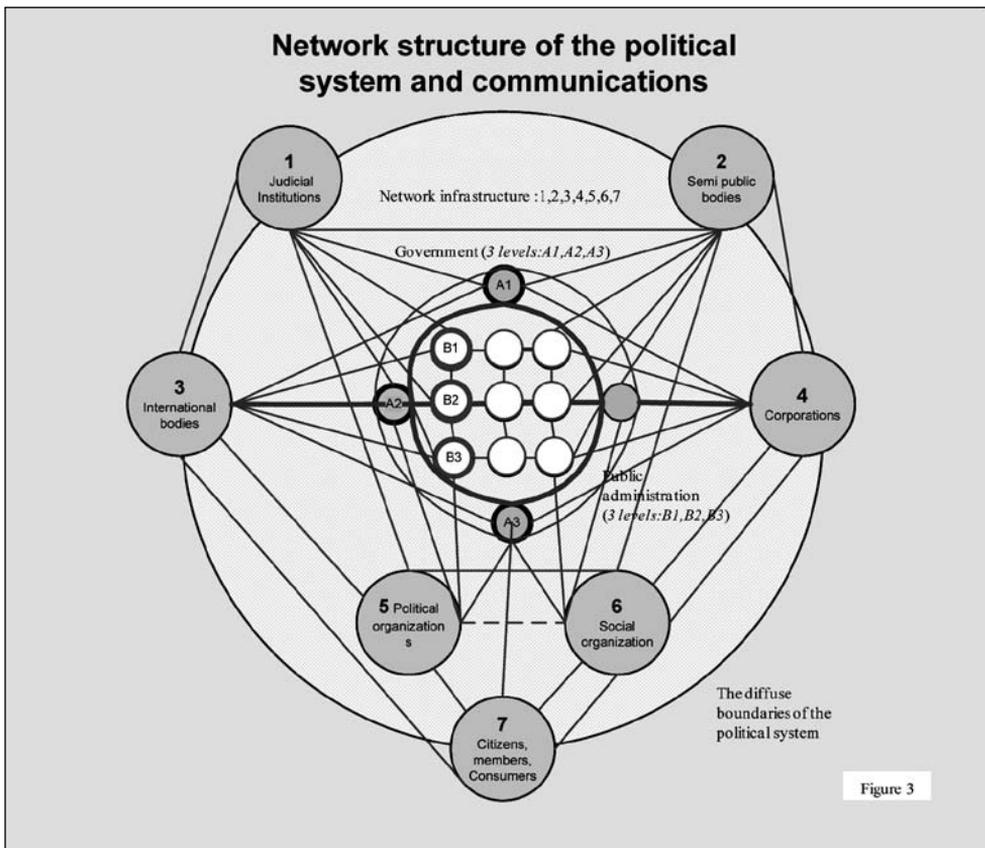
The relations between all actors (*involved in political activities in the widest sense can be subsumed in a comprehensive model of the political system, see Figure 3*). In the previous chapter, the manifestation of the infrastructure of the network society in the digital economy was described in terms of networks within and between companies, financial institutions, state administrations, financial market, Central bank and etc.

Goldsmith and Eggers (2004)<sup>14</sup> have demonstrated that government is increasingly shaped through networks. Figure 3 (*analogue of Jan Van Dijk, 2006:100, network infrastructure*) shows that even politics in general is organized in a network structure (*all relations have been generated within the body of the network and produce various political and social integrations*).

<sup>13</sup> Van Dijk Jan, 99.

<sup>14</sup> *Ibid*, 100.

All the relations between the different actors of the political system – governments, parliaments and public administrations on a national, regional and local level, political parties and organizations in civil society, international bodies, legal authorities, semi-public institutions, corporations and individual citizens – can be interpreted both as political relations (*of power*) and as relations of information and communication (*our political system is so diversified and divided that there is no necessary integration in approaching and governing the national politics which make it possible for it to be fully recognized and appreciated regionally and globally*). Media networks and their applications increasingly organize and shape these relations. *Figure 3* should be seen as a *model of the political system*<sup>15</sup>, able to show how some relations and actors achieve central importance while others drop out or become peripheral.



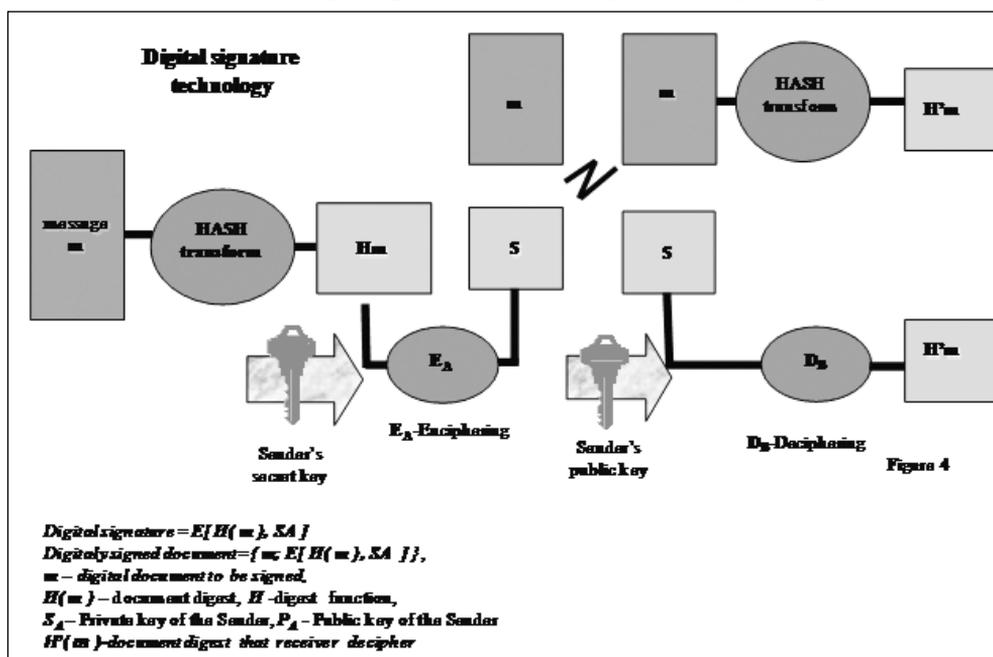
Both visions are one-sided, since networks consist not only of (*horizontal*) connections but also of (*vertical*) centres and nodes (*not only in the sense of network structure but the effective implementations*). Furthermore, *they do not*

<sup>15</sup> *Ibid*, 101.

float in the air. They connect actors of flesh and blood (*people*) and material resources (*in households and organizations*) and create the huge number of communications and messages exchange. In a network society, *networks do not replace society*, but they *increasingly connect and organize its constituents*. So, the state still belongs to the strongest (*assembly of*) actors in the society.

Therefore, politics and democracy, primarily operating at the level of society, are not doomed. As Slaughter (2004) has argued, *the state is not disappearing, but disaggregating into its component institutions linked by networks*.

However, the state, politics and democracy have to be supported or corrected by political and democratic forces outside institutional politics, among other things with the aid of ICT (*primarily the national strategy in Information society development has to be based on ICT, i.e. to support all main social, business, political, cultural and technological processes as being essential for implementations*).



## 6. Security and risk within the Information society

Question with regard to the security issues is connected with the sort of algorithms the participants apply in communications (*most of the security matters are software and hardware driven and are automatically proceeded, i.e. RSA asymmetric algorithm in enciphering and deciphering the digitally signed documents/messages over the financial or social networks, figure 4*) and protected mechanism that they use in data and messages exchange.

The basic element of the secure communications is a digital signature technology, *figure 4*, which is used within the network and dominantly provides the data protection and financial transactions exchange over the networks (*Target 2 RTGS of the EU countries, SWIFT network, national network of the payment system, and etc*). If the security and the assessment of the risk requires the digital signature (*and not only such a technology*) implementation because of the necessity to make the environment and the framework for the data and the information exchanges secure, making the *paperless communications* possible, as a key for effective production, better productivity and profitability, is what the Information society really needs (*not only in a declarative sense and meaning*).

Making a system secure (*if we consider the digital signature technology, and in the broadest sense the data and information communications secured by the cryptography, PKI infrastructure, network security, application security*) contributes to better data and information exchanges, and gives the chance to have the managed communications, deal with the *risk reduction* and profile the development of the Information society layers having the objective to optimize the entire social, political and technology based communications and collaborations.

## 7. Summary

The paper aims to present the models (*digital economy model (figure 1) which gives basic infrastructure for further implementations and the network structure model of the political system (figure 3) as being the copy effort in order to push the society to see the real situation and, on a step by step basis, to understand and solve the problems*) that have been offered to see and scan some of the efforts and achievements, but also something what has not been achieved in the Information society modeling and development.

For the Information society development there is *growing importance of teamwork in the so-called business, social and political network redesign and reengineering*: working autonomously and often shifting *multidisciplinary groups* across the old divisions and departments of organizations, institutions, government and political environment.

The mass data and information exchanges today, if we consider the digital and network economic environment in Serbia, have a basic element, *infrastructure*, to forward and continue the dedicated work on Information society development and to make some progress towards the EU integration. Would it be possible for our society to continue the already began actions? We would not exaggerate to say that it is possible, but to be able to achieve that, it must be managed, checked and based on ICT functionality aiming to reduce the possible risk and losses we may face on the path to Information society development.

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## INFRASTRUKTURA I KOMUNIKACIJA INFORMATIČKOG DRUŠTVA UNUTAR NACIONALNIH GRANICA

### S a ž e t a k

Informaciono društvo podrazumeva modernu strukturu društva i može se eventualno razmotriti i analizirati na praktičan i detaljan način. Cilj rada je da predstavi pristup autora, da pokaže i dokumentuje model strukture digitalne ekonomije (*tretiran kao složen sistem sa velikim brojem potencijalno interaktivnih komponenti*), kao i da pokaže deo funkcionalnosti koje mrežna struktura i komunikacije političkog sistema mogu imati u okviru nacionalnih granica.

Postoji određeni nivo integracije informaciono-komunikacione tehnologije u digitalno ekonomsko okruženje u Srbiji, ali danas to nije dovoljno da pokrije potrebne poslovne, političke i socijalne podatke i obradu informacija i komunikaciju. Ovaj rad pokušava da dokaže i dokumentuje sledeća pitanja: na koji način se društvo bavi *razvojem informacionog društva*, i da li je to osnovni okvir projektovan i pripremljen da pruži celokupan elektronski saobraćaj i razmenu na svim institucionalnim, političkim, poslovnim i društvenim nivoima.

**Ključne reči:** informatičko društvo, društvo zasnovano na znaju, umreženo društvo, informacione i komunikacione tehnologije, SWIFT tehnologija, ključna javna infrastruktura, digitalna ekonomija, internet, digitalni jaz, Fejsbuk, Tviter, Jutjub, RTGS



INTERNATIONAL RELATIONS

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MEĐUNARODNI ODNOSI

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## PORTUGAL AND LATIN AMERICA BEYOND HISTORICAL AND CULTURAL TIES

Today Latin America is in the Portuguese foreign policy priorities; at least, the region is target of the *economic diplomacy* of a country with prospects and interests that reach beyond the limitations imposed by a financial and economic crisis with serious social repercussions. However, given the high potential of a relationship that actually has advantages (inter-comprehension linguistic, historical and cultural proximity and some commons juridical traditions) the political and economic investments of Portugal in the region are still timid and insufficient. This paper analyzes some aspects beyond historical and cultural ties in order to understand the main causes, conditionings and limitations of the current relationship between the parts.

**Keywords:** cooperation, Iberoamerica, community, strategic partnerships, economic diplomacy, crises

### 1. Introduction

In an environment marked by a profound financial and economic crisis with very serious social repercussions, Portugal - in a weakened Europe - tries to respond to the different challenges currently facing in a globalized world. For now, and given the need to comply with the obligations imposed by *troika* by its “rescue”, we realized that the strategy of the Portuguese government, under economic-commercial is to increase exports to the “emerging” markets, including Brazil, but also to other fast growing economies.

The relationship between Portugal and Latin American countries today, even if we consider the “old ties of brotherhood” between giant Brazil and Portugal, or look to the Portuguese diaspora, spread a little throughout the region, or we take into account the numbers that represent the market of *saudade*, seems very little expressive. What are the main causes, conditions and limitations of the current relationship between Portugal and Latin American countries?

Latin America has been highlighted in recent political speeches, as foreign policy priority after the *lusofonia* which also includes a Latin American country, Brazil. Can we speak of the basis of building a true partnership between Por-

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tugal and the different states of the region today? In addition to the historical and cultural ties, what are the interests that move both parties? Is the current situation of crisis a good opportunity to deepen existing relationship? What are the themes of common interest? What are the common projects? What are the means available to the parties involved?

Meanwhile, the value of geopolitics seems to renew itself today when we observe reemerging continental states such as India and China, and other emerging like Brazil. As Alfredo Valladão would utter, “Geography meets History”<sup>1</sup>. It is in this context that in Portugal is open to debate on the model of international insertion to follow and its role in the world. The meaning of “pier” Agostinho da Silva<sup>2</sup> spoke of is an element which integrated in the discussion of these issues.

The actual challenge for Portugal will therefore be to keep open the options that arise in two circumstances which are peculiar - and are also geopolitical - one European and the other Atlantic. Regarding the second option, Portuguese professor Polibio Valente de Almeida, in his book entitled “Do Poder do Pequeno Estado” (1990) already spoke about the need of *small states* to maintain and develop stronger historical, linguistic and cultural affinity with most states, as evidence of an advisable strategy.<sup>3</sup>

## 2. Portugal and Latin America: a relationship adrift in the Atlantic?

The potential of the *nova terra de Vera Cruz*, its people, its climate, the abundance and variety of fruit, the beauty of the vegetation, were witnessed by Pero Vaz de Caminha through the “Letter” addressed to the Portuguese king D. Manuel, when of the discovery of Brazil.<sup>4</sup> But the interests of the first Portuguese on the continent were not confined to the Brazilian lands.

The Portuguese historians have always claimed that, long before the *colombina* arrival to Antilles, multiple voyagers already under the orders of the *Lusitana* court, had come to American shores, and that Christopher Columbus himself would have been aware of some of these trips. The belief that there was land to the west and the nautical knowledge led the Portuguese to achieve a feat geostrategic before the Castilians: the deviation of the meridian of Tordesillas to

<sup>1</sup> Paper presented during the International Conference “O Brasil, Portugal e a União Europeia”, held at the Cultural Centre of Cascais, Cascais, on June 24, 2010.

<sup>2</sup> Cited by Jorge Rodrigues *et al.*, 2009, 458.

<sup>3</sup> Almeida Polibio Valente: *Do Poder do Pequeno Estado*, Lisboa 1999, 352.

<sup>4</sup> Azevedo Ana Maria, Caetano N. Águas Maria Paula (Estudo crítico e notas): *Carta de Pêro Vaz de Caminha a El-Rei D. Manuel sobre o Achamento do Brasil*, Lisboa 2000, 14.

370 leagues west of Cape Verde, earned them first, a huge mass of land on the American continent, Brazil.<sup>5</sup>

Later, when both Castilian and Portuguese crowns were united in 1580 and until 1640, there was an advancement of the line of Tordesillas because it allowed the displacement of subjects beyond the borders of their respective colonies. Brazilian Ambassador Mario Vilalba reminds us that,

“(…) in fact the pioneers came and conquered the empty space left by the Spaniards who were only interested in the Potosí silver, then this space that Brazil won, the inhospitable Amazon, the Pantanal inhospitable at the time, was the space that the Spaniards did not want to know about”<sup>6</sup>.

Effectively, the Portuguese explored and settled in other areas further north and also west of the American continent, outside Brazil. The Portuguese elite linked to the royal household and to international trade came to dream of the idea - advocated by Cardinal Antoine Perrenot de Granvelle - to transfer the government to Lisbon and to use Lisbon's Atlantic seaboard as a basis for monitoring ocean and spearhead the fight the British.<sup>7</sup> Overall, the period from 1580 to 1605 was prosperous for the Portuguese mercantile bourgeoisie and financial networks of new Christians. In Spain those years are known as the “famous well-of years” with the flood of American silver. The Portuguese crown also did very well, and almost 1/3 and Portugal remained solvent”<sup>8</sup>.

In fact, Portugal benefited from the *cycle of American silver*. Portuguese historian Pedro Cardim denotes that it is not so surprising to find records of Portuguese who traveled and settled throughout the region, before the independence of those territories. We uncovered for example dozens of records of baptisms of *Luso-descendentes* established during the 17th century, in Mexico City, and a significant amount of Portuguese who lived in the city of Buenos Aires, in the second half of that century.<sup>9</sup>

The architectural wonder that is the first fortified city of Uruguay, Colony of Sacramento; and the stories, myths and representations around the Portuguesa state in Venezuela, are two testimonies - but not the only - regarding passing, setting and influence of the Portuguese in the region before independence, beyond Brazil.

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<sup>5</sup> Rodrigues Jorge Nascimento, Tessaleno Devezas: *Portugal. O Pioneiro da Globalização. A Herança das Descobertas*, VN Famalicão 2009, 126.

<sup>6</sup> Paper presented during the International Conference “A União Europeia e a América Latina”, held at the UAL, Lisbon, on October 11, 2011.

<sup>7</sup> Rodrigues Jorge Nascimento, Tessaleno Devezas, 358.

<sup>8</sup> *Ibid*, 359.

<sup>9</sup> Paper presented during the Historical-Diplomatic Seminar “1811-2011: Revisitar a História e Perspetivar o Futuro. As Independências Latino-Americanas”, held at the MUDE, Lisbon, on October 7, 2011.

After independence, the New Latin American states, including Brazil, defined closer relationship strategies, first to the British, the great maritime and commercial power in the world, and from the end of 19th century, to the United States of America (US). Any European pretensions of land conquest were removed from the *Inter-American System* that meanwhile was created.

Starting from 1932, and for over forty years, Portugal lives in an authoritarian regime, called *Estado Novo*, led by António de Oliveira Salazar and continued by Marcelo Caetano, which isolated the country politically and economically, despite this fact, Portugal managed to keep its colonies in Africa. The foreign policy of the government of Salazar made use of the theory of “Atlantic feature” to justify the management of the transatlantic relationship, where the Air Base of Lajes in the Azores islands, was an important and active asset.<sup>10</sup>

Thus, during a long period of time, Portugal’s relationship with the Americas was limited and pretty much exclusively, to the north with the US, and to the south with Brazil. Portugal’s participation in the Alliance (OTAN), set by the North Atlantic Treaty was worth to the Salazar regime, the “protection” and American sympathies necessary to prevent their isolation. As for Brazil, Alfredo Valladão states that,

“As for Brazil, its ties with Portugal had more to do with the ‘rhetoric of *saudade*’ than with significant economic or political exchanges. In both cases, the strong Portuguese emigration in Brazil served as informal channel of communication for a relationship, after all weak. In fact, the American hemisphere, and more their Hispanic part was not part of the priorities of the Portuguese foreign policy”<sup>11</sup>.

On the Brazilian side, its “political realism”<sup>12</sup> during the time of define the strategy of the relationship, and cultural and historical factors - that transcended the proper context of the Cold War - explain why the “loyalty” to the *Lusitana* nation, during the ten years that the Portuguese dictatorial government was refused admission to the United Nations (UN). This relationship was strengthened with the Treaty of Amity and Consultation, enacted in Brazil in 1955, referring to the existence of a genuine *Comunidade Luso-Brasileira*.<sup>13</sup>

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<sup>10</sup> Rodrigues Jorge Nascimento, Tessaleno Devezas, 493.

<sup>11</sup> Valladão Alfredo GA: “Portugal e as Américas” in: *Publicação Estratégia* N° 12-13, Lisboa 1999.

<sup>12</sup> Gonçalves Williams da Silva: *O Realismo da Fraternidade Brasil – Portugal*, Lisboa 2003, 248.

<sup>13</sup> The ties between Brazil and Portugal conditioned the politics of Brazil in relation to the issue of decolonization. It was evident in 1960, when this country held a position contrary to the independence of Algeria.

The “carnation revolution” of April 1974, the new democratic regime and later the adherence of the *Luso* country to European Communities led Portuguese government to reconsider its position in relation to Latin America.

In fact, the European involvement in the peace process in Central America in the 1980s, the institutionalization of summits European Union (EU) - Rio Group; the Ibero-American Summits (including Portugal, Spain and Andorra, on the European side); joint meetings in the framework of the General Assembly of the UN; and the development of privileged relations, economic and political, between the EU and the Common Market of the South (MERCOSUR); created an intense network of exchanges and common interests between Europe and Latin America.

Portugal, taking into account its condition of an Iberian country, its historical connection with the largest regional power in South America, Brazil, and the weight of the second largest Portuguese community in Latin America, in Venezuela, should not obviously be out of this process.

In turn, in Latin America, the return to democracy in different countries, especially south of the region, enabled important advances in political coordination and regional cooperation and boosted the region to diversify its relations with Europe, Asia and Africa.

Initially, as mentioned before, it was the historical and cultural ties with Brazil and Venezuela, the determinants of clear Portuguese preferences, especially in the political and economic plans. Later, the interests diversify, a bit throughout the region, to Argentina, Uruguay, Paraguay, México, Peru and Colombia.

### 3. Portugal and Brazil today: fraternal relationship or partnership?

Singular but inconclusive thus defines the partnership Portugal - Brazil, Amado Luiz Cervo, because conditioned by a multitude of factors: historical legacy, common language, crossing demographic, cultural similarities and differences, historical formation national image of the other, as well as external strategic choices of both countries.<sup>14</sup>

Undoubtedly, Brazil’s roots were launched during the three centuries of Portuguese colonization, traits that endure through culture, economic and social organization and as well as creation of institutions. The Portuguese were the largest migratory community bound for Brazilian lands to date, conditioning also by the ethnic composition of its population.

Following the Independence of Brazil, Portugal and the 1th Republic maintained fraternal relations. Brazilian diplomat Paulo Feres reports: “Camões’ lyrics and the prayers of Father Vieira were the basis of sharing the same language,

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<sup>14</sup> Rodrigues Jorge Nascimento, Tessaleno Devezas, *ibid.*

in the form of government and the Catholic faith”<sup>15</sup>. But the economic link was conditioned by the nature of a relationship “metropolis - colony”, based on purely extractive activities in nature, and therefore unsustainable<sup>16</sup>. Independent Brazil turns to its neighbors, especially favoring its northern neighbor, the US.

Upon entry of the democratic Portugal in the European Community, in 1986, the priorities of its foreign policy are also reset. The Portuguese governments seem more sensitive towards Latin American issues in general, but it was only in the mid-1990s, that some significant changes took place, particularly in relation to Brazil. Indeed, between 1996 and 2002, Portugal invests € 14 billion in Brazil, carried by 350 companies, accounting for 100.000 jobs and the new image of modern Portugal.<sup>17</sup> Paulo Feres states that, in 1998, before the onslaught of Portuguese investment, particularly in the Telecommunications sector, the former Brazilian President, Fernando Henrique Cardozo even spoke of a new Treaty of Tordesillas<sup>18</sup>.

Later, starting in 2002, we observed a decline of Portuguese investments in Brazil, which is stressed the following year when Spain is elected as a priority destination. Regarding Brazil’s investment in Portugal, we observed a positive trend over the past five years, which translates into an average annual growth rate of 59%.<sup>19</sup>

Trading between Portugal and Brazil has increased significantly since 1998 too, and then slow down somewhat starting in 2005. Brazil currently receives approximately 40% of the products that Portugal exports to Latin America. About Portuguese imports to the region, approximately 50% come from Brazil. However, despite the increase of Portuguese exports to Brazil, they still represent less than 2% of total Portuguese exports, and the great majority of Portuguese exports remains marked mainly by oil, cod and wine.<sup>20</sup>

Moreover, today several institutions and legal instruments reflect the unmistakable specificity of relations between Portugal and Brazil. We find, among others, the Convention on Equal Rights and Duties between Brazilian and Portuguese, dated in 1971, the Agreement on Scientific and Technological Coopera-

<sup>15</sup> Paper presented during the 3th Session of Working Group about the Relations between Portugal and Brazil, dedicated to the subject “As Relações Bilaterais entre Portugal e Brasil – a dimensão económica”, held at the IDN, Lisbon, on September 15, 2011.

<sup>16</sup> *Pau-Brasil* and sugar, diamonds, tobacco; the Portuguese Crown extracted all these commodities from the Brazilian colony aimed exclusively international trade.

<sup>17</sup> Pedro Pinto, cited by Cervo Amado Luiz: *A Parceria Inconclusa*, Brasil 2012<sup>3</sup>, 100.

<sup>18</sup> Paper presented during the 3th Session of Working Group about the Relations between Portugal and Brazil, dedicated to the subject “As Relações Bilaterais entre Portugal e Brasil – a dimensão económica”, held at the IDN, Lisbon, on September 15, 2011.

<sup>19</sup> In Portugal, there are more than one hundred Brazilian companies today (Odebrech, Banco Itaú, Banco do Brazil, O Boticario, Marcopolo, etc.). We highlight Embraer, which has two factories in the Alentejo region. This company has already created some 3.500 jobs.

<sup>20</sup> Data provided by INE.

tion in 1986, and the Luso-Brazilian Summit, which takes place annually and is considered the most important forum aimed at improving the relationship between these two countries.

In April 2000, during the commemorations of the 500th anniversary of the “discovery of Brazil”, a Treaty of Friendship, Cooperation and Consultation was signed. This singular document allowed to review, update and revoke nine previous agreements, including the Agreement on Abolition of Visas for Diplomatic and Special Passports dated in 1951, the Agreement on Common Passports Visas in 1960, the Agreement for the abolition of payment of residence by nationals of each country residents the territory of another, from 1979, the Cooperation Framework Agreement of 1991 and the Agreement on Visa Exemption, from 1996.

In the political sphere high-level politicians visit each country on a regular basis. Finally, Isabel Leite observes, a joint initiative that allowed launching of the “Year of Portugal in Brazil and of Brazil in Portugal” (September 7, 2012 – June 10, 2013), has contributed to a new dynamic in the relationship between the two countries through cultural programs, investments and business partnerships which identifies business opportunities previously unknown.<sup>21</sup>

#### 4. Portugal and Venezuela: the weight of the second largest Portuguese community in Latin America

In Venezuela there is approximately half a million of Portuguese. With the exception of Brazil, this is the largest Portuguese community in Latin America.<sup>22</sup>

The Portuguese are in Venezuela since the time of its discovery. But it is with the immigration policies of Presidents, Generals Eleazar López Contreras (1936 - 1941), and Marcos Perez Jimenes (1952 - 1958), that a real *boom* of immigrants is recorded. Both policies favored the entry of workers especially from Europe, in order to meet the demand in the Agricultural and Construction labor, skilled labor and experience in these areas. According to official data of the National Statistics Institute, between 1940 and 1969, about 21.731 Portuguese people lived in Venezuela.<sup>23</sup>

In general, we can say that bilateral relations between Portugal and Venezuela have been cordial and friendly, overall good. This is reflected mainly from 1990 on, in numerous official visits of the Ministers of Foreign Affairs of the Republic and the Presidents of both countries as well as the diversity of legal documents that aim to regulate these countries' ties.

<sup>21</sup> Leite Isabel Costa: “A crise ibérica e o recurso à América Latina” in *Revista Pacta*, Lisboa 2012, 13.

<sup>22</sup> Gomes Nancy: “Os portugueses na Venezuela” in *Relações Internacionais* n° 24, Lisboa 2009, 83.

<sup>23</sup> *Ibid*, 84.

From the commercial point of view and according to data provided by the Agency for Investment and Foreign Trade of Portugal (AICEP), the trade balance between the two countries has revealed a very irregular behavior. The value of Portuguese exports to Venezuela, which on 2007 could be regarded as of almost no relevance, show from that year on a favorable and positive rise, continuing to this very present moment. Between 2007 and 2008 Portuguese exports increased by 213%; in 2009 these registered a growth rate of 142% over the previous year. In 2011, exports stabilized at approximately € 152.8 million, while in 2007 that number did not exceed € 16.3 million.

Regarding the Portuguese imports originating from Venezuela, we witnessed a large variability in its flow, which is related to the fluctuations in the acquisition of petroleum, the main imported product. The value of imports increased from approximately € 10.9 million, in 2005 to approximately € 211.3 million in 2006. In the two following years, values ranged between € 12.1 million (2007) and € 140.5 million (2008). In 2011, Portuguese imports from Venezuela were around € 14.1 million. As for bilateral investment flows Portugal-Venezuela, we can observe for now, low *rankings* and market shares significantly reduced.<sup>24</sup>

Still discussing the economic and commercial ties between Portugal and Venezuela, in May 2008, an Energetic and Economic Complementary Marco Agreement was signed between the Bolivarian Republic of Venezuela and the Republic of Portugal. In 2012, the Portuguese current government led by Pedro Passos Coelho took over resuming and deepening the relationship that the previous government began with the signing of fourteen new cooperation agreements<sup>25</sup>. These agreements are essentially aimed at the areas of Construction, Science and Technology, Communication Technology applied to Education<sup>26</sup>, Energy and Pharmaceuticals.

In the cultural area, we found between the two countries some existing legal instruments between the two countries such as the Basic Agreement on Technical Cooperation between the Government of the Republic of Venezuela and the Government of the Portuguese Republic (1976), the Basic Arrangement on Cultural Interchange between the Government of the Republic of Venezuela and Government of Portugal (1978), and the Framework Agreement on Cooperation

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<sup>24</sup> AICEP, 2011.

<sup>25</sup> There are currently a total of 52 agreements, between Portugal and Venezuela.

<sup>26</sup> This is an ongoing project which is involved in the YOUTSU Portuguese consortium (formed by JP Sá Couto and Prológica) consisting of 5 lines at the opening assembly of the pieces and parts of the computers provided by the Portuguese consortium that provides technical assistance to this operation. According to statements by the Deputy Minister of Telecommunications, Information Technology and Postal Services, Manuel Fernandez, the new plant will have capacity to produce 1.8 million “Canaimitas” per year (designation given to “Magallanes” in Venezuela). AICEP, information available in <http://www.portugalglobal.pt/PT/PortugalNews/Paginas/NewDetail.aspx?newId={023EFC7A-C3B7-4D8C-A51A-4197D1232A94}>

between the Republic of Venezuela and the Republic of Portugal, signed in Caracas on June 17, 1994. The last agreement provides a better cooperation in the areas of Language, Culture and Science and the creation of cultural institutions, in addition to strengthening the political and economic cooperation.

### 5. Portugal and Latin America today: building bridges

We can state that the relationship between Portugal and Latin America is undergoing a period of great dynamism. Accordingly, Portuguese diplomat Gonalo Teles notes that,

“Just in the politics area, we are currently negotiating some twenty-two agreements with different countries of Latin America. We are also negotiating many other agreements within the economic sector, including numerous protocols and memorandums (...) Mexico is one of our most important trading partners, almost to the level of Brazil; it is 4<sup>th</sup> largest outside the European Union. In Colombia, Peru, Chile, the presence of Portuguese companies have been growing at a significant rate (...)”<sup>27</sup>.

Gonalo Teles adds,

“Our relationship with Uruguay is very close too; we have a series of agreements that have been very rewarding in the Defense, Justice and Health areas. The relation with Paraguay has also been forthcoming. Few people know that Portugal in nowadays is one of the leading foreign investors in Paraguay, especially in the farming and bio-fuel sectors, and there is also a growing interest on the part of Portuguese companies (...)”<sup>28</sup>.

Indeed, in 2010 Portugal exported approximately € 1,250.9 million to Latin America, more than € 440 million in 2006 (€ 567.7 million). However, it should be pointed out that, according to the National Institute of Statistics (data for the year 2011), no Latin American country comes among the top ten markets for Portuguese exports. Imports fell in 2010 to approximately € 1,904.3 million, down € 240.5 million, for the year 2006 (€ 2,144.8 million). The main destinations for Portuguese exports are Brazil, Mexico, Venezuela, Argentina, Chile, and Cuba. As to the bulk of Portuguese imports, these originate from Brazil,

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<sup>27</sup> Paper presented by the ex-director of the Services of Americas (MNE) during the Historical-Diplomatic Seminar “1811-2011: Revisitar a Hist3ria e Perspectivar o Futuro. As Independ3ncias Latino-Americanas”, held at the MUDE, Lisbon, on October 7, 2011.

<sup>28</sup> *Ibidem*.

Mexico, Argentina, Colombia, Chile, Uruguay, Peru, Venezuela and Cuba. Portugal imported from these countries mainly agro-food products and fuels.

Regarding the Official Development Assistance (ODA), in 2011, according to data provided by the Ibero-American General Secretariat (SEGIB), Portugal delivered to Ibero-American countries a total of \$ 8.9 million, registering a slight increase of 2.3% compared to the previous year (\$ 8.7 million). It should be noted that these figures rely mainly on commitments to the different cooperation programs in the field of higher education that Portugal remained with Brazil (78% of funds) as well as Cuba, Argentina, Chile and Mexico, Uruguay, Venezuela, El Salvador, Colombia, Peru and Nicaragua (22%).

In fact, records from Portugal to Latin America must always be contextualized because the region represents a minor proportion (less than 3%) of its total cooperation, biased towards Africa, Asia and the countries of the Community of Portuguese Language (CPLP).<sup>29</sup> Despite the discrete value of the Development Aid, it is worth noting that this has been diversifying beyond Brazil, with regard to Ibero-American. This is due in part to the commitments that have resulted from the participation of Portugal in the different programs, initiatives and projects within the Ibero-American Community of Nations.

Culturally, there are several existing legal instruments between Portugal and some Latin American countries in addition to those already mentioned with Brazil and Venezuela. For example, we have the Cultural and Scientific Agreement with Mexico (1977), the Cultural Exchange Agreement with Peru (1977), the Cultural Agreement with Argentina (1981), the Cultural Agreement with Uruguay (1992), the Agreement on Cultural Cooperation with Cuba (1998), the Agreement on Cooperation in the Fields of Education, Science, Culture, Youth and Sport with Paraguay (1999) and the Agreement on Cultural and Educational Cooperation with Colombia (2007).

Yet within the culture area, the teaching of the Portuguese language has been, without doubt, one of the main demands of the Portuguese communities in countries like Venezuela, wherein the Portuguese language was included as an optional subject in the official curriculum, which until now included only English and French as foreign languages to study. In Uruguay, there is also the possibility that the Portuguese language could become officially mandatory from the 6th grade on. Accordingly, Gonzalo Teles reminds us that,

“(...) in Uruguay until the 19th century, the two languages (Spanish and Portuguese) were used, and from the end of the that century, Uruguay’s government initiated a policy favoring the Spanish language and limiting the use of

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<sup>29</sup> SEGIB, 2012.

Portuguese which was banned during the military dictatorship, but it was so difficult for the political power to control the culture (...)<sup>30</sup>.

In Portugal, the Institute for Cooperation and Language - Camões (under the Ministry of Foreign Affairs - MNE) is the institution that ensures the teaching of the Portuguese language as well as the Portuguese culture in countries like Argentina, Brazil, Chile, Uruguay and Venezuela. It is done through its network of lectureships, in cooperation with higher education institutions and international organizations, both through its network of pre-school, grammar, middle and high school education, in coordination with the ministries of education and their municipalities, as well as the Portuguese diaspora in those countries.

## **6. The European Union and Latin America: the role of Portugal in the process of bringing the two regions closer**

Regarding Europe, it was the military coup in Chile in 1973, and the tightening of authoritarian governments in Latin America, in the 1970s, which will justify a more active role in that region through the political initiatives undertaken by the worldwide organization such as Socialist International, entrusted with the mission to promote democracy among those countries.

In 1984, Portugal and Spain participated in the I Conference of San Jose, along with other countries of the European Communities, engaging effectively the “European Political Cooperation”. With the arrival of these two Iberian countries and their entry in the Community institutions in 1986, the process of rapprochement between Old Europe and the New World, gains new dynamism. Accordingly, the actual Director of the Secretary-General Cabinet of the Ibero-American General Secretariat, Fernando Garcia Casas asserts:

“About the relation between the EU and Latin America, until 1986, there was only the dialogue of San José with Central America and since then, most of the political and diplomatic initiatives which allowed the evolution of this relationship are due to Portugal or Spain, often a joint effort. If today we can speak of strategic and bi-regional partnerships it is in large part, due to Portugal and Spain”<sup>31</sup>.

Indeed, in 1992 during the Portuguese presidency on European Community, a Third-generation Agreement was signed (framework agreement) between the

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<sup>30</sup> Paper presented by the ex-director of the Services of Americas (MNE) during the Historical-Diplomatic Seminar “1811-2011: Revisitar a História e Perspectivar o Futuro. As Independências Latino-Americanas”, held at the MUDE, Lisbon, on October 7, 2011.

<sup>31</sup> Paper presented during the International Conference “A União Europeia e a América Latina”, held at the UAL, Lisbon, on October 11, 2011.

European Community and Brazil. In the same year, at the end of the VIII Conference of San Jose, which took place between 24 and 25 February in Lisbon, the two regions issued a political policy expressing the direct relationship between Democratization, Economic Development and Social Justice. In 1992 Portugal also promoted, at the summit of Guimarães, the initial meeting between the Foreign Ministers of the EU and MERCOSUR, laying the foundations for a stronger interregional cooperation.

Starting in 1997 - since the beginning of the “onslaught” of Portuguese investment in Brazil - Portugal has been engaged in strengthening the relationship between the EU and the American partner. In this regard, Amado Luiz Cervo stresses that,

“To convince other Europeans, (Portugal) resorted to arguments of mutual benefit and the important role of Brazil in both regional relations - especially in the conduct of the Latin American integration processes - and international relations, as an emerging power. In addition, the EU- Brazil relations stood out the condition of the Union as the second largest investor in Brazil and second trading partner”<sup>32</sup>.

Regarding Brazil, under the Portuguese EU presidency of 2007, the Community institutions established a “strategic partnership” agreement that recognizes the growing regional and global importance of this country. Thus, Cervo says: “thanks to the efforts of the Portuguese diplomacy, Brazil reaches out for the condition of being a strategic partner to the Union”<sup>33</sup>. The action plan adopted aims to make more effective the cooperation between the members of the partnership, covering sectors such as Defense and Security, Combating Poverty, Climate Change and New Energy Sources, especially biofuels.

### **7. Portugal and the Ibero-American community of nations: together with Spain but unlike Spain**

“The presence of Portugal and Brazil at the Guadalajara Summit represents in the cultural and political development, a factor of major significance: the acceptance that in Ibero-America there are two languages - Spanish and Portuguese - and a natural solidarity resulting from common roots, the proximity of cultures and identity of bonds intersected by history and geographic proximity. Portugal is also Ibero-America”

(Mário Soares: I Ibero-American Summit, Guadalajara, 1991)

<sup>32</sup> Cervo Amado (2012), 28.

<sup>33</sup> *Ibidem*.

Regarding the participation of Portugal in the Ibero-American Community, although the historical and cultural values are invoked at any time in the political speech, both, economic and strategic return was seen from the outset as being significantly reduced and the low expectations - which do not constitute, therefore, the true motives force of the conduct of Portuguese foreign policy in relation to this project.

Indeed, since 1975 Portugal's foreign policy has revolved around three main axes, its relationship with Europe, its relationship with its former colonies in Africa and Asia, and within Latin America, its primary link with Brazil. However Portugal was increasingly involved into the Ibero-American project through successive diplomatic contacts led by the Spanish.

Thus, we can say that formal political contacts started before the I Ibero-American Summit (1991), when the Portuguese Francisco Pinto Balsemão and Maria de Lourdes Pintassilgo attended the Ibero-American (Democratic) ex-presidents meeting held at the Monastery of Guadalupe, Extremadura, Spain. The signatories of the Declaration of Guadalupe pledged to strengthen an Ibero-American Community of Nations, boost Education, Science and Culture and to support and foster Peace processes in Latin America<sup>34</sup>. Since then, Portugal has not missed a single meeting and has always been represented at the highest level, to be considered in the words of Secretary General Enrique Iglesias, a *strategic partner*.<sup>35</sup>

Portugal is the third sponsor of the Ibero-American Community of Nations, and its contribution to the SEGIB is approximately € 636.000 / year.<sup>36</sup> This amount, although modest (about 9% of the total budget of the organization) is significant if we compare it with the amount for CPLP, says Augusto Manuel Correia.<sup>37</sup> Portugal also contributed for the first time in 2009 and 2010, with a donation in the amount of € 175.000 for the Voluntary Trust Fund. This contribution was to stimulate the participation of Portugal in the activities in this multilateral space.<sup>38</sup>

In a more limited scope of International Cooperation for Development, the Ibero-American space has served as a platform for the development of many projects of South - South Cooperation, in the ways of a Triangular Cooperation (which involves a traditional donor, a middle income country and a third

<sup>34</sup> Gomes Nancy: "Portugal e o Projecto da Comunidade Ibero-Americana de Nações", Actas do I Congresso OBSERVARE (UAL), Lisboa 2011, 5.

<sup>35</sup> Paper presented during the International Conference "Portugal e o Projecto da Comunidade Ibero-Americana de Nações", held at the UAL, Lisbon, on October 14, 2009.

<sup>36</sup> Information provided by the IPAD (now Institute for Cooperation and Language - Camoes) via email on November 4, 2009, duly filed.

<sup>37</sup> Augusto Manuel Correia (ex-Director) in an interview conducted by the author at the headquarters of the IPAD (now Institute for Cooperation and Language - Camoes), Lisbon, on September 28, 2011, recorded electronically.

<sup>38</sup> Information provided by the IPAD (now Institute for Cooperation and Language - Camoes) via email on July 24, 2012, duly filed.

country of a relative lower development)<sup>39</sup>, a Sub-regional Economic Cooperation (between sub-regions of Latin America and the Caribbean, managed and executed in block) and last the Bilateral South - South Cooperation (it has been the most widely used way of cooperation applied between the countries of the region and it has developed predominantly through the inter-exchange of experiences and knowledge).

The Ibero-American space of cooperation has made easy and effective the mutual knowledge and knowledge and adoption of good practices in sectors such as Justice, of Support to the Courts, Work and Social Security, etc. An effective contribution to this work has been the web of relations that are established through the annual and biennial Ministerial meetings. In the words of Augusto Manuel Correia, "IPAD (known today as Institute of Cooperation and Language - Camões) has a knowledge of Latin America which did not have 20 years ago"<sup>40</sup>.

There are several different Portuguese entities committed to the different Programs, Initiatives and Ibero-American Projects, such as the Ministry of Culture, the Portuguese Cinema and Audiovisual Institute, the Institute of Museums, the Portuguese Association of Publishers and Booksellers, the General Direction of Books and of the Libraries, the General Direction of Archives, the General Direction of the Historical Diplomatic Archive, the Ministry of Education, the Department of Labor and of the Social Solidarity, the Ministry Science and Technology and Superior Teaching, the Foundation of the Science and Technology, the Portuguese Institute of Quality, the Town Hall of Coimbra's City.

At the time, Portugal participates in the following Ibero-American Programs: (Cultural) IBERMEDIA, IBERMUSEOS, RILVI, PICBIP, ADAI, RADI; (Social) IBERGOP, TEIB, INFANCIA, PABLO NERUDA; (Economics) CYTED. Portugal also participates in economic Initiative CIBIT, and in the economic Projects IBERQUALITAS and CIDEU.

From the diplomatic point of view, Portuguese efforts are compensated to the extent that several countries, like Brazil, Argentina and Mexico are active members of the key international forums like the G20, so multilateral summits such as the Ibero-American results thus in real "international resonance tools" cheap in terms of cost - effectiveness. We can imagine that when operating with countries of the Ibero-American Community, Portugal may thereafter enlarge its space of action by obtaining both types of results, directly or indirectly. The Latin American votes, recently obtained in favor of Portugal to be elected as non-permanent member of the Security Council constitutes a positive proof of these results.

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<sup>39</sup> Thanks to its vast knowledge about Africa, Portugal began to be called by countries like Brazil, in order to triangular the cooperation with countries of that continent.

<sup>40</sup> Augusto Manuel Correia (ex-Director) in an interview conducted by the author at the headquarters of the IPAD (now Institute for Cooperation and Language - Camoes), Lisbon, on September 28, 2011, recorded electronically.

## 8. Conclusions

The Portuguese presence in the Americas dates back since the 15th century to the beginnings of “the meeting between the two worlds”. Later the Iberian Union between 1580 and 1640 facilitated the relocation and establishment of Portuguese subjects beyond the borders of Portuguese colony, Brazil. However, the Portuguese presence in the American continent and the linkages established revealed themselves, insufficient to structure a deep and continuous relationship between Portugal and those countries, at least politically and economically.

In the 19th century - along with the new Latino American states - first emerge England and then the US, as extra regional hegemonic powers. The US would keep away from its “backyard” any interests of rapprochement on the part of Europe until mid-60s.

It is not until the military coup in Chile in 1973, and hardening of authoritarian governments in Latin America in the 1970s, that Europe will defend a more active role in the American continent through the “promotion of democracy” carried out by the worldwide organizations such as Socialist International. Later, Europe reinforces its presence in the region through mainly the cooperation agreements and investments.

From the I Conference of San José to the definition of “strategic partnerships” today, Portugal and Spain undoubtedly take part in bringing the two regions closer.

Portuguese interests and Portuguese foreign policy priorities were redefined influenced by the European Union policies. In fact, we can observe a major sensitivity from the different Portuguese governments in relation to Latin American issues. However, it would not be until after 1997, with increasing Portuguese investments, especially in Brazil, that would be introduced some significant changes.

Overcoming the historical rivalry between Portugal and Spain, and as part of the same community of nations, Portugal has been increasingly involved in the Ibero-American project. Another diplomatic window was opened and created the basis for a better understanding because of the “Portuguese Cooperation” and the potential for a relationship with those countries. The knowledge and adoption of the best practices in areas such as Justice, Courts Support, Labor and Social Security, were very promising in this regard.

Trade between Portugal and countries like Brazil, Venezuela and Mexico have increased significantly in recent years with mutual benefits. Still much remains to be done. Given the high potential of a relationship that actually has advantages (inter-comprehension linguistic, historical and cultural proximity and some commons juridical traditions) the political and economic investments are still timid and insufficient. The social impact of an incipient economic link will therefore be reduced.

Today Latin America is in the Portuguese foreign policy priorities, at least, the region is target of the *economic diplomacy* of a country with prospects and interests that reach beyond the limitations imposed by a financial and economic crisis with serious social repercussions. It remains to be clearly defined a strategy that in the medium and long term would strengthen the existing ties with those countries.

It would be relevant to know if Latin America considers Portugal as a valid interlocutor in a scenario of global challenges and opportunities, beyond the interests of individual states. Themes such as the Education, Commerce, Air traffic, the South Atlantic, Piracy, Drug Trafficking, Energy, Naval Cooperation, Cooperation with Africa, or the Peace Missions and Human Rights, will be certainly common issues in a future agenda between the two margins, further south, in the Atlantic.

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## **PORTUGALIJA I LATINSKA AMERIKA IZVAN GRANICA ISTORIJSKIH I KULTURNIH VEZA**

### **S a ž e t a k**

Latinska Amerika danas spada u prioritete inostrane politike Portugalije; u najmanju ruku taj region je cilj ekonomske diplomatije ove zemlje sa izgledima i interesovanjima koji sežu izvan ograničenja koja je nametnula finansijska i ekonomska kriza sa ozbiljnim društvenim posledicama. Međutim, imajući u vidu veliki potencijal odnosa koji u suštini nosi prednosti (razumevanje jezičke, istorijske i kulturne bliskosti i neke zajedničke pravne tradicije), političke i ekonomske investicije Portugalije u ovaj region još uvek su stidljive i nedovoljne. Ovaj rad analizira neke aspekte izvan istorijskih i kulturnih veza u cilju razumevanja glavnih uzroka, uslova i ograničenja trenutnih odnosa između ove dve strane.

**Ključne reči:** saradnja, zajednica, strateška partnerstva, ekonomska diplomatija, krize, Iberoamerika

## CUBAN DIPLOMACY\*\*

*In memory of the Ambassador Martin Mora Dias*

The author gives us the historical genesis of the origin and development of Cuban diplomacy. He begins reflecting about various definitions of the concept of diplomacy underlining that anyhow the essence of diplomacy is to be one of the main instruments used by an independent state for the defence and promotion of their national interests. On the other hand, the author emphasizes that after the Revolution Dr. Raul Roa Garcia established modern Cuban diplomacy having in mind that he gave idea and instructions to establish Foreign Ministry with all corresponding sub-secretariats. Further on, the effects of the Cuban revolution in foreign policy and diplomacy are analyzed, indicating its specificities, high professionalism, pragmatism and effectiveness. The result of this successful evolution is the fact that the Republic of Cuba today has relations with 190 countries, of which 184 are UN member states. In this system operates 119 embassies, 1 Interest section, 21 Consulates General, 3 Offices embassies and 3 Representations to international organizations.

**Keywords:** diplomacy, Cuban diplomats, functionality, professionalism, and national interests

There may be no other profession in the world the content of which is interpreted in so distorted fashion as in the case of diplomacy. This may be due to the fact that people outside this job – which is almost the entire population – perceive only its external attributes and sometimes they may seem sumptuous and superfluous. But surely when the word is mentioned the one who mentions it is rarely aware of the high level of personal dedication required by this practice and of the real importance of this profession for the preservation of life on this planet of ours.

In Spanish language, for instance, if we look up the word “diplomacy” in the “Diccionario de Uso del Español Actual” we will find the following definitions: 1. - A science that studies interests and international relations of countries; 2. - a group of people and organization of services of each country in its international

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\*\* Based on the two lectures given to the students of international relations of the University of Megatrend in Belgrade on February 8, 2005 and of the Faculty of Law of the University of Kragujevac on April 4, of the same year.

relations; 3. - apparent or disinterested courtesy, and; 4. - ability or dissimulation when doing or saying something<sup>1</sup>. Larousse's "El Gran Diccionario usual de la lengua Española" from 1999 eliminates the previous definition from point 3 concerning the apparent or disinterested courtesy, and so does the "Diccionario de la Lengua Española Espaca" from 2002. With these definitions from such serious and prestigious institutions, we should not be surprised to see so many strange things in the world disguised in diplomacy. The most recent history has given us many opportunities to observe in practice this "ability or dissimulation when doing or saying something" and to count thousands of lives nations had to pay because of it. We, the Cubans, remember well how at the moment of aggression in the Bay of Pigs in April 1961 the representative of the attacking power presented Cuban successes before the United Nations Security Council as products of an internal rebellion.

There are many other definitions of diplomacy that contain true nonsense. Ostentatiousness of numerous expressions results in people not knowing what they are talking about and leads them to think about diplomacy as a dilettante and charlatan activity. I remember a Bulgarian colleague who I ran into in one of the capitals of East Europe, who told me that there was a saying in his country: "Legatsia - Legatsia", which in translation would mean that a Mission equals leisure. It's true that every now and then there appear colleagues who take this seriously, but fortunately they are not more than exceptions confirming the rule.

Incorrectness in defining the concept of "diplomacy" is not limited only to the above mentioned. Very often it is confused with foreign policy. This is, for instance, my respectful observation of an interesting work of Dr. Mijailo Vojvodic, whom I haven't had an honor to meet – although I would like to – because he is one of the few who has followed the trail of Serbian conduct during what he calls "the Hispano-American war of 1898", which in truth was a Hispano-Cuban-North American conflict.

Dr. Vojvodic's paper titled "Routes of Serbian Diplomacy. Essays about Serbian foreign policy of the 19<sup>th</sup> and 20<sup>th</sup> centuries"<sup>2</sup>, mixes up the two concepts already in the title, although it is clear in every moment throughout the text that this is about the Serbian state foreign policy at this stage of the history.

My concept of diplomacy is close to the one of the former Argentinian ambassador Luis Santiago Sanz, professor emeritus of the Foreign Affairs Institute of his country, who supports a view that "diplomacy is not politics, but its constituent material is essentially political"<sup>3</sup>. I usually compare a diplomat with a nurse, who works in medical field but is not a doctor, although there are situa-

<sup>1</sup> *Diccionario de uso del Español Actual*, 4ta edición, Ediciones SM, 2000.

<sup>2</sup> Vojvodič Mihailo: *Putevi Srpske Diplomacije*, Clio, Beograd, 1999.

<sup>3</sup> Sanz Luis Santiago: "La diplomacia en las crisis", American Diplomacy; [www.american-diplomacy.org](http://www.american-diplomacy.org). 18 April 2003.

tions in which a patient's health could depend more on him than on a physician who prescribed the treatment.

Diplomacy is, above all, one of the instruments independent states have to defend and promote their interests in the community of nations. Definition of these interests is the task of the politics. So, there are rare cases of good diplomats who represent erroneous politics and having said that I am not giving moral expressions, but I rather refer to an objective level where the mentioned politics corresponds to what is called the state reason in the contemporary history. Certainly, it could be the other way around, when a good politics fails due to bad diplomacy.

For a Chilean Claudio Garrido Melo, diplomacy can also be seen from the viewpoint of international society, where its fundamental role is to transmit and communicate messages. "Diplomacy is, hence, an open and permanent channel through which the countries communicate and talk, and is, therefore, essential for functioning of the international society. This way diplomacy cannot be avoided, not even in those circumstances in which relations are interrupted, in which case alternative channels to resident mission are used to maintain communication."<sup>4</sup>

Diplomacy is a multifaceted practice with different forms and contents that requires maximum intellectual tension both from those who make decisions at political level and of those who implement them in practice. Functions of modern diplomacy were defined at the Vienna Convention on Diplomatic Relations in 1961 and they basically consist of representation, promotion of ties, collection of information and preparation of political reports and negotiations. Regarding its form, diplomacy can be bilateral or multilateral, which includes the so called summit diplomacy, and there is a relation of mutual complementation between the two.

An important merit of multilateral diplomacy is that the framework of its implementation allows a higher degree of access to public opinion and, therefore, attracts more attention of mass media thus increasing the pressure on those involved to respect their commitments and agreements. For these reasons multilateral diplomacy is many times described as "open diplomacy"<sup>5</sup>.

This is closely linked with multilateral diplomacy and, hence, has come to be known as public diplomacy, which beyond the intergovernmental, looks for a direct relation with one or more nations of a country of concern or of the world, as the case may be. Unlike the traditional diplomacy, this type of diplomacy does not take part in designing foreign policy of its country; instead, its task is to explain and spread it.

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<sup>4</sup> Gerardo Melo Claudio: "Diplomacia: rol, funciones y practica, *Diplomacia* No. 107, abril-junio 2006, Santiago de Chile, abril-junio 2006, 38.

<sup>5</sup> *Ibid.*, 196.

Public diplomacy has become one of the main aspects of diplomatic missions work in the entire world and, practically, there is no country in the world without a sector within or outside its ministry of foreign affairs that is in charge of work with public opinion in foreign countries, with the aim to promote its own image in accordance with the goals that are being pursued.

It is generally said that diplomacy is a very old profession and the moment of its appearance in history is placed in different stages, from the beginning of exchange between the first human groups to the period of commercial development of Italian cities. To be honest, to me these are rather stages of its development, because its true birth must have happened when men started making wars, which was probably what the first two human groups had done when they met each other. But we can't either rule out that they had attempted first to reach an agreement, and, hence, this dilemma resembles the story of what happened with an egg and a hen. Later history doesn't give any doubts. War and diplomacy have always walked hand in hand, sometimes replacing each other and sometimes happening at the same time in a crystal-clear expression of what in the Hegelian dialectic is called unity and conflict of opposites or the negation of the negation. Diplomacy is successful when you can see chests of generals filled with medals gained in exercises. In contrast, failure of diplomacy leads relentlessly to generals having to gain their medals in combat. It is in the awareness of this reality where diplomats' great responsibility to their people and even to their own family lies.

And Cuban diplomacy was born under the circumstances of a war – the first war started by our people for their independence on October 10, 1868. The very same month the Revolutionary Assembly of Havana was established and asked the first president of the Republic in Arms, Carlos Manuel de Céspedes, for an authorization to send agents not only to the United States, but also to other foreign countries where there were no commissioners or agents to represent the provisional government of free Cuba. The aim proposed to these agents was to negotiate recognition of independence of the Island and obtain moral and material support for the Revolution.

The first Constitution of the Republic in Arms, passed on April 10, 1869, prescribed in its Article 14 that, among others, ratification of treaties, declaration and conclusion of the war and declaration of reprisal in regards to enemies have to be essential objectives of the law. Also, Article 18 authorized the President to sign treaties with ratification of the Chamber and Article 19 conferred on him the power to appoint ambassadors, plenipotentiary ministers and consuls of the Republic in foreign countries<sup>6</sup>. The task of managing the new-born diplomatic service was entrusted to the State Secretary.

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<sup>6</sup> Hortensia Pichardo: *Documentos para la Historia de Cuba*, Editora de Ciencias Sociales, La Habana, Vol I, 1977, 378-379.

That first war for independence of Cuba lasted for 10 years and contradictions within the rebel forces could be felt from the very beginning. This is not the place to analyze the causes that motivated them, but it is important to say that its effects reflected soon on the incipient diplomacy, which divided in two groups and obliged the President of the Republic to divert his attention from the war efforts against the Metropolis in order to resolve disagreements among his diplomats.

Nevertheless, that diplomacy in diapers achieved some important successes having obtained the support for Cuban Independence from Mexico, whose president at the time, Benito Juárez, arranged the admission of ships under the Cuban flag in Mexican harbors and the Parliament allowed to hand over the hostility arms to him. The right to belligerency of Cuba was recognized by Chile, Venezuela and Bolivia, while the government of Peru recognized our country as an independent nation.

Cuban diplomacy, however, couldn't obtain any type of assistance or recognition for the independence from the North-American government, which was trying at that moment to reach an agreement with Spain to buy the Island through its embassy in Madrid.

The division among the Cubans was one of numerous factors that resulted in defeat of the Independence supporters' efforts and capitulation, through the signing of the Pact of Zanjón on February 10, 1878. The Metropolis gave certain concessions in that agreement, but the goal for which the war was fought for 10 years, which was the total Independence of Cuba, was not achieved. Because of that the peace was rejected by sectors most consistent with Independence movement, personified in the figure of General Antonio Maceo, who made clear a decision to continue with the fight on March 15 of the same year in a meeting held with the Commander of Spanish troops, General Arsenio Martínez Campo, in the act known in the history of Cuba as the Protest of Baraguá.

This rebellious gesture resulted in a new Constitution, the Constitution of Baraguá, which was in force for two months and focused on not accepting peace without independence. All the laws approved beforehand by the Republic, including the ones referring to its representatives abroad were maintained in effect.<sup>7</sup>

Seventeen years had to pass before the Cubans could reorganize and launch a new war for independence of their country. As soon as this one began, a Constitution of the Provisional Government was adopted on September 16, 1895, known as the Constitution of Jimaguayú, which solemnly declared separation of Cuba from the Spanish Monarchy and established judicial bases of the new state. It implicitly contained revitalization of the foreign affairs service by granting the power to the President to sign treaties with ratification by the Government Council and receive foreign ambassadors. Foreign Relations Secretariat was also established<sup>8</sup>.

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<sup>7</sup> Ibid., 406.

<sup>8</sup> Ibid., 498.

The Constitution of Jimaguayú restricted its effect to a period of two years, so another Constituent Assembly was gathered on September 2, 1897, which enacted the Constitution of Yaya. Its Section 2, Article 12, gave the Government Council the power to “determine foreign policy and appoint and separate agents, representatives and delegates of all categories”, while Article 15 authorized it to sign treaties with other powers designating commissioners who have to adjust them, but without being able to delegate their definite endorsement<sup>9</sup>. In its Section 4, Article 34, the Constitution stipulates that the “Foreign Affairs Secretary is the immediate superior of all agents, representatives and delegates abroad”<sup>10</sup>.

The Republic in Arms gave special importance to diplomacy and sent its representatives to the United States, France, England, Chile, Peru, Columbia, Guatemala, Nicaragua, Honduras, Brazil, Uruguay, Argentina, Venezuela, Mexico, Costa Rica, El Salvador, Santo Domingo and Haiti. But at this stage Cuban diplomacy couldn't get recognition, let alone material support, from the governments of the continent, because most of them were interested in improving their economic relations with Spain or were subject to the US interests.

As stated by the renowned Cuban intellectual Manuel Márquez Sterling, a historian, journalist and diplomat from the period between the 19th and 20th centuries, “the war for independence of Cuba had two periods perfectly marked and separated by an interregnum of total peace: the one that lasted for ten years, which suffered from all those Hispanic-American shades and ended in 1878 with a surprising capitulation; and the second that lasted for almost four years and finished with the Battle of Santiago de Cuba, resulting with the Cuban and North-American arms united. The second Cuban revolution could be essentially military, because the first one had been exceptionally diplomatic. The utopian ideal of the first one produced results in the second one”<sup>11</sup>.

Marquez Sterling left us a vivid and emotional description of the first members of the Cuban Foreign Affairs Service, whose ethics and spirit are still the example for all those who have had or have an honor to belong to this body. He wrote about them:

“Our diplomats from that period did not have any salary, and they didn't receive funds for the costs of representation, like, in the economic aspect, the President of the Republic, Secretaries of the Cabinet, generals, officials and soldiers, who also did not dispose of any emoluments other than the glory of their work. Cuban Minister used to be a citizen that would earn indispensable sustenance in difficult tasks that were quite different from the tasks of his public functions ... Rich personalities of the eve were subject to the harshness of total misery without raising a single complaint, without feeling the pins of caprice or

<sup>9</sup> Ibid., 504.

<sup>10</sup> Ibid., 506.

<sup>11</sup> Sterling Manuel Marquez: *La Diplomacia en nuestra historia*, Instituto del Libro, La Habana, 1967, 11-12.

remorse. Eminent lawyers became tobacconists; and distinguished gentlemen of the highest class put on the livery of tram drivers. The idea of 'free Cuba' seized all the feelings of individual and provided patriots with a magical resistance and a fool proof resignation"<sup>12</sup>.

Only when knowing this legacy of ethic, left by the first officials of the Cuban Foreign Service, could the feat done by the Cuban diplomats in the 90's be understood when their country lost, overnight, the 73% of its capacity of importing products, goods, etc. A letter written by Isidoro Malmierca, former Cuban chancellor at that time, dated on October 22nd, 1990, and addressed to Carlos Rafael Rodríguez, former Cuban vice-president of the epoch, informed him about a project to reduce the budget of the Cuban foreign service scheduled for 1991 by more than 50%, from 23 733.5 USD in 1990 to 9150, 8 USD<sup>13</sup>. These actions were taken at the moment the alliance among Cuba and Eastern European countries had vanished and this situation made Cuba to find new economical partnerships, redirecting commercial-economical, scientific and cultural links, and to widen the number of diplomatic missions all over the world. The truth is that in those difficult moments, the Cuban Foreign Service worked monthly with less money than the 9000 USD, which was the annual salary for the Cuban ambassadors under Batista's dictatorial regime.

In 1898, when Cuba had virtually won its war against Spain, the US troops disembarked in Santiago of Cuba to intervene in the conflict failing to recognize the Cuban authorities that held the war. The signing of the Paris Treaty on December 10<sup>th</sup>, 1898 between US and Spain was the greatest offence against the Cuban Liberation Army because by means of that treaty the US government took control over Cuba.

After that, Cuba was military occupied by the US for four years. In those years the country was ruled by a US administration composed of four departments, one of them, the State and Governing, took care of the links of Cuba with the world. That intervening structure authorized the participation of a Cuban delegation assisting to the conference in La Haya in 1899. This was the first time that the Cuban diplomacy voted differently from their counterparts of the US, even being subordinated to them.

The same situation was repeated for several times in the years ahead. It did not matter that, the US government threatened our people not to retire its troops in our country and imposed the first contributors of our first "Carta Magna" to adopt the Platt Amendment. That amendment imposed Cubans its national sovereign, gave the US government the right to intervene in Cuba militarily and forced Cuba to deliver lands for the constructions of US naval bases. As a result of that "American heritage" there is the Guantanamo Naval base, a center for the

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<sup>12</sup> Ibid., 133-134.

<sup>13</sup> Serie 7.0 Estructura, legajo 1990-1996. Archivo Central del Minrex.

violation of every human right, a Cuban territory, which is still illegally occupied by the US government.

Being understood that diplomacy is considered an attribute of the sovereign Status, the Republic, born on May 20th, 1902, was not able to accomplish it properly due to the absence of a true independence, which at the same time did not allow Cubans to define their domestic interests. That lack of definition also gives the politics the chance to ignore the necessity of a rigorous and professional foreign service which was turned into a sort of benefits and privileges for their families and friends. Disguised into a “context”, the admission process used at that time did not take into account black people, as well as women. As it may be seen, the Cuban Foreign Service did not “escape” from the corruption established in every sector of that society. Professor Carlos Alzugaray Treto reminds us how the last Cuban ambassador in Japan, before the triumph of the Revolution, named Jorge García Montes; a nephew of a Batista’s closest friend demanded that his salary and representation expenses should be regularly deposited in a bank in San Francisco, California. His embassy in Japan, consisted of a small office that he shared with an official, whom he divided the sum of 500 USD illegally collected for the shipping of trade boats, plus 5 USD that they extorted from every Havano Cigar box that Japanese importers bought. This ambassador was affectionally called “Pepi” by the Japanese flight attendants. It is clearly seen that those kinds of ambassadors were not interested in defending any kind of domestic interests. However it would not be fair or positive to say that every ambassador before the triumph of the Revolution was like “Pepi”. There were some of them that honoured their homeland, for example the ones who founded the Cuban Society of International Law in 1917 with the slogan “Pro justitia et pro patria semper”.<sup>14</sup> Beyond the governments this slogan defined the feelings of an entire nation.

The condition of semi-colony subordinated to the US interests made Cuba to be a part of the coalition against the central States during the WWI and the anti Hitlerian coalition during the WWII. Although until these events ended up, the behaviour of our diplomacy became different from the US. For example, Cuba signed the Versailles Pact and became an active member of the League of Nations. Meanwhile the US government did not recognize that organization.

It is worth remembering that once the WWII ended up, the Cuban delegation attending to the San Francisco Conference, where the UN organization was founded, was the only one in voting against the right of veto, given to the powered nations.

Both times, the behaviour of the Cuban diplomacy was conditioned by the two principles which have been a part of the clearest moral values of the Cuban people since its reappearing in History: the right of every nation has to its self-determination, the main content for the work of the league of nations, and equal-

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<sup>14</sup> S. de Bustamante y Sirvén Antonio: *Discursos*, Tomo IV, El siglo XX, La Habana, 1922, 75.

ity for the sovereign states which was violated by the instauration of the right to veto at the UN Security Council.

In May 1902, the first government in the “Republic” reorganized the ancient governmental system left by the Americans and created the State Department and Justice up to 1909, the year in which the branch in charge of the foreign policy was separated and then the State Department appeared up to 1940 with the new Constitution, it was turned into the State Ministry.

The Organic Law for the Foreign Service promulgated on February 14<sup>th</sup>, 1903, conditioned, with some modifications, the development of the profession up to 1959.

It is true that, with the constitution of 1940, some ideas related to the creation of an efficient and professional diplomatic service went in advance, but unfortunately the dome of the government did not aim at those ideas. It is not until April 24<sup>th</sup> 1954, that the dictatorial government of Fulgencio Batista signed up the Organic Law of the State Ministry and the Foreign Service that came to the light with the number 1619. Although the will to make the Foreign Service more efficient was declared in that document, the truth was that its content was reduced to specify the responsibility of the diplomacy for the economic relations and including this last aspect into the careers of the Service, at the same level of the Consulate and Diplomatic ones. At that time, Cuba had only established the relation with 49 countries, just 8 more compared to the ones in 1902.

Under the new circumstances that came up after 1959, the Diplomatic service was the one of the first spheres that needed to be changed. First of all, the task was to accomplish what was established by article 107 of the constitution of 1940 that read “the personnel of the diplomatic service need to be political and trustable charges”. Besides, the salary system applied for diplomats was too expensive for such poor country as Cuba.

On June, 1959, Dr. Raúl Roa García was designated as head of the Ministry of State at that time. He was a very prestigious and cultivated university professor, named by his own people “chancellor of dignity” due to his bright debates and wit at the international forums. He was precisely the one who proposed the idea of turning the Ministry of State into the Ministry of Foreign Affairs.

But it was not just a matter of changing the name. It was, most of all, a matter of creating a foreign service and diplomacy capable of defending the domestic interests of the Cuban people in a successful way. In some other words, as former and passed away president Osvaldo Dorticos once said: “it meant to create the diplomatic shield of Cuba”.

On September 15<sup>th</sup>, 1959 the 563 law was passed substituting the Order Law 1619/1954, notifying that it was indispensable “to turn the ministry of State into an organ capable of doing the great task that had been assigned by the revolutionary government, related to its international projects”. Moreover, this law

cleared out that it aimed at reorganizing the Ministry in its own structure and in the organization and composition of its specialized services.

Some months later, on December 23, 1959 the 663 law was promulgated. It announced that the Ministry of State turned into Ministry of Foreign Affairs to take over of the Cuban foreign policy, as well as the international relations.

The composition of the new Ministry of foreign affairs was established by Article 2 of the 663 law. It was determined that it would be composed by the following issues:

- The Minister and the Sub secretaries of foreign affairs
- The secret service
- The foreign service constituted by:
  - The diplomatic career
  - The consular career
  - The cultural service and auxiliaries of the Foreign Service.

It was established in this law that the persons in charge of the sub secretary of foreign affairs should be officials of the diplomatic career, so it was supposed that the minister should be a politician.

Fourteen months after the promulgation of this law, on February 25<sup>th</sup>, 1961 the Ministry of Foreign Trade was founded, as a result of the monopoly of the State over that field, which made the economic diplomacy more autonomic, although the current policy was to reintegrate it into the Diplomatic State Mission.

At the same time, the US government hostility against the Cuban Revolution at the very beginning of the 60's, made the new authorities of the Caribbean island see the need of developing new mechanisms that allowed it to attract the US people's attention and more important, Latin American people's attention. As Jose Marti advised in a letter addressed to the director of the Liberal Party, dated on August, 2<sup>nd</sup>, 1886, and referring to the relations between Mexico and the USA: "There shall be two schools of diplomacy, with one spirit, one for the government, in order to always have the courage required to enter the exit decorous, and be ready to every probable case of conflict, the other for the country's mass, to destroy its lack of respect and knowledge that makes the conflict too easy".

In a few years, a network of public diplomacy was created which included Havana Cuba radio broadcasting, sending the Cuban voice to every part of the American continent; "Casa de las Americas" which serves as a link with the intellectuals of the region and the Cuban Institute for the friendship with other Peoples (ICAP in Spanish) for the direct attention to the Revolution's friends, and more recently, the international satellite TV channel "Cubavision Internacional" broadcasting to every continent.

To change the designated personnel by the previous government, law 855/1960 suspended the immovability in the Foreign Service for three years, giving the Ministry of Foreign Affairs the authority to approve as much legal

disposals as he needed, as long as he did not raise the expenses in the budget. Together with this, Resolution 336 was passed to define the political principles of the new diplomacy, in its first issue, it expresses: The Ministry of Foreign Affairs is the main responsible for the external policy of the Cuban government and in charge of increasing the development of the diplomatic, cultural and cooperative relations with the rest of the countries under the basis of peaceful coexistence among the States, no matter the behaviour of their social regime and reciprocal respect to their self-determination, equal sovereignty and the independence of all nations.

In parallel with the work of restructuring of the diplomatic service and the definition of the basic principles of its activity, it began a huge task in the training and upgrading of staff.

As early as March 1959, just two months after the dictatorship overthrown, the new authorities published the first diplomat Handbook, which although yet provisional edition, was to serve the purpose of unifying the performance of diplomatic agents and help raise the prestige of the representations abroad Cuba, "which is one of the purposes stated by the Revolutionary Government".<sup>15</sup>

The Handbook gathered in detail the rules of procedure, protocol and ceremonial, according to Cuban law and internationally accepted custom, such as the activities to be performed at the beginning of the diplomatic mission, diplomatic immunities and exemptions, instructions on how to decorate, furnish and organize local official aspects correspondence, together with models for different types editor of official documents and other important aspects of diplomatic endeavour. This book, which preceded the Vienna Convention on Diplomatic Relations, joined its contents which were the most novel, already agreed in negotiations on it.

The first diplomatic Handbook was an important contribution to raising the level of preparedness and technical professional new Cuban diplomacy, but was poor at the magnitude of the changes in the country. Above all, it was a 180 degree turn that occurred in the international situation of the country, given the increasing aggressiveness shown by the powerful northern neighbour to the Cuban Revolution, which is why in 1963, under the leadership of Foreign Minister Raúl Roa García, a Diplomatic *Promptuarium* was released, whose content was divided into 3 parts.

The first included a description of the activities to be done by both the Chief as the other members of the mission, from start to finish and which included, besides the functions, everything relating to the ceremonial, the regime of immunities and franchises, according to Cuban law, international conventions, customs and norms of reciprocity and courtesy. The latter was a new contribution, to date not properly taken into account by the Cuban diplomatic practice.

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<sup>15</sup> Agramonte Roberto: *Prologue. Diplomatico Manual* (TEMPORARY Edition), by Miguel Figueroa and Miranda, Publications of the Ministry of State, Havana, March 1959.

The second part was represented by different models of diplomatic correspondence and notes, set by both the internationally established practices and the characteristics of the Cuban Foreign Service.

And finally, an extensive glossary collected Syllabus terminology with more indispensable knowledge for all members of the Cuban diplomatic corps.

In that first met Glossary the definition of the term “diplomacy” is given. It says that this concept has changed over the centuries, with times; its genius was Machiavelli and Machiavellianism form of conduct. “Diplomats most futile pretexts used and refined dialectic to support, explain and justify the most absurd theories and claims more contrary to equity and to the right”,<sup>16</sup> but that kind of diplomacy still survives, and has introduced a new form that is for “the good harmony among nations, the reconciliation of their conflicting interests, the successful completion of negotiations between States, ensuring compliance of Treaties and the dignity of the country without affecting the dignity of others, defending the legitimate interests of nations, and conflict prevention”. The mission of diplomacy is, “to transform society towards a society of law, ensure peace, freedom, international trade, cooperation without conditions, prosperity, tend to international relations unfold on legal basis and, without neglecting the interests of each country, combine its proportion and defence with the general and permanent interests of mankind”.<sup>17</sup>

The glossary defines the most important features that diplomatic ethics must have. “In carrying out their functions, diplomats have a duty to behave with loyalty to their own government, and no felony to the government that gives them hospitality. To protect the interests of the state they represent, they must refrain from acts capable of offending or shocking the country of their residence. The attitude of diplomats depends, ultimately, on the nature and purpose of representing foreign policy.”<sup>18</sup>

These definitions have guided the conceptual urgency of the task of creating the diplomatic shield which should protect the ever growing government hostility of the greatest power on earth, one of whose main objectives was precisely Cuba’s international isolation.

Of the 49 countries with which the country had relations in 1958, almost half, 21 were from the Americas, including the United State. So, only Mexico and Canada were left out of the wave breaks. This forced Cuba to refocus and strengthen its relations with other parts of world. Already for 1965, the number of countries with which relations were established increased to 65, mostly located in distant geographical regions, of which our diplomats often barely heard.

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<sup>16</sup> Prontuario Diplomático, Ministry of Foreign Affairs, Republic of Cuba, Havana, 1963, 266-267.

<sup>17</sup> Ibid., 67.

<sup>18</sup> Ibid.

A rearrangement as radical as we did in the early years had affected the work of any Chancellery in normal conditions. In our case, we had to do well with new staff - mostly little savvy international life - given the level of corruption that the old diplomats showed.

What that early post-revolutionary Cuban diplomacy involved, driven by creative activity of the tenacious Dr. Raul Roa, was, besides the geographical reorientation of the country's external relations, the restructuring of the governing body, of its own affairs, to overcome political, professional and technical staff and the transformation of their working methods.

One entirely new aspect that was introduced in mid-1962 was planning, which initially had a very rudimentary form. Thanks to the experience and developments taking place in international practice, it moved slowly but consistently over time, reaching today a major foresight, projecting the activities up to three years in advance. Based on the analysis of the objective conditions of the moment and the main trends in the development of phenomena, Cuban diplomacy makes different alternative positions or reactions, which are its fundamental contribution to the process of making a political decision.

What was essential for the success of this important work was the consistent application of the principles of collective leadership, collective discussion and individual responsibility, which were also introduced in the Cuban diplomacy by Dr. Roa. All Cuban missions, large or small, had a Board of Directors and Collective officials, who, under the leadership of the Ambassador, discuss and decide on all core issues, supported by the principle of discretion, which requires all participants to make appropriate management of the professional elements available.

Over the years, the development of this practice has led to the emergence in the mid-nineties, of the concept of State diplomatic mission, understood as "the state agency that represents the general interests of the Cuban state in a given country".<sup>19</sup>

For this it was necessary to do enormous work, and for the diplomatic staff to provide a level of professionalism to match the requirements of the moment, which involves, among other things, a relentless battle against bureaucracy. "The most serious consequence of bureaucracy is the replacement of the brain by the table and the will of the chair. Instead of thinking and acting, and laziness stereotype".<sup>20</sup>

In today's globalized world, where new challenges have emerged as environmental pollution or transnational crime, when the development of science and technology has done away with the concept of "distant event", the requirement of knowledge that is brought before the Cuban diplomats is really high. Our missions are generally small and, therefore, each officer has to be known

<sup>19</sup> Almodóvar Thomas Chambers: *Diplomatic and Consular Law*, Vol I, ISRI, Havana 2000, 95.

<sup>20</sup> Raul Roa: *Works*, Havana, Volume II, 1964, 590.

player in any of the fronts, with an appropriate level of mastery of the material and the techniques used in it, because another feature of our diplomacy is making heavy use of modern computer techniques. Cuban embassies not only use email in their communications, but almost all have websites in the language of the country where they reside and all administrative, accounting and consular activities are fully automated.

Of course, success in diplomatic work not only depends on the knowledge and skills, it is also necessary to conduct commensurate with the dignity of the country that is represented in our case. There is a Code of Ethics, which serves as a major moral impediment for corrupt behavior and antisocial behaviors and attitudes. Cuban diplomats face their work where necessary, and do not abandon the mission under any circumstances. Cuban diplomacy was present in the jungles of South Vietnam during the war in that country, the Cuban ambassadors in Beirut, Belgrade and Baghdad, to name a few, remained all the time at their posts, at a time when those cities were subjected to bombings. For a Cuban diplomat, the immunity of his facilities is a part of the national sovereignty and the defense his own life, if necessary. At the same time, the basic principle of Cuban diplomacy is strict observance of the principles established by the Vienna Convention on Diplomatic Relations and the laws of the country where they are accredited.

What plays an important role in the projection of Cuban diplomacy is discretion, without which it is practically impossible to prepare and make a success of any negotiations, given the pressure and harassment by the U.S. from the beginning to any target that is raised by the Caribbean nation. But the objectives of these actions are solutions and public agreements. Cubans, in principle reject secret diplomacy, the style of which was used in Europe in the period between the two world wars, because as a rule, such a practice is directed against the interests of the third.

The protocol and ceremonial Cubans, without abandoning the best international practices, strive to be solemn, but simple. In their daily practice, Cuban diplomacy follows the legacy that José Martí has left: “not to give an opinion that does not bear the fact the foot, or advance censorship that go straight to the target, or censor much and cause little, but when spare the cause, and the unexpected and deserved censure, chest enters hostile to handle”.<sup>21</sup>

In 1959, Cuba had a revolution to change their relationship with the world. But at the end of the 80s the world was changing and the Cuban government saw the need to defend their interests thoroughly using all forms of diplomacy.

With the disintegration of the Soviet Union and the disappearance of the Eastern European block, the Caribbean nation lost its political and military alliances and economic integration and the established links with them. The U.S. objective of completely isolating the Cuban government seemed closer.

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<sup>21</sup> José Martí: Works, Volume 6, 85.

The Cuban diplomacy faced with the imperative task of finding new fellow travellers that would allow its government to successfully face the increased pressure from the United States. But the effectiveness of an alliance depends on representing considerable power and has clear purpose, which is impossible to achieve with disparate partners pursuing various objectives. Finding that purpose was urgent and essential, but it was only possible on the basis of the identification of shared values with other nations and there, almost spontaneously arose the necessity and possibility of a greater emphasis on the defence of sovereignty, central principle of the Caribbean state diplomacy since 1959.

Despite the insistence of some contemporary theorists on the supposed loss of validity of the concept of international relations angle, the defence by Cuban diplomacy has enabled to internationally isolate the embargo policy of the U.S. government against the Greater Antilles. Say what you say, people's adherence to the principle of sovereignty is still a formidable force. One cannot otherwise explain the fact that virtually every year a new state comes within the United Nations.

Product sustained effort in defence of national interests; the government of Cuba has created a dense network of diplomatic representations who have led the Caribbean archipelago voice to all corners of the planet. Its official relations reach 190 States, including 184 members of the United Nations. Its representatives have 148 offices in 120 countries, classified in 119 embassies, 1 Interests Section, 21 Consulates General, 3 Offices embassies and 3 Representations to International Organizations.<sup>22</sup>

Like any diplomacy, ours relies on the media that the country has to project internationally. Cuba lacks a military, economic or financial strength, to allow itself the diplomacy of "gunboat" or "dollar". But it has created one of the best health systems in the world, has a good educational system, and an attractive culture and good development.

To illustrate this it should be noted that in December 2012 our country had 38,000 health specialists, half of whom were physicians, serving in 65 states of the world;<sup>23</sup> Until 2010, Cuba had established 11 overseas medical schools attended by their teachers, while in their own universities 542 students studied divided into five provinces.<sup>24</sup> Furthermore, its hospitals received a considerable number of foreigners to heal. For example, in the 20 years between 1990 and 2010, our hospitals had 23,000 children affected by the Chernobyl disaster and every year about 700 to 800 patients come to Cuba with their families to receive free medical care [[38]].<sup>25</sup>

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<sup>22</sup> <http://www.cubaminrex.cu/Ministerio/ministerio.htm> (1/11/13)

<sup>23</sup> <http://www.ain.cu/2012/diciembre/06ypc-colaboracion-medica.htm> (11/01/2011)

<sup>24</sup> [http://www.ecured.cu/index.php/Colaboraci%C3%B3n\\_M%C3%A9dica\\_Cubana](http://www.ecured.cu/index.php/Colaboraci%C3%B3n_M%C3%A9dica_Cubana) (11/01/13)

<sup>25</sup> Granma, the official organ of the Cuban Communist Party, March 29, 2010.

Cuban diplomacy enriches the effectiveness of their actions through the exchange of information and, where necessary, coordination with other national factors involved in international relations. For example, the Cuban parliament is not only actively involved in the work of the Inter-Parliamentary Union, but has a foreign affairs committee, which analyzes the reports of the Ministry of Foreign Affairs before being presented to the plenary and has 86 groups of friendship with countries around the world, which directly contributes to boosting bilateral relations with these states.

Similarly, the party, social organizations and NGOs have a wide range of links with their counterparts abroad and are members of numerous international associations or federations. The Communist Party of Cuba has relations with some 152 political groups of different ideological signs in different countries and is a member of the Forum of Sao Paulo and the Permanent Conference of Political Parties of Latin America. Some 15 Cuban NGOs have consultative status with the Economic and Social Council of the United Nations.

All these are partners with which our state diplomacy interacts simultaneously.

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## KUBANSKA DIPLOMATIJA

### S a ž e t a k

Autor daje istorijsku genezu porekla i razvoja kubanske diplomatije. On počinje razmatranjem različitih definicija pojma diplomatije, ističući da je u svakom slučaju suština diplomatije da bude jedan od glavnih instrumenata koje nezavisna država koristi za odbranu i promociju svojih nacionalnih interesa. S druge strane, autor ističe da je posle revolucije dr Raul Roa Garsija uspostavio modernu kubansku diplomatiju, imajući na umu da je on dao ideju i instrukcije za osnivanje Ministarstva inostranih poslova sa svim odgovarajućim pratećim telima. Dalje autor analizira uticaj kubanske revolucije na inostranu politiku i diplomatiju, ukazujući na njihove specifičnosti, krajnji profesionalizam, pragmatizam i efikasnost. Rezultat ove uspešne evolucije je činjenica da Republika Kuba danas ima uspostavljene odnose sa 190 zemalja, od kojih su 184 članice Ujedinjenih nacija. U tom sistemu ima 119 ambasada, jedna interesna sekcija, 21 generalni konzulat, 3 ambasadorske kancelarije i 3 predstavnika u međunarodnim organizacijama.

**Ključne reči:** diplomatija, kubanske diplomate, funkcionalnost, profesionalizam, nacionalni interesi

## IS THE EMERGENCE OF A STRATEGIC PARTNERSHIP BETWEEN LATIN AMERICA AND ASIA-PACIFIC POSSIBLE?

The author analyzes the development of relations between Latin America and the Asia Pacific region through history and continues with the current state of bi-regional relations. His starting point of view is fact that both regions are reformed in accordance with the theory of open regionalism and have successfully achieved more significant level of participation in globalization. The author considers that one of the main characteristics of this relationship at the beginning of the 21st century is its transformation in strategic terms. In addition, it was taken into consideration that the most important Latin American countries such as Brazil, Mexico, Argentina, Chile and Venezuela are becoming more and more attractive partners for APEC, ASEAN or China, Japan and South Korea bilaterally. Finally, one of the main conclusions is based on the view that there is still no common Latin American strategy towards the Asia-Pacific region and that currently in Latin America an important process of redesigning regional integration structure is taking place in Pacific coast countries.

**Keywords:** Latin America, Asia-Pacific region, cooperation, integration, strategic partnership, People's Republic of China, Japan

### 1. Some introductory remarks about contemporary Latin America

The contemporary world is imposing several important alterations and adjustments today, having in mind that the multipolar world is an irreversible economic, political, social and cultural phenomenon which occurs on global and regional levels simultaneously. In addition, the life of international community is characterized by the functioning of the most powerful tendency called "globalization", which could be briefly described as a process of increased mobility throughout the world of different interactions concerning commerce, services, labor, technology and capital. Despite the fact that experts in international relations proliferated their studies on globalization, we have to emphasize that this phenomenon is not new in the history of international relations. Its importance is based today on the fact that we are the witnesses of the new forms and modalities of its functioning as well as the ways of its rapid development due to the

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advent of latest technological progress, especially in the area of information and telecommunication.

Actually, besides explosive evolution of transportation networks, globalization also means communication and new technologies, the profound social-political, cultural and ideological changes, increased connectivity among societies and transculturation of the contemporary world - understood as multiculturalism in the broadest sense. As a result, we could underline that the term is applied to various social, political, economic, commercial, financial and cultural contexts within the analytical framework of the so-called "global village", characterized by closer and more dynamic contacts and interactions between different civilizations existing in the world.<sup>1</sup>

On the other hand, the possibility of identifying apparently new but concentrated interactions produced at regional level in the form of economic and political blocks is a very important consequence of globalization. Generally speaking, regionalism as a parallel process on the world scale is mostly based on coexistence in harmony, cooperation and integration. However, there is also a number of cases that demonstrated the potential for conflicts of different types and ranges.<sup>2</sup> Finally, due to progressive and evident erosion of some traditional concepts and principles of International Law as the basis of the international community's life - for example, the redefinition of the nation state, national boundaries or national sovereignty and territorial integrity - the globalization as a dominant tendency of the present phase of the development of international relations could not be reduced only to its economic or financial aspects.<sup>3</sup>

There is no doubt that all these changes of the structure, actors, philosophy and methods in the functioning of contemporary world have influenced both the internal development and the international positioning of Latin American countries and the region as a whole. In practice, the new global constellation required the adequate search, definition and adoption of governmental measures concerning internal political, economic, social and cultural development and promotion of various interstate relations at regional level in order to strengthen

<sup>1</sup> About the importance of intercultural dialogue, multiculturalism and transculturation as the fundamental values of global era consult: Mikolić Vesna, Kozak Krištof Jacek: *Intercultural dialogue as the fundamental value of the EU*, Založba Anales, Koper, 2008; Pajović Slobodan S.: *Interculturalidad en los procesos de formación identitaria de América Latina: Percepciones e interpretaciones*, Megatrend Universidad y CEISAL, Belgrado, 2007.

<sup>2</sup> About the new challenges of the contemporary world after the fall of bipolarity in the field of security consult: Marchal Roland, Messiant Christine: "Las guerras civiles en la era de globalización: nuevos conflictos y nuevos paradigmas", *Análisis Políticos*, Bogotá, No. 50, enero - abril de 2004. Available on: <http://bibliotecavirtual.clacso.org.ar/ar/libros/colombia/pd1219656076.htm?categoryId=0>

<sup>3</sup> For more information about the globalization and the way it is interpreted and analyzed by the author of this article, see: Pajović Slobodan S.: "The Place of Latin America in the Foreign Policy Strategy of Serbia and Montenegro", *EUROGLOB*, Bucharest, Vol. 5, 5/2005.

regional cooperation, integration and to diversify international cooperation and position. Consequently, we can stress that the geo-political and geo-economic scenarios of Latin America have changed deeply.

Further on, these changes in the development of the international system during last two decades - particularly from the viewpoint of power distribution - reflect on how this phenomenon influenced the relationship between Latin America, the United States, European Union, China and the rest of the world, including Asia and Pacific region. It is evident that the new international image of Latin American region relying on renovated Latin American regionalism intensively improved by introducing different models of bilateral, sub regional, regional and inter-regional cooperation initiatives.<sup>4</sup> These modifications were the result of high quantity of interactions at different levels (presidential, ministerial, experts, civil society, etc.) and intensification of political relations among these countries, above all in the context of positive changes in their political orientation: process of democratization, economic stabilization and neoliberal reform, further development of democratic institutions and human rights, etc.<sup>5</sup>

In any case, these socio-political, ideological and economic changes redesigned and improved the international role and relevance of Latin American countries by the end of XX century and opened new possibilities for innovative international projections and partnerships. This was possible because of a decisive governmental effort to achieve compatibility of regional economic development and trading arrangements with other similar partners around the world and, of course, in accordance with the new national and regional priorities. The basis of this new regional philosophy during the nineties of the last century was to ensure that regional agreements would pragmatically function in practice with the aim of constructing the solid regional block capable of fitting into global market and commercial liberalization tendencies. Theoretical model of the "Open regionalism" was adopted as a fundamental doctrinal principle of MERCOSUR, ALADI, MCCA, Association of Caribbean States (ACS), CAN, NAFTA, the Group of Three (G 3), and other bilateral and trilateral arrangements, or the recently promoted Initiative for the Integration of Regional Infrastructure in

<sup>4</sup> The Latin American regionalism by the end of XX century is formed by: Association of Latin American Integration (ALADI) as the biggest integration framework in the region; Central American Common Market (MCCA); Andean Community of Nations (CAN), Common Market of the Southern Corn (MERCOSUR); the Group of Three (G 3); Caribbean Community and Common Market (CARICOM), Rio Group; Iberoamerican Community of Nations, North American Free Trade Association (NAFTA) and a great number of different bilateral trade or economic complementation arrangements that were signed in this period among Latin American countries.

<sup>5</sup> It is well known that during the eighties - the so-called "lost decade" - the transitional process was undertaken in political and economic spheres in order to assure democratic transformation and implementation of neo-liberal model of development. For further information see: Langguth Gerd: "Positive Signals after the Lost Decade: Change in Latin America", *Aussenpolitik* III, 1997, 278-290.

South America (IIRSA), South American Community of Nations, officially inaugurated at the Summit of South American Presidents (Cuzco, Peru, December 8<sup>th</sup> 2004) or the Community of Latin American and Caribbean States (CELAC), created on February 23, 2010.<sup>6</sup>

On the other hand, the appearance of the Bolivarian Alliance for the Peoples of our America (ALBA),<sup>7</sup> launched by Venezuelan leader Hugo Chavez Frias and Cuban leader Fidel Castro Ruz (2004), was entirely new model of cooperation and integration in the long history of Latin American integration. ALBA is conceptualized on different ideological basis, demonstrating that the process of fragmentation of Latin American regionalism is moved into ideological field in accordance to the regional socio-political reality at the beginning of the XXI century. The emergence and development of new formulas and methodologies of responding to complex social problems produced in Latin America during the application of neoliberal reforms,<sup>8</sup> generated not only very important intellectual debates focused primarily on all aspects of western democracy and its institutions that were successfully re-established during the eighties of the last century, but also profound political disputes between Latin American countries.<sup>9</sup> Further on, the phenomenon of non-traditional political leadership representing different

<sup>6</sup> CELAC is an example of a decade-long push for deeper integration within Latin American region. It is created to deepen Latin American integration and to reduce the political and economic presence and influence of the United States in this region. Some experts in Latin American political history have seen this initiative as an alternative to the Organization of American States (OAS). CELAC is the successor of the Rio Group and the Latin American and Caribbean Summit on Integration and Development (CALC).

<sup>7</sup> The first proposal to establish ALBA was announced by the President of Bolivarian Republic of Venezuela during the III Summit of Association of Caribbean states (ACS), celebrated in Isla Margarita (Venezuela), December 11<sup>th</sup> 2001. Officially, ALBA was inaugurated at the meeting of Venezuelan and Cuban political leaders, held in Havana on December 14<sup>th</sup> 2004.

<sup>8</sup> The concept of “neoliberalism” is understood in this research as a process that in Latin American practice meant the implementation of different recipes derived from the classical liberal theory. It is important to underline that this theoretical approach drastically limits the space for state intervention in social sphere as well as in economic, except the first phase of reform and adjustment period. Free market is the principle guarantee of progress and the role of state is to assure the political and ideological preconditions for independent functioning of market in accordance with its own system of regulations. In other words, the possibility for state intervention in social and economic issues as well as market questions is not expected.

<sup>9</sup> For instance, Professor Carlos Malamud from Royal Institute *Elcano* for International and Strategic Studies (Madrid) and famous Mexican writer Carlos Fuentes had a very important debate concerning the essence of democracy and its obligations - published in remarkable Spanish daily newspaper *El País*. Namely, Carlos Fuentes published his article entitled *Democracia latinoamericana: anhelo, realidad y amenaza* expressing his worry about the future of Latin American democracy and underlining the following question: “What level of misery does democracy tolerate?” On the other hand, Professor Malamud answers this question formulating the following one: “Does democracy have the obligation

ideological and ethnic sectors of contemporary Latin American societies definitely marked a new phase of political development in this part of the world.<sup>10</sup>

To sum up, when analyzing Latin American relations with the rest of the world at present, it is necessary to mark the importance of new modalities of its international insertion, appearance of new partners and alliances without forgetting to note that political power has been deeply transformed in various countries with the corresponding changes in foreign policy activities and priorities.

Additionally, for the first time in the long political history of this region the so-called leftist regimes obtained the control over nearly 60% of Latin American population. This significant change could be understood only as a result of the crisis of “Washington Consensus” (Consenso de Washington) that came to its limits during the period 1997-2002, indicating that such deep socio-economic problems and very high and multifaceted inequality are the principal elements of political and ideological agenda of the so-called new Latin American populism. In reality, the “Washington Consensus” starting from 1989, represents a set of ten specific economic policy drivers necessary to fulfill the conditions of the International Monetary Fund, World Bank, Inter-American Development Bank or US Treasury Department to obtain financial support, especially when reform packages of developing countries – including Latin American – were considered. The Washington Consensus was openly criticized in Latin America because its basic principles “stabilize, privatize and then liberalize” became the official economic policy of almost all regional governments producing very negative consequences in social sphere.<sup>11</sup>

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to provide food?” For further information consult: El País, Madrid, May 15th and June 19th, 2001.

<sup>10</sup> For example, the legendary union leader Luis Ignacio Lula da Silva entered Latin American political scene in 2002. When he took the presidency in Brazil as the first leftist who won the presidential elections with *Partido de Trabalhadores* (PT) in the whole political history of independent Brazil, international community was very reserved. With the entering of Hugo Chavez Frías and Evo Morales – in Venezuela and Bolivia into political scene – and later on the comeback of Sandinismo in Nicaragua, it was evident that these dramatic changes could be understood only as a result of the crisis of “Washington Consensus” (Consenso de Washington) that came to its limits during the period 1997-2002. In fact, those changes demonstrate that such a deep socio-economic problems and very high and multifaceted inequality are the principal elements of ideological framework manifested in political practice by *chavismo*, *indigenismo* of Morales or the new Sandinismo.

<sup>11</sup> Pajović Slobodan S.: “Particularities of International Insertion of Latin American countries during the last decade of XX century and beginning of XXI century”, *Annales Universitatis Mariae Curie – Skłodowska*, Sektio K Politologia, Lublin, Polonia, Vol. XVII, 2/2010, 7-18.

## 2. Historical background of Latin American and Asian-Pacific relations

There is no doubt that the intention to describe and analyze the present relations and linkages between Latin America and Asia is an extraordinarily complex scientific responsibility. We have to take into consideration that we are referring to two extremely different worlds observed intra and extra regionally and not only from the point of view of historical development, culture, religion or language but also from its geography, their political, economic, demographic and social realities. Anyhow, from the historical perspective, the fact is that between Latin America and Asia there have always existed physical and commercial contacts since the Spanish empire was expanding its colonial power and administration in the Philippines and Pacific Rim. Famous Spanish navigators<sup>12</sup> discovered and drew definitive commercial shipping routes between America and the Far East, after 1520 when the Strait of Magellan was discovered and when Spaniards came to the Philippines. Nevertheless, Spain had priority in the so-called "New World"<sup>13</sup> and therefore Spanish crown maintained eminently commercial activities in this part of the world with the aim of isolating its Pacific colonies from attacks by other powers and ensuring the flow of silver from Peru and Mexico.

Consequently, we can conclude that the links between Latin America and Asia - two regions geographically and culturally so distant - arise mainly from commercial interests. In fact, the Spaniards tried to ensure that the exchange of goods between the two regions could be made without major problems. It is well known that gold and silver were arriving to the Philippines from Mexico and Peru in exchange for silk and spices that were exported from Manila.<sup>14</sup> Later, in the XIX century, when Latin American countries gained independence, private commercial contacts still existed between the two regions having been realized from past centuries through the scope of trade. The most important contacts were established with China, Japan, Dutch Indonesia and French colonies in the Pacific.<sup>15</sup>

In general, during the XIX century the public sector of independent Latin American countries didn't articulate more interest in having diplomatic relations with Asian countries. Furthermore, in the mid-nineteenth century, with the rise

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<sup>12</sup> For example, during the XV century Spain had many famous sea captains who sailed discovering the world. As far as Asia is concerning Vasco Núñez de Balboa arrived to Asia in 1513. Andrés de Urdaneta arrived to the Philippines and García Jofre Loaysa sailed worldwide.

<sup>13</sup> *New World* is one of the names used by Europeans for America, and, especially by Spaniards after this continent was discovered by Columbus (1492). Western civilization has already used names for Europe, Asia and Africa.

<sup>14</sup> The famous Spanish navy vessel the Galeón maintained this trade route from Manila to Spain and the New World, the term that official Spanish colonial administration used for Latin America

<sup>15</sup> Malamud Carlos: *Historia de América*, Alianza Editorial, Madrid, 2010<sup>2</sup>, pp. 60-65.

of plantations and the apparent lack of labor force in Latin America, the traffic of „Coolies” was developed in this region. „Coolies” were Chinese workers who came to Cuba, the rest of the Caribbean, Peru, and later on to Chile and who had been forced to work by the eight years labor contract.<sup>16</sup> By the end of XIX century and the first decades of the XX century there was a second Japanese immigration, which came to Peru and Brazil. Throughout this period - with some exceptions - the Asian world was not perceived as relevant to Latin American foreign policy priorities because of the fact that the Atlantic economies, which conducted the course of history during XIX and XX centuries, were more important for economic development and political stability for the countries of this region.

However, this general evaluation could be understood as the result of a negative and markedly vulnerable international position of Latin American countries after the independence. A few examples indicate in some cases the existence of long tradition and interest in establishing formal relations with the governments of China and Japan. As far as the Mexican case is concerned, it is important to stress that the first contacts between Mexico and Japan were registered in 1605, 1625, 1874 and this process was completed in 1888 by signing the Treaty of Friendship, Commerce and Navigation, which is the first official basic document for establishing diplomatic relations between the two countries. Similar process characterizes the history of Mexican Chinese relations. In fact, after the first contact in 1565 both countries signed the Treaty of Friendship, Commerce and Navigation in 1899.<sup>17</sup> As for Chile historical facts show that not only trade contacts were established with Japan and China, but also with India. Commercial boats from the Chilean port of Valparaiso sailed loaded with copper and other nitrates to Calcutta, Hong Kong, Manila and Canton. This intensive trade exchange lasted until the mid-nineteenth century. Formally, China and Chile didn't establish official relations because China refused to receive consuls from those countries that had not signed the Agreement on Friendship and Trade. Referring to Chilean Japanese relations we know that Chile formally sent its first consul to Japan in 1989. On the other side, formal diplomatic relations with China were established in 1906.

During the first half of XX century it is possible to observe the growing of trade and political-diplomatic contacts between these two regions. This trend was generated in the sixties of the last century due to the financial and economic growth of Japan as a second world economic power, than South Korea and, finally China. Later on, Latin America continued to develop trade and economic cooperation with the countries belonging to the Asia Pacific, turning this

<sup>16</sup> Carredano Juan B. Amores, *Historia de América*, Ariel, Barcelona, 2006, 627-648.

<sup>17</sup> About the historical background of Mexican relations with China and Japan consult: Connelly Marisella: “Las relaciones de China y México en su contexto histórico”, *Escenarios XXI*, Año 1, 5-6/2010, Noviembre-Diciembre de, México, 2010, 50-66; and *Sintersis de la Relacion Comercial México - Japón*, ProMéxico, 2012; accesible on Internet: [http://www.promexico.gob.mx/work/models/promexico/Resource/102/1/images/Japon\\_VP.pdf](http://www.promexico.gob.mx/work/models/promexico/Resource/102/1/images/Japon_VP.pdf)

relationship in the late XX and early XXI first century into a completely new partnership in the frame of this globalizing world. This change in foreign policy orientation of Latin American countries was the result of geostrategic and geoeconomic global transformations and the fact that Asia Pacific in the last quarter of the XX century undoubtedly became the center of business, military, financial and political activities that moved from the Atlantic to the Pacific.

The process of institutionalization of Latin American-Asian diplomatic relations during the XX century began after the World War II having a very important development phase all over the cold world period. Japan and China opened its embassies in almost all Latin American countries. It is important to note that China's opening strategy to Latin America had several periods after the victory of the communist revolution in this country. On the other hand, the normalization of diplomatic relations was conditioned by the question of Taiwan, or more precisely by the recognition or non-recognition of Taiwan as a part of China or an independent state. In any case, Japan and China were the most important extra-continental partners for Latin American countries until the end of the century.<sup>18</sup> It is necessary to stress that Japan was very interested in Latin American natural resources and raw materials while China was looking for support in the region when joining the United Nations with parallel effort of assuring its ideological and cultural presence.<sup>19</sup>

As far as Latin American-Japanese relations are concerned we could underline that after the World War II Japan has gradually become one of the most important economic, commercial and financial partners of Latin America. We have to emphasize that Japanese diplomacy in Latin America did not clearly define political objectives, having in mind that Japan did not make use of political pressure or forced Latin American governments on issues related to democracy, infiltration and dissemination of communism, etc. This phenomenon can be explained as a result of Japan's postwar foreign policy, which was clearly concentrated on economic and trade cooperation. This approach to Latin America has opened a space for Japan to establish, maintain and develop stable relations

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<sup>18</sup> It is well-known fact that the United States of America was at that time the main hegemony center in the political-ideological, military and security, economic and financial terms. However, Latin American countries during the Cold War significantly diversified its international position by establishing relations with the People's Republic of China or the Soviet Union, and in addition the intensive participation in the Non-Aligned Movement is observable, too.

<sup>19</sup> There are a lot of authors who have studied Latin American-Asian relations and, in particular, the relations with Japan. The general opinion is that Japan, unlike China, achieved a very significant economic and financial presence in this period, and that Japanese government didn't have political ambitions in that part of the world. On the other hand, China has established a close cooperation mostly with Communist and Socialist Parties in the region. For further information consult: Mols Manfred: "El regionalismo en América Latina y el Sudeste Asiático: aspectos comunes y diferencias", in: *Nuevas formas de concertación regional en América Latina*, Anuario, Rial, Buenos Aires, 1988, 91-115.

with all Latin American governments regardless of their political and ideological profile. In other words, Japanese interests in Latin America were based on economic complementation, which includes the development of trade, investment and technical assistance to these countries.

For example, Japanese investments were mainly directed in the commodity sector and modernization of food production. There is no data about the volume of trade exchange until 1950, but in 1960 it reached 600 thousand U.S. dollars. On the other hand, in the early 1980's the total amount of Japanese investment and technical assistance dynamically increased to 15 billion of U.S. dollars.<sup>20</sup> In short, Japan mainly imported raw materials and food products from Latin America, and exported the industrial products and capital goods to the region. Special contribution to the development of bilateral relations was given by Japanese emigration to Latin American countries.<sup>21</sup>

In the case of South Korea we could observe that starting from the constitution of the Republic of Korea in 1948 the first diplomatic contacts were done. In fact, in the fifties and after the Korean War (1950-1953), that is to say during the Cold War, South Korea was seeking the official support for its international recognition from anti-communist military regimes that prevailed in Latin America. However, economic and trade relations between the two sides were minor having in mind that economic policies adopted at that time in Latin America were primarily protectionist. Starting from the eighties the economy became the priority for Korean enterprises due to the rapid development in this country, which has already become industrialized. As a result, South Korean companies increased progressively the level of their exports to the Latin American market, where the main drivers for cooperation and investments were Mexico, Brazil, Argentina and other country-members of MERCOSUR. Further on, after the Asian financial crisis (1997) Latin America became a great attraction for Korean investors because of its dynamic and promising economic development. In conclusion, we may say that there is another factor that stimulated bilateral cooperation: energy resources and food potential of geostrategic nature, which justifies the growing interest of South Korea towards countries of this region.<sup>22</sup>

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<sup>20</sup> "Cooperación y relaciones económicas entre el Japón y América Latina y el Caribe", in: *Panorama de la inserción internacional de América Latina y el Caribe 2009-2010*, CEPAL, accesible on Internet: [http://www.eclac.org/publicaciones/xml/5/40695/Cooperacion\\_relaciones\\_entre\\_Japon\\_America\\_Latina\\_Capitulo\\_V\\_vf.pdf](http://www.eclac.org/publicaciones/xml/5/40695/Cooperacion_relaciones_entre_Japon_America_Latina_Capitulo_V_vf.pdf)

<sup>21</sup> For example, Alberto Fujimori (born in Lima in 1938), a Peruvian of Japanese descent, was elected President of the Republic in 1990. He founded and was the leader of the "Change 90" movement (Cambio 90) which won the elections in 1990. He was in power for ten years, but after the presidential elections in 2000, there were serious riots in the country and he was forced to ask for the political asylum in Japan.

<sup>22</sup> For more information about South Korean - Latin American and triangular relations between South Korea, Latin America and Spain consult: Ojeda Alfonsjo, Hidalgo Álvaro, De Laurentis Ernesto: *El ámbito exterior de las relaciones coreanas*, Verbum, Madrid, 2005.

### 3. Latin America and Asia Pacific: New geoeconomic association?

Having in mind that Latin America and the Caribbean is a very important part of all developing countries, its role and presence in international globalizing scenarios is strengthening progressively. There is no doubt that new international circumstance that emerged by the end of the XX century and beginning of the XXI century brought a lot of transformed development opportunities for Latin American and Caribbean countries. At the same time, it is possible to speak about a redefined international projection of Latin America considering the fact that all restructurings undertaken in this region, starting from the “lost decade”, redesigned profoundly different trends of the internal political and economic development and cooperation tendencies within the region and the region with other regions in the world. Therefore, we could speak about new geopolitical and geo-economic priorities of Latin American countries according to the principles of the theory of open regionalism and neoliberal reforms.<sup>23</sup>

In short, it can be said that the changes in the system of international relations after the Cold War clearly contributed to the process of diversification of relations of Latin America with other regions, a great number of regional organizations and the most important economic and financial centers of the contemporary world. It is also important to notice that some Latin American integration groups performed a very ambitious opening strategy to the world market with a parallel process of institutionalization of the relationships with other relevant political, economic and financial blocks in the world. In accordance with this tendency, we could identify and analyze the increasing affinity in relations between Latin America and the Asia-Pacific region. In addition, Latin American countries and regional organizations have continued to develop different forms of cooperation, including the new ones, with the United States of America, European Union, China, Japan, South Korea and Russia becoming more and more attractive and important trade, economic and financial partner.<sup>24</sup>

During this period, it is evident that intensive development of political contacts and different forms of cooperation with the countries belonging to Asia-Pacific region has been established. This trend is particularly dynamic after the establishment of the Asian-Pacific Economic Cooperation - APEC in 1989 having in mind that significant countries like Mexico, Chile and Peru have become

<sup>23</sup> Pajović Slobodan S. (2010), 8-11.

<sup>24</sup> For example, in this context the launching of NAFTA, or inability to achieve U.S. objectives in Latin America by the ALCA project should be analyzed. On the other hand, there is also a fundamental change in the relationship between Latin America and the European Union. For example, at the Summit held in Madrid in 2010 Latin America was a part of a world that no longer suffered direct consequences of extended global economic and financial crisis. For further information consult: Pajović Slobodan S., Ivanović Ivan: “The Latin American economy and its priorities”, *Megatrend Review*, Vol. 8, 2/2011, 3-4.

full members of this group.<sup>25</sup> It should also be noted that other Latin American countries gravitate towards APEC and what is more, Brazil, Argentina, Columbia, Ecuador and Central American countries are involved in establishing the partnership with APEC. On the other hand, Chile was the first Latin American country that organized an annual summit meeting of APEC in 2004. The main conclusions contained in the “Santiago Declaration” among others were: a) to achieve greater market access for agricultural products, b) support for the accession of Vietnam and Russia to the World Trade Organization, c) to create a set of the best practices for the accomplishment free trade agreements, d) commitment to transparency at work in free trade agreements, so that all citizens can know and understand it. Apart from this document the “Santiago Commitment to Fighting Corruption and Ensuring Transparency” was adopted.<sup>26</sup>

Beside APEC or progressive development of Chinese or Japanese economic and financial presence and influence in Latin America, a direct mutual interest for establishing closer and more diversified forms of bi-regional cooperation can also be seen in this period. In reality, starting from 1998 the Forum for East Asia – Latin American Cooperation (FEALAC or FOCALAE in Spanish) officially began its activities.<sup>27</sup> The main objective of FEALAC was to overcome some difficulties and differences when the formation of Free Trade Areas (FTAs) is concerned. In fact, by the end of the nineties Latin American countries began to show a tendency of expanding their financial activities outside the regional institutional framework with the strategy directed towards creating a bilateral FTA with Asian countries. It was a result of neoliberal economic reforms that have given priority to opening to the world as a type of insertion into globalization, searching of increasingly competitive place in the world economy, which supposed the process of dynamic modernization of production and society, and further strengthening of regional identity in the form of political, economic and cultural integration and cooperation.<sup>28</sup>

On the other hand, when considering the main objectives of FEALAC we can see that priority is given to the promotion of understanding and strengthening of political dialogue as the basis for the rapid development of bi-regional economic and trade cooperation. The institutional structure of the new group is

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<sup>25</sup> Today full members of APEC are the following Latin American countries: Mexico, Columbia, Brazil, Chile and Peru.

<sup>26</sup> La Cumbre APEC de Chile 2004, document of National Library of The Chilean Congress (BCN) accessible on Internet: [http://www.bcn.cl/carpeta\\_temas/temas\\_portada.2005-10-27.7993379546](http://www.bcn.cl/carpeta_temas/temas_portada.2005-10-27.7993379546)

<sup>27</sup> The members of FEALAC are from Latin America: Argentina, Bolivia, Brazil, Chile, Columbia, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela. Participating Asian countries are: Singapore, Brunei, Cambodia, Thailand, Vietnam, Philippines, Malaysia, Laos, Indonesia, Burma, Japan, China and South Korea. Australia and New Zealand are also full members of this group.

<sup>28</sup> Pajović Slobodan S. (2011), 12-14.

very pragmatic and functional. The highest level of consultations is conducted at the ministerial level (foreign ministers) of member states (Summit FEALAC), meetings that are held every two years. It is also agreed to convene regular meetings at the level of ministers of economy and finance. Also it is important to underline that in 2001 Cuba, El Salvador and Costa Rica became full members of FEALAC. Finally, the Summit as the highest level of consultations, directly points to main directions and goals of cooperation. The last Summit was held in Bogotá (Columbia) in October 2012. When analyzing the results of FEALAC it is necessary to mark that working groups for politics, culture, education, economy, technology, science and society are very active. In the frame of FEALAC the Business Meetings are organized regularly and alternatively in Latin America and Asia Pacific.<sup>29</sup>

As it was mentioned before, Mexico and Chile were the first Latin American countries to promote and carry out this strategy of cooperation and strategic partnership with Asian countries.<sup>30</sup> Consequently, it is possible to observe that certain Latin American countries achieved a quite successful insertion in global trade models of trade liberalization, such as NAFTA in the case of United States of America and Canada or full membership of several Latin American countries in APEC, FEALAC and previously in Pacific Basin Economic Council-PBEC (1967)<sup>31</sup> or Pacific Economic Cooperation Council-PECC (1980)<sup>32</sup>. A parallel process was registered on bilateral level demonstrating that principal individual partners of Latin American countries from Asian Pacific region are China, Japan, and South Korea. In case of Russia individually or as a member of APEC, we could notice an intensive development of Russian strategy towards Latin America aiming to promote economic, commercial and scientific cooperation. Russian regional priorities are: MERCOSUR as a block, and bilaterally Brazil, Argentina, Chile, Venezuela, Mexico and Cuba.

In accordance with all these new facts characterizing the relations between two regions, we can say that notably numerous and different channels of communication and cooperation were established. The bi-regional Asian Pacific – Latin American dialogue includes not only economic and trade issues, but also

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<sup>29</sup> For more complete information about FEALAC, its institutional structure, activities, declarations and results consult the official website of this group: <http://www.fealac.org/>

<sup>30</sup> As already noted a rapid and highly diversified insertion of Latin American countries in the global trends of cooperation had different forms and contents. We also emphasized that Mexico during that period made a record by signing 43 Free Trade Agreements (FTAs) on three continents (America, Asia, Europe) and was ranked the second in the world in this field.

<sup>31</sup> Chile, Colombia, Mexico, Peru and Ecuador are members of the Pacific Basin Economic Council – PBEC.

<sup>32</sup> Mexico, Chile, Peru, Colombia are members of the Pacific Economic Cooperation Council – PIECC.

increasing political contacts and consultations together with closer cultural, scientific and technological cooperation.

At the beginning of the XXI century, further intensification of economic, trade, scientific and technological cooperation between the two regions was registered. Additionally, in the same period and with the exchange of visits at the highest level the political relations were developed notably so China, Japan, South Korea and India, who became a very important economic partners of Latin American countries having in mind that they increased significantly foreign direct investments in that part of the world.<sup>33</sup> Nevertheless, it seems that the existing institutional system of bilateral and group communication and cooperation channels between Latin America and the Asia Pacific region wasn't able to satisfy the demands and different interests manifested in Latin America and its relations with Asia Pacific region. Recently, with the establishment of two completely new groups (Pacific Arc Forum – PAF and Pacific Alliance – PA) the process of geo-economic and geo-strategic restructuring of Latin America was initiated. Both groups are *de facto* harmonizing interests of member states in the field of cooperation and integration but there is also include further strengthening of cooperation with Asia Pacific region as one of the most important economic partners of Latin America. In practice, this means that the phenomenon of cooperation with the Asia Pacific region caused geo-economic and geopolitical modifications in the field of cooperation and integration processes in Latin American. This process has brought new regroupings at the Latin American Pacific coast and possibly pointed to new leaders and protagonists of cooperation with the Asia Pacific region.<sup>34</sup>

When analyzing these two new initiatives it must be mentioned that the first one (PAF) is the initiative of some Latin American countries gravitating

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<sup>33</sup> For example, in 2011 Latin America and the Caribbean received 153 billion dollars of foreign direct investment (FDI). It is about 28% more than in 2010. According to the geographical origin of these investments flows we could say that the United States and European Union countries together remain the main investors in Latin America. When Asian Pacific region is considered, the Japanese investment increased in 2011 amounting 8% of the total. The investment from China, which in 2010 was 15 billion dollars did not reach that level in 2011, but it is important to underline that China carried out acquisitions such as Sinochem Sinopec in Brazil and in Argentina, besides other Greenfield investments as the mining of Minmetals and Chinalco in Peru, or the great tourist Baha Mar resort project in the Bahamas. It is important to underline that Korean direct investments in Latin America grew 137.8% in 2010 thus outperforming for this year Chinese investment in the region. For further information consult: *La inversión extranjera directa en América Latina y el Caribe 2011*, CEPAL, 2012, accesible at Internet: [http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/0/46570/P46570.xml&xsl=/publicaciones/ficha.xsl&base=/publicaciones/top\\_publicaciones.xsl#](http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/0/46570/P46570.xml&xsl=/publicaciones/ficha.xsl&base=/publicaciones/top_publicaciones.xsl#)

<sup>34</sup> Malamud Carlos: “La Alianza del pacífico: un revulsivo para la integración regional de América Latina”, ARI 46/2012, Real Instituto Elcano de Estudios Internacionales y Estratégicos, Madrid, Spain, 2012.

towards Pacific Basin, promoted and headed in 2006 by Colombia. This project was immediately accepted by Chile, Mexico and Peru. Currently, the country members of this mechanism are: Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Peru. This Forum was established with the main objective to promote bi-regional cooperation and regional coordination in Latin American case. In brief, it could be concluded that the Forum is constituted as a mechanism for political dialogue, cooperation and convergence in economic and trade issues. Its institutional structure is formed by Ministerial Meetings, Senior Officials Meetings, the Secretariat Pro-Tempore and five working groups: Business Convergence (coordinated by Chile), Infrastructure and Logistics (coordinated by Panama) Promotion and Protection of Investments (coordinated by Colombia), Economic and Technical Cooperation for Competitiveness (coordinated by Peru) and Reflection (coordinated by Mexico).<sup>35</sup>

The most recent initiative is PA launched in 2011 by Chile, Mexico, Colombia and Peru. The new mechanism also supposes the strengthening of economic, trade and political cooperation and integration between country members. In fact, the Pacific Alliance has to be seen as a new model of strategic partnership with the priority to form an area of deep integration within the Latin American Pacific Basin, encourage regional integration, increase growth, development and competitiveness. The emergence of the AP has had a strong impact on the process of regional integration in Latin America because the AP revalued the importance of trade and economy in this process that lately insisted on political consensus. Also, it is important to stress that the AP is linked directly with the intention of country members to be a part of globalized world and to carry on deeper forms of cooperation and integration with Asia Pacific region.<sup>36</sup>

#### 4. Final remarks

There is no doubt that Latin America has strengthened progressively its international position during the first decade of XXI century and successfully diversified contacts with the new political and economic partners in the contemporary world. For example, the reinforced presence of China in some way leads one to consider the erosion of the undisputed hegemony that United States had

<sup>35</sup> *El Arco del Pacífico Latinoamericano: construyendo caminos de complementación e integración con Asia*, document adopted by the Sixt Ministerial Meeting of Pacific Arc Forum held in Cuzco, Peru in 2010 and accesible on official website of ECLAC-CEPAL: <http://www.eclac.cl/cgi-bin/getprod.asp?xml=/publicaciones/xml/3/41283/P41283.xml&xsl=/comercio/tpl/p9f.xsl&base=/comercio/tpl/top-bottom.xsl>

<sup>36</sup> For more information consult the official material on the website of the Ministry of Foreign Affairs of the Republic of Columbia: <http://www.cancilleria.gov.co/international/consensus/pacific-alliance>

established previously in this region during XIX and XX centuries. If we add that China has increased imports from Latin America by 600%, and so far invested around one billion dollars per year in this region, sent some twenty military missions there, become an observer to the Organization of American States and the Inter-American Development Bank, we will be able to conclude that China has become a very important partner for Latin American countries. Also, it is necessary to underline that the cooperation between China and Latin America occurs at the bilateral, sub-regional and inter-regional levels.<sup>37</sup>

On the other side, we could also notice that China's interests in Latin America are increasing in the domain of global security and defense questions. So far, the military cooperation with Brazil, Venezuela and Bolivia has been quite significant, as well as the recently appeared Suriname as a partner in this field, which is, due to its geographical position, extremely important for Chinese ambitions concerning the launching of satellites and spacecrafts. Parallel to this, China also established a solid base for observing the U.S. from Cuba that has become Chinese strategic partner in the Caribbean sub-region. On the other hand, and according to various authors, the strengthening of the Chinese presence in this part of the world will primarily depend on the political situation in the region and the survival in power of the leftist and populist regimes. In any case, all this new data indicates that China's policy toward Latin America is extremely pragmatic and in line with its internal increasing needs as a result of accelerated economic growth. Consequently, China cooperates in the field of energy, copper, food products and commodities in general. In its strategy towards Latin American countries, China has established a joint oil company with Venezuela and realized a significant numbers of investments in different projects in Brazil, Argentina, Bolivia, Chile, Peru, Mexico, Central America and the Caribbean. Simultaneously, at the beginning of 2004 China became one of the major trading partners of MERCOSUR.<sup>38</sup>

As far as Japanese and South Korean presence in the region is concerned, we can see that both countries have improved significantly their cooperation with Latin America. The principal motivation of their Latin American foreign policy strategies is quite similar to Chinese, but with some institutional innovations

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<sup>37</sup> A very interesting study on Latin American Chinese relations was written by Veronica Neghme Echeverría, Deputy Director of the Institute of Pacific Studies of University of Gabriela Mistral in Santiago de Chile. For further information consult: Echeverría Verónica Neghme: "Vinculaciones América Latina Asia: Futuro y Presente", available on the official website of the Library of the Chilean National Congress: [http://asiapacifico.bcn.cl/columnas/vinculacion\\_asia\\_latinoamerica\\_vneghme/vinculacion\\_asia\\_latinoamerica\\_versioncompleta](http://asiapacifico.bcn.cl/columnas/vinculacion_asia_latinoamerica_vneghme/vinculacion_asia_latinoamerica_versioncompleta)

<sup>38</sup> For further information consult: Malamud Carlos: "China y América Latina: ¿que esperan los unos de los otros?", *Anuario Asia Pacífico*, Casa Asia, CIDOB y Real Instituto Elcano, Madrid, 2006. This study is available on Internet: [http://www.anuarioasiapacifico.es/pdf/2006/009Carlos\\_Malamud.pdf](http://www.anuarioasiapacifico.es/pdf/2006/009Carlos_Malamud.pdf)

introduced mainly by Japan. For example, with Mexico and Chile, Japan signed an Agreement on Economic Association instead of FTA. The intention of Japan was to deepen and diversify the cooperation with Latin America and therefore it decided to initiate the horizontal cooperation using its own high technology and experience in such programs. This kind of cooperation is oriented mostly to Brazil, Argentina, Chile and Mexico. South Korea has strengthened diplomatic relations with Latin American countries always taking into consideration a significant number of Korean immigrants throughout the region. Korea obtained the observer status in the Organization of American States, participated in Rio Group activities, became an extra-regional member of the BID and intends to obtain the same position in ECLAC. It is interesting to note that Japan has achieved all this by the end of 2006. In short, the main Korean regional partners are Argentina, Brazil and Chile. South Korea signed a Free Trade Agreement with Chile in 2004. The establishment of South American-South Korean Center with the headquarters in Buenos Aires supports Korea's strategy in Latin America.

In brief, the relationship between Latin America and the Asia-Pacific region is carried out through various and different multilateral and bilateral channels of cooperation. It is also visible that some countries of these two regions have adopted the strategy of institutionalization of the relations bilaterally with some of the existing integration models. In any case, the phenomenon of increasing relations between these two regions is a new and innovative element in Latin American foreign policy activity. There is no doubt that historically Asia-Pacific wasn't a priority for Latin American international relations and accordingly we may deduce that this phenomenon is the consequence of globalization and the opportunities for cooperation and integration that this process has opened. Also, many authors have questioned whether there is a common Latin American policy toward Asia-Pacific and stressed that the process of institutionalization of relations with APEC or the establishment of FEALAC has considerably accelerated and diversified the development of bi-regional cooperation.<sup>39</sup>

On the other hand, it is evident that the intensive development of cooperation with the Asia-Pacific region has also influenced the process of reconfiguration of cooperation and integration flows in Latin American region. Consequently, in this sense we have to analyze the objectives, potential and possible achievements of PAF and PA, which reflect new aspirations of Pacific nations in Latin America towards deepening integration and thus becoming a more attractive and more equal partner for Asian-Pacific region.

At the end, it can be concluded that the relations between Latin America and the Asia Pacific region are rapidly evolving, gradually taking on a strategic character. As an argument in favour of such statements we have pointed out that almost all Pacific countries of Latin America are members of APEC, that FEALAC has been established as inter-regional forum for cooperation with ASEAN,

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<sup>39</sup> Verónica Neghme Echeverría, *ibid.*

that the most important Latin American countries<sup>40</sup> have become strategic partners of China, Japan and South Korea and, finally, that the scope and content of economic and financial cooperation has reached as high as never before in the history. In practice it means that Latin American geo-economic space, which was reformed according to the theory of Open Regionalism, is becoming an increasingly important partner of Asian Pacific region, whose Open Regionalism has permitted dynamic economic development and integration.

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<sup>40</sup> According to the World Bank's ranking for 2012 Brazil's economy is seventh in the world, Mexico's economy is the fourteenth, while the Argentine economy in the twenty-eighth. Among the top forty economies of the world there are still Chile, Venezuela and Colombia.

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## **DA LI JE POJAVA STRATEŠKOG PARTNERSTVA IZMEĐU LATINSKE AMERIKE I AZIJSKO-PACIFIČKOG REGIONA MOGUĆA?**

### **S a ž e t a k**

Autor analizira razvoj odnosa između Latinske Amerike i Azijsko-pacifičkog regiona kroz istoriju i daje trenutno stanje njihovih bilateralnih odnosa. Njegova polazna tačka je činjenica da su oba regiona reformisana u skladu sa teorijom otvorenog regionalizma i da su uspešno ostvarila značajniji nivo učešća u globalizaciji. Autor smatra da je jedna od glavnih karakteristika tog odnosa na početku 21. veka njegova transformacija u strateškom smislu. Osim toga, uzeto je u obzir i to da najvažnije latinskoameričke zemlje poput Brazila, Meksika, Argentine, Čilea i Venecuele postaju sve privlačniji partneri za zemlje APEK-a i ASEAN-a ili Kinu, Japan i Južnu Koreju u bilateralnim odnosima. Konačno, jedan od glavnih zaključaka počiva na shvaćanju da još uvek ne postoji jedinstvena latinskoamerička strategija prema Azijsko-pacifičkom regionu i da se trenutno u Latinskoj Americi odvija značajan proces redizajniranja strukture regionalne integracije u zemlje pacifičke obale.

**Ključne reči:** Latinska Amerika, Azijsko-pacifički region, saradnja, integracija, strateško partnerstvo, Narodna Republika Kina, Japan



## THE TRANSFORMATION OF THE HUNGARIAN-ITALIAN RELATIONSHIP

The Hungarian-Italian relationship is one of the most important ones for Hungary. This study investigates the Italian spatial structure from political geographic point of view, and its values in historical dimensions of the geographic research. The special feature of this relationship is the basis of the south-west corridor (the formal Hungarian geographical exit to the sea).

The recent survey pays attention to the institutional, commercial and cultural dimensions of the relations. The geographic concentration of the activity is meaningful. The majority of the cooperation is focused on the Central-Hungarian Region in Hungary (Budapest and its agglomeration). The Hungarian cities, counties and regions all over the countryside show less importance. The concentration in Italy is less characteristic, but it is focused in four regions (Emilia-Romagna, Lombardy, Veneto, Friuli-Venezia-Giulia).

**Keywords:** corridor, region intermediary, relations, Italy, Hungary

### 1. The changing character and view of the Hungarian–Italian relations

#### *1.1. The changing character of the Hungarian–Italian relations*

The Hungarian-Italian relations have made many, and often quite deep impacts in the geographical thinking. The troops arriving at the plain of Venice through the valley of the Isonzo (or Soca) river in the autumn of 898, wearing oriental costumes, came from the land of Pannonia and made their way south from the Drava and Sava rivers and the Muraköz (the present Medimurska in Croatia). This track had been used by different conquerors intruding into Italy in the preceding centuries (the Huns, Avars etc.), and had originally been built out by the Romans and named Via Postumia. From this time on, however, the road bore the name of the Hungarians for centuries; this was the “Path of the Hungarians” or “Strada Ungarorum”.<sup>1</sup>

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<sup>1</sup> JÁSZAY M.: *Velence és Magyarország*, Budapest 1990.

In the years from 898 to 954 a total of 33 Hungarian military expeditions to Italy – including the marches through – were recorded. During these the Hungarian troops reached the southern part of the peninsula, usually as allies of some local power. This way the Hungarians gained thorough knowledge on the region. They also transported a considerable amount of “knowledge-transmitting materials” (i.e. prey) and many Italians as war prisoners and slaves to their newly conquered home land. They had comprehensive skills on the contemporary Italian culture on which they could rely on their “integration into Europe”.

Some Italian names still bear the memories of these times. Longara (near Vicenza), Ongarina (near Verona) and Vogarisca (near Gorizia) all have the names originating from the Hungarians. In some areas of North Italy the terms “Hungarian ford”, “Hungarian port”, “camp of the Hungarians” were used for centuries, and a suburb in both Bologna and Mantova was called Ungaria as late as in the 13<sup>th</sup> century.<sup>2</sup>

A series of cultural history memories also kept the evidently negative sign of the Hungarian raids. One of these memories is represented in one of the most ancient pieces of the Italian literature, a poem written by the guard of the city of Modena, which contains a plea that has become famous (or infamous) since then: “Save us, oh Lord, from the arrows of the Hungarians!”. At the end of the Strada Ungarorum and the beginning of the Amber Road, in the crypt of the Romanesque style Cathedral of Aquileia there is a picture whose origin is uncertain but probably depicts a Hungarian warrior. Later this negative image changed, in accordance with the change in the character of the relations.

For the Hungarians thus Italy was a point of reference in their foreign economic relations since the time of the Conquest. The Transdanubian phase of the settling down in the Carpathian Basin was also connected to the already mentioned Italian military expeditions.

In the organisation of the medieval cattle trade, of basic importance, North Italy was the third major market besides the Byzantine and the South German one. Later, when the Hungarians were converted to Christianity (the process in which an emblematic person was archbishop Gellért/Gherado, from Venice) and joined Rome, the trade of industrial and luxury goods also boomed, in which the main actor was Venice.

During the Hungarian Middle Ages (until the 15<sup>th</sup> century) a continuous rivalry characterised the relationship of Hungary and Venice, the stake of which was the rule of the Dalmatian cities, the taxes collected from them and the issue of the sea exit, which was of great political and economic significance.

It is necessary to mention that there was an opposition coming from broader, strategic efforts behind the rivalry. The dominant foreign political and geopolitical effort of Hungary was focused on gaining ground in the Balkans. This process, from time to time manifested in territorial consequences, was well

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<sup>2</sup> *Ibid.*

expressed and the demand was kept by the so-called demands for the throne by the Hungarian kings. Venice, as a super power of the time, also had a strong Balkans policy; in this region the two powers were rivals for each other.

Another foreign policy objective of the time was the policy of holding back the invaders and the protection against them for centuries. The contemporaries and the posterity cannot neglect the fact that the Danube Valley offering an ideal path played an important role in these processes. The main axis – in the geographical sense of the word – of the foreign policy objectives of Hungary and the international events concerning Hungary was the northwest-southeast direction. Compared to this all other directions had an inferior role.

The relations in direction other than the main direction described above, i.e. the relations to the eastern and southern areas beyond the Carpathians were far less intensive (*although one of these, the Mongol Invasion had disastrous effects on Hungary*). Especially in the time of the Anjou rulers Hungary showed a great interest in the Italian affairs. Cultural exchange was booming, together with the traffic of those travelling for military, educational or sacral purposes. Finally the Ottoman conquest coming from the Balkans brought an end to this model.

The wars between Hungary and Venice were closed by the victory of Venice at the time of the reign of Sigmund (1387 to 1437). The opposite parties then were urged to cooperate by the penetration of the Turks. Approximately one-third of Hungary was conquered by the Turks and these areas remained under Ottoman rule for about a century and a half. The rest of the country was torn into two, the so-called royal Hungary, ruled by the Habsburgs whom the Hungarians always saw as foreigners, and the Principality of Transylvania, dependant on the Turks.

Transylvania was practically in a geopolitical puffer zone and managed to maintain a limited Hungarian state sovereignty. In its foreign policy orientation – following its Protestant rulers and elites – the northern and western regions of Europe were appreciated (*in addition to the neighbourhood policy!*), instead of the Roman Catholic Italy. The so-called “Royal Hungary” held back the Turkish invaders with the help of the “Eternal Provinces” during the Habsburg Reign. In the protecting and liberating fights against the Turks, Hungary required the help of half of Europe, and the necessary resources could only be mobilised from Central and Western Europe. The dominant relations in this area were made to the Catholic German speaking regions.

The significance of the relations to Italy, of greater importance before, now decreased. The foreign policy relevance of this relation was partly gone; the cultural and economic role remained, even though with lessened intensity.

At the time of the Counter-Reformation, the Collegium Ungaro-Illiricum, related to the University of Bologna, played a very important role in the development of the relations. The institution worked for 228 years, approximately half of their students were Croats and half of them Hungarians. The school was closed down by Joseph II, the enlightened absolutist ruler (1780-1790). The role of the

Collegium Hungaricum-Germanicum in Rome was similar. The people educated in these institutions, later awarded state and church offices, became the primary mediators of the Italian cultural impacts to Hungary and the annexed parts.

The enlightenment made a new era in the Hungarian-Italian relations, too. The lines written by the Hungarian poet János János Batsányi, which have become common saying since then – “To Paris turn your eyes” – , marked a new philosophical point of reference that ruled over the former ones.

In the 18<sup>th</sup> century the Hungarian regions, integrated into the empire of the Habsburgs, recreated their economic and cultural relations to Italy. This relationship became more and more intensive with the progress of modernisation, culminating in the 19<sup>th</sup> century. The national fights of independence brought the two peoples closer to each other in the cultural and political sense, and the development of the transport infrastructure (especially the railway, and also the development of sea navigation) resulted in strong economic relationships. This period was closed by World War I (in which the two countries were enemies to each other) and the Trianon peace dictated mutilating the historical Hungary. The two states were “removed” from each other; the former “neighbour” location was gone. The two countries that had almost touched each other in the Fiume region ethnically – and were actually neighbours with their state territories – were torn hundreds of kilometres apart by the peace treaty concluding World War I.

For the Hungarian state that became sovereign again in the period between the two world wars and found itself in the Central Europe puffer zone, surrounded by a ring of hostile neighbour states, the economic, political and cultural relation to Italy was a sort of exit from its limited action space. This was the most intensive era of the Hungarian-Italian relations. Finally the two states were allies in the new world war, from which both came out defeated. Later their fate turned into two different directions, integrated into the opposite camps of the bipolar world. As a twist of fate, the two states were “designated enemies” in the decades after World War II. During these decades both states finished a modernisation programme. In Italy market economy structures were created, and the country joined the most developed countries of the world by the 1980s. To the opposite, the modernisation of Hungary was less successful and was at least as contradictory as that of Italy, a strongly divided country three times Hungary in territory and six times in population.

In the second half of the state socialist period, in the framework of the Alpine-Adriatic Cooperation, relations and collaboration emerged at subnational level between the two countries, just with the participation of the counties of Transdanubia, which had been unimaginable in inter-state relations, due to the geopolitical contradictions of the time. The cooperation contributed to the shift in orientation and the socio-political systemic change in Hungary in 1988-91.

The time of the so-called systemic change brought a great shock not only to Hungary as a part of the post-socialist region but also to Italy that had a political

structure petrified by the cold war logic (the Tangentopoli scandal, the “Mani Puliti” (clean hands) movement).<sup>3</sup> There were initiatives in the uniting European economic space (especially by Italy) and the two regions started to approach each other, creating sub-regional organisations (Pentagonale, Hexagonale, Central European Initiative).

The achievements were far more limited than had been expected, however. The otherwise developing relations were underachieving for cultural, political and economic reasons, with significant spatial disparities both in Hungary and Italy.

To sum it up: the Hungarian–Italian foreign policy relation is a cyclically changing connection, in which the orientation to each other, the development of the relations actually means the search for alternatives within the main foreign political trends. In this relationship the cultural elements have almost always been highly represented and the economic relations have been intensive too, although with varying weight.<sup>4</sup>

## 2. Different geographical views in the Hungarian and the Italian geography

### 2.1. *Altering spatial views in the Hungarian and the Italian secondary school geography books*

The relatively narrow audience of professional books published does not allow us to see the geographical concepts of the broader social groups, and their images of each other. A possibility to examine these issues is to take a look at the books used in secondary school education, as these books are used by the majority of the society and they show a certain degree of stability in content. Below we compare the images of the two peoples and states through the analysis of the contents of an Italian and a Hungarian secondary school geography book.

The Hungarian secondary school geography book generally used now (PROBÁLD F. 2002) introduces Italy among the states of the European Union, in the same chapter with the Vatican. The book looks at whole planet Earth in a regional breakdown on a total of 226 pages, of which four pages are devoted to Italy, including approximately half a page on the Vatican. There is only one map to illustrate the chapter, demonstrating the North-South divide by the figures of unemployment and GDP per capita. The pages written of Italy put the main emphasis on the economy.

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<sup>3</sup> PAP N.: “Centrifugális és centripetális erők az olasz államtérben”, in: Kukovecz György (ed.): *A Mediterráneum szerepe az európai történelemben és politikában*, Szeged 1998, 175-186; Pap N.: *Törésvonalak Dél-Európában*, Pécs, 2001.

<sup>4</sup> Pap N.: “Az olasz-magyar gazdasági kapcsolatok néhány nézőpontja”, *Mediterranean and Balkans Forum*, 1/2007, 2-9.

The main contents of the chapter are as follows:

- natural endowments,
- the duality of the rich and the poor parts of Italy,
- the industrialised northern and the underdeveloped agricultural southern regions,
- a brief introduction to some cities, on the basis on their economic functions,
- the Vatican as the smallest sovereign state of the world, a group of monuments and the centre of the Catholic Church,
- the summary is on the basic features of the economic geography of Italy.

On the whole we can see that the book was written with a slightly conservative attitude, in the spirit of the best regional economic development traditions. Its information is up-to-date and accurate. What we can criticise in the book is what is missing from it: there is too little attention paid to the problems of the society other than economic issues.

The Italian public geographical thinking is also represented in a secondary school book (*ATLANTE GEOGRAFICO*, 2005). This book was written in a completely different structure and attitude than its Hungarian equivalent. The book of 222 pages has a strong didactic attitude and a more complex character than the Hungarian one. It does not only give a regional view of the Earth but also contemplates several geographical phenomena. The comparison of the two books is thus rather difficult.

What can be compared in the Italian and the Hungarian book is the different views of the European space. The Italian book sees Hungary as the middle part of the so-called Danube region (*la regione danubiana*). The other countries in this spatial unit are the Czech Republic, Slovakia and Romania. (*In Hungary too there is a similar notion with some historical connotation: the Danube Area.*) The characteristic of this Danube region is that it borders the Balkans (*la regione balcanica*) from the north. North of this region we find the Germanic region (*la regione germanica*): a region consisting of the Netherlands, Denmark and Poland in addition to Germany. This way the book differentiates among zones more and more north from the Mediterranean area, including Italy.

The description of Hungary is short and accurate, with more or less the same content dedicated to each of the four countries. The photos reinforce the stereotypes of the countries (“csikós”, i.e. horseman, Hortobágy, Budapest in Hungary) and the maps are schematic illustrations. The introduction to the country seems to be rather superficial with a Hungarian geographical approach, but it is consistent with the introduction of the other countries.

The comparison of the two books helps to understand a few significant differences. The Hungarian geographical view of Europe has a basically east-west

division, while the Italians divide Europe into regions from north to south. The fact that the Danube region has such an outstanding position may seem strange to the Hungarians. This resembles the Danubian Empire of the Habsburgs or, as a much “lighter” alternative, the Danube confederation envisaged by Lajos Kossuth. The fact that this spatial community is not actually functioning is partly explained by the many tensions among the states belonging to this region (especially in the Hungarian-Slovak, and the not much better Hungarian-Romanian relation). However, reasons probably more important than the tensions of the recent past are the cultural and civilisation differences (language: Slavic, Neo-Latin, Finno-Ugric; religion: Roman Catholic, Hungarian Reformed, Evangelic, Greek Orthodox etc.; there are also disparities in mentality and development level, differences in the political culture etc.). The sub-regional group identity is weak, nevertheless the self-differentiation of the countries takes place more typically along an east-west axis (see e.g. Visegrad Countries) rather than a north-south one (see the disputes over the spatial category Southeast Europe). The Danube as a connecting link is weak now due to the limited navigation, its dividing character is much stronger, for some conflicts (see e.g. Gabčíkovo-Nagymaros).

The other major difference can be seen in the character of the geographical view. The Hungarian traditions of geographical education attribute a considerable significance to the economic role of geography and subordinate the contemplation of the other social phenomena to the economy. In the Italian geography the issues of cultural geography and the sensitivity connected to the natural environment are much stronger. Geography thus has completely different content for the Hungarian and the Italian readers.

In order to assess the above statements adequately we have to comprehend the position of geography in the ideal of the general education in Italy and in Hungary. We can find significant differences in the education priorities in the two nations, which can well be seen in the field of geography. In the ideal of an educated Hungarian person at least the topographic skills of the world are of basic importance. On the other hand, the demand for geographical information is much lower in Italy.

## *2.2. Mental map survey of the Italy image of the Hungarians*

The geographers studying mental mapping approach the issue from the side of the adapting, learning, reading and travelling medium.<sup>5</sup>

The first relevant survey was done by Bajmóczy and Csíkos in 1994-95. They surveyed 28 European countries in a group (sample) consisting of a total of 148

<sup>5</sup> Bajmóczy P, Csíkos J.: “Európai országok népszerűsége egyetemi hallgatók körében”, *Iskolakultúra*, 6-7/1997, 71-77; MICHÁLKÓ G.: “Mentális térképek a turizmus kutatásában. A magyar középiskolások Olaszország képe”, *Tér és Társadalom*, 1-2/1998, 111-125; LAKOTÁR K.: *A 14-16 éves tanulók hazánk szomszéd országairól alkotott kognitív térképeinek tartalmi elemei*, PhD thesis (manuscript), Pécs 2007.

university students. The east-west discrepancy seemed to be strong in the minds, and the negative feelings towards the neighbour countries were well demonstrable. The results also revealed that the primary and secondary education had a strong impact on the cognitive maps of the members of the target group.

It is not by chance that it was Gábor Michalkó, an excellent representative of tourism geography researchers who had mental maps made in the circle of secondary school age groups, as Italy is an important destination for the travelling Hungarians. The survey was conducted in 1997, using a group of secondary school students just before their final exams as a representative sample. The study tries to find out what factors motivate the students in their travel decisions. The positive attitude is dominant, so Michalkó tried to find the first thought the target group had in mind of Italy, what sights of interest they knew and what cognitive map they had of the peninsula.

In her doctoral thesis Katalin Lakotár summarised and updated the relevant research. She looked at the cognitive maps of the age group of 14 to 16 years, especially their cognitive maps of the states neighbouring Hungary, supplemented by the maps of some more distant European countries. The examination can be taken as representative, since it covered the whole of Hungary; the processing of the findings took place in a regional framework (of the seven Hungarian regions). It was done in 2004-2005, using more than 1,200 questionnaires. She worked with two control groups: one with children of 10-12 years of age and one consisting of adults. The survey of the control groups only showed minor differences compared to the target group. With some reservations, the findings can thus be comprehended for the whole of the Hungarian population.

We can say that there is no “white patch” in Europe on the travel map. The most popular destination of the target group was Austria, followed by Croatia, Italy, Slovakia and Germany. Looking at the findings in a regional breakdown, Italy was among the most popular destinations in each case, but never in the first position. It is not surprising that in the case of planned excursions Italy was in the same group as France, Great Britain or Spain, the group of the most attractive countries. It could also be seen from the research findings that the higher living standards, the attractive lifestyle, the factors connected to the sea and the objects of outstanding cultural significance were the factors influencing the travel decisions.

The dominant concepts related to the Italy image were as follows: sea, sights of interest, Rome, Italian food, Venice, Mediterranean landscape, happy lifestyle, leaning tower of Pisa and the Vatican.

The aspects in a travel with longer stay (i.e. not the tourism-motivated ones) are different. Good salary, better living conditions and language skills are far the most important in this case. The demand of the younger generations for language learning is very strong. On the top of the selected countries we find Great Britain, France, Italy, Germany and Spain, but some other countries were

also, although much less frequently, mentioned: Austria, Greece, Switzerland, the Netherlands and Croatia.

Half of the secondary school students in Hungary at the time of the survey learned English, and some 40% learned German as the first foreign language. We have to remark that Italian, together with French, had stable positions as the second foreign language in school education. (*According to the census of 2001, the number of those in Hungary who spoke Italian was approximately 60 thousand.*)

The list of rejected countries is also worth looking at. The order is as follows: Romania, the Ukraine, followed by Serbia, Russia, Albania and Bulgaria much less often mentioned. It is interesting that Germany is many times on the “black list”, among the countries rejected.

On the whole we can see that the judgement of Italy is positive in the target group examined, but this attitude towards Italy is dominated by tourism and cultural contents; the everyday Italian life, the image of the society and the essence of the economic processes are rather unfamiliar to the young Hungarian generations.

### 3. Territories in the relation

(roads, transport routes, mediating cities, corridor to the sea)

#### 3.1. Territories of the relations, geographical dimensions – the role of Transdanubia

From the historical core area of the Hungarian state (Visegrád, Veszprém, Fehérvár, Pest and Buda), the route to Italy ran along the northern and southern shores of the Lake Balaton, through an important Drava crossing, Ptuj (Petovium or Potoj) to the Adriatic coasts. The plains and mild hills of the Pannonian region do not cause any major transport problem. The only obstacle may be the crossing of rivers and streams. Major effort was only necessary in the ridges of the Dinaric Mountains. Pilgrims heading to Rome, merchants dealing with the Republic of Venice, cattle drivers and soldiers walked the paths difficult to use, across the barren and dry ridges of the Karst Mountains. Finally, descending to the Mediterranean coast of the Kvarner Bay, they reached a world very much different, whose colours, rhythm and tastes are still surprising for the Hungarian traveller in our days.

For Hungary the south-western direction/corridor explores the two main destinations now. One is the Italian regions and is optimally accessible for the dominant road traffic via the Budapest–Nagykanizsa–(Zagreb)–Ljubljana–Trieste line. The infrastructural basis of this is the Hungarian motorway M7 under construction, the Croatian Čaklovac–Zagreb motorway, and the Slovene motorway to Sezana. The major part of the motorway chain is now finished. On rail-

way, the international fast train called Venezia is a direct connection between Budapest and Venice, or Rome. The flight traffic is intensive along the Budapest-Rome (Fiumicino/Ciampino) and the Budapest-Milan line.

The other target area is the eastern coast of the Adriatic Sea, whose tourism destinations and ports (Koper, Rijeka) are managed by the Budapest-Zagreb-Karlovac-Rijeka/Split motorways. On air the south Dalmatian region around Dubrovnik is accessible from Hungary. The issue is dealt with in details by the excellent study of Ferenc Erdősi.<sup>6</sup>

### 3.2. Hungarian land access to the sea

Hungary these days, similarly to several other Central-European countries, is a land-locked country, i.e. it has no sea coast. This was not always the case, and the Hungarian historical nostalgia often reminisces the Hungarian seaside; some remnants of these memories can still be seen and experienced during summer holidays in Croatia.

In the Adriatic area there are still states whose inner areas are or were connected to the sea with short coastlines and land stripes.<sup>7</sup> The following corridors (exist to the sea) could be enumerated from the historical times on the northern and eastern shores of the sea:

- the Austrian corridor that ran to Trieste and its neighbourhood until 1918 (the Habsburg rulers opened a narrow sea access for Austria in 1366, and they built, competing with the Hungarian railway to Fiume, rail lines in the 19<sup>th</sup> century, see e.g. the Austrian South Railway);
- the Slovene corridor covering the port of Koper and less than 50 kilometres seashore around it. Its importance increased with the sovereignty of Slovenia (in 1991), and the Slovenians had sea law disputes with Croatia for the provision of the sea access;
- the Bosnian exit, the neighbourhood of the port of Neum (it has a strategic importance for Bosnia and Herzegovina and also for Croatia, the latter having just the opposite interest);
- the Yugoslav corridor (Crna Gora), one of the sea accesses of the now land-locked Serbia, providing an access to the sea of the member republics of the Yugoslav state federation until 2006);
- finally the Hungarian corridor whose birth, features and consequences are analysed below in details.

<sup>6</sup> ERDŐSI F.: *A Balkán közlekedésének főbb földrajzi jellemzői*, Balkans Papers No. 3, 2006.

<sup>7</sup> Pap N.: *Törésvonalak Dél-Európában*, Pécs 2001.

The location of Hungary is not really favourable as regards the possible access to the world sea.<sup>8</sup> The Hungarian state was born in a continental basin, surrounded in all directions by high mountains making serious transport obstacles. North, east and southeast of Hungary, the ranges of the Carpathian Mountains, are interrupted by no more than a dozen passes. At the western borders of Hungary we find the feet of the Alps, southwest of Hungary the Karst mountain ranges close the Carpathian Basin. Among the mountains the only pass is the Danube valley in the northwest and the southeast direction. The natural drainage of the waters in the Carpathian Basin is to the Black Sea across the Danube River. The main transport axis of Hungary traditionally – *apart from the forty years of the state socialist period!* – was (and still is) along the Danube line, in a northwest-southeast direction. The line of river navigation was (and still is) followed by the rail and road infrastructure. The Black Sea, however, is located in a less developed area of Europe, so the access to this sea only means limited advantages for Hungary. The importance of this Danube route was and still is in keeping in touch with the areas (German speaking regions) in the other direction.

From the core area of the Hungarian state the historical route to Italy ran along the northern and southern shores of the Lake Balaton, through an important Drava crossing, Ptuj (Petovium or Potoj) to the Adriatic coasts. The plains and mild hills of the Pannonian region did not cause any major transport problem. The only obstacle may have been the crossing of rivers and streams. Major effort was only necessary in the ridges of the Dynaric Mountains. A considerable difficulty was the range of the Karst mountains, reaching an elevation of 1500 metres, where crossing was blocked not only by the steep hills and the lack of constructed roads but also by the fact that the mountain range is built up by limestone that absorbs all waters: it was very difficult to find drinking water, which was a major obstacle for settling down. The Karst area was almost uninhabited for a long time. Pilgrims heading to Rome, merchants dealing with the Republic of Venice, cattle drivers and soldiers walked the paths difficult to use, across the barren and dry ridges of the Karst Mountains.

Before the appearance of mechanised transport the drinking and change of the animals could not be adequately solved, so transport across the Karst was very limited in volume. The deep-cut valley of the Kulpa River offered the most favourable crossing possibility in the mountain. With the general spread of capitalist market economy in the 19<sup>th</sup> century the Hungarian state made considerable efforts to create the transport connection between the Hungarian seaside and the inner basin. In the framework of these works the railways across the Karst Mountains were constructed for the transport of the products of Hungarian agriculture (mainly cereals) to the sea ports, primarily Fiume, and to the world markets using the cheap sea navigation.

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<sup>8</sup> Prinz Gy.: *Magyarország fekvése a tengerhez*, Budapest 1905; SCHINDLER M.: *Az Adria felé vezető útaink geográfiája*, Budapest 1913.

The historical Hungary had a sea coast of 190 kilometres, and even this short section was accessible from the Hungarian state territories across a land stripe that was only 48 kilometres wide at its narrowest point. This area, as part of the Kingdom of Croatia, was one of the first areas annexed to the Kingdom of Hungary and also one of the areas most continuously possessed by Hungary.

At the time of the foundation of the Hungarian state, in the days of (Saint) Stephen I, the Kingdom of Hungary had no sea shore areas. The sea access mentioned above was opened in 1091, in the time of the reign of (Saint) Leslie I, by the occupation of Croatia (in the opinion of Croatia historians by the voluntary accession of Croatia). During the reign of Kalman (Coloman) the penetration started by Leslie continued, Hungary occupied seaside cities (Spalato, Tersact, Trau, Zara) and islands (Arbe, Osero, Veglia). The Dalmatians were ready to choose the Hungarian reign offering liberal trade instead of the rule of Venice, their rivals in trade. The first Hungarian governorship was set up in Beograd (Tenger-Fejérvár); this city became the first Hungarian sea port as well. We have to remark, however, that the conquest was not motivated by any geopolitical considerations, it did not represent any kind of "Hungarian maritime effort", it was merely based on the typical dynastic politics of the times. The corridor was formally born very early, although it only started to work functionally in the 18<sup>th</sup> and 19<sup>th</sup> centuries. For centuries, the significance of trade in this direction was negligible. The above-mentioned features of the natural endowments did not allow the construction of busy commercial routes.

During the reign of the Anjou rulers, especially Louis the Great, Venice tried several times to re-conquer the seaside. Venice first abandoned the reign over Dalmatia and acknowledged the free trade of the Dalmatian cities in the Peace Treaty of Zara in 1358. This was the time when Raguza became a part of the Kingdom of Hungary. The next war was concluded by the Peace Treaty of Turin (in 1381), in which the *status quo ante* was reinforced. Finally the Venetians acquired Dalmatia during the reign of Sigmund, in 1432 – after 327 years of Hungarian rule. The only areas remaining in the possession of the Kingdom of Hungary were the Frangipani (Frangepan) domains: Tersact, Buccari and a few islands.

The most important city of the Hungarian seaside was Fiume, the Croatian name of the city was given in the 13<sup>th</sup> century (Riekae). Originally it was the property of the Archbishop of Pola, and later it was donated to the Counts of Duino. It was the subject of bloody fights for a long time; it was sometimes possessed by the Frangepands and by the Counts of Duino at other times. When the Habsburgs, strong enough after the acquisition of Carinthia and Kraina, reached their territories towards the seaside, they gained Trieste together with Fiume (establishing this way an Austrian sea access or corridor). From this time on Austria too was a factor in the rule over the Adriatic area. Fiume was the scene of constant war actions in the 15<sup>th</sup>-17<sup>th</sup> centuries. It was destroyed by Venice many

times, it had to protect itself against the Turks, the “Usk” sea robbers<sup>9</sup>, and it was occupied by the French in the Spanish Succession War.

This stormy period came to an end in the 18<sup>th</sup> century, after Venice started to decline parallel to the decrease in the importance of the routes of the Levant trade. At the same time peace, allowed development. The Habsburg rulers tried to promote the trade in their empire by the development of the sea ports, among other things. Charles III reinforced the autonomy of Trieste and Fiume (1723); then he had the first road in the Karst mountains built, the so-called Charles Road. Maria Theresa continued the policy of her father: she organised the seaside territories into a separate province (Littorale Austriacum) in order to optimise the frameworks of the state economic policy in the region. On the whole, however, Trieste enjoyed preference in her politics. Following the advice of her son, Joseph, she annexed Fiume to Hungary, and placed it as a *corpus separatum*<sup>10</sup> under the management of a Hungarian governor (1776). Their goal was to open up new routes and thereby new markets for the products of Hungary, promoting this way the economy of this part of the empire.

In the Reform Age in Hungary (first half of the 19<sup>th</sup> century) the public interest in the seaside increased. The contemporary decision-makers saw the key of the economic and industrial development in the improvement of the sea navigation and the development of Fiume as an export port. The impact of Lajos Kossuth was especially important (“*To the sea, Hungarians!*”). Plans were made for the construction of the railways running to Fiume. From the debate of Kossuth and Széchenyi – on what route to choose – the idea of the Széchenyi was implemented. The actual works were interrupted by the War of Independence (in 1848-49) and the consequent Habsburg absolutism. Fiume was now under Croatian public administration. After the Compromise made in 1867, following many years of debates the legal situation of Fiume was only settled in 1881.

The construction of the railways took place in the framework of the “Fiume or Constanta” dilemma. There was a debate on what route should be used for transporting the Hungarian crops to their markets in Italy and Western Europe. In fear of the competition of the Austrian railway to Trieste, some Hungarian experts of economic policy recommended the construction of the railway to the port of the Romanian city Constanta. By the pressure of the large estate owners of the Great Hungarian Plain, and considering the circumstances (much longer and thus more expensive railway transport, much longer sea transport and the competition of the Russian and Romanian cereals) the decision was made on the railway to the port of Fiume. The final section of the railway from Budapest to

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<sup>9</sup> Irregular armed troops fleeing to the Adriatic sea from the Turks from Bosnia. They were actually the equivalents of the Haiduk at the seaside. One of them, Miklós Jurisics, the heroic defender of the city of Kőszeg, is now in the Hungarian national pantheon (the author).

<sup>10</sup> Separate body annexed to the Kingdom of Hungary.

Fiume was built in 1882, whereas the Nagyvárad- (now Oradea) Fiume railway was constructed by 1909. In the 1910s plans were made both for the development of the port and the improvement of the railway tracks.<sup>11</sup> Some also urged the increase of the number of the Hungarian ports – taking the rather limited development possibilities of Fiume into consideration.<sup>12</sup> The geographical and legal conditions for the construction of developable *Hungarian* ports were given in Dalmatia, but the basis of any development would have been the construction of an adequate railway line in this place, too.

The coming world war blocked the implementation of the plans, and the peace treaty concluding the war deprived Hungary of its seaside territories. Hungary became a *land-locked* country, in the ring of the surrounding hostile Little Entente states. However, as the importance of the south-western strategic direction did not cease to exist, the leaders of the Hungarian foreign policy saw the possible expansion of the action space of Hungary in the cooperation with the Kingdom of Italy. The route of keeping in touch, however, partly moved to the Austrian state territory. This was symbolised by the Italian–Austrian–Hungarian cooperation (Rome–Vienna–Budapest axis). The relations in the coming years were made not on geographical and economic grounds but on the basis of political considerations in the first place. This was true both for the period between the two world wars and the time of the cold war.

The science and technology revolution and the transformation of the foreign economic relations resulted in significant changes in the character and importance of sea navigation. The range of the goods, persons and information extended, and the order of their importance considerably altered. The centre-periphery relations also changed to a large extent. As an effect of all these factors some directions of communication were depreciated, others appreciated. The character and content of the communication axes changed.

In the present Hungary, the professional literature<sup>13</sup> differentiates among eight communication axes or channels. These are as follows:

- a) the western “Budapest-Vienna”,
- b) the south-western “Adriatic” corridor,
- c) the north-eastern “Borsod-Galician”,
- d) the northern “Tatra-Krakow”,
- e) the eastern “Transcarpathia-Podolia”,
- f) the south-western “Pontic-Levantine”,
- g) the southern “Suez” and
- h) the south-western “Slavonian” corridor.

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<sup>11</sup> SCHINDLER M.: *Az Adria felé vezető útaink geográfiája*, Budapest 1913.

<sup>12</sup> HAVASS R.: *Magyar impérializmus*, Budapest, 1902; HAVASS R.: *Dalmácia*, Budapest 1906.

<sup>13</sup> ERDŐSI F.: *Ágazati és regionális kommunikációföldrajz I-II*, Pécs 1996.

These axes are different in importance and their characters are also rather different. For Hungary the most important axis in many cases is the south-western “Adriatic” corridor: its place, role and importance are still outstanding among all communication main axes. The primacy of the western main direction cannot be questioned, where a considerable amount of high specific value goods is managed, but its main importance is still in the fact that it is the major innovation corridor of Hungary. This is the corridor along which approximately 70 % of all advanced technology, know-how and licences reach Hungary.<sup>14</sup>

The south-western international “Adriatic” corridor in our survey is similar in many respects to the above-mentioned “western” corridor. It is also an important corridor of innovation, although with a much lower capacity and traffic than the other one. Still some 15% of all input innovations come from this direction, and the remaining six communication directions together make no more than another 15 %.<sup>15</sup>

Hungary manages now most of its trade with the European Union member states and the neighbouring countries. The railways, roads, inland navigation and pipeline networks for this are available. The demand for sea transport is negligible for the time being. In the longer run a demand for the sea transport of the Middle East crude oil may emerge, just through the communication channel of our survey (Adriatic pipeline). The role of the “Adriatic” corridor itself is primarily in keeping in touch with the developed Italian territories; this was a basic function of this corridor formerly, as well.

The integration of Hungary into the European networks – including the infrastructure networks – and the implementation of the *four freedoms* shed new light on the problems in our survey. Sea transport is now responsible for approximately 80% of the European Union’s foreign trade to third countries; also, one-third of the internal trade of the European Union is managed by sea transport. The community transport policy gives a priority to sea transport as an energy saving and environmentally friendly means of transport. Thus the ports making parts of the Trans-European Network and the rail and road<sup>16</sup> systems connecting these ports to the inland areas of the continent are improved and will also be improved in the future.

In Hungary’s transport development concept the specific national interests are harmonised with the pan-European plans. The elements of the Trans-European Network running across Hungary enjoy a special priority.

The professional literature differentiates among eight components of this “Adriatic” corridor. Its original foundation is made by railways (two of them): the Budapest-Nagykanizsa–Murakeresztúr–Trieste (1) and the Budapest–Dom-

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> The least priority is given to the road systems; railways and inland navigation routes are preferred (the author).

bóvár–Gyékényes–Zagreb/Ljubljana–Fiume–Venice(–Rome) (2) electrified international railways. The first railway is suitable for Ro-La operation. The foundation of the road traffic is the Budapest-Ljubljana motorway, or dual carriageway in some sections (3). Other components are the Budapest-Venice international coach lines (4), the Budapest-Ljubljana–Milan–Spain/North Africa air corridor (5), and the Budapest-Ljubljana 10 fibre optic cable (6). The corridor is also an important potential energy transport route. The Adriatic crude oil pipe starting from the Island of Krk (7) will be a very important alternative in the future in the safe supply of Hungary with oil. Of similar importance is the 120kV high voltage wire connecting Hungary to Croatia (Varasdin (8)).<sup>17</sup>

### *3.3. South Transdanubia as a potential mediating region: its endowments and south-western gateway functions*

Towards the Adriatic Sea and Italy the geographically determined area of relations is the so-called geographical South Transdanubia. The region south of the Lake Balaton, to the Hungarian state border and the Drava River – which we can consider as Transdanubia in the geographical sense of the word – is not the same in all respects as the region made by the three counties of the official South Transdanubia, created for statistical and regional development purposes. This region with potential gateway functions extends to the south-eastern parts of Zala county, and to the south it spreads to the so-called Baranya Triangle across the border, to Osijek. Its spatial connections are strong to the Hungarian core area around the capital city, and also towards the South Great Plain region. Its traditional spatial structural role is mediation towards the West Balkans and the Adriatic and Italian regions. It is a special contradiction of the region, however, that in addition to the mediating role it also has a traditionally isolated character.

The road network was transformed many times by the shifts in the power spaces.<sup>18</sup> The study of János Hóvári summarises the ethnic, social and cultural content of the changes in the established structures, starting from Budapest and moving along the shores of the Lake Balaton, the last mediating city towards southwest in Nagykanizsa. The road from here to the sea runs to Zagreb–Karlovac–Fiume (Rijeka) or Ljubljana–Koper, or through Trieste to the Italian regions. Another access to the Adriatic Sea of lesser importance is the road also stemming out from Budapest but running along the Danube River, via Szekszárd, Pécs and Osijek as mediating cities, towards the Slavonski Brod, Sarajevo, Mostar, Metkovic, Ploce line. The gateway role is supported by railways as well, with lines running almost parallel to the roads.

<sup>17</sup> ERDŐSI F.: 1996, 2006.

<sup>18</sup> HÓVÁRI J.: “Adriai és balkáni hatások a Balatontól a Dráváig”, 43-58, in: Pap N. (ed.): *A Balatontól az Adriáig*, Pécs 2006.

The region is awkwardly divided from spatial organisational aspect. Nagykanizsa and its surroundings are now part of the West Transdanubian region, a region developed into a border region to Austria – although this city had and potentially could also have now an important role in mediating towards the south-west direction including Italy. The Baranya Triangle was part of the Serbian-Croat-Slovenian Kingdom after 1921 (the first and then the second Yugoslavia), while now it belongs to Croatia. The present lagging behind is the consequence of the presence of the state border, which is due to the Yugoslav civil war and its aftermath (east, across the Danube River, the hostile Serbia can be found, and the territory of the Baranya Triangle itself is burdened with war destruction, land mine fields, the refugee problems and the serious economic decline).

On the Hungarian side of the region the county structures are strong; their descendants are usually the historical county seats, now cities of the county rank (Pécs, Kaposvár, Szekszárd, and Zalaegerszeg in the west). Coming from their population, economic weight and the political positions of their leaders they dominate the regional processes. The significance of Nagykanizsa, another city of the county rank, does not exceed that of the small towns in the shaping of the regional processes.

The rivalry of varying intensity among the cities and their counties, and their (less typical) cooperation are the dominant features of the spatial processes in the region. The linkages to the metropolitan regions<sup>19</sup> demonstrate the mediating role of the region. With the two-hour travel distance Nagykanizsa is more closely linked to Zagreb than to Budapest, the other major cities are in the perimetropolitan region of Budapest. The effective linkage to the metropolitan cities is blocked by the significant lagging behind in the development of infrastructure.

The region of South Transdanubia is present on the map of Europe and the world with the following features:<sup>20</sup>

- a mediating border region of the European Union towards the Balkans areas,
- the headquarter of the nuclear industry in Central Europe (nuclear power plant of Paks, nuclear waste deposits in Bataapáti and in the vicinity of Pécs, in Boda),
- a background area of the Lake Balaton, a region experiencing the restructuring of its tourism sector,
- a region accommodating Pécs, the European Capital of Culture in 2010,
- home to the University of Pécs, the biggest and most intensively developing university in Hungary,

<sup>19</sup> Metropolitan – part of the global big city network (Budapest and Zagreb in this place), perimetropolitan cities and towns – settlements (cities and towns) not farther than two hours travel time from the metropolitan centres, with close relationships to those.

<sup>20</sup> Pap N.: “A délnyugati korridor és jelentősége Magyarország életében”, 9-32, in: Pap N. (ed.): *A Balatontól az Adriáig*, Pécs 2006, 9-32; Pap N.: “Az olasz-magyar gazdasági kapcsolatok néhány nézőpontja”, *Mediterranean and Balkans Forum*, 1/2007, 2-9.

- a region with good agricultural endowments (e.g. Villány, Szekszárd and Balaton wines),
- a region touched by the European Corridor V,
- a region along the Danube River making the basis of the European Corridor VII,
- one of the regions with the most serious social problems.

#### 4. The specific pattern of the real connections between Hungary and Italy in the present and the recent past

**Table 1:** *Comparison between Italy and Hungary*

	<b>Hungary</b>	<b>Italy</b>	<b>Relationship of the two</b>
Area	93,030 km	301,308 km	3.23 multiplier
Population	9.982 million (2011)	60.813 million (2011)	5.8 multiplier
GDP (2011)	140,3 billion Euro	2,313 billion USD	16 multiplier
Administrative division	19 counties + capital city 3,175 municipalities	20 regions, 106 (from 2009: 109) provinces 8,801 communa-s	Partly similar structures, the disparities in size justify the two or three levels. The main difference is the presence of autonomies in Italy.
Breakdown by language	The role of the Hungarian language in everyday language use is 99% and increasing with the progress of assimilation. Most migrants come from the Hungarian-inhabited parts of the neighbour countries, the only considerable exception are the Chinese immigrants.	The role of Italian language is dominant, but the presence of minority language groups (Sard, German, Friulian etc.) and a growing role of intercontinental migrants have to be considered. The regional variations (dialects) of the Italian language are significant.	The role of the state language is dominant, but the change of the language policy in the long run has to be considered in both countries, although to a different degree.

Ethnic breakdown	Nation state character, with small number of German, Slovak and Croat minorities. The proportion of the Roma population is increasing (approximately 0.5 million).	Nation state character. Five autonomous regions mark the importance of the minority issue. The handling of migration (illegal migration within that) is a source of continuous tensions.	Both are nation states.
Main inner political cleavages and conflicts	Capital city – countryside Religious – non-religious Losers – winners of the modernisation	North–South Religious – non-religious Classic “left wing – right wing” Traditional presence of inner political extremism, terrorism Organised crime (maffia, camorra, n’drangheta etc.) has gained significant positions in power in the southern regions	Both societies walk the modernisation path of the European peripheries, so their inner conflicts are partly similar. The differences are caused by the altering processes of national development and also the cultural particularism.
Political and economic block	Member of the European Union NATO member	Member of the European Union NATO member	They belong to the same security, political and economic block.
External conflicts	Conflicts of low intensity with Serbia, Slovakia and Romania, because of the situation of the Hungarian minorities Conflicts with the neighbour states because of environmental safety problems Participation with troops in the war conflicts of the Balkans and the Middle East region (Kosovo, Afghanistan and Iraq)	Participation with troops in the war conflicts of the Balkans and the Middle East region - Target of illegal migration from the Third World and the Balkans countries - Energy security problems	Their external conflicts come to a large extent from their joint NATO and EU membership, and partly from their special geographical locations.

**Source:** Pap, N.

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#### 4.1. *The Hungarian–Italian relations of our days*

The relations are varied, covering a broad range of activities from cultural, economic and tourism to security policy activities. The relations have a long tradition and considerable dimensions, coming from the proximity of the two countries. The cultural relations were established on strong old state institutional grounds (Italian Institute of Culture in Budapest, Hungarian Academy in Rome) and on the basis of inter-municipal, inter-university and personal relations. In the cultural exchange the Italian side participates mainly with music, opera, film, literature, fine arts, fashion and the Italian cuisine. The Hungarian party contributes to the Italian cultural life primarily with literature and the beautiful Hungarian women. The Italian culture has a relatively high prestige in Hungary; especially certain humanities intellectuals appreciate it highly.

As regards the modern foreign languages, English and German are spoken by a million people each in Hungary (34 thousand speak them as mother tongue), approximately 200 thousand people speak the formerly heavily supported Russian and the same number of people the traditionally prestigious French. Italian, Slovak and Romanian (officially minority languages in Hungary) are spoken by a relatively large number of population, each of these languages are spoken and understood by approximately 100 thousand (HCSO 2001). On the whole, Italian language skills among the Hungarian population have definitely good positions, despite the disadvantages of the language (no ethnic minority in Hungary speaking Italian, no former strong state pressure to teach Italian, and the globalisation effects do not strengthen the positions of Italian, either).

The institutional system of cultural relations shows a strong spatial concentration. In Hungary this is Budapest, in Italy it is Rome and Milan, e.g. this structure reflects the special settlement network structures in both countries. The two institutional systems mirror images of each other; more or less the same functions are represented by the institutions.

In the field of trade Italy is the third biggest partner of Hungary; in import it has the fourth position. This intensive relationship is more or less concentrated to the North Italian regions, which means that there are significant reserves in the cooperation with the South Italian areas. The focus of the Hungarian relations is the Central Hungarian region, especially Budapest. Approximately half of the Hungarian export is processes goods, more than one-third is machinery and transport equipment.

In Hungary the number of businesses with Italian property is approximately 2,400, with a total of about 2 billion Euros invested. Italy has the eighth position in the order of the foreign investors in Hungary. Presently we are experiencing the second period of Italian investments in Hungary. The businesses interested in privatisation and locating here to use the cheap labour, active from the beginning of the 1990s, have already moved to the Southeast European area. The new Italian

investors appreciate the good geographical positions of Hungary and are looking for the high level skills that are still more competitive in Hungary than the western labour. A new aspect is the access to the structural support available in Hungary after the EU accession of the country. Among the most important Italian investments in Hungary we find Italgas (services), Agip (services), the Boscolo Group (hotel industry), Benetton (clothing), SanPaolo-IMI (Inter-Európa Bank), Intesa BCI (CIB Bank), Iveco (bus manufacturing), ENI (chemical industry), Generali (insurance), Pirelli (cable manufacturing), Zanussi (household devices), Ferrero (confectionery industry) and Sole (dairy industry). However, most of the Italian companies are small sized; practically they are family ventures, what determines the features of their presence in Hungary. In the organisation of their activity the informal character is strong.

Since the EU accession the Hungarian businesses have become more active, due to the decrease of the bureaucratic difficulties. The majority of the Italian companies are members of a chamber (Hungarian–Italian Chamber of Commerce, HICC). The ITDH<sup>21</sup> keeps an office in Milan.

The cooperation is booming in the field of tourism. The most favoured destination of Hungarian tourists are the North Italian areas (seaside resorts, ski resorts, historical cities), while the Italians usually visit Budapest for long weekends. The institutional relations (agreements, professional organisational co-operations) have been made. The Hungarian Tourism Co. established a representative office in Milan in 1996.

Our empirical surveys suggest that the inter-state institutional system that Hungary operates is not effective enough for the Italian businesses. The definitely great growth potentials can only be utilised by a system that is strong at the local level, takes the cultural, language and size characteristics into consideration, has strong personal relations and effectively promotes businesses.

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<sup>21</sup> ITDH – Hungarian Investment and Trade Development Company

**Table 2:** *Locations of the businesses members in the HICC (287)*

Localities	Breakdown (proportion, pieces)
Total of businesses registered in Hungary	227 (80 % of the HICC)
Budapest	172 (75 % of the Hungarian members)
Functional regional centres (Pécs, Szeged, Debrecen, Miskolc, Győr)	7 (3 % of the Hungarian members)
Other cities with county rank	12 (5 % of the Hungarian members)
Other municipalities in Hungary	36 (16 % of the Hungarian members)
Total of businesses registered in Italy	60 (20 % of the HICC)
The five most represented regions in Italy:	
- Lombardy	15 (25 % of the members with Italian location)
- Veneto	10 (17 % of the members with Italian location)
- Friuli-Venezia Giulia	9 (15 % of the members with Italian location)
- Emilia-Romagna	7 (12 % of the members with Italian location)
- Toscana	5 (8 % of the members with Italian location)
Total:	47 (78 % of the members with Italian location)
The five cities in Italy with the largest number of businesses	
Milan	7 (12 % of the members with Italian location)
Lecco	3 (5 % of the members with Italian location)
Trieste	3 (5 % of the members with Italian location)
Pordenone	3 (5 % of the members with Italian location)
Padova	3 (5 % of the members with Italian location)
Total:	19 (32 % of the members with Italian location)

**Source:** Edited by Pap N, after the databases of HICC, Hungarian–Italian Chamber of Commerce

In order to analyse the regional characteristics of the Hungarian–Italian economic relations we processed the database of the Hungarian–Italian Chamber of Commerce. Although the Italian member businesses in the database do not make a representative sample of the total of Italian–Hungarian relations, they make a considerable set.

The main findings are featured in the table above. Most of the member companies are Italian owned, with Italian representatives and managers, but 80 % of them have their headquarters in Hungary.

Of all businesses located in Hungary, 75 % have their headquarters in Budapest. The actual weight of Budapest is even bigger, as we find several other respective settlements in the agglomeration of Budapest. This makes an extraordinary

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concentration in which the share of all other settlements outside the Budapest agglomeration is negligible. The total of the 23 cities with county rank are home to no more than 8 % of the respective member businesses, and even the regional centres among them do not show an above-average activity. For the whole of the settlement network in Hungary (other than Budapest) we can see the relatively bigger weight of the inner urban ring and the regions in between compared to the outer ring of cities and their in-between areas.

Another kind of concentration can be seen in the Italian settlements home to the company headquarters. The five most important regions featured in the table are all North and Central Italian regions. Besides the regions of Lombardy, Emilia-Romagna and Veneto representing a considerable economic weight, the other forerunner of the making of relations is the North-Eastern region of Friuli-Venezia-Giulia, which has a natural advantage in making relations to Hungary, coming from the spatial rationality. As regards the cities of the company headquarters, Milan has the biggest weight, followed by the four other cities from the above-mentioned regions (Lombardy, Veneto and Emilia-Romagna).

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## TRANSFORMACIJA MAĐARSKO-ITALIJANSKIH ODNOSA

### S a ž e t a k

Razvoj italijansko-mađarskih odnosa je spektakularan i stanje odnosa je pozitivno za obe strane. Danas je karakter ovih odnosa obično kulturni i ekonomski, dok su odnosi koji se odnose na politiku i bezbednost ređi. Gledajući u dužem periodu, ovi odnosi su imali uspone i padove. Osnovna motivacija za inicijativu koja je dolazila sa mađarske strane obično se vezuje za proširenje prostora političkog i ekonomskog delovanja i smanjenje dominantnog uticaja.

Kulturni odnosi su odlični, raznovrsni i uživaju obostrano pozitivnu ocenu. Kulturni institucionalni sistem je izgrađen i relativno dobro funkcioniše, ali se uglavnom odnosi samo na intelektualce humanističkih nauka. Uloga nastave jezika u srednjoškolskom obrazovanju je značajna: italijanski kao drugi strani jezik je popularan. Institucije pokazuju snažnu regionalnu koncentraciju u obe zemlje, pri čemu je uloga Budimpešte, Rima i Milana posebno naglašena.

U ekonomskim odnosima pozicija glavnog grada i centralnog mađarskog regiona je dominantna, ruralne oblasti su znatno manje važne. U slučaju geografskog južnog Podunavlja – što je prirodno područje odnosa – opšti mađarski hendikep se pogoršava transportnom i kulturnom izolacijom i nedostatkom konzistentne strategije koju treba slediti.

U Italiji razvoj odnosa nije slučajan; uočljiva je značajna prostorna koncentracija. Severne italijanske, a posebno severoistočne i centralne italijanske regije imaju interes u razvoju odnosa. Glavne regije sa kojima Mađarska razvija odnose su Frijuli–Venecija–Đulija, Veneto, Emilija–Romanja i Lombardija.

**Ključne reči:** koridor, region posrednik, odnosi, Italija, Mađarska

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## THE LEGAL STATUS OF THE SEAPORTS OPEN TO PUBLIC TRAFFIC IN THE REPUBLIC OF CROATIA

In the first part of this article the author describes the elementary significance of Croatian Maritime Code of 1994, Sea Port Act of 1995 and Croatian Maritime Domain and Sea Ports Act of 2003. In the second part, the author spells out about Croatian Maritime Domain and Sea Ports Act of 2003 with special review at the seaports open to public traffic. He points out a legal status of the ports as maritime domain in the Republic of Croatia, a new concept of separation of functions in the port, the role of Port Authority, special regime of concession for port activities and status of immovables as port assets. Finally, in the third part the legal status of the Croatian seaports open to public traffic is compared with Slovenian law (port of Koper) and Italian law (port of Trieste).

**Key words:** seaports open to public traffic, Maritime Domain and Sea Ports Act, Republic of Croatia

### 1. Introduction

After promulgation of the *Constitution* of 1990<sup>1</sup> and after declaring its independence by the *Dissolution Act* of 8 October,<sup>2</sup> the Republic of Croatia embarked upon the task of regulating numerous issues, thus creating a genuine legal constellation and a new legal system. A part of the above refers to the rules which govern the field of maritime navigation and maritime law.<sup>3</sup>

The new *Croatian Maritime Code* (hereafter – CMC 94) was passed on February 2, 1994 and came into force on March 22, 1994.<sup>4</sup> The provisions of the CMC regulated: the maritime and submarine areas of the Republic of Croatia, the safety of, navigation on the internal waters and the territorial sea of the Republic

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<sup>1</sup> See *Official Gazette of the Republic of Croatia* (hereafter – OGRC) No. 56/90.

<sup>2</sup> See OGRC No. 31/91.

<sup>3</sup> Bolanča Dragan: "The Maritime Law in the Era of Globalisation – a Universal law or Mixed Legal System", *Zbornik radova Pravnog fakulteta u Splitu* 3-4/2002, 333-338.

<sup>4</sup> See OGRC No. 17/94, 74/94, 43/96. The CMC derogated The Maritime and Inland Navigation Law of the Republic of Croatia (see OGRC No. 53/91).

of Croatia; *the regime of the maritime domain*;<sup>5</sup> the basic material and legal relations concerning waterborne craft; contractual and other obligatory relations concerning ships; procedures concerning the registration of waterborne craft, limitations of the ship operator's liability; enforcement proceedings and injunction, and security measures on ships (art. 1, (1)).<sup>6</sup>

In the matter of sea ports the fundamental act was the *Sea Ports Act* (hereafter - SPA) which was passed on December 19, 1995 and came into force on January 5, 1996.<sup>7</sup> The SPA (art. 2 (1)) contained the definition of the term "port" and divided ports into those open to public traffic and those for a special purpose. In the port open to public traffic<sup>8</sup> any physical and legal person on terms of equality can use the port according to its purpose and within the capacity of the available facilities (art. 2 (2)). The port for a special purpose<sup>9</sup> is a port for the needs of a company, another physical or legal person (nautical tourism port, industrial port, shipyard, fishery port etc.) or government body (military port, police port etc.) - art. 2 (3).

Finally, the new *Croatian Maritime Domain and Sea Ports Act* (hereafter CMDSPA)<sup>10</sup> came into force on October 15, 2003 and derogated Part III of CMC 94<sup>11</sup> and SPA (art. 123).

<sup>5</sup> Part III (Articles 48-80) of the CMC 94 describes the maritime domain which includes the seashore, ports and harbours, breakwaters, embankments, dams, sandbars, rocks, reefs, mouths of rivers flowing into the sea, sea canals, and live and inanimate natural resources (fishes, minerals, etc.) in the sea and in the marine subsoil (art. 49 (2)).

<sup>6</sup> For more details see Bolanča Dragan: "The New Croatian Maritime Code", *Acta Juridica Hungarica Budapest* 1-2/1997, 60-63, Bolanča Dragan, Luttenberger Axel: "Some Views on the New Croatian Maritime Code", *Zbornik radova Pravnog fakulteta u Splitu* 1-2/1995, 113-117, Stanković Predrag, Stanković Gordana: "Croatia", *International Encyclopaedia of Laws - Transport Law*, Kluwer Law International, Haag 2000, 37-171.

<sup>7</sup> See OGRC No. 108/95, 6/96, 137/99. The previous legislation substantially regulating the matter of sea ports was primarily contained in the Maritime and Water Demesne, Ports and Harbours Act (OGRC No. 19/74, 39/75, 17/77, 18/81; hereafter - MWDPHA). This act was repealed by the SPA.

<sup>8</sup> See in detail Bolanča Dragan: "Pravni režim luka otvorenih za javni promet u hrvatskome pomorskom zakonodavstvu", *Strani pravni život Beograd* 1-3/2001, 27-49.

<sup>9</sup> See in detail Bolanča Dragan: *Pravni status morskih luka kao pomorskog dobra u Republici Hrvatskoj*, Pravni fakultet, Split 2003, 98-108.

<sup>10</sup> See OGRC No. 158/03, 100/04, 141/06, 38/09. See also Bolanča Dragan, Naprta Rajko: *More naše plavo - Morske luke (zbirka propisa)*, Biblioteka Nading, Zagreb-Split 2010, 187-209.

<sup>11</sup> The new Croatian Maritime Code (hereafter - CMC 04) come into force on December 29, 2004 and derogated CMC 94.

## 2. Sea ports open to public traffic and the CMDSPA

### 2.1. The ports as maritime domain<sup>12</sup>

Maritime domain is a public domain of interest for the Republic of Croatia; it is under its special protection and is used under the conditions and in the way regulated by CMDSPA (art. 3 (1)). Maritime domain consists of coastal sea waters and territorial sea, their seabed and underground, as well as a section of land that is by its nature intended for general use or has been declared as such, as well as everything that is permanently connected with such section of land<sup>13</sup>, on or under the surface (art. 3 (2)). The use of a maritime domain can be general<sup>14</sup> or special use<sup>15</sup> (art. 6 (2)) and concession<sup>16</sup> for special use and economic exploitation<sup>17</sup> of a part of maritime domain can be granted to physical and legal persons through a legally prescribed process (art. 7 (1)). The right of ownership or any other property right cannot be acquired on maritime domain on any basis (art. 5 (2)).

CMDSPA divides ports as ports open to public traffic (international or domestic) and special purpose ports (art. 40).<sup>18</sup>

### 2.2. A new concept - separation of functions in the port

With the entry into force of the CMDSPA (and SPA earlier) a new strategic concept of port management, operation and development has been introduced in Croatia. Unlike the previous legislation, the CMDSPA has effectively separated strategic management from commercial activities in public ports introducing a dualism of entities in charge of such activities. On the one hand, the

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<sup>12</sup> Kundih Branko: *Hrvatsko pomorsko dobro u teoriji i praksi*, Hrvatski hidrografski institut, Rijeka 2005, 11-36.

<sup>13</sup> The following shall be considered as a part of land: coast, ports, embankments, sandbanks, rocks, reefs, beaches, mouths of rivers flowing into sea, canals connected with sea, and live and inanimate natural resources on seabed and in underground (art. 3 (3)).

<sup>14</sup> General use of a maritime domain shall mean that everybody has the right to use the maritime domain in accordance with its nature and purpose (art. 6 (3)).

<sup>15</sup> Special use of a maritime domain shall mean every use which is not general use nor economic exploitation of the maritime domain (art. 6 (4)).

<sup>16</sup> Concession is a right under which a part of maritime domain is partially or fully excluded from general use and is given for special use and/or Economic exploitation to physical and legal persons, in compliance with physical plans (art. 2 (5)).

<sup>17</sup> Economic exploitation of a maritime domain shall be the exploitation of the maritime domain for performing of economic activities, with or without using of the existing buildings and other structures on the maritime domain and with or without construction of new buildings and other structures on the maritime domain (art. 6 (5)).

<sup>18</sup> See fn. 8 and 9.

functions of strategic management, development, protection and maintenance, as well as coordination and control of commercial activities have been entrusted to the Port Authority, a State entity subject to a predominant influence from the Government. On the other hand, the commercial activities should be in the hands of a number of persons registered for business operation. In order to be able to perform commercial activities (and thus earn profit) within the port, such persons must obtain appropriate authorization (concession) from, and pay certain charges to, the Port Authority.<sup>19</sup> The purpose of the above concept is to foster private incentive and investment, enable competition, and thus increase the quality standards and reduce prices, with the overall purpose of increasing (or regaining) the competitiveness of Croatian ports. The described regime does have an important impact on the status of assets in the ports, or, more precisely, the facilities constituting the port infra and suprastructure.

### 2.3. Port Authority<sup>20</sup>

The Port Authority is a non-profit institution, capable of gaining rights and obligations in legal transactions (art. 48 (3) and (7) CMDSPA). The Government of the Republic of Croatia exercises the rights that the Republic of Croatia has as the founder of port authority (art. 48 (2)). Among other powers, the Port Authority: manages and controls the facilities of port infra and supra structure, and, as such, collects concession charges from commercial entities in consideration of granting them the concession to carry out port activities (including the use of the existing facilities of the port infra and suprastructure) and/or build new facilities of port infra and suprastructure (art. 50), collects port dues (art. 62) and determines the maximum prices at which the port activities may be rendered (port tariffs) - art. 63. The decision-making within the Port Authority is carried out by two bodies, i.e. the Management Council and the Manager (art. 51 (1)). The Management Council consists of seven members and a president. Four members and the president are appointed by the Government (art. 51 (2) PSA). In certain circumstances, the government is authorized to dismiss the Management Council (art. 53). The Manager, in turn, is appointed by the Management

<sup>19</sup> It must be pointed out, for the sake of completeness, that the previous legislation (i.e. the MWDPHA) did also formally entrust the management of a port to the State (or, more precisely, to the units of local self-government, such as municipalities), while the use, i.e. the commercial exploitation, was in the hands of commercial companies which had to be duly authorized for that purpose by the bodies of local self-government. In reality, though, the strategic thinking and control in terms of management, development and exploitation were in the hands of the commercial companies - for more details see Capar Rudolf: *Pomorsko upravno pravo*, Školska knjiga, Zagreb 1987, 181-186.

<sup>20</sup> For the purpose of managing, building and using public ports which are of special international economic interest for the republic of Croatia, port authority shall be established (art. 48 (1)).

Council with the consent of the Minister of Transport and Maritime Affairs, and is responsible to the Management Council and the Government (art. 56 (3)). Any profit generated by the Port Authority must be used solely for the maintenance and development of the port infra and suprastructure (art. 61).

#### 2.4. Regime of concession<sup>21</sup>

The types of activities that may be performed in public ports are: 1. mooring of ships, yachts and fishing, sporting and other boats and floating vessels; 2. loading, unloading, trans-shipment, transport and storage of goods and other materials; 3. embarkation and disembarkation of passengers and vehicles; 4. other economic activities in direct economic, traffic or technological relation with these activities (art. 65 (1)). Commercial entities may perform any of those activities only upon a concession which consists of the act of concession and concession's agreement (art. 23 and art. 25). In general, Port Authority grants a concessionaire a concession for one port activity and single concessionaire cannot be granted a concession for performing of all port activities (art. 66 (4)).<sup>22</sup> Except for certain cases (where concessions are granted by the Port Authority with prior consent by the Government of the Republic of Croatia or the Croatian Parliament - art. 67 (4)), concessions are granted by the Port Authority for a period of up to 10 years (art. 67 (2)) or 99 years (art. 67 (1) and (3)).<sup>23</sup> Concessions are granted on the basis of a public tender or request of the concession applicant. The *choice of concessionaire* should be based on the applicant's competitiveness in terms of: investment and business plans, quality of service, organization and equipment, know-how, financing, concession charge offered, impact on the port's overall turnover, environment protection, etc (art. 23). The *concession period*

<sup>21</sup> See Seršić Vanja: *Koncesije na pomorskom dobru*, Novi informator, Zagreb, 2011, 171-174.

<sup>22</sup> Types of concession are: 1. concession for port activities that does not require exclusive use of the existing infrastructure and suprastructure or building new infrastructure and suprastructure in dock area, 2. concession for performing of other economic activities specified in art. 65, paragraph 1, clause 4 of CMASPA, that do not require use of the existing infrastructure and suprastructure or building of new infrastructure and suprastructure in dock area, 3. concession for performing of port activities that requires use of the existing infrastructure and suprastructure and/or building of new infrastructure and suprastructure in dock area, 4. concession for performing of other economic activities that require the use of the existing infrastructure and suprastructure and/or building of new infrastructure and suprastructure in dock area (art. 66 (5)).

<sup>23</sup> The exception is also the transformed enterprise in social ownership (Luka) which has the right to receive a priority concession for carrying out the port activities and using the port facilities. As already indicated, Luka as a transformed company has the right to receive a priority concession. The priority concession differs from ordinary concessions in that: (i) the priority concession is granted to an *already known entity (Luka)*; (ii) it is not granted on the basis of a public tender, but on the basis of a *written request*; (iii) it is granted for a period of 50 years.

should be determined having in mind the time necessary for the amortization of the investments planned by the concessionaire (art. 20 (6)). The *concession charges*, in turn, should be determined taking into account, *inter alia*, the extent of the planned investment. In summary, the duration of the concession and the amount of the concession charge should be so balanced as to protect investment and guarantee the return of capital.<sup>24</sup>

### 2.5. Port assets

When considering the legal regime of the port assets, a distinction must be made between the movable and immovable assets. The immovables deserve special attention in this opinion. There are basically two categories of immovable assets in the port (art. 2 (7) and (8)):

- port *infrastructure* includes docks and other land areas of a port, breakwaters and other infrastructure facilities (ex. port roads and railroads, water-supply network, sewer network, power-supply network, telephone network, port-traffic safety facilities etc.) (including piers, jetties, roads, railroads, buoys and the like);
- port *suprastructure* includes structures built in dock area (administrative buildings, warehouses, silos, reservoirs etc.).<sup>25</sup>

Immovable assets in the port are traditionally subject to a special *non-ownership* regime. The legal formula behind such regime is as follows: ports, by definition, constitute a part of the *maritime domain*. The maritime domain, including any immovable assets located within the domain area, may not be subject to anyone's ownership and enjoys the State's special care; consequently, all immovables located within the port area are maritime domain and may not be subject to ownership. This has been the legislative principle under the previous law (see art. 4 and 26 MWDPHA), as well as under the current one (see *supra* 2.1.).

Under the old regime,<sup>26</sup> Luka as enterprise in social ownership, enjoyed the right to use the immovable assets constituting the port infra and suprastructure by virtue of the authorization received from the local municipality. Such right of use included not only the right to commercially exploit the facilities, but

<sup>24</sup> Concessionaires are free to form their prices for the port services performed. Nevertheless, as already indicated, the Port Authority has the right to prescribe the maximum prices for port services (the tariffs). Also, in certain circumstances the Port Authority shall have the right to reduce the tariffs, always having in mind the competitiveness of the port and capabilities of the concessionaires (art. 63).

<sup>25</sup> *Nota bene* other major cargo-handling facilities as permanently installed cranes etc. are not port suprastructure.

<sup>26</sup> See Bolanča Dragan: "Pravni režim hrvatskih luka otvorenih za javni promet s posebnim osvrtnom na pravni status objekata lučke podgradnje i nadgradnje", *Zbornik radova Pravnog fakulteta u Splitu* 1-2/ 1999, 115-116.

also a right and a duty to manage, maintain and develop the same. The use of the facilities was subject to no charge. On the other hand, Luka was responsible for the maintenance and development of the infra and suprastructure facilities. Building of such facilities was to a substantial extent financed from Luka's own sources. Under the new regime, building and maintenance of the port infra and suprastructure is the responsibility of the Port Authority. Commercial entities may receive a concession to use such facilities, in consideration of which they have to pay certain charge. When established, the Port Authority took over the management of the port infra and suprastructure, as well as all Luka's financial rights and obligations from the previous period in connection with the same.<sup>27</sup>

### 3. The comparison with Slovenian law (Port of Koper) and Italian law (Port of Trieste)

#### 3.1. Port of Koper<sup>28</sup>

The basic legal framework in the port of Koper is analogous to the one that used to apply in Croatian ports until the entry into force of the CMASPA (SPA).<sup>29</sup> Luka Koper, as a port company (i.e. a commercial company engaged in port activities), carries out the tasks of the port manager. Such power was received from the local municipality pursuant to an act which defined the facilities (the port area, the objects of port infra and suprastructure, as well as the unbuilt pieces of coast) to be entrusted to the management of Luka Koper. As the port company, Luka Koper is in charge of the building and maintenance of the port infra and suprastructure.<sup>30</sup>

As it follows, the management function in the port of Koper has not been entrusted to a port authority or a similar state institution. The functions of port

<sup>27</sup> Until it is transformed and until it receives a priority concession, Luka will have the right to use the port infra and suprastructure facilities at no charge. In principle, the shift to the new regime will have a two-way financial impact on Luka. On the one hand, having ceased to be the prime responsible party for the building and maintenance of the port facilities, Luka is released from the appertaining financial burden. On the other hand, the duty to pay concession charges is an item of cost that Luka has not had before.

<sup>28</sup> See Bolanča Dragan, Stanković Gordana: "The legal status of the Croatian seaports of Rijeka and Split with special review to the ports of Koper and Trieste", *Naše more Dubrovnik*, 5-6/2000, 206-207.

<sup>29</sup> The legal regime of ports in the Republic of Slovenia is governed primarily by the Ports Act (Official Gazette of the Socialist Republic of Slovenia No. 7/77, 29-1403/86, 5-262190; Official Gazette of the Republic of Slovenia No. 10-407/91, 55-2515/92, 13-587/93, 66-2401/93, 66-2402/93, 29-1356/95).

<sup>30</sup> Building and/or refurbishing of any shore facility is subject to prior consent of the relevant Harbour Master's Office.

management and commercial exploitation of the port facilities are concentrated within a single entity - Luka Koper. Unlike its Croatian counterpart (Luka Rijeka), Luka Koper has passed the process of transformation from the social ownership to a known-owners regime and operates as a joint stock company. Despite the absence of state institutions, Luka Koper is effectively controlled by the State through the State's majority interest in the Luka's stock capital,<sup>31</sup> as well as through a substantial number of members in Luka's Supervisory Board. Nevertheless, Luka Koper is financed entirely from its own business, pays taxes and receives no state subsidies.

Apart from carrying out the basic port activities (such as loading/discharging of cargo, embarking/disembarking passengers, warehousing), Luka Koper as the port company may also perform other activities that are associated with, or enable a more thorough and cost-effective use of the port (such as industrial manufacturing, processing, and finishing of goods, as well as towage, pilotage, ship-chandling and the like). Nevertheless, Luka Koper has the right to entrust some of these ancillary activities to other commercial companies. At present, Luka Koper's commercial activities are concentrated mainly at terminal operations, each of the terminals constituting a separate profit centre within the joint stock company.<sup>32</sup> Many of the ancillary port activities are carried out by separate companies set up by Luka Koper. Some of them are fully owned by Luka Koper,<sup>33</sup> while in a number of others Luka Koper holds various capital interests.<sup>34</sup> The tariffs for the port activities are determined by Luka Koper. Luka Koper is entitled to collect port dues. The port assets are, too, under the management of Luka Koper. To the best of our knowledge, and although the Ports Act is silent on this matter, the port facilities, as well as the underlying land, are in the ownership of Luka Koper and have entered into its asset evaluation for the purposes of transformation.<sup>35</sup> The Slovenian *Ports Act* does not recognize a concept of maritime demesne.<sup>36</sup>

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<sup>31</sup> Luka Koper has the following ownership structure: the Republic of Slovenia owns 51% of the stock capital; various state funds - a total of 18,70%; Koper Community - 7,70%; other legal entities - 2,20%; other shareholders - 20,20%; stock-broking companies - 0,20% - see *Port of Koper Annual Report*, 1997, 9.

<sup>32</sup> At present, there are 11 profit centres. They are separate organizational units within the joint stock company, but have no legal personality of their own.

<sup>33</sup> For example, INPO d.o.o., Free Zone d.o.o. and Pristan d.o.o.. Each of those companies operates as a limited liability company.

<sup>34</sup> For example, Luka Koper holds 49% of the capital in Adria Tow, a towage company, and in Car Service, while it holds 25% of the capital in Logistic Service.

<sup>35</sup> See, for example, Luka Koper's balance sheets as on 31 December 1997 - see *ibid*, 25.

<sup>36</sup> See Virant Grega: "Pravni položaj uporebnika javnega dobra", *Pravnik Ljubljana*, 9-10/1995, 519.

3.2. Port of Trieste<sup>37</sup>

The concept of a single port company enjoying a monopolistic position has been abolished in Italian ports fairly recently, with the entry into force of the *Law No. 84 of 28 January 1994*.<sup>38</sup> This law has introduced a dualism between port management and commercial activities, that is to say, between the port authority and commercial companies. The port of Trieste has swiftly followed the new concept. The Port Authority is in charge of coordinating the commercial activities within the port, managing the port facilities and determining the strategic business policy. Commercial activities may be performed within the port on the basis of a *concession* granted by the port Authority. In order to qualify for receiving a concession, an applicant must satisfy the organizational, financial, technological and formal requirements prescribed by the regulations accompanying the Law no. 84/94.<sup>39</sup> Concessions are granted on the basis of a public tender, which should ensure that the chosen company offers the best terms of business regarding the amount of investment, turnover, level of occupancy of the port facilities, as well as the amount of concession charges. In order to maintain the highest standard of services, the Port Authority may revoke the concession if the chosen company has not achieved the planned objectives, and may determine the highest number of concessions to be issued within a period of time. Also, the chosen company is obliged to make its tariffs public and stick to them.

Under the Italian law, ports are considered maritime domain (*demanio marittimo*), are open to public use, and are subject to no private ownership.<sup>40</sup> The management of the maritime demesne is the responsibility of the State. The maritime demesne in the ports is managed by the Port Authorities. As a practical emanation of the regime where port activities are in the hands of private companies, the Port Authority has the right to let the use and operation of port facilities to commercial companies on the basis of a concession, thus excluding such

<sup>37</sup> See Bolanča Dragan, Stanković Gordana: "The legal status of the Croatian seaports of Rijeka and Split with special review to the ports of Koper and Trieste", *Naše more Dubrovnik*, 5-6/2000, 207-208.

<sup>38</sup> The formal stimulus to such a change came from the ruling issued by the European court of Justice in December 1991 to the effect that the legal regime then in force, i.e. the one prescribed by the Italian Codice della Navigazione of 1942 was contrary to the principles of the EEC Treaty, in that such regime was not allowing for free competition in the ports; the port companies were the only sources of manpower; as such, they were disinclined to use modern technologies, and, at the same time, were forcing upon disproportional and non-competitive prices see art. 28-58 of mentioned act (Tulio Leopoldo: *Codice della Navigazione*, Dott. A. Giufre Editore, Milano 1992, 10-16).

<sup>39</sup> Such regulations are contained in the Decree of 31 March 1995 (*Regolamento di cui all'art. 16 della legge 28 gennaio 1994, n. 84*), issued by the Ministry of Transport and Navigation.

<sup>40</sup> For more details see Bolanča Dragan: *Pravni status morskih luka kao pomorskog dobra u Republici Hrvatskoj*, Pravni fakultet, Split 2003, 215-220.

port facilities from the general public use. There is a dualism of legal regimes of immovable assets under concession. On the other hand, the facilities already existing at the time of receiving concession are necessarily the maritime demesne and are thus under the non-ownership regime. On the other hand, any facilities built by the concessionaire during the concession on the maritime demesne are the ownership of the concessionaire during the concession period and may be mortgaged in favour of third persons.

With regard to both types of concessions described above, the duration and the amount of *concession charge* should always reflect the level of investment made by the concessionaire, as well as the concessionaire's involvement (in terms of finance, organization, equipment, time and personnel) in the safety activities in the port.

#### 4. Concluding remarks

The Croatian seaports by definition constitute a part of maritime domain. The *Croatian Maritime Domain and Sea Ports Act* of 2003 regulates the maritime domain as the public estate of interest to the Republic of Croatia, which is under her special protection, and should be used and/or exploited under the conditions and in the manner prescribed by law. The maritime domain includes, *inter alia*, seashore, ports and harbours. There is no property in the maritime domain or other proprietary rights on any basis. Anybody is free to use and/or to be benefited by the maritime domain according to its nature and purpose in conformity with the provisions of the mentioned act. Special use and/or economic exploitation of a part of the maritime domain may be conceded to physical and legal persons (concession) provided that such use is not in contradiction with the interests of the Republic of Croatia. The most important act for ports open to international public traffic separates strategic management from commercial activities in public ports introducing a dualism of entities in charge of such activities. On the one hand, the functions of strategic management, development, protection and maintenance, as well as the coordination and control of commercial activities have been entrusted to the Port Authority, a State entity with a predominant influence from the Government. On the other hand, the commercial activities should be in the hands of a number of commercial companies. In order to be able to perform commercial activities (and thus earn profit) within the port, such companies must obtain appropriate authorization (concession) from, and pay certain charges to the Port Authority. The exception is the transformed enterprise in social ownership (Luka) which has the right to receive a priority concession for carrying out the port activities and using the port facilities. In comparison with ports of Koper and Trieste, we can conclude that under the Italian law ports are considered maritime domain, while the Slovenian law does not recognize this concept.

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## **PRAVNI STATUS MORSKIH LUKA OTVORENIH ZA JAVNI SAOBRAĆAJ U REPUBLICI HRVATSKOJ**

### **S a ž e t a k**

U prvom delu ovog rada autor opisuje osnovne funkcije Pomorskog zakonika iz 1994, Zakona o morskim lukama iz 2005. i Zakona o pomorskom dobru i morskim lukama iz 2003. godine. U drugom delu, autor govori o Zakonu o pomorskom dobru i morskim lukama iz 2003, s posebnim osvrtom na morske luke otvorene za javni promet. On naglašava pravni statusu luka kao pomorskog dobra u Republici Hrvatskoj, podelu obavljanja lučkih funkcija, uloga lučke uprave, poseban postupak koncesija za lučke delatnosti, status lučkih nekretnina. Konačno, u trećem delu upoređuje položaj hrvatskih luka sa slovenačkim (luka Koper) i talijanskim pravom (luka Trst).

**Ključne reči:** luke otvorene za javni promet, Zakon o pomorskom dobru i morskim lukama, Republika Hrvatska

## HATE CRIME AND CRIMINAL ASPECTS OF HATE SPEECH: MACEDONIAN APPROACH

The article deals with so-called hate crime and criminal aspects of hate speech. It is case study of Macedonia ye, also based on the relevant international instruments. After short introduction the author gives us basic information on hate crimes, including elements of the term “hate crime” and particular legal treatment of hate crimes. After that the author refers to the incrimination of “hate speech”. His final conclusion is that the promotion of legal concept by prescribing strict descriptions of criminal acts that will exclude political opportunity in assessment of criminal character of the “hate speech” stays one of the main challenges for Macedonian reform of criminal legislation.

**Keywords:** hate crimes, hate speech, Criminal Law, Macedonia

### 1. Introduction

Functioning of the contemporary multicultural and pluralistic society without a high degree of tolerance, coordination and integration is inconceivable. The existence of conditions of intolerance and hatred on national, racial, religious or any other basis creates the conditions for conflicts that can develop into violence and social disorganization. The immediate victims of the intolerance and hatred are the human rights and freedoms, peace, security, stability and prosperity of the society itself. Hence, effective prevention and repression of hate crimes necessarily imply the need for the state to ensure respect and protection of human rights and freedoms on the principle of equality of rights.

### 2. Hate crimes

Hate crimes are complex social and criminal phenomenon with a range of special elements in comparison with other forms of crime. The motive of hatred behind them, gives them a flexible, portable character: any offense may, but not necessarily, occur as an act of infringement of freedoms and rights of the indi-

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vidual in his capacity as a member of a particular social group. Hate crimes have a stratified object of protection because they are directed against the integrity, dignity and other values of the social group, to which the victim belongs whose property is an immediate object of attack.

The exhibited particularities impose the requirement for creating a consistent legal concept of “hate crimes” through a combination of provisions in General and in Special part of the Criminal Code (CC) and consistent application of that concept. Effective prevention and repression of hate crimes presume: special education of officials in the police and public prosecutors for discovery, preliminary investigation and an investigative procedure for the hate crimes and locating and securing evidence of the special motive of such acts; identifying victims and their protection from repeated victimization; encouraging victims to report offenses; particular recording and monitoring; data collection for the hate crimes that are not processed as such and which represent “dark number” of this form of crime; and support from the media and the public for condemnation of the hate crimes.

### 3. Elements of the term “hate crime”

The term “hate crime” is defined in theory as a criminal act, motivated by hostile relationship, bias or prejudice toward the victim as a member of a particular social group, or towards the social group itself, explicitly prescribed in the law as a criminal offense. This definition contains three elements (terms) that require further elaboration: “hatred”, as a term that encompass various individual feelings and opinions, expressed as various degrees of hatred (intolerance, hostility etc.); “crime”; and special discriminatory status of the “crime victim” as a member of a specific group (racial, ethnic, religious etc.).

*Hatred* is a negative feeling of hostility, aversion, repulsiveness or negation of others, based on prejudices on various differences between people and social groups – national, ethnic, religious and other. Therefore, the term of “hatred” is quite often replaced by the term “biasness” as its synonym. The concept of “biasness” has a wider meaning compared to hatred and it implies a relationship towards others based on some type of prejudice in relation to their characteristics, as members of a specific group (*bias crime*, *bias-motivated crime*). The following are considered as a hate crime: an act where the perpetrator has acted with a special motivation of hatred; and an act the actions of which are aimed at causing hatred towards group of persons on national, ethnic, religious and other grounds, and where the hatred is objective for such action by the perpetrator.

The hate crime is a *species* to the violent crime. Only the direct or personal violence is relevant for the specific criminal and legal treatment of this act, whose term may be derived from different definitions of different types of vio-

lence contained in international conventions and other documents relating to the prevention of violence and acts of discrimination. The most frequent types of violence when it comes to hate crimes, besides murder and corporal injuries are: sexual violence, vandalism (destruction of goods), hooliganism (violent behavior at sport events, rallies and other public manifestations), xenophobia (violence against foreigners), abuse (bullying, purposeful and continuous infliction of pain and suffering for other people) and maltreatment at the workplace (mobbing, work abuse).

Apart from narrow theoretical concept of hate crime as violent crime, Office for Democratic Institutions and Human Rights (ODIHR, OSCE) accepts the following definition of a “hate crime”: any punishable act, including offenses against the person or property, where the victims, preconditions and goals for the commitment of the crime have been chosen because of their real or assumed (imagined) interrelation, affiliation, kinship, support or membership in a specific group.

A special characteristic of the hate crime is its *discriminatory* ground, the direction of the action aimed towards a specific group or an individual, in the capacity of a member of the very same group. There is no criminal or legal definition of the notion of “group of individuals” as a victim of hate crimes. The qualitative aspect of the notion of “a group” relates to the features that distinguish one group from another and they provide the grounds for recognition of the collective rights of that particular group. The groups are “natural” (race, gender, age, physical disabilities) or “abstract” communities (nation, religion, political party) etc. Another characteristic of a group is the existence of equal rights for its members within the group: collective rights are enjoyed equally by all its members. Besides the formal social groups, i.e. the groups that have certain recognized legal status (national or ethnic groups – language and other rights, religious groups – religious freedoms and rights etc), hate crime can also be directed towards informal, or abstract groups imagined by the perpetrator and towards members of such groups. According to the ODIHR definition “the group may be based on mutual characteristics, common for its members, regardless whether they are true or assumed as such, on the basis of membership of race, national group, nationality or ethnic origin, as well as language, skin color, religion, gender, age, physical or mental disability, sexual orientation, political or other affiliation”. The EU Council Framework Decision of 2008/913/JHA of 2008 on combating certain forms of expressions of racism and xenophobia by means of criminal law specifies the following as attributes of the group (Article 1): race, skin color, religion, descent, national or ethnic origin. The Macedonian Law on Prevention and Protection Against Discrimination from 2010 (Article 3), prohibits any direct or indirect discrimination, calling for or incitement of discrimination and aiding any discriminatory behavior on the grounds of sex, race, skin color, gender, membership in a marginalized group, ethnicity, language, nationality, social origin, religion

or religious beliefs, other convictions, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition or on any other grounds, specified by law or by ratified international agreement (discrimination ground).

Hate crimes can be directed towards a specific group and a larger or smaller numbers of its members or against an intentionally selected victim, who personalizes the group and its characteristics. The victim may belong to a minority or majority group, and therefore, having in mind the nature of these crimes – discrimination, violation of equality of rights, hate crimes may also be committed against majority national, ethnic, religious or similar groups.

#### 4. Particular legal treatment of hate crimes

There is unanimity of opinion that hate crimes represent qualified (severe) forms of abuse or violation of basic human freedoms and rights. Besides the specific rights that are the object of attack of individual acts such as murder, body injury, rape, slander, insult, etc., hate crimes violate another fundamental legal value-equality of rights and freedoms. Therefore, non-separation of hate crime as a separate phenomenon from general crime, primarily through its recognition as a phenomenon that deserves special criminal and legal treatment, has numerous negative consequences: neglecting the actual consequences of hate crime, which would be limited only to consequences for the particular victim of crime, and tolerating the spread of prejudice and of their violent expression in relation to different social groups, since a consequence could have a social disharmony, increased social conflicts or transformation of hatred in the most severe forms of terrorism and other acts of violence (genocide, mass destruction, etc.).

In choosing the appropriate model of criminal justice response to the hate crimes, the modern criminal law adopts some already existing concepts, which are developed in the international documents for human rights and conventions in criminal justice area: the special treatment of the genocide and the crime against humanity under the international conventions (Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the Statute of the International Permanent Criminal Court of 1998); and the acts of discrimination under the International Covenant on Civil and Political Rights of 1966, International Convention on Elimination of all Forms of Racial Discrimination of 1965 and other Conventions.

In the application of the provision on non-discrimination (Art. 14) of the European Convention on Human Rights, the European Court of Human Rights has formulated the opinion that the state does not have only a negative obligation (to refrain from discrimination), but also a positive obligation to prevent the acts of discrimination, to criminalize the severe forms of hatred and violence

that are based on discrimination, and also to look at and determine the possible motives for the crimes that are based on racial, ethnical or other background. In a few latest judgments delivered by the ECHR (as the most known judgment of the Grand Chamber of the Court in the case of *Nachova and Others v. Bulgaria* no.43577/98 and 43579/98 of 2005; and also *Shesic v. Croatia* of 2007), the Court decided that the state has violated the provision on non-discrimination (Article 14) because the authorities failed to investigate the possible racist motives behind the crimes. According to the Court, determining the discriminatory motive is used for imposing more severe sentence, which is proportionate to the committed crime.

The International Conventions gradually tend to obligate the states to criminalize some hate crimes in their national laws. A result of such tendency is the Additional Protocol of the Council of Europe's Convention on Cyber Crime of 2003, relating to the criminalization of acts of a racist and xenophobic nature that are committed through computer systems. Also, the Framework Decision of the EU Ministerial Council on combating certain forms and expressions of racism and xenophobia by means of criminal law of 2008 also includes recommendations for a special criminal justice treatment of these acts.

The International Conventions and the EU Law do not foresee the adoption of a unified criminal justice model of repression of these crimes. It is up to the national criminal legislation to define the legal framework relating to the hate crimes, in line with the constitutional and legal systems in the countries. There is a consent that the special criminal-justice treatment of the acts could involve: introduction of specific crime or hate crimes; envisaging qualified forms of the basic crimes committed because of hate and for which more severe sentences will be prescribed; or introduction of general sentencing provision where by hate crime aggravating circumstance will be defined. As a result of these possibilities, there is a variety of legislative models.

The advantages and disadvantages of the two models that were adopted in the modern criminal legislation have been carefully analyzed while preparing the Novelties of the Macedonian Criminal Code of 2009 such as: the treatment of hate crime as a specific crime; and prescribing the motive of hate as general aggravating circumstance. The first model has some advantages, which emphasize the importance and better perception of hate crime. The disadvantage of this model is the introduction of the motive of hate as a subjective element in the substance of the criminal act (subjective element of unlawfulness), to which the same procedural evidence rules apply as for any other element of crime. The comparative analysis of the case law (Great Britain and other countries) shows that the courts usually avoid special legal qualification of such a crime as hate crime and the defendants are convicted of the basic crime of violence (murder, body injury, property damage etc.)

The second model avoids the above indicated disadvantages of the special treatment of hate crimes, but its disadvantage is the general provision for sentencing, where the motive of hate is foreseen as an optional aggravating circumstance for sentencing. The broad competence of the Court whether to take into account such circumstance or not, might cause a restrictive approach towards its application, especially because the motive should be determined as a psychological fact, which is in connection with the commitment of crime.

The Macedonian concept of hate crimes uses a combined legislative method, which is also accepted in other legislation: general provision for the discriminatory ground, which is the motive and the reason for the crime as aggravating circumstance, and was introduced in the Novelty of the CC of 2009 (Art. 39, para.5 of the CC), as well as the qualified forms of particular crimes in the Special part of the CC, if those crimes have been committed because of the particular discriminatory ground.

The general provision in Article 39, para.5 of the Criminal Code does not explicitly contain the term “hate” or any other genius notion (motive, urge, etc.), instead the word “because” is used (committing of crime against a person or group because of his or their national and social background, etc.). With this, the characteristic is clearly defined, i.e. the affiliation of the victim to certain group as a motive for committing the crime. So, the legal formula “because of his or their background” includes the motive of the perpetrator, which can be determined as hostile relation, partiality, prejudice, discrimination and hate against the victim, or the group to which the victim belongs. The legal fixing of the characteristics of the group uses causing methods, by which the grounds for discrimination that are the reasons for committing the crime are enlisted. The Novelty of the CC of 2009 was adopted before the Law on Prevention of and Protection against Discrimination was enacted (April 2010), which has a significantly broader scope of discriminatory grounds (Art.3). The approach of the CC in relation to the characteristics of the group is obviously restrictive. But on the other hand, there are the motives (urges) which are not related to the characteristics of the group included in the provision for the hate as aggravating circumstance. Therefore, the Court can also take them into account as circumstances that are relevant for sentencing (Art. 39, para.2 of CC). The Law does not limit the legal effect of the general sentencing provision for (Art. 39, paragraph 5 of CC); the provision refers to any crime for which the Court will determine that it was committed on discriminatory grounds prescribed by the law. This means that this provision includes the crimes of violence and also crimes without the elements of violence, i.e. more severe and less severe crimes.

The Macedonian CC does not recognize a specific hate crime, but in much incrimination in the Special part of the CC directly or indirectly, the hate, bias, and discrimination on racial, national, ethical or other belongings are foreseen as a qualified circumstance, thus qualifying the crime as more severe, and for

which a more severe sentence has been stipulated. For example, the incriminations of: severe murder committed for “low motives” (CC, Art. 123, Para 2, Item 4), severe form of endangering security (Art. 144, Para.4 of the CC), which includes threatening by the perpetrator for committing a crime through an information system against another person due to their national, ethnic, racial or religious background, for which a sanction of imprisonment of five years or a more severe sanction has been prescribed; and causing national, racial or religious hate, discord and intolerance (Art. 319 of the CC), which is not a hate crime in a narrow sense of this notion, but is connected with the hate crime, because the national hate crime and other hate crime is one of the objectives that the perpetrator wants to achieve with his action (hate, discord or intolerance. The international crimes also have a particular nature: (Art.403 of the CC), crime against humanity (Art.403a of the CC), approving or justifying of a genocide, crimes against humanity or war crimes (Art. 407a of the CC) and racial and other types of discrimination (Art.417 of the CC).

Based on the analysis of the provisions contained in the Special part of the CC, the following two conclusions can be made: firstly, the legislator has chosen a relatively restrictive approach toward the incrimination of hate crimes as severe and qualified forms of violent crimes. The analysis of social conditions and the need of more severe treatment of non-tolerance and violence, refer to the need of expanding the scope of qualified forms and other crimes (for example: the rape crime, sexual abuse of a child and other crime of sexual violence, robbery, damaging of other people’s property, damaging and destroying cultural monuments etc.). Secondly, the legal description of hate crimes has been conceptualized according to the model of discriminatory grounds, and not the hate as a motive, subjective element in the substance of the criminal act, thus resulting in broader definition of wrongdoing and decrease of difficulties in their identification and prosecution. On the other hand, the legislator decides for restrictive and unequal approach in determination of protective features of the groups foreseen as discriminatory ground that will have to be reconsidered in the following changes of the CC.

## 5. Incrimination of “hate speech”

In the most general sense, hate speech is any shape of public expression of discriminatory or degraded attitude toward individuals and groups based on their feature by which the prejudice is spread and it creates or can cause relation of intolerance, hostility or can cause violence toward such groups and their members. According to the ODIHR standards, “hate speech” in its basis is not considered a “criminal act of hatred because the second concept assumes existence of some “basic act” (murder, bodily injury etc). “Hate speech” is not about

“basic act” that by rule has a violent character and racial or similar hatred is shown as its motive. Hate speech represents a criminal act by itself (libel, violation of security, etc.).

Hate speech is above all a social and cultural problem that is not particularly suitable for legal regulation. That is hampered by the complexity of the determination of its term and the boundaries between freedom of expression as fundamental human right and elementary democratic value of modern society and hate speech as negative aspect that should fall under bash of penal-legal restrictions. European Convention on Human Rights regulates the relation between freedom of expression and its restrictions in general and principled manner (Article 10), that can be added by law envisioned penal-legal restrictions. The European Convention on Human Rights comprises general valuable, philosophic-legal stand point, according to which the country is entitled to propose restrictions and sanctions enshrined by Law, if that is a necessary measure for State Security protection, territorial integrity and public safety and protection of the reputation or rights of others in a democratic society. The essence of provision of article 10 and the restrictions and sanctions that can be imposed by Law are amended by the provision regarding to the restriction of subversive action regarding the rights enshrined by the Convention (Article 17). The goal of this provision is “prevention of totalitarian and extremist groups to justify their activities by referring to the Convention”, (according to the European Court of Human Rights, in case of *Zdanoka vs. Latvia hudoc* (2004)). According to the European Court of Human Rights, nobody can refer to freedom of expression for addressing discrimination, and advocating of violent racist programmes, and provisions of the Conventions, including article 10, cannot be used for weakening and destroying the ideals and values of democratic society (ECHR in case *Refah Partisi vs. Turkey* (2003)). In order for the provision of article 17 to be applied, “the purpose of offensive activities must be spreading violence and hatred, reaching for illegal and non-democratic methods, encouraging the use of violence, undermining national democratic and plural political system or the realization of goals that are racist or have potential to annul the rights and freedom of others (case *Lehideux and Isorni vs. France* (1998)).

However, in Court’s case law regarding imposing penal-legal restrictions that concerns freedom of expression, a strict line of separation of scope of that freedoms and their essential legal restrictions has not been drawn.

If certain public expression is treated as “hate speech”, that can be qualified as verbal criminal act depending on specific valuable assessment based upon balance of values: for example, announcing certain standpoints may promote freedom of expression, other freedoms and rights guaranteed by the Convention and democratic institutions and relations, or it may mean the misuse of that freedom negatively affecting equal freedom and rights of others and jeopardizing national security, territorial integrity and other social values. As valu-

able criteria for assessment of certain manifestations of freedom of expression as “hate speech”, in general exceeding the threshold of initiating violence, flaring up public riots and causing interethnic hatred in unstable region (ECHR in case *Incal vs. Turkey* (1998)) and others. In Court’s case law three basic criteria are developed for qualifying certain verbal and other actions as “hate speech”: the intention or aim to initiate intolerance, racism or violence; the context and content of expression (for example, the extent of statement of public office holder or public person is bigger than the statement of ordinary citizen and can cause negative consequences). According to the Court, a propagation of totalitarian regimes should be considered as restricted hate speech or fascist ideology, negation of the Holocaust, causing racial hatred and intolerance against Muslims, Jews and other religious groups.

Enshrining of penal-legal restrictions of “hate speech” imposes the need for an explicit and consistent legal definition of that term. Such a definition does not exist in international human rights documents and in national penal legislatures because it is hard to concretize all the constitutive elements of this term. In the Recommendation No. R(97)2 of the Ministerial Committee of Council of Europe for hate speech of 1997, (Annex) the following definition is given for the term “hate speech”: every form of expression that spreads, flares up, initiates or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based upon intolerance, including intolerance expressed in shape of aggressive nationalism and ethnocentrism, discrimination or hostility against minorities, immigrants and persons with immigrant origin”. The shortcomings of this definition lie in the fact that it does not generalize the term of “hate speech” against any group (one minority group against another or against any majority group etc).

Ground for incrimination of various shapes of “hate speech” could be taken, besides lots of Recommendations and Resolutions of the Council of Europe and Provisions of the Universal Declaration of Human Rights of UN of 1948, guarantees of freedom of expression (Article 19) together with the obligation of the individual towards society because social community is the only one that enables free and complete development of the personality (Article 29). International Pact for civil and political rights of UN of 1966 had foreseen (Article 20) the restriction of the freedom of expression that is consisted by restriction in any propagation of war or calling up on national, racial or religious hatred that presents initiating of discrimination, hostility or violence. International Convention on elimination of all forms of racial discrimination (Article 4) declares as illegal all propaganda activities by which racial discrimination is being promoted and initiated.

In Macedonian CC little incrimination is stipulated regarding hate speech: violation of authority of Republic of Macedonia, its flag or Coat of Arms (Article 178); publicly mocking Macedonian ethnicity and members of the communities who live in Republic of Macedonia (Article 179); publicly mocking a foreign country (Article 181); spreading racist and xenophobic material by computer sys-

tem (Article 394-d) as special form of racial and other discrimination (Article 417, paragraph 3) is stipulated for spreading ideas of superiority of one race over other, justification of racial hatred and initiating of racial discrimination.

Flexible determination of legal essence of criminal acts can be pointed out as general feature of this incrimination. Description of acts (incitement, exposure to mocking, justifying etc.) refers to specifically determined action, leaving a lot of space for interpretation of the meaning for the actions of the perpetrator.

Interpretation has to take into account general context of the expression, usually involving politically based assessment for possibility of treating specific action as restricted hate speech and undertaking measures for prosecution of the perpetrator of that act. As a result, separate cases of undisputable misuse of freedom of expression undeservedly stay outside of the system of criminal justice, as well as journalist's articles or statements by the information media, speeches and statements by representatives of political parties that initiate or defend violence, nationalist and extremist outburst on sport events, burning the national flags, violation of religious feelings on carnivals and other cultural events etc.

The promotion of legal concept by prescribing strict descriptions of criminal acts that will exclude political opportunity in assessment of criminal character of the "hate speech" stays one of the main challenges for Macedonian reform of criminal legislation.

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## **ZLOČIN IZ MRŽNJE I KRIVIČNI ASPEKTI GOVORA MRŽNJE: PRISTUP MAKEDONIJE**

### **S a ž e t a k**

Rad se bavi takozvanim zločinom iz mržnje i krivičnim aspektima govora mržnje. Zasnovan je na studiji slučaja iz makedonskog zakona, koji se takođe zasniva na relevantnim međunarodnim instrumentima. Posle kraćeg uvoda, autor daje osnovne informacije o zločinima iz mržnje, uključujući i elemente izraza „zločin iz mržnje“, kao i određene načine pravnog tretiranja zločina iz mržnje. Posle toga autor govori o inkriminisanju „govora mržnje“. Njegov zaključak je da promovisanje pravnog koncepta propisivanjem strogih opisa krivičnih dela koji isključuje političku mogućnost ocene krivičnog karaktera „govora mržnje“, ostaje jedan od glavnih izazova reforme krivičnog prava u Makedoniji.

**Ključne reči:** zločini iz mržnje, govor mržnje, krivično pravo, Makedonija

## THE ANTI-TERRORISM LEGISLATION OF THE RUSSIAN FEDERATION

The article deals with the anti/terrorist legislation of Russia. In the first part the authors give some introduction to the subject, reminding of a several well-known terrorist acts which took place in Moscow and other Russian cities. They underline that under present-day conditions the jeopardy of terrorism increased in comparison with the 1940-1960s years of the 20<sup>th</sup> century not only owing to its considerable prevalence but also because humanity obtained access to mass-destruction weapons: nuclear, chemical, biological, laser etc, that possesses enormous destructive force. The authors then go to the positive Russian legislation in this field and present the most important provisions of the relevant laws, many of which are rather new. The final conclusion of the authors is that Russian Federation now has a well established and actively functioning national system of countering terrorism, which represents the aggregate of subjects of counter-terrorism and enactments, regulating the activities of the said subjects to expose, avert (prevent), suppress, detect and investigate terrorist activity, to minimize and (or) liquidate the consequences of terrorism.

**Key words:** terrorism, anti-terrorism, law, Criminal Law, Russia

Currently, terrorism is one of the most dangerous social phenomena for international community. The History of the 20<sup>th</sup> century abounds in occurrences where terror and intimidation were the main way of solving social conflicts arising from economic, social, national, ethnic, religious and other antagonisms between society on the one hand, and certain individuals or groups of people on the other.

The degree of public danger of terrorism is extremely high because it doesn't only reflect the culture of violence, but it also promotes the development of this culture, it forms and increases the sense of fear in society, it devalues human life, leads to curtailment of state guarantees of personal freedom since it provokes a state into retaliatory measures that do not always conform with regulations of rule-of-law state.

The explosions in the Moscow Metro and trolleybuses, and in Volgograd trains, the incidents in Budenovsk and in the theater of Taganka, the explosion

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at the Pyatigorsk railway station and in the apartment house in Kaspiysk, as well as the explosion in Vladikavkaz and other such acts bring about 90% of people having a sense of anxiety either for their own safety or the safety of their dearest according to the sociological studies of public opinion. In spite of slight amount of terrorist crimes they still present a huge threat of the national security of the Russian Federation<sup>1</sup>. Moreover, The National Security Strategy of the Russian Federation until 2020<sup>2</sup> attributes the activity of terroristic organizations, groupings and individuals to one of the sources of the national security threats in the scope of state and public safety.

Under present-day conditions the jeopardy of terrorism increased in comparison with the 1940-1960s years of the 20<sup>th</sup> century not only owing to its considerable prevalence but also because humanity obtained access to mass-destruction weapons: nuclear, chemical, biological, laser etc. that possesses enormous destructive force.

Determination of the anti-terrorism strategy is impossible without taking into consideration two of the most significant factors. First, preventive, revealing and suppressive activities request the joining of efforts of the whole international community. Secondly, terrorism is the phenomenon of many faces due to various causes, and therefore counteraction to it must be systematic and comprehensive and embrace the aggregate of social, economic, political, organizational and other arrangements. Material importance in this complex is owned by the measures of legal essence.

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<sup>1</sup> Statistical data on terrorist crimes in the Russia Federation in 2005-2010. **2005** - the total number of registered crimes in Russia amounted to 3,554,738. Out these crimes: 203 acts of terrorism (article 205 of the Criminal Code - hereinafter referred to as CC), hostage-taking (art. 206 CC) - 20, organization of criminal community (criminal organization) (Art. 210 CC) - 244. **2006** - Total number of registered crimes in Russia amounted to 3,855,373. Out of these crimes: acts of terrorism (article 205 CC) - 112, hostage-taking (art. 206 CC) - 22, organization of criminal community (criminal organization) (Art. 210 CC) - 244. **2007** - Total number of registered crimes in Russia amounted to 3,582,541. Out of these crimes 759 crimes were committed as terrorism crimes, including 48 acts of terrorism (article 205 CC), hostage-taking (art. 206 CC) - 18, organization of criminal community (criminal organization) (Art. 210 CC) - 337. **2008** - The total number of registered crimes in Russia amounted to 3,209,862. Out of them - 642 terrorism crimes, including 10 acts of terrorism (article 205 CC), 12 cases of hostage-taking (art. 206 CC) and 325 facts of organization of a criminal community (criminal organization) (Art. 210 CC). **2009** - The total number of registered crimes in Russia amounted to 2,994,820. Out of them: 654 terrorism crimes, including acts of terrorism (article 205 CC) - 15, hostage-taking (art. 206 CC) - 16, organization of criminal community (criminal organization) (Art. 210 CC) - 247. **January-August 2010** - the total number of registered crimes in Russia amounted to 1,805,067. Of these: 388 terrorism crimes, including acts of terrorism (Art. 205 CC) - 19, hostage-taking (art. 206 CC) - 5, organization of criminal community (criminal organization) (Art. 210 CC) - 125.

<sup>2</sup> The National Security Strategy of Russia until 2020. Approved by presidential decree of May 12, 2009 № 537.

Until recently, the legal basis of war on terrorism has been limited only by the rules of the Criminal Code of the Russian Federation, that hadn't reflected the needs of modern society. Thereupon the Federal Law of 25 July, 1998, №130-FZ "On combating terrorism" was enacted, which in 2006 was changed for the Federal Law "On countering terrorism" dated 6 March, 2006. Subsequently there were also the Federal Law "On countering the legalization (laundering) of proceeds from crime and terrorism financing" of 7 August, 2001, the Decree of the President "On Measures to Counter Terrorism" dated 15 February, 2006, the Regulation(s) of the National Anti-Terrorist Committee, adopted by the Decree of the President of 15 February, 2006, the Decree of the President "On approval of the National Security Strategy of the Russian Federation until 2020" dated 12 May, 2009, and the Concept of Counter-terrorism, approved by the Decree of the President dated 5 October, 2009. Thus, the issues of legal basis of war on terrorism as a dangerous social phenomenon were resolved on the merits.

As stated in the preamble of the Federal Law "On Combating Terrorism" it "designates the legal and institutional basics to combat terrorism in the Russian Federation, the procedure of coordination of activities of the federal executive bodies, the executive bodies of subjects of the Russian Federation, public associations and organizations, regardless of ownership, officers and nationals, engaged in combating terrorism, as well as rights, duties and guarantees of citizens in connection with the war on terrorism".

In the said law there are several building blocks that regulate series of major interconnected questions.

The first block (Art. 1-5) comprises general provisions, defining the legal basis for combating terrorism and its fundamental principles, the international obligations of Russia connected with cooperation with foreign states, the institutional foundations of counteraction against terrorism, and define the main concepts used in this law.

The legal basis of counter-terrorism is the Constitution of the Russian Federation, the generally recognized principles and rules of international law, the international treaties of the Russian Federation, the fundamental Federal Law "On Combating Terrorism" and other federal laws, normative legal acts of the Government of the Russian Federation, as well as normative legal acts of other federal authorities adopted in accordance with the above-mentioned enactments.

The achievement of effective results in overcoming antisocial phenomena involves determination of the basic principles, fundamental ideas that reflect goals, objectives, means and methods of activity. War on terrorism in the Russian Federation is based both on the general principles in combating crime, which include ensuring and protection of basic individual and civic rights and freedoms, legality, priority in protecting rights and legal interests of persons exposed to terrorist threats, unavoidability of punishment for terrorist activity, systematic and complex use of political, informational and propaganda, socio-economic,

legal, special and other measures for counteraction against terrorism, collaboration between the state and public and religious associations, international and other organizations, citizens in war on terrorism, the priority of measures to prevent terrorism, and on the particular principles conditioned by specificity of terrorism: sole management in guidance of the drawn forces and resources in the course of anti-terrorist operations, combination of overt and covert methods of countering terrorism, confidential information about special facilities, techniques, tactics, and also about the composition of their participants, inadmissibility of political concessions to terrorists, minimization and (or) liquidation of the consequences of terrorism, the commensurateness of measures of countering terrorism to the degree of the terrorist threat.

The general concept of terrorism as a social phenomenon is given in Article 3 of the Federal Law of 6 March, 2006: "terrorism is the ideology of violence and the practice of influence on the decision making by public authorities, local government bodies or international organizations related to intimidation of the population and (or) other forms of illegal violent actions".

The cardinal forms of terrorism in real life are: a) terrorist activities and b) a terrorist act. Terrorist activities includes organization, planning, training, funding and implementation of a terrorist act; abetting a terrorist act; organization of an illegal paramilitary group, criminal community (criminal organization), an organized group for implementation of a terrorist act, as well as participation in such a structure, recruitment, arming, training and use of terrorists; information, or otherwise aiding and participating in the planning, preparation or implementation of a terrorist act; propaganda of terrorist ideas, dissemination of materials or information appealing for the implementation of terrorist activities or substantiating or justifying the necessity of such activities. In turn, the terrorist act is defined as setting off an explosion, committing arson or other actions that can frighten the population and endanger the life of a person, as well as cause inflection of significant property damage or other heavy consequences, with a view to affecting decision-making by authorities or international organizations, and also as the menace of committing such actions for the same purpose.

Peculiarity of the concept of a terrorist act is its formulation in two aspects: a) as a domestic crime injurious for the interests of individuals, society and state, and b) as a crime aggrieving both the national interests and the stability of international relations (peaceful collaboration and normal realization of interstate relations), whereby it becomes a crime of international character. It should be noted that both the terrorist activities and the terrorist acts are described not only in the above Federal Law, but explicitly banned by the Criminal Code of the Russian Federation of 1996.

The second block (Art. 6-10) of the Federal Law dated March 6, 2006, regulates the utilization of the Armed Forces of the Russian Federation in the war on terrorism. In particular, Art. 6 of the Law outlines the range of functions when

the Russian Federation Armed Forces can be applied in the fight against terrorism. These include:

- suppression of aircraft flights used for committing a terrorist act, or captured by terrorists;
- suppression of terrorist acts in the inland waters and territorial sea of the Russian Federation, at the objects of the marine production activity on the continental shelf of the Russian Federation, as well as to ensure the safety of the national maritime traffic;
- participation in the antiterrorist operation in the manner provided by this Federal Law;
- suppressing international terrorist activities outside the territory of the Russian Federation.

Under the provisions of this law with a view to removing the threat of the terrorist attack in the air, the inland waters, the territorial sea, the continental shelf of the Russian Federation and ensuring the security of the national maritime traffic, or with a purpose of preventing such a terrorist attack, the Russian Federation Armed Forces apply their weapons and military equipment in the manner prescribed by normative legal acts of the Russian Federation. If the aircraft does not respond to radio commands of ground control center to cease the breach of the rules of using air space of the Russian Federation and (or) to radio and visual signals from aircraft of the Armed Forces of the Russian Federation raised for interception, or refuses to obey radio commands and visual signals without explanation, or sea-going or river ships and vessels (floating facilities) neither respond to commands and (or) signals to stop violating the rules on use of the water space of the Russian Federation (the undersea environment) nor agree to submit to the demands to stop, the Russian Federation Armed Forces apply their weapons and military equipment for suppression of aircraft flight by forcing it to land or for enforcement of floating facilities to stop.

In those cases when an aircraft doesn't obey to land, and floating facility doesn't submit to stop and (or) they cannot be forced to stop, and *provided that all the necessary measures of stopping* depended on the existing circumstances have been exhausted and there is an actual jeopardy of loss of life or occurrence of environmental disaster, weapons and military equipment are employed for suppressing the flight of the aircraft or for preventing the floating facility from motion by means of its annihilation.

The appropriate measures of the Russian Federation Armed Forces are lawful, since they are grounded on the provisions of Article 22 of the Federal Law, which states that causing of death to a person when they commit a terrorist act, as well as causing damage to health or property of such a person or any other interests of individuals, society and state protected by law, during the suppression of a terrorist act or application of other measures to combat terrorism, that is

prescribed and permitted by the legislation of the Russian Federation, are legitimate. In the terminology of criminal law such legal foundations, in particular, are the state of necessary defense or extreme necessity, detention of the offender, reasoned risk and execution of order or direction. The said circumstances are regulated by the Criminal Code (Art. 37-42) and indicate the absence of socially dangerous nature, and consequently, the criminality of these deeds on the part of the persons applying these measures.

Moreover, under the provisions of Article 10 of the Federal Law of 6 March 2006, The Armed Forces of the Russian Federation may be used in accordance with the international treaties of the Russian Federation, the present Federal Law and other federal laws for fulfillment of suppression of international terrorist activities outside the territory of the Russian Federation. Such actions can be implemented in the following way: the use of armaments from the territory of the Russian Federation against terrorists and (or) their bases situated outside, or the use of formations of the Russian Federation Armed Forces for executing the task of suppressing international terrorist activities outside the territory of the Russian Federation. The decision to use the arms by the Armed Forces of the Russian Federation from the territory of the Russian Federation against terrorists and (or) their bases situated outside must be made by the President of the Russian Federation in accordance with the Council of the Federation of the Federal Assembly of the Russian Federation.

On 7<sup>th</sup> July 2006 the Federation Council adopted Resolution № 219-SF “On the use of units of the Armed Forces of the Russian Federation and special task forces outside the territory of the Russian Federation for suppression of international terrorist activities”. Guided by Article 51 of the United Nations Charter and Articles 61, 80, 87,102 of the Constitution of the Russian Federation, the upper chamber of the Parliament authorized the President of Russia to use the Armed Forces and the special task forces outside the territory of the Russian Federation in order to prevent international terrorist attacks against Russia. In accordance with paragraph 3 of the Resolution, that right was granted to the President for a period of removing the threat of terrorist acts against Russia outside the territory of the Russian Federation. It is interesting to note that the President of the Russian Federation has not enjoyed this right so far.

The main subject that leads the war against terrorism providing it with essential forces, means and resources, is the President of the Russian Federation. He determines the main directions of state policy in respect of the fight against terrorism, and establishes the competence in combating terrorism assigned to the federal executive bodies, which he heads, and makes the decision in compliance with legal procedure, of using the formations of the Russian Federation Armed Forces and special task forces to combat terrorist activities outside the territory of the Russian Federation, carried out against the Russian Federation or Russian citizens or resident stateless persons of the Russian Federation.

The Government of the Russian Federation states the competence of federal executive bodies, which it leads in counter-terrorist activity, organizes the development and implementation of measures of prevention of terrorism and minimization and (or) liquidation of the consequences of terrorism, arranges for the provision of the federal executive authorities, executive bodies of the subjects of the Russian Federation and local government agencies for the purpose of war against terrorism by indispensable forces, means and resources.

To coordinate the counter-terrorist activities of the subjects of federal executive bodies, executive bodies of subjects of the Russian Federation and local government agencies, as well as to prepare relevant proposals to the President of the Russian Federation, the National Anti-Terrorism Committee was established. At the regional level anti-terrorism commissions can be set up. The National Anti-Terrorist Committee exercises its activity in cooperation with the federal bodies of executive power, anti-terrorism commissions of subjects of the Russian Federation, executive authorities of subjects of the Russian Federation, bodies of local self-government, as well as with public associations and organizations. Its main priorities are:

- a) preparation of proposals for the President to form state policy to counter terrorism, and to improve the legislation of the Russian Federation in this area;
- b) coordination of counter-terrorist activities of federal executive bodies, anti-terrorism commissions of subjects of the Russian Federation, as well as organization of their interaction with executive authorities of subjects of the Russian Federation, bodies of local self-government, public associations and organizations;
- c) working out anti-terrorist measures, measures of elimination of the relevant causes and conditions, including measures to ensure protect ability of potential targets of terrorist attacks;
- d) participation in international cooperation in countering terrorism, including the drafting of international treaties of the Russian Federation in this area;
- e) preparation of proposals concerning the ensuring of social protection of persons who implement anti-terrorist activities and (or) are engaged in combating terrorism, as well as the social rehabilitation of the victims of terrorist acts;
- f) other tasks stipulated by the anti-terrorism legislation of the Russian Federation.

Immediate implementation of war against terrorism is realized by the Federal Security Service, the Ministry of Internal Affairs, the Foreign Intelligence Service, the Federal Protective Service, the Ministry of Defense, and the Federal Border Guard Service of the Russian Federation. The said federal authorities and

their territorial bodies in the subjects of the Russian Federation take part in the fight against terrorism within their competence. The prevention, detection and suppression of terrorist activities may also involve other federal bodies of executive power.

However, this does not mean that other authorities, public organizations and certain citizens don't participate in the war against terrorism. Executive authorities of the subjects of the Russian Federation, local self-government bodies, associations and organizations irrespective of ownership, and officers should assist the above bodies in combating terrorism. Moreover, communication from citizens to law-enforcement agencies on terrorist activities and any other circumstances that have become known to these nationals and which can facilitate to prevent, detect, and suppress terrorist activities is the civic duty of every person. Individuals assisting in the detection, prevention, suppression, clearance and investigation of terrorist acts, in the identification and detention of persons preparing, committing or having committed such an act, may be paid pecuniary remuneration from the federal budget.

The third block (Art. 11-17) is devoted to the regulation of counter-terrorist operations. A counter-terrorist operation is a special event aimed at suppression of terrorist acts, ensuring the safety of individuals and neutralization of terrorists. For organization of planning of using powers and resources of the federal executive authorities and their territorial bodies to combat terrorism and counter-terrorist operation the Federal Operative Headquarters was established. In the subjects and regions of the Russian Federation, and taking into account the local conditions, operative headquarters have been set up. The Head of the operative headquarters places all soldiers, officers, and specialists engaged to conduct counterterrorism operations under his command. He has the right to raise the necessary forces and means of the federal executive bodies that are involved in the fight against terrorism. Interference of any other person regardless of their post title in the operational management of the counter-terrorist operations is not allowed.

A special legal regime is established in the area of counter-terrorist operations, represented as separate areas of land or water, a vehicle, building, structure, installation, premises and adjoining territories or water areas, when within this range the said operation takes place. In particular, persons conducting the operation are entitled to:

- 1) examine certificates of identification, and in the absence of such documents - bring the individuals in the interior bodies of the Russian Federation (the other competent authorities) for establishment of their identity;
- 2) remove individuals from particular areas and facilities, and tow away the vehicles;
- 3) strengthen the protection of public order, objects liable to public security, and facilities that assure the vital activity of the population and

- the functioning of transport, as well as objects of exceptional material, historical, scientific, artistic or cultural value;
- 4) fulfill the speaking monitoring and monitoring of other information transmitted through telecommunication systems, as well as search for the channels of telecommunication and postal items in order to elicit information about the circumstances of committing a terrorist act and persons, and prevent committing other terrorist acts;
  - 5) use vehicles owned by organizations regardless of ownership (except for vehicles of the diplomatic representations, consular and other offices of foreign states and international organizations), and in urgent cases, also the vehicles owned by individuals, for transporting persons in need of urgent medical aid to hospitals, as well as for pursuing of persons suspected of committing a terrorist act, if the delay could pose a real threat to one's life or health. The procedure of reimbursement of expenses associated with such utilization of vehicles is determined by the Government of the Russian Federation;
  - 6) suspend the enterprise of hazardous productions and organizations that use explosives, radioactive, chemically and biologically dangerous substances;
  - 7) suspend performance of communication services in respect of legal and natural persons, or limit the use of communication networks and communication facilities;
  - 8) provisionally relocate individuals living within the territory where the legal regime of anti-terrorist operation is introduced to the safe regions when the said persons are provided with stationary or temporary accommodations;
  - 9) quarantine in order to conduct sanitary-epidemiological, veterinary and other quarantine arrangements;
  - 10) restrict traffic and pedestrian traffic on streets, roads, and in particular areas and facilities;
  - 11) exploit unimpeded access to residential and other premises, as well as to pieces of land owned by persons, and premises of organizations, without reference to ownership, with the view of implementation of anti - terrorism actions;
  - 12) examine individuals and their luggage, as well as vehicles and cargos being transported by them, when passing and leaving the territory having the legal regime of a counter-terrorism operation, including employment of technology;
  - 13) restrict or ban the sales of arms, ammunition, explosives, special resources, and poisonous substances to establish the special regime of turnover of medicinal agents and preparations containing drugs, psychotro-

pic or drastic substances, ethyl alcohol, alcohol and alcohol-containing products;

- 14) restrict or suspend the private detective and security activity.

Relevant restrictions in certain areas of the territory (or facilities) having the legal regime of a counter-terrorism operation can be either provided in the full amount and continually, or set as certain measures and temporary restrictions.

The fourth block of the Federal Law (Art. 18-23) regulates problems related to recovery (reparation) of damage caused by terrorist acts, and social rehabilitation of persons participated in counter-terrorist actions and their social protection.

The indemnification is performed depending on the territoriality of committing this act and material resources of the budget, or the subject of the Russian Federation, or the federal budget, by the subsequent recovery of the damages from the tortfeasor in the manner prescribed by the civil procedure legislation.

Reparation of losses caused to foreign nationals by the terrorist attacks on the territory of the Russian Federation is made on the account of the federal budget with subsequent exaction of the amount of recovery from the tortfeasor. Reparation of damage caused to the organization as the result of terrorist action shall be made in the manner prescribed by the Civil Code of the Russian Federation.

The social rehabilitation of victims of terrorist acts is carried out with a view of their return to normal life, and includes legal assistance to such persons, their psychological, medical, vocational rehabilitation and employment placement until reinstatement, providing them with housing.

The social rehabilitation of victims of terrorist acts, as well as the individuals involved in the fight against terrorism, is made at the expense of the federal budget and the budget of the subject of the Russian Federation on whose territory this terrorist act was committed.

Special attention is paid to the legal and social protection of servicemen, officials and specialists of the federal executive authorities and executive bodies of subjects of the Russian Federation that directly participate (or were involved) in the war against terrorism; to the persons assisting public organs, responsible for combating crime, permanently or temporary with prevention, detection, suppressing terrorism and minimizing its consequences; to the family members of the above persons, if the need of ensuring their protection is caused by the participation of the said individuals in the fight against terrorism.

The damage done to health or property of individuals involved in the fight against terrorism should be compensated for in the manner determined by the legislation of the Russian Federation.

Particularly, in case of death of a person who participated in the implementation of anti-terrorist measures, the members of the family of the perished and the persons who lived in dependence on him shall be paid the lump-sum allowance of six hundred thousand rubles, and also shall be guaranteed the preser-

vation of the housing list, the refund of housing charges and charges for communal services, if they were entitled to such compensation. The disabled family members of the perished and persons who lived in dependence on him shall be granted the pension in connection with the loss of a breadwinner. If the person participating in the implementation of measures to combat terrorism has been injured, resulting in disability, the said person is paid the lump-sum allowance of three hundred thousand rubles at the expense of the federal budget, and granted a pension in accordance with the legislation of the Russian Federation. When the property of the person participating in the implementation of measures to combat terrorism is lost or damaged, the person is entitled to recover its value in the manner prescribed by the Government of the Russian Federation.

As a result of an anti-terrorist operation there is often coercive physical and material damage to detached citizens and organizations, as well as damage to life, health and property of terrorists and other legally protected interests. In this case, servicemen, specialists and other individuals involved in the fight against terrorism shall be exempted from liability for harm caused during the counter-terrorist operation in accordance with legislation of the Russian Federation. Such legal grounds, in particular, are the state of necessary defense or extreme necessity, and the detention of the offender, reasoned risk and execution of an order or orders. These circumstances are governed by the Criminal Code (Art. 37-42) and indicate the absence of a socially dangerous, and therefore of felonious nature of these acts.

The fifth block (Article 24) regulates the responsibility of organizations for participation in terrorist activities.

The legislation of the Russian Federation prohibits creation and activities of organizations, whose goals and actions are aimed at the propaganda, justification and support of terrorism or crimes provided by Articles 205 - 206 (an act of terrorism, the assistance of terrorist activities, public appeals for terrorism or public justification of terrorism, hostage-taking, respectively), 208 (organization of an illegal armed formation or participation in it), 211 (hijacking of an aircraft, a sea-going ship, or a railway train), 220 (illegal treatment of nuclear materials or radioactive substances), 221 (stealing or possession of nuclear materials or radioactive substances), 277 - 280 (encroachment on the life of a statesman or public figure, forcible seizure of power or forcible retention of power, armed rebellion, public appeals for extremist activity, respectively), 282.1, 282.2 (organization of extremist community, organization of an extremist organization) and 360 (assaults on persons or institutions enjoying international protection) of the Criminal Code of the Russian Federation.

Persons deemed to be guilty of terrorist activity bear criminal or civil responsibility. In the first case, the perpetrator of a crime shall be held liable under the Criminal Code. The said articles stipulate severe punishment within the limits of deprivation of liberty for a term of up to twenty years, but moreover, for an

act of terrorism, hostage-taking and organizing a criminal community (criminal organization) or participation in it, deprivation of liberty for life shall be established. The same penalty is imposed if terrorist activities have involved murder.

Civil law deals with issues related to compensation for damage inflicted on citizens or organizations and for expenses which were made for treatment of victims of the terrorist attack.

There are some procedural features concerning the cases of terrorist organizations. Since the Criminal Code makes no provision for legal persons (organizations) to be held criminally responsible, so far terrorist organizations can only be brought to account by means of civil procedure.

An organization shall be deemed to be terrorist and shall be liquidated, and its work banned according to the judgment of the court on an application of the Attorney General of the Russian Federation or his subordinate prosecutors, if organization, preparation and commission of crimes envisaged by Articles 205 - 206, 208, 211, 220, 221, 277 - 280, 282.1, 282.2 and 360 of the Criminal Code of the Russian Federation, on behalf of or for the benefit of this organization, as well as in the case, if the said actions are performed by a person who controls the implementation of the rights and obligations of the organization. The court's decision on the liquidation of the organization (the prohibition of its activity) can be extended to regional and other structural units of the organization.

By the Decision of the Supreme Court of the Russian Federation dated February 14, 2003 the activities of 15 organizations are recognized as terrorist and banned in Russian Federation. Currently, there are eighteen<sup>3</sup> of these organizations:

- 1) "Supreme Military Majlis-ul Shura of the United Mujahideen Forces of the Caucasus", "Congress of the Peoples of Ichkeria and Dagestan"
- 2) "Base" (Al-Qaida)
- 3) "Asbat al-Ansar"
- 4) "Holy War" ("Al-Jihad" or "Egyptian Islamic Jihad")
- 5) "Islamic Group" ("Al-Gamaa al-Islamiya")
- 6) "The Muslim Brotherhood" ("Al-Ikhwan al-Muslimun")
- 7) "Islamic Party of Liberation" ("Hizb ut-Tahrir al-Islami")
- 8) "Lashkar-e-Tayyiba"
- 9) "Islamic Group" ("Jamaat-e-Islami")
- 10) "The Taliban"
- 11) "The Islamic Party of Turkestan" (former "Islamic Movement of Uzbekistan")
- 12) "Society of Social Reforms" ("Jamiat al-Islah al-Ijtimai")
- 13) "Society of the Revival of Islamic Heritage" ("Jamiat Ihya at-Turaz al-Islami")

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<sup>3</sup> *Russian Gazeta*, July 28<sup>th</sup>, 2006

- 14) "Two Holy Cities" ("Al-Haramain") (the Decision of the Supreme Court of the Russian Federation dated February 14<sup>th</sup>, 2003)
- 15) "Jund al-Sham"
- 16) "Islamic Jihad - Jamaat Mujahideen" (the decision of the Supreme Court of the Russian Federation of June 2<sup>nd</sup>, 2006)
- 17) "Al-Qaida Organization in the Islamic Maghreb" (formerly known as – "Salafist Group for Call and Combat") (the decision of the Supreme Court of the Russian Federation of November 13<sup>th</sup>, 2008)
- 18) "Caucasus Emirate" ("Imarat Kavkaz") (the decision of the Supreme Court of the Russian Federation dated February 8<sup>th</sup>, 2010)

In 2009, the President of the Russian Federation approved the Concept of Countering Terrorism, which set up a systemic basis for the further improvement of activities of public authorities at all levels in combating terrorism, as well as for the involvement of various public institutions.

The Concept includes structurally the sections containing the description of modern terrorism, trends and causes of its diffusion, the definition of subjects, objects, goals, means of terrorism and ways of its implementation, the description of the national system of combating terrorism (its subjects, the legal basis, the substance of the counter-terrorism, and all kinds of supplying counter-terrorism with resources), as well as the major areas of international cooperation in this field.

This Concept was first to define the following terms: "the national counter-terrorism system", "subjects of terrorist activity", "means of terrorist activity", to determine the key internal and external factors conditional on the origin and spreading of terrorism, the objects of terrorist activities, and mediums of terrorist activities. It also discloses the contents of the counter-terrorism activities (prevention of terrorism, combat against terrorism, and minimization (or) liquidation of the consequences of terrorism), including the questions of funding such activities.

According to the Concept, the main objectives of countering terrorism in particular are: revelation and elimination of the causes and conditions conducive to arising and spreading of terrorism; detection, prevention and suppression of acts of individuals and organizations aimed at preparing and committing acts of terrorism and other terrorist crimes; calling to account subjects of terrorist activities; maintenance of forces and means for suppressing terrorist activities in constant readiness; protection of citizens and anti-terrorism security of potential targets of terrorist attacks; countering the dissemination of terrorist ideas.

Currently, many terrorist organizations take advantage of the Internet in order to popularize and dissemble the ideology of terrorism. Access to mass media is very important to any terrorist group. Any act of terror is some kind of informational and psychological action designed to attract the attention of

an increasing number of people. Traditional media (radio, newspapers, television), due to legal restrictions on information of this kind, are trying to filter it out. With aid of the Web Islamites solve one of their prevailing problems - bringing to the end-user/ultimate consumer the message devoid of any government censorship.

Russian authorities seriously approach the question of the terrorist propaganda on the Internet. Interior Minister Rashid Nurgaliyev reported that in 2007 the internal affairs authorities revealed 148 sites of terrorist and extremist orientation. In the Russian network segment there were over 70 sites identified, 49 in the U.S., 6 in the Netherlands, 5 in Germany, 4 in the UK, 3 in Canada, and 2 in Turkey<sup>4</sup>. Information obtained by monitoring was sent to law-enforcement authorities of the countries concerned. The Minister stressed the need to create a mechanism of international cooperation for prevention of using the information space for the purpose of multiplying the ideology of terrorism.

In accordance with Art.1 of the Federal Law "On Countering Extremist Activities" № 114-FZ of 25 August 2002, the steps of providing telephone, facsimile and other forms of communication and information services to carry out extremist activity are equated with extremism. Article 12 of the said Law prohibits the use of public communication networks to implement extremist activity. Establishment of the fact that the certain information of the website contains some extremist materials shall be fulfilled by federal court on the proposal of the prosecutor. For the first time this rule was enforced by the court of the Soviet District of Novosibirsk, whose decision restrained the access to four Internet resources. The Decision applied to the Islamist and separatist websites - "Kavkaz-Center", "ChechenPress", "Daymokh" and "Information-analytical agency of Alania (Karachay-Balkaria)", whose materials, as observed by the public prosecutor's office, contained "propaganda for war, fomenting of national, racial or religious hatred and strife"<sup>5</sup>.

Thus, Russian Federation now has a well established and actively functioning national system of countering terrorism, which represents the aggregate of subjects of counter-terrorism and enactments regulating the activities of the said subjects to expose, avert (prevent), suppress, detect and investigate terrorist activity in order to minimize and (or) liquidate the consequences of terrorism.

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<sup>4</sup> Research Center "Agentura.ru". Nurgaliyev: Ministry of Internal Affairs revealed 148 sites on the Internet of terrorist and extremist orientation. Information is available at: <http://www.agentura.ru/press/propaganda/?id=1177501080>

<sup>5</sup> The Information-analytical center "Sova". The court first asked to block access to sites recognized as extremist. Information is available at: <http://xeno.sova-center.ru/13B565E/947E36A>

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## **ZAKON O BORBI PROTIV TERORIZMA U RUSKOJ FEDERACIJI**

### **S a ž e t a k**

Rad se bavi pitanjem antiterorističkog zakonodavstva u Rusiji. U prvom delu autori daju uvod u temu, podsećajući na nekoliko poznatih terorističkih akcija koje su se dogodile u Moskvi i drugim ruskim gradovima. Oni potvrđuju da je u današnjim uslovima opasnost od terorizma povećana u poređenju sa periodom 1940–1960. godine 20. veka, ne samo zbog njegove značajne rasprostranjenosti, već i zbog toga što čovečanstvo ima pristup oružju za masovno uništenje koje ima ogromnu destruktivnu moć: nuklearnom, hemijskom, biološkom, laserskom...

Autori zatim prelaze na pozitivno rusko zakonodavstvo u ovoj oblasti i predstavljaju najvažnije odredbe relevantnih zakona, od kojih su mnogi prilično novi. Konačni zaključak autora je da Ruska Federacija sada ima dobro uspostavljen i aktivan nacionalni sistem za borbu protiv terorizma predstavljen skupom subjekata i akata za suprotstavljanje terorizmu, koji regulišu aktivnosti pomenutih subjekata u cilju razotkrivanja, odvratanja (sprečavanja), potiskivanja, otkrivanja i istraživanja terorističkih aktivnosti, i tako svođenja na minimum i (ili) likvidiranja posledica terorizma.

**Ključne reči:** terorizam, antiterorizam, zakon, krivični zakon, Rusija



## DEATH PENALTY AS A CRIMINAL PUNISHMENT IN THE SYSTEM OF CRIME COUNTERACTION IN RUSSIA

The article deals with the death penalty (capital punishment) in the contemporary system of crime counteraction of Russia. At the very beginning, the author reminds us that the death penalty is perhaps the most ancient form of criminal punishment, mentioned in the Bible, and in the laws of many ancient states. The author then goes on to explain that the death penalty has been known in Russia since the ancient times. He gives interesting historical overview which covers important legal sources dating back from the 11<sup>th</sup> and later centuries. The central part of the article deals with the issue of death penalty as a criminal punishment in the present-day Russia. His final conclusion is a hope that sooner or later Russia will abolish this form of punishment. Yet, he believes that for the time being, it is not only possible but it is necessary to apply the death penalty in Russia, at least for the most egregious and resonant cases of extraordinary murders.

**Keywords:** death penalty, criminal law, history, law, Russia

Death penalty is perhaps the most ancient form of criminal punishment and without a doubt the cruelest one of them. Ever since biblical times this penalty has been known to all the nations of the world. Its genesis can be found in a far more distant period of history, when the custom of blood revenge was put in practice everywhere and tortfeasors were simply eliminated.

In the period of state establishments death penalty was enthusiastically accepted by many of the world legislators as being the most reliable, cheap and effective way to deal with lawbreakers. It is mentioned in the laws of Babylon, Assyria, Hittite, Egypt, Greece, Rome, Byzantium, etc<sup>1</sup>.

The death penalty has also existed in Russia since the ancient times. The very emergence of the term “criminal law” was probably a result of the widespread use of the death penalty, which often took the shape of “Beheading”.

Russkaya Pravda<sup>2</sup> allowed a possibility to revenge by committing a murder for a murder, theft, or injury. Subsequently, there was a tendency to expand the

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<sup>1</sup> Oppengamer G.: *Istoricheskoe issledovanie o proishozhdenii nakazaniya*, Moscow 2011, 29-30; Maltsev G. V.: *Mest' i vozmezhdie v drevnem prave*, Moscow 2012.

<sup>2</sup> Russian Truth. Is one of the first Russian written laws dated approx. 1019-1054.

scope of the death penalty. Thus, according to the *Sudebnik*<sup>3</sup> of 1497 and 1550, such crimes as treason, false accusation, aggravated theft, robbery, *dushegubstvo* (murder), arson, kidnapping and other crimes were punished by death.

The practice of death penalty dramatically expanded in the seventeenth and eighteenth century. According the Conciliar Code of 1649, this penalty was allowed to be imposed for the commission of 54 types of crimes (Kistiakowsky, *supra* note 4) or, according to other sources, 63 different crimes. Peter's Military Articles refer to death penalty in 122 articles.

By the method of execution the death penalty was subdivided into regular and aggravated. The regular one was execution by hanging, beheading and drowning. At the time of Peter "razstrelyanie" (shooting) was introduced. Aggravated capital punishment was extremely diverse, and demonstrated an inexhaustible imagination of lawmakers and law enforcement bodies. The methods of its execution were monstrous. According to witnesses, they were:

- Burning – imposed for blasphemy, a distraction from the Orthodox Church and arson. In practice it was mostly used for heretics and schismatics, and for committing superstitious crimes;
- Drenching a throat with a molten metal (tin or lead) – imposed upon thieves of gold and silver. This variation of death penalty was considered as one of the most painful forms of execution, as the melted tin sometimes burned a hole in a throat. It was slow and lingering death and if the condemned person didn't die, they were beheaded;
- Burying alive – imposed on wives who killed their husbands. Usually the convicted person was buried with their hands laid on their shoulders, and left to die of starvation. Mostly they died on the second or third day.

Like some other countries, Russia implemented quartering (amputation of hands, legs and head), putting on a stake, hanging by the rib, boiling in oil, peeling skin, pulling the intestines, poisoning, suffocation, dropping off a cliff, feeding wild animals, trampling under foot, stoning, etc<sup>4</sup>.

There was no other purpose than deterrence, retribution and reward retaliation for this punishment. Actually, their goals were not even obscure- on the contrary, they were strongly emphasized, advertised, and promoted. And that was the very essence of the criminal policy of the Russian state at that period of time.

At the time of so called "educated monarchy" the number of death penalties declined and during the reign of Elizaveta and Ekaterina II it was abolished. Under the Code of Punishments Criminal and Executive of 1845 death penalty was limited to the crimes against the state (criminal action against the Emperor, a revolt against the government, treason) and quarantine (criminal omission to

<sup>3</sup> The name for Code of Law in Tsarist Russia.

<sup>4</sup> Kistyakovsky A. F.: *Issledovanie o smertnoj kazni*, Saint-Petersburg 1896.

prevent the spread of the plague, the violent break through the quarantine zone, etc.). In the Criminal Code Of 1903 the death penalty prevailed only for the crimes against the state. It was executed by hanging. The 19<sup>th</sup> century can be seen as the “era of mercy”. During this period from 10 to 50 people were executed in Russia every year. And from 1866 to 1900 the total number of executions was only 420<sup>5</sup>.

In the twentieth century the practice of the death penalty in Russia varied significantly. It was abolished in 1917, 1920, 1947, and unlimitedly expanded in 1922, 1926, 1960, 1962. Hence, according to the Criminal Code of 1926, the death penalty could be imposed for committing 37 different crimes. The Criminal Code of 1960 mentioned it in 35 articles. Russian criminal legislation of that period can be compared to Peter’s Military Articles<sup>6</sup>. In its cruelty the Criminal Code of 1960 competed only with the Turkish Penal Code and South African Penal Code. As an illustration, at the time in Bulgarian Criminal Code the death penalty could be found in 29 articles, in the Criminal Code of Poland in 7, in the Criminal Code of the GDR in 21, and in the Criminal Code of China in 17 articles.

In consideration of the uniqueness of this form of punishment, and taking into account the humanistic orientation of penal policy, death penalty for so many different types of crimes was clearly unjustified.

The literature on this subject contained different opinions ranging from the most radical which allowed the death penalty during peacetime only for treason, espionage, sabotage, terrorism, banditry and premeditated murder with aggravating circumstances, including a homicide during hijacking an aircraft (G.Z. Anashkin). Another opinion was a compromise - abandoning the death penalty for grand larceny and breaking the rules on currency exchange (E.A. Sarkisov). Intermediate position occupied by L.V.Bagriy-Shakhmatov proposed to keep the death penalty only for the most dangerous crimes against the state, premeditated murder with aggravating circumstances and rape, resulting in the death of the victim.

Some Russian lawyers (O.F. Shishov S.G. Kelina, S.S. Alekseev, etc.) went much further. In the late 80’s and early 90’s of the previous century, during the debates on the death penalty, it was proposed that the death penalty be abolished completely<sup>7</sup>. As we see, the opinions are sharply divided. It is interesting to observe the reaction of Russian legislators to such proposals.

According to Art. 59 of the Criminal Code of 1996, the death penalty being an exceptional measure of punishment is set only for the most serious crimes against life. It shall not be imposed upon women, and those who committed crimes before the age of eighteen, and men who have reached the age of sixty by

<sup>5</sup> Gernett M. N.: *Smertnaja kazn’*, Moscow 1913, 98-99. Shelkoplyas N. A.: *Smertnaja kazn’ v Rossii: istorija stanovlenija i razvitija*, Minsk 2000; Rozhnov A. A.: *Smertnaja kazn’ v Rossii i Zapadnoj Evrope v XY—XYII vv.: sravnitel’no-pravovye ocherki*, Ulianovsk 2009; *Vina i pozor v kontekste stanovlenija sovremennyh evropejskih gosudarstv (XVI-XX vv.)*, Saint-Petersburg 2011.

<sup>6</sup> Zhiltsov S. V.: *Smertnaja kazn’ v istorii Rossii*, Moscow 2008.

<sup>7</sup> *Smertnaja kazn’: za i protiv*, Moscow 1989, 250.

the time of committing a crime. Firstly, it means that Russian legislators never abandoned the idea of using the death penalty as a measure of the toughest criminal repression. Secondly, the death penalty is still regarded as an exceptional measure. Thirdly, it is used for committing the sharply limited range of offenses. Fourthly, the list of persons to whom it could be applied is slightly narrowed.

The death penalty can be imposed as a primary punishment only.

According to Art. 184 of the Russian Criminal Executive Code, prisoners sentenced to death should be kept in a single confinement cell in conditions that ensure security and isolation.

An execution of the sentence is suspended until the decision of the president, if the condemned person has applied for a pardon. In case of the condemned refusing to appeal for a pardon, the prison administration must draw up an appropriate statement in the presence of a prosecutor.

The death penalty can be executed if the Chief Justice of the Supreme Court and the Prosecutor General of the Russian Federation has given the statement that there are no grounds for a protest or revision of the court judgment and the condemned has refused to appeal for a pardon or his appeal had been declined.

According to Y. Antonyan one third of those sentenced to death never wished to appeal for pardon.

The “technology” of the death penalty execution is explicitly regulated by the Criminal Executive Code. In accordance with Art. 186 of the abovementioned Code the death penalty is executed by shooting in a nonpublic place. The death penalty is executed separately for different persons.

A prosecutor, prison administration representative, and a doctor must attend the death penalty execution. The death of the condemned is certified by the doctor and an appropriate report must be signed immediately.

The prison administration must notify the court which rendered the judgment, as well as one of close relatives of the convicted person. Body for burial is not given and the place of his burial is not disclosed. The body of the executed cannot be revealed to the relatives and the place of burial is not disclosed<sup>8</sup>.

The death penalty is applied for commission of five crimes: murder with aggravated circumstances (Part 2 of Art. 105 of the Criminal Code), attempt on the life of a state or public figure (Article 277 of the Criminal Code), attempt on the life a person administering justice or preliminary investigation (Art. 295 of the Criminal Code); attempt on the life of a law enforcement officer (Article 317 of the Criminal Code), genocide (Article 357 of the Criminal Code). It is easy to see that the legislator could reduce the list to two articles, limiting it only to aggravated homicide and genocide. Three other crimes can be seen as a specific type of murder. It is possible that this option will be chosen as the next step towards the complete abolition of the death penalty.

<sup>8</sup> Korobeev A. I. (ed.): *Uchenie o nakazanii v ugovnom prave Rossii*, Vladivostok 2011, 251-252.

The establishment of life imprisonment as an alternative to the death penalty can be regarded as another step already taken towards the abolition of the death penalty. The rule formulated in Art. 59 of the Criminal code is based on the same ideas. The rule stipulates that in the case of pardon the death penalty may be replaced by life imprisonment or imprisonment for a period of twenty-five years.

However, these decisions cannot be called radical. Russian legislation still faces a dilemma, which is based on the famous aphorism: "Edwardum occidere nolite timere bonum est".

Let's ask ourselves a question: After stepping into the 21<sup>st</sup> century is it still possible to continue practicing such an anti-humane measure as the death penalty? And does the arsenal of criminal penalties have anything as effective but relatively humane? Unfortunately, we cannot find a definite answer to this question.

Without a detailed description of all the points of view on this issue we should only mention that the debates have already come to the practical sphere of criminal policy.

The matter is that by joining the Council of Europe in 1996, Russia signed the Additional Protocol number 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, assuming thereby an obligation to abolish the death penalty within three years, and impose a moratorium on the death penalty executions before that. Up to now this form of punishment is still legal and the bill on its abolition has never been brought in Russian parliament. In this situation the first measure undertaken is blocking the death penalty by the President's decree that refused to consider petitions for pardon. This was followed by the Constitutional Court's decision of 2<sup>nd</sup> February, 1999 which ruled that Russian courts have no right to impose the death penalty until the jury trial has been introduced across Russia. From the moment of enforcement of the present Judgment until the entry into force of the respective federal law guaranteeing that each person accused of committing a crime punishable by death with the right to be tried by jury in the whole territory of the Russian Federation, punishment in the form of a death penalty shall not be imposed regardless of whether the case was considered by a jury, a panel of three professional judges, or a judge and two lay judges.

Finally, the last 720 (other sources say 713 and 718) death convicts were pardoned by presidential decree. 190 of them were sentenced to 25 years in prison, and 530 were sent to life imprisonment.

In 2009, the moratorium had to be reviewed again. The Supreme Court addressed the Constitutional Court of Russia with a request for clarification of paragraph 5 of the operative part of the decision of the Constitutional Court of February 2<sup>nd</sup>, 1999. The Supreme Court's appeal was based on an assumption of legal vagueness in imposing the death penalty after enacting jury trials throughout the Russian Federation on January 1<sup>st</sup>, 2010.

The Constitutional Court found that the enforcement of this Judgment with respect to the introduction of jury trials across the entire territory of the Russian Federation does not allow for a possibility of applying death penalty, including situations where the jury gives a verdict of guilt.

In its argument, the Constitutional Court stated that the long-term moratorium on the use of death penalty has served as a basis for the formation of well-established guarantee that the human right will not to be subjected to death penalty and establishment of the constitutional regime. Within the framework of the regime and in the light of the international legal tendencies and obligations assumed by the Russian Federation, there is an irreversible process aimed at abolishing death penalty as an exceptional measure of punishment of temporary nature (“until it is repealed”) which is acceptable only during a certain transitional period.

The abovementioned position of the Constitutional Court is unconvincing and dictated by political, rather than legal motives. That is why Judge Rudkin expressed his personal opinion about it, and a few months later the Supreme Court of Russia had to appeal to the Constitutional Court again to clarify the position of clause 4.3 of the new ruling of November 19<sup>th</sup>, 2009. The question was whether the ruling meant that death penalty was impossible to impose after April 16<sup>th</sup>, 1997. As a result the Constitutional Court passed death sentence to the death penalty.

Different branches of the judiciary would not have to unravel this “Gordian Knot” so long as the Constitutional Court of the Russian Federation had the courage to recognize the constitutionality of the death penalty after January 1<sup>st</sup>, 2010. And Russian lawmaker could introduce amendments to Part 2 of Art. 20 of the Constitution and Articles 44, 59 of the Criminal Code, and abolish the death penalty.

Yet this hasn’t been done. Therefore we have to admit that the legal position of the Constitutional Court, as it is reflected in paragraph 5 of its resolution of February 2<sup>nd</sup>, 1999, could not be interpreted otherwise than that sentencing of the death penalty is admissible since enacting jury trials throughout the Russian Federation on January 1<sup>st</sup>, 2010. A jury trial in the Chechen Republic (the last region of the Russian Federation, where such a court was not formed) began its operation. Otherwise such a position would be inconsistent with the arguments inherent in the above-mentioned decision and with the very nature of the basic constitutional provisions and principles, according to which its final conclusion was formulated in 1999.<sup>9</sup>

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<sup>9</sup> Opređenje Konstitucionnogo Suda RF ot 19.11.2009 № 1344-O-R. Osoboe mnenie sud’i Konstitucionnogo Suda RF Rudkina Ju.D., *Rossiyskaya gazeta*, issue 226, Nov. 27, 2009; Tirranen V. A.: *Vysshie mery nakazaniya v Rossii i zarubezhnyh stranah :avtoref. dis. ... kand. jurid. nauk*, Saratov 2011, 12.

Thus, the death penalty remains in the Criminal Code as a form of punishment, though it cannot be imposed or executed.

There are a few solutions to this problem. First, the death penalty could be not only kept in the Criminal Code but it could be executed. Keeping the death penalty in the Criminal Code as a form of punishment, as the legislator obviously can't ignore the historical tradition and the contemporary Russian criminal reality, and the public opinion. Public intolerance to this issue gets such a massive form that more than 70 % of the population are not only in favour of retaining the death penalty, but for its expansion. According to the most recent data, only 11 % of Russian citizens believe that death penalty should be abolished<sup>10</sup>.

It is noteworthy that even the "tolerant" Russian Orthodox Church does not object to the possibility of the death penalty in Russia. There is a widespread idea that only the increased penalties and strict punitive practices can and should fight against anti-social behavior. Such idea is as common as it is wrong though it is deeply rooted among the general public. Hence there are numerous proposals of citizens to strengthen punitive measures. In the mouth of the most extremist part of the population even the principle of retaliation has gained a different sense: "Two eyes for an eye, lower jaw for a tooth!"

The most extreme manifestation of that philistine idea is that the death penalty is an effective measure of general prevention of the most serious crimes. Criminal statistics is indisputable evidence of the opposite. Another proof is an attitude towards punishment. The number of individuals who had an indifferent attitude towards the perspective punishment while committing a crime is estimated to be 58 % (A.I. Martsev) or 64 % (I.S. Noah) of the total number of persons sentenced to imprisonment. The fear of punishment prevents between 2.6 and 21 % of individuals from committing a crime.

It is even more groundless to believe that such a goal, as repentance of an offender can be achieved with the death penalty.

Aiming at an endless intensification of criminal repression is a typical manifestation of the incompetence of public opinion. It is a failure to properly assess public interests in combination of severity and tolerance spheres of both the legislative and law enforcement. In this respect, it is appropriate to recall the famous words of Jean-Jacques Rousseau: "the severity of penalties is only a vain resource, invented by little minds in order to substitute terror for that respect which they have no means of obtaining"<sup>11</sup>.

These defects of public legal awareness and public psychology require elimination by relevant legal educative measures. Otherwise, these distorted ideas about the possibilities of criminal repression against crime may become an

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<sup>10</sup> Mezaev A. B.: *Smertnaja kazn' i sovremennoe mezhdunarodnoe pra-vo*, Moscow 2006, 201-201; Kvashis V. E.: *Smertnaja kazn'. Mirovye tendencii, problemy i perspektivy*, Moscow 2008, 619-623.

<sup>11</sup> Rousseau J. J.: *A Discourse on political economy*.

insurmountable obstacle to scientifically based depenalization of the death penalty. In the meantime, it must be noted that the degree of public acceptance of the complete abolition of this punishment is very low. In these circumstances, the easiest way out for the legislator is to retain the death penalty in the Criminal Code, even at the cost of Russia's "expulsion" from the Council of Europe. Following this concept we could go even further and expand the list of legal norms providing the death penalty as a punishment for committing rape, terrorism, banditry, sabotage, etc., as it is proposed by some criminologists<sup>12</sup>.

The second way is to try imposing the ideals of humanity on society, abolishing the death penalty and expanding the scope of life imprisonment at the same time. Though this idea is not likely to be considered humane, in consideration of Russia's "suicide bombers" will be forced to spend the rest of their lives in the conditions which are not better than those in dungeons of the Bastille or the Peter and Paul Fortress.

However, despite indisputable inhumanity of the death penalty as such and not indisputable humanity of life imprisonment, it must be noted that in the current circumstances, the Russian legislature reduced the level of application of the death penalty to "lower the lowest" limit. In other words, Russia brought the death penalty into condition which can be resolved in only one way – a complete abolition of the death penalty.

While this is perhaps objectively impossible, as average Russian legal consciousness has accepted that burning witches at the stake or hanging counterfeiters is inhumane, Russians still did not come to realize why it is barbaric to execute a murderer.

The fact that currently the death penalty is abolished in only 92 countries (Iceland, Netherlands, Norway, Portugal, France, Czech Republic, Sweden, Belgium, Germany, Hungary, Italy, Spain, Australia, Angola, Mauritius, Mozambique, etc.) also cannot be ignored.

Other 30 countries retained the death penalty in law but never applied it in practice for the past 10 years or more (Algeria, Benin, Cameroon, Ethiopia, Mali, Morocco, Tanzania, Tunisia, etc.).

Finally, more than 60 countries still execute the death penalty for various categories of crime. These include many of the former republics of the Soviet Union, Cuba, a number of Asian countries (Afghanistan, Bangladesh, Cambodia, India, Indonesia, China, North Korea, South Korea, Singapore, Pakistan, Japan, etc.), a group of African countries (Sudan, Uganda, Nigeria, etc.), virtually all the Arab states (Egypt, Libya, Jordan, Iran, Iraq, Syria, and other). In the U.S. imposition of the death penalty is implemented in 39 jurisdictions, 37 states have

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<sup>12</sup> Afonin I. N.: *Smertnaja kazn': problemy naznachenija i ispolnenija po rossijskomu zakonodatel'stvu : avtoref. dis. ... kand. jurid. nauk*, Saint-Petersburg 1999.

it in their legislation, it is also provided for the U.S. federal law and the military justice system<sup>13</sup>.

The execution rate in some countries is particularly high. Iraq, Iran, China, North Korea, Sudan, Nigeria, Saudi Arabia, USA are among them. For example, over the past 35 years (from 1976 to 2009) an average of 243 people were sentenced to death each year in the USA. 7.5 thousand death sentences were executed there. In 2006, 53 convicts were executed in different ways (lethal injection, electrocution, gas chamber, hanging, firing squad). And about three thousand condemned persons are waiting their fate. According to some reports, in the past 10 years an average of 76 % of all recorded executions in the world and 70 % of all death sentences are related to China<sup>14</sup>. For truth's sake, we should note that "The amendments № 8 to the Criminal Code of the People's Republic of China", adopted on February 25<sup>th</sup>, 2011 eliminated the death penalty from the sanctions of 13 offenses (19.1 % of the total number of crimes punishable by death) of economic and non-violent crimes. The mitigation of punishment mechanism was also improved for the criminals sentenced to death with a stay of execution, the system of punishment became more balanced with the adjustment of the death penalty and life imprisonment proportion<sup>15</sup>.

The beginning of the sixties in the post-war Russia is the peak of the death penalty execution. 1,890 persons were sentenced to death by shooting in 1961, and 2,159 in 1962. Since then the number of executions dropped sharply (in the second half of the 60's it ranged from 379 to 577 persons annually). Over the years of perestroika, the number of persons sentenced to death continued to decline (in 1987 it was 344 persons, and 195 in 1990).

With the adoption of the new Criminal Code, these figures decreased slightly: in 1997 202 prisoners were sentenced to death and 112 prisoners in 1998. As a result, the proportion of persons sentenced to death in Russia in the denoted period of time decreased dramatically (by more than 30 times). This indicates a stable tendency to curtail the death penalty as the most severe form of criminal repression<sup>16</sup>.

The examples of the attitude of legislators and law enforcement agencies around the world towards the death penalty indicate that combating negative social phenomena can be versatile. It is known from Russian history that Peter the Great eradicated barbarism in Russia by the same barbaric measures.

<sup>13</sup> Mikhlin A. S.: *Smertnaja kazn': vchera, segodnja, zavtra*, Moscow 1997, 25-26; Mikhlin A. S.: *Vysshaja mera nakazaniya: istorija, sovremennost', buduwee*, Moscow 2000, 29-38; Kvashis V. E., Morozov N. A., Tyo I. B.: *SShA i Japonija. Prestupnost'. Ugolovnaja politika. Smertnaja kazn'*, Vladivostok 2008, 10.

<sup>14</sup> Kvashis V. E.: *Kuda idet smertnaja kazn'. Mirovye tendencii, problemy i perpektivy*, Saint Petersburg 2011, 45, 209-212.

<sup>15</sup> Pan Dunmai: "Novye tendencii razvitiya ugolovnogo zakonodatel'stva v Kitae", *Journal of Criminology*, Vol. 2 (16), Irkutsk 2011, 62-63.

<sup>16</sup> *Polnyj kurs Ugolovnogo prava: V 5 t. T I. Prestuplenie i nakazanie*, Saint Petersburg, 826.

As Karl Marx wrote: There is history – there is such a thing as statistics – which prove with the most complete evidence that since Cain the world has neither been intimidated nor ameliorated by punishment. Quite the contrary<sup>17</sup>.

The objectives of the criminal repression should not be achieved by any means and at any cost. The crime control in rule-of-law state must be carried out by democratic and humane methods. An implementation of the recent calls to put an “iron discipline” with a “firm hand”, or to bring down the crime wave by “red terror”, or go to an “emergent” and widespread use of the death penalty may ultimately lead to dictatorship, lawlessness, massive repression, totalitarianism. And we already learned this lesson from history.

As for the death penalty, we hope that sooner or later our country will abolish this form of punishment. For now, we believe that it is not only possible but it is necessary to apply the death penalty in Russia, at least for the most egregious and resonant cases of extraordinary murders.

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<sup>17</sup> Marx K., Engels, F.: *Sochineniya*, Vol. 8, 530.

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## **SMRTNA KAZNA KAO KRIVIČNA SANKCIJA U SISTEMU BORBE PROTIV KRIMINALA U RUSIJI**

### **S a ž e t a k**

Ovaj članak se bavi smrtnom kaznom u savremenom sistemu borbe protiv kriminala u Rusiji. Na samom početku autor nas podseća na to da je smrtna kazna najstariji oblik kažnjavanja koji se pominje, kako u Bibliji, tako i u zakonicima mnogih drevnih država. Autor dalje objašnjava da je smrtna kazna u Rusiji poznata još od drevnih vremena. Daje zanimljiv istorijski pregled pravnih izvora iz XI i kasnijih vekova. Centralni deo rada bavi se pitanjem smrtne kazne u savremenoj Rusiji. Njegov konačni zaključak je nada da će Rusija pre ili kasnije ukinuti ovakvu vrstu kažnjavanja. Ipak, veruje da je za sada ne samo moguće, već i neophodno primenjivati smrtnu kaznu u Rusiji, makar za nečuvane slučajeve teških ubistava.

**Ključne reči:** smrtna kazna, krivični zakon, istorija, pravo, Rusija

## THE ROOTS AND FORMATION OF THE RUSSIAN SCIENCE OF INTERNATIONAL LAW

After the introductory part, the author refers to the Kievan Rus, to show that although it was undoubtedly an active participant in international relations (closing international agreements, receiving foreign representatives, etc.) there is no evidence preserved on any papers that could be called the works of international legal science. Moreover, even in the period from the 13th until 17th century there are neither theoretical, nor systematic works in the domain of international law. The widely acclaimed work by P. P. Shafirov *The reflections on the legitimate reasons of the war against Sweden* (1717) could not be characterized as such either.

However, already in the 19th century the Russian science of international law went through an unbelievable period of flourishing. A number of original papers appeared, not just articles and monographs on selected issues, but the systemic works as well. As early as 1880 the Russian Society of International Law was founded. Generally speaking, the Russian science international law of the time was quite advanced and advocated for the strengthening of international law, peaceful settlement of disputes, the renunciation of war, disarmament, etc.

Soon after the October Revolution (1917) there was a division among the scholars. Thus, one group of them withdrew, the others fled abroad and continued their career in exile, while the third group (the majority of them) stayed in the country, raising new generations and laying the foundations of the Soviet science of international law, with all its positive and negative sides.

**Keywords:** international law, doctrine, the science of international law, Russia

### 1. Introduction

Although it would be an interesting undertaking, we will not go so far as to search for the first norms of what might be called international law in the relations of the Old Slavs, nor of the Slavic tribes, the ancestors of the Russians. This is because there was no Russia at the time, and from all that we know, there was no statehood in its contemporary understanding either.

It is sometimes forgotten that actually very little is known about the origin, life and social relationships of the Russians and their ancestors before the 9<sup>th</sup> century. Even what was at one moment regarded as official history lost its credibility over time. In fact, for a long time the official history of Russia was the

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one written by the four Germans in the first half of the 18th century! Those were the historians and linguists Müller, Bayer, Strube de Piermont and Schlözer<sup>1</sup>, who were invited from Germany by the Russian rulers to 'reinforce' the Russian Academy of Sciences established in 1724. Among other things, they wrote the history of Russia, though their Russian was either poor, or they did not speak it at all, so that they could not rely on the Russian sources (not that they were particularly interested in them). It is therefore not surprising that they formulated the theory of 'Variag' (Scandinavian) origin of the Russian state<sup>2</sup> (the so-called Scandinavian school, or the Norman theory), which, as soon as it appeared, suffered severe criticism as being false and non-scientific by the great Russian and the world scientist Mikhail Lomonosov. Although it was accepted by the authorities in Russia at one moment, it was later dismissed<sup>3</sup>.

All this is mentioned here only to be noted that in a situation where basically little is known about the elementary things from the distant history of the Russians (primarily about their exact origin), it should not be surprising that we do not have any knowledge about some, to put it that way, less important issues. Among these is the knowledge on the position of law<sup>4</sup>, international law in particular and what is more about the possible study of the law. In fact, it is difficult to say when and how the Russians entered international relations, what norms of international law they accepted, etc.

<sup>1</sup> Gottlieb Siegfried Bayer (1694-1738); Gerhard Friedrich Müller (1705-1783); Frederic Henri Strube de Piermont, (1704-1790), August Ludwig (von) Schlözer (1735-1809).

<sup>2</sup> The essence of the theory is the claim that it was Rurik who gave statehood to the Russians - Rurik, a Variag, i.e. a Viking (a Swede), who was invited with his companions by the citizens of Novgorod to manage them. However, something like that was not possible for the simple reason that Rurik could not have brought something that even his supposed homeland had not had - at the time Sweden itself did not exist as a state (it would become one only two centuries later). Lomonosov did not deny that Rurik was a historical figure, but he claimed that he was from the tribes of the Polab Slavs who had dynastic ties with the local princes (Ilmensky Slavs), which was the reason why it was him who had been invited. It should be added that Variags were not of any particular nation. It was the name of a warrior caste - professional soldiers who protected foreign rulers in exchange for award (as personal guards) or followed trading ships and caravans, and protected them from the forest and river robbers. Evidence that 'root' is the word connected with protection, preservation and security is found in many Slavic languages today.

<sup>3</sup> For one of the critiques of the Scandinavian school see: Мавродин В.В.: *Борьба с норманизмом в русской исторической науке*, <http://rutenica.narod.ru/norman.html> (16.11.2012).

<sup>4</sup> The oldest known collection of laws of the Russian law is 'Russian Justice' (*Русская правда*). The Codex was created in the 11th century (between 1019 and 1054) on the basis of customary legal norms of the old Russian law, the regulations passed by the princes and court practices. It contains primarily the norms in the field of inheritance, criminal, commercial and procedural law. It is preserved only in the transcripts from the 13th and later centuries. More in: : Введенский Б.А. (глав. ред.): *Энциклопедический словарь*. Volume 2, entry 'Русская правда', Moscow 1964, 331.

## 2. The Kievan Rus

If you look at the Kievan Rus (the end of the 9th until the middle of the 13th century)<sup>5</sup> which is considered to be the first Russian state, there is no doubt that it was not only present, but also played a very important role in international relations at the time<sup>6</sup>. It maintained relations with a number of states - Byzantium, the Khazar Khanate, Scandinavia, The Czech, French, Arab states and etc<sup>7</sup>.

Among other things, from the 9th until the 11th century the Kievan Rus<sup>8</sup> fought several wars against the mighty Byzantine Empire, and very successfully, what is confirmed by the fact that Byzantium was repeatedly forced to accept to pay the tax to the Russian princes, and that after the peace reached in 907, Oleg hung his shield over the door of Constantinople, showing thus his victory and domination<sup>9</sup>. Among a series of peace treaties (of 860, 907, 911, 945, 971, and 1043) of particular interest are the three - those of 911, 945 and 971<sup>10</sup>.

Oleg's treaty with Byzantium of 911 regulated a number of issues, such as punishing the perpetrators of particular criminal offences; help that each party is to provide for the merchants of the other contract party; the rule that (contrary to previous practice) the boat of the other party, thrown ashore, must not

<sup>5</sup> It is generally considered that the Old Russian state was created in Novgorod in 862, but after moving the capital to Kiev in 882, it began to be called Kievan Rus. The above mentioned years are given in accordance with what was accepted traditionally, based on *The History of Ancient Summers*. Otherwise, *The History* is the famous chronicle which is believed to be written by a monk Nestor in the early 11<sup>th</sup> century (in about 1113). However, some modern historians believe that all of the above mentioned happened 20 to 30 years later. The Chronicle is published in Serbian as: *Povijest minulih ljeta ili Nestorov ljetopis*, IKP 'Nikola Pasic', Beograd 2003.

<sup>6</sup> This is for several reasons – not only for the size and military power, but also because of its location on an important Dnepr road and the role in international trade (manufacturing of fur, linen, weapons, etc.). Heidrick J. 'The end of the Kievan State in the 13th Century', in: Böing Günther (ed.): *Povijest svijeta*, Zagreb 1990, 368.

See more on the Kievan Rus foreign policy in: Пашуто В.Т.: *Внешняя политика Древней Руси*, Москва 1968. Available on the website: <http://historybook.at.ua/news/2009-12-19-249> (24.11.2012).

<sup>7</sup> Кожевников Ф.И.: *Русское государство и международное право (до XX века)*, Москва 1947, 22.

<sup>8</sup> About the old Russian state, i.e. Kievan Rus, various approaches to the problem of the origin of the Russian state, social relations, etc. see particularly in: Греков Б. Д.: *Киевская Русь*, Москва 1953, also available at: [http://royallib.ru/read/grekov\\_boris/kievskaya\\_rus.html#0](http://royallib.ru/read/grekov_boris/kievskaya_rus.html#0); Фроянов И.Я.: *Киевская Русь*, Ленинград 1999. The books are also available at <http://historybook.at.ua/news/2009-09-30-113>; Пузанов В.В.: *Образование древнерусского государства в восточноевропейской историографии*, Ижевск 2012, also available at <http://elibrary.udsu.ru/xmlui/bitstream/handle/123456789/8571/201215.pdf?sequence=1> (all the given web-sites were visited on November 24, 2012)

<sup>9</sup> *Povijest minulih ljeta ili Nestorov ljetopis*, 18-19.

<sup>10</sup> For the content of these agreements see: *Ibid.* 20-23, 27-33. 44-46.

be looted, but must be given help; purchase of prisoners; the allied help of Byzantium to Russia and Russian voluntary service in the army of Byzantine Emperor; the extradition of fugitives i.e. the repatriation of the abducted; the inheritance of the Russians who died in Byzantium, etc<sup>11</sup>.

The other two contracts are those which Prince Igor (945) and Sviatoslav (971) concluded with Byzantium in the name of Kievan Rus. Apart from the tax payment, these agreements also regulated some other issues, including the alliance between the two parties against a common enemy (the obligation to provide military assistance to the other party at her request), certain issues in the field of civil and criminal law and others.

This data clearly indicates that even at that time, but also in the following periods (after the disintegration of a single state into smaller principalities) Russian princes made peacekeeping and other relevant treaties with foreign states<sup>12</sup>. In other words, the Old Russian state was aware of international law, no matter how undeveloped it was at the time<sup>13</sup>.

And second, since there were international agreements<sup>14</sup>, it is obvious that someone among the Russians had to be skilled in these matters. Someone had to study them, know the existing practices, interpret regulations etc. In addition, Russian's rulers used to receive envoys of foreign countries<sup>15</sup>, which means that

<sup>11</sup> More on this agreement in: Кожевников Ф.И. (1947), 23-25; Лисовский В.И.: *Международное право*, Москва 1970, 21-22; Родионов К. С. : “Была ли в Договоре 911 г. Киевской Руси с Византией норма о выдаче?”, *Государство и право* 3/2006, 75-85, and the references given there.

<sup>12</sup> Thus, for example, trade agreements with north German and Dutch trading cities, the dynastic marriages agreements with a number of European monarchies, etc. The Russian princes concluded, among other things, a series of agreements with the Germans (eg. 1195), the Netherlands (1195, 1270), Riga (1229, 1407), Poland (1239) and so on. Some 100 agreements which the Russian princes concluded between themselves should be added to this. More: Лисовский В.И., 22-23. One of the best known Russian peace treaties of the time is the one concluded in 1245 with the Livonia Germans after the great victories of Alexander Nevsky.

<sup>13</sup> After all, international treaties with international customary legal rules are today the most important sources of international law. More: Krivokapić Boris: *Enciklopedijski rečnik međunarodnog prava i međunarodnih odnosa*, Beograd 2010, the entry 'formal sources of international law' (285-286) and the entries that are referred to in it. Also: Krivokapić Boris: “Обицајна правна правила u међународном праву”, *Megatrend revija - Megatrend Review* 3/2012, 35-79.

<sup>14</sup> We learn much of the history of the old Russia and its international relations from the rare but extremely valuable cultural and historical monuments, the famous ones being the already mentioned *The History of Ancient Summers*, and then *The Story of Igor's Regiment* (*Слово о полку Игоревом*). This work describes the unsuccessful campaign (1185) of the Novgorod Northern Prince Igor against the nomadic people known as the Kumans. It is thought to have been written at the end of the 12th century, probably around 1185.

<sup>15</sup> Among other things, there is documented evidence that in the mid-13th century Alexander Nevsky received the legates of Pope Innocent IV at least twice, as well as that he received the Tatar deputies, etc.

there were certain rules referring to the treatment of foreign delegates, i.e. to what we call today diplomatic immunity, ceremonies and protocol, etc.<sup>16</sup> Someone had to know the rules, take them into consideration etc. Therefore, the people knowledgeable of what we might call international legal norms simply had to exist at the time. After all, if we know that the first Russian Code ('Russian Justice') was adopted in the early 11th century, even this points to the fact that the law had been studied earlier (and with this by all likelihood what is known as international law in the terminology of today)<sup>17</sup>.

However, we do not dare go so far as to conclude that the Russian science of international law had already appeared at that time. Generally speaking, it is true that the international law itself was not sufficiently developed. It is especially important to note that we have no information about any theoretical or even professional papers of Russian thinkers of the time in the field of international law. Therefore, apart from some speculations and assumptions that some experts on elementary rules of the then international law simply had to exist, there is no ground to claim that the science of international law already existed in Kievan Russia.

### 3. The Forerunners of the Russian science of international law

#### *3.1. Russia in international relations in the period between 13<sup>th</sup> and 16<sup>th</sup> centuries*

As it has already been mentioned, there is no doubt that the Old Russian state actively participated in international relations. However, in mid-13<sup>th</sup> century Russia went under the rule of the Golden Horde (of the Mongols i.e. Tatars) and remained under that rule until the end of the 15<sup>th</sup> century.

It is therefore not surprising that during a particular period long enough Russia was seen by Western Europe as mostly distant, unexplored and not entirely understandable country, perpetually under snow and ice, inhabited by strange, backward, bearded people who were never sober and who treated bears almost as farm animals.

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<sup>16</sup> According to some authors inviolability of foreign diplomats was strictly respected in feudal Russia, and when it comes to laws and customs of war, the Russian practice was far more humane than what was typical of Western Europe and Asia at that time. Кожевников Ф.И.: "Краткий очерк истории международного права", 7, с: Кожевников Ф.И. (отв. ред.): *Международное право*, Москва 1987.

<sup>17</sup> Without opening the issue of the accuracy of this thesis, it is interesting to note that some Russian scholars from the 19th century noted that 'neither purely Russian, nor purely Byzantine law could be found in' the peace treaties with Byzantium (911, 945, and 971), 'but that Russian law prevails'. Владимирский-Буданов М.: *Хрестоматия по истории русского права*, СПб - Киев 1908, 19. - Quoted by: Кожевников Ф.И. (1947), 25, fn 1.

Of course, the reader has realized that the description of the image that Western Europe had of Russia is deliberately exaggerated and ironic. But there is no doubt that since the Middle Ages Russia had been perceived as at least backward, in many ways an unknown country, with unusual, not clear enough customs, and in any case, with a rather different culture from the one that was typical for the rest of Europe<sup>18</sup>. That led the 'civilized' Europeans to be cautious and, why not say, arrogant to some extent. At best, Russia, in the minds of many, was the country from which jewels, furs, honey and similar products were coming, but which was inhabited by half-wild people.

After all, at that time Western Europe looked down upon all other parts of the world as something that is by its very nature inferior to Western European civilization. This Eurocentric approach was reflected in many areas. Among other things, it brought up the belief, at least in one part of science, that Europe was the cradle of modern culture, that its mission is to enlighten the rest of the world, and that what was remarkable in science and culture was, more or less, the work of the Europeans, whereby 'Europe' referred to Western Europe only<sup>19</sup>.

However, since the 16th and 17th centuries Russia has seriously climbed the international political scene and has not stepped down ever since. Despite some periods of slowdown or decrease of power, it can be said that the country has been one of the leading world powers to the present day, an important participant in international relations, conventions, conferences etc., and one of the creators of modern international law in many ways.

Logically, the higher the participation of a country in international relations, the higher its interest in international law, and if it is a sufficiently powerful country, the higher its impact on the development and interpretation of that law. Additionally, the higher the importance of international relations and international law for the life of the given country, the more developed the science of international law in that country is. In this respect Russia is no exception<sup>20</sup>.

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<sup>18</sup> To tell the truth, there are strong indications that the Russians did not have a much better opinion of the 'Latin' Europe either.

<sup>19</sup> Of course, the presented approach was wrong. It was not only a testimony to the arrogance and intolerance of then the Europeans, but also the evidence of their ignorance of the history and cultures of other nations.

<sup>20</sup> On the development of international law and international science of law in Russia see in (given by chronological order): Mälksoo Lauri: "The History of International Legal Theory in Russia: a Civilizational Dialogue with Europe", *European Journal of International Law* 1/2008, 211-225; Стародубцев Г.С.: "История международного права", у: Бекашев К.А. (отв. ред.): *Международное публичное право*, Москва 2009, 87-105; Толстых В.Л.: *Курс международного права: учебник*, Москва 2009, 88-100.

### 3.2. The first written works in the field of international law (17<sup>th</sup> and 18<sup>th</sup> centuries)

Speaking about the development of the science of international law in Russia, if written evidence is taken into account, it can be followed from the middle of the seventeenth century. After all, the major work by V. E. Grabar *The History of International Law in Russia* (1647-1917), which is indispensable in any presentation of the development of the Russian doctrine of international law, starts by the presentation of the international legal thought of Russia since 1647<sup>21</sup>.

In this regard, although he recognizes that until the 19th century there were few works in Russia dealing with issues of international law, Grabar notes that the origins of the science of international law in that country could be consistently traced since the 17th century<sup>22</sup>. Thereby, he distinguishes three categories of written information: 1) a military statutes, i.e. the books in the field of military issues and skills<sup>23</sup>; 2) works that do not cover international law specifically, but touch upon its certain aspects (war, sovereignty, etc.)<sup>24</sup>; and 3) various literary documents as part of the ambassadorial office (*Посольский приказ*)<sup>25</sup>, which operated from 1549 until 1720, and was some sort of a forerunner of the later ministry of foreign affairs<sup>26</sup>.

Turning to the 18th century in the second part of his book, Grabar rightly notes that Russia became a powerful empire under Peter the Great. However, it was still in many ways, regarding science as well, behind the Western Europe.

<sup>21</sup> Грабарь В.Э.: *Материалы к истории литературы международного права в России (1647-1917)*, Москва 1958.

<sup>22</sup> *Ibid.*, 14-37.

<sup>23</sup> The first act of this kind was written in 1606, but it remained in manuscript which was later, by order of the Emperor, processed and published in two parts, but only in 1777 and 1781. However, in 1647 (and this is the year that Grabar took to start his presentation of Russian literature in this area) another book saw the light of the day: *The science and skill of the military lining up of infantry* (*Учение и хитрость ратного строения пехотных людей*) which was a revised version of the German translation of Wallhausen's work (Wallhausen: *Kriegskunst zu Fusz*, 1815-1817).

<sup>24</sup> Grabar particularly emphasized the works of Maxim the Greek (*Максим Грек*, 1480-1556), who came to Russia from Albania, and of a Catholic missionary, a Croat, Yuri Krizanic (*Юрий К. Крижанич*, 1618-1683). It is interesting that he mentioned Maxim the Greek although he had died nearly a century before the year which Grabar himself took as the year of appearance of the Russian literature in this field.

<sup>25</sup> More about this jurisdiction in: Громыко А.А., Земсков И.Н., Хвостов В.М. (глав. ред.): *"Посольский приказ", Дипломатический словарь*, том II, Москва 1971, 550.

<sup>26</sup> Grabar specifically points out that manuals and other books were written for the needs of diplomats in this period. He particularly emphasizes the works of Matveev (*Матвеев А.С.*, 1625-1682) and Kotoshihin (*Котошихин Г.К.*, 1630-1667). The latter, by all accounts a gifted writer, fled abroad at one point, changed his name and moved to the Swedish civil service, but was soon executed because he killed his landlord in a state of intoxication.

Therefore, renowned names of the Western science were brought to Russia during this period, while the famous works in the fields of history, politics, economics, law and so on were translated. Some work in the field of international law were translated as well, primarily the most important works of Grotius, Pufendorf, Wolff and Vattel. However, the translation work was connected with certain problems. They referred to the difficulty of translating the mentioned works (due to the specific terminology with which the translators were not sufficiently familiar)<sup>27</sup>, while, on the other hand, the scope of these efforts was limited due to the relatively narrow circle of readers (Tsarevich Alexei and other persons of higher origin).

Of special importance is the fact that in this period the original Russian literature on international law appeared. After the remarks that the greatest Russian diplomat of the time was Peter I himself, Grabar lists a number of prominent Russian diplomats of the time<sup>28</sup>. The most interesting among them are those who left written works behind, notably Peter P. Shafirov (*Петр П. Шафирова*, 1669-1739). In fact, many in Russia itself and across its borders still believe that his work on the Swedish War, published in 1717, and then again in 1722, represents the first work of Russian science of international law<sup>29</sup>. Looking closer, this work, which is commonly cited under its shorter title *The Consideration of Legitimate Reasons of the War against Sweden* (*Рассуждение о законных причинах войны со Швецией*) or even only as *The Consideration* (*Рассуждение*), for the simplest reason that its full name occupies about two pages (!), was written upon the order of the Russian Tsar himself, and represents an attempt to explain, give arguments and justify the reasons that drove Peter I to go into war with the Swedish king Charles XII<sup>30</sup>.

Generally speaking, starting from the massive documentation provided by Grabar, it can be concluded that the works of the Russian legal writers of the 18th century discussed specific international legal issues of particular relevance to practice, such as: the title of the Tsar (the imperial title), the rank of ambas-

<sup>27</sup> Grabar says that great experts in both Russian and foreign languages had serious problems with the translation, and that in the case of the translation that was done by insufficiently experienced translators, the original text completely lost its sense, or, as he says, 'became unrecognizable'. He cites several examples of the wrong translations from the 18th chapter of the Grotius' book 'On the Law of War and Peace', where translations from the Latin (in which the book was written) into Russian were truly outrageous. Grabar., 42.

<sup>28</sup> Ukrainev E.I., Shafirov P.P., Postnikov P.V., Matveev A.A., Dolgoruky V.L., Kurakin B.I., Veselovsky F.P. Saltikov F.S., Osterman I.F., and others.

<sup>29</sup> For example Лисовский В.И., 38; Mälksoo Lauri, 214.

<sup>30</sup> The author, however, analyses some specific issues and institutes of international law of war, such as: the position of diplomatic agents of the conflicting sides before the war, the position of the subjects of the countries at war in the territory of the opponent, the position of the civilian population, capitulation, the position of prisoners of war, reprisals, etc.. More in Грабарь В.Э., 70-75.

sadors, the rights and privileges of ambassadors, diplomatic protocol and ceremony, extradition, reprisals, law of war etc<sup>31</sup>.

### 3.3. General evaluation of the period until the 19<sup>th</sup> century

With all due respect to different opinions (some of them have already been represented), we tend to notice that until the 19th century it is too early to talk about the Russian science of international law in the modern sense of the term.

In fact, recognizing Grotius as the father of science of international law, many Russian authors attempted to provide evidence that Russian science in this field did not lag behind the world trends very much. That can explain the fact that the roots of scientific thought in the field of international law are looked for and found in 1647, that is only two decades after the publication of Grotius' capital work 'On the Law of War and Peace' (*De jure belli ac pacis*, 1625), which was the first systematic overview of international law, i.e. the first comprehensive theory of the law. However, we have already seen that the book that was published in 1647 was actually a German translation, that is, the translation of work in the field of military science. Moreover, even the much acclaimed Shafirov's treatise (*The Reflections*, 1717) not only appeared a century after the famous Grotius' work, but it actually dealt only with the explanations of political and other reasons of the Russian-Swedish war, i.e. the qualification of the war, and only slightly touched on some institutes of the law of war. It was not in any real sense the theoretical, much less systematic work of international law.

On the other hand, there is no doubt that what happened in the 17th and 18th centuries in many ways prepared the fertile ground for a surprisingly rapid and successful development of Russian science of international law in the 19th century and later.

## 4. Russian science of international law in the 19<sup>th</sup> and early 20<sup>th</sup> century (until the October Revolution in 1917)

At the beginning of the 19th century there was growing interest in international law in Russia, which soon led to rapid development of Russian science of international law<sup>32</sup>. This was certainly positively influenced by the introduction of teaching of international law at universities, the translations of foreign authors, etc.

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<sup>31</sup> Грабарь В.Э., 52-70.

<sup>32</sup> Стародубцев Г.С. (2009), 87.

#### 4.1. *The introduction of teaching of international law at universities*

Teaching of international law at Russian universities was introduced in 1835 under the name of 'Law of Nations' (*общенародное право*), but in 1863 its title was changed to 'International Law' (*международное право*).

The introduction of this course should not be surprising when one takes into account that this is a country that, even at times of faltering for some reason, has always been a great power, therefore the country that out of very practical reasons had to be very well informed about the norms of international law, and particularly in different areas - in the field of diplomatic and consular relations, the law of international treaties, the law of war, international maritime law and so on. Other factors probably played their role too, among which the two seemingly opposite phenomena.

On the one hand, after the reforms of Peter I, at the beginning of the 18th century the upper classes of Russian society, especially the intellectual circles, were turned to the West, its ideals and innovations. The very fact that international law had become very popular in western countries, was enough to attract the attention of the Russian intelligentsia, to intrigue the prominent Russian thinkers of the time, and then, by the very nature to lead to the process of adjustment of understanding of foreign authorities to their own needs and views.

On the other hand what was typical of the then Russia, like of most Slavic countries, was a strong sense of belonging to family and nation. In other words, the awareness that the individual is only a part of a community that is a part of the wider community. On this basis, what was also welcomed was the idea of connecting various parts of the world, among other things, by international law as a normative system that regulates the relations between different nations, that is, on a higher level than the state does. Thereby, it is probable that the Russian intellectuals themselves, who had engaged in the study of international law, were not aware that, along with other factors, their roots and upbringing helped them embrace, easily and it could even be said enthusiastically, the ideas not only of the existence, but also, at least in some sense, of supremacy of law that transcends national borders.

In any case, the interest in international law was developed rapidly in Russia for various reasons (practical, intellectual, fashionable, etc.). One should therefore not be surprised by the fact that in the late 19th century there were Departments of International Law not only at one or two, but at a dozen Russian universities - in Moscow, Kazan, Kharkov, Yuryev, Saint Petersburg, Kiev, Odessa and Tomsk.

Logically, at first international law was taught at some other departments, usually departments of natural law, political law, i.e. national law, the roles of lecturers most often being occupied by experts in state law (constitutional law according to present terminology) or history.

The essential progress was made by the University Statute (*Университетский устав*) from 1835, which established the department of law of nations (i.e. international) law as a separate department. Since then, this subject has been taught separately.

At first, it was reduced to the teaching of the works of Hugo Grotius (1583-1645), Samuel von Pufendorf (1632-1694), Emerich de Vattel (1714-1767) and other famous international writers of international law, with the lecturers commenting on the attitudes of the then leading authorities of the world.<sup>33</sup> Gradually, however, they began to enter more deeply into the essence and the specific theoretical and practical issues of international law, formulate their own, original approaches and theories, write serious papers, and even the systemic works in this field.

#### 4.2. *The first contemporary works*

**1. General.** - Until the middle of the 19th century in Russia the works mainly by prominent scholars had been translated, while there were few original domestic works.

The first original Russian textbook of international law was the two-volume work by T. F. Stepanov *The national law with diplomacy*.<sup>34</sup> Unfortunately, although the censorship approved its publication in 1847, that piece of work was never published because the author died in the meantime<sup>35</sup>.

Shortly after that V.D. Spasovic (1851), M.N. Kapustin (1852, 1856), L.N. Denis 1854, D.I. Kacenevsky (1855) and others published their first works.

Only a few years after that, the first systemic works appeared (the first in 1863) and the first textbooks, with an increasing number of monographs, articles and other papers devoted to specific problems.

Among other things, this was due to the fact that in the late 40s and early 50s of the 19th century numerous doctoral dissertations were defended in international law. Even if we leave out the fact that many of them were subsequently published as monographs, the emergence of a growing number of doctors of science and experts in general in the field of international law, was the trigger that led to an unusually rapid and successful development of the Russian science in this field.

As soon as 1880 the Russian Society for International Law was founded in Saint Petersburg, which was an additional impetus for the development of the

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<sup>33</sup> Толстых В.Л., 96.

<sup>34</sup> Степанов Т.Ф.: *Общеправное право, в совокупности с дипломатией*.

<sup>35</sup> Among others see in: Левитский В.: *Основные труды Т. Ф. Степанова*, <http://www.law.edu.ru/doc/document.asp?docID=1126183> (16.11.2012). According to Grabar, the manuscript itself was later destroyed in the war, so that it is permanently lost. See in: Грабарь В.Э., 372.

Russian science of international law, and for the better understanding and acceptance of international law in the society in general.

Thanks to the above said, as well as the persistent efforts and the natural gift of the leading Russian thinkers in this field, the Russian science of international law managed for a relatively short period not only to catch up with the European schools of international law of the time, but also to process the acquired knowledge in its own way, and based on this develop its own approaches, theories, and over time, traditions.

It is particularly interesting to note that in a backward political and legal structure of the then Imperial Russia, the science represented a kind of phenomenon, in the sense that it was characterized by progressive ideas, and a commitment to the ideals of peace and international cooperation.<sup>36</sup>

**2. The systemic works.** - The first published attempt at systemic presentation of international law in the Russian legal science was the work of D. I. Kachanovsky 'The Course of International Law' (1863)<sup>37</sup>. It is largely accepted that this work provided enormous scientific material, that it was brilliantly written, but that it stopped at the history of international relations in the Middle Ages, thus even at the time of its publication in many ways, being rather outdated.

In the following years, until the Revolution of 1917, many authors tried to give their perspective of international law, to write high quality textbooks and works in general devoted to general issues, the development and system of international law<sup>38</sup>. In this respect the following books are worth mentioning (in chronological order): Kapustin M.N.: *International Law* (1873), Ivanov A.V.: *The Characteristics of International Relations and International Law in Historical Development* (1874); Stoyanov A.N.: *An Overview of the History and Dogmatics of International Law* (1875); Korkunov N.: *International Law* (1886); Eihelman O.O.: *Introduction to the System of International Law* (1889); Danevsky V.P.: *The Textbook for the Study of the History and System of International Law* (1892); Kamarovsky L.A.: *The Elementary Issues of the Science of International Law*, volume 1-2 (1892-1895); Simmon E.: *The System of International Law* (1900); Kazansky P.: *An Introduction to International Law* (1901) and *The Textbook of International Public and Civil Law* (1902), Kamarovsky L.A. and Ulianski V.A.:

<sup>36</sup> Стародубцев Г.С. (2009), 87; Левин Д.Б.: *Наука международного права в России в конце XIX и начале XX века*, Москва 1982, 7.

<sup>37</sup> Каченовский Д.И.: *Курс международного права*. Харьков 1863.

<sup>38</sup> It is interesting to note here that Martens in his famous work published in 1904 rather strictly observes that 'Russian literature is very poor in individual works when it comes the works that include the whole system of international law'. He cites only a handful of works which, according to him, present the basic principles of the science of international law - the books of Kachanevsky (1863), Stoyanov (1875), Kapustin (1856, 1873) and Kazansky (1902), and with them the work of Professor Bialecky from the Warsaw University (1872). Мартенс Ф.Ф.: *Современное международное право цивилизованных народов*, том I, Москва 1996 (reprinted in 1905), 139.

*International Law* (1908), Gorovcev A.M.: *International Law* (1909), Ulianski V.A.: *International Law* (1911) and others<sup>39</sup>.

**3. Martens' capital work.** - In spite of the presented range of approaches and an impressive number of systemic works published in a relatively short period of time, one piece of work stands out above the others. It is a famous work that shapes the system of more or less whole international law of the time. Of course, this is a two-volume major work of the famous Russian lawyer Martens entitled 'The Contemporary International Law of Civilized Nations'.<sup>40</sup>

In this work, Martens very seriously deals with the fundamentals of international law, the definitions of the most important categories of international law, the history of international relations, the development of the science of international law, the sources of international law, the codification of international law, the international community, the subjects of international law, state territory, international treaties, diplomatic law, consuls, religious relations between Christian nations, international transportation law, international private law, international criminal law, peaceful settlement of disputes, the law of war, neutrality, etc.. Generally speaking, the impression is that Martens not only sought to identify, analyze, and interpret the norms of international law, but also to establish the regularities of their formation and development. In doing so, he correctly noted that relations between states depended on the legal institutes of particular countries, but also on the spiritual and economic interests of societies.

<sup>39</sup> Капустин М.Н.: *Международное право*, Ярославль 1873; Иванов А.В.: *Характеристика международных гматики международного права*, Харьков 1875; Коркунов Н.: *Международное право*, СПб 1886; Эйхельман О.О.: *Введение в систему международного права*, Киев 1889; Даневский В.П.: *Пособие к изучению истории и системы международного права*, Харьков 1892; Камаровский Л.А.: *Основные вопросы науки международного права*, том 1-2, Москва 1892-1895; Симсон Э.К.: *Система международного права*, СПб. 1900; Казанский П.: *Введение в курс международного права*, Одесса 1901; Казанский П.: *Учебник международного права публичного и гражданского*, Одесса 1902; Камаровский Л.А., Ульяницкий В.А.: *Международное право*, Москва 1908; Горовцев А.М.: *Международное право*, СПб. 1909; Ульяницкий В.А.: *Международное право*, Томск 1911.

<sup>40</sup> Мартенс Ф.: *Современное международное право цивилизованных народов*, том 1-2, С.-Петербургъ 1882-1883. Ovo čuveno delo doživelo je 5 izdanja na ruskom jeziku, već 1884-1885. objavljeno je na nemačkom, 1887-1888. na francuskom, a zatim i na španskom i još nekoliko stranih jezika. Rad je ponovo objavljen na ruskom krajem 1996, kao reprint petog izdanja iz 1904-1905. U tom reprintu smo ga koristili i mi, pa se na njega i pozivamo kao na Мартенс Ф.Ф.: *Современное международное право цивилизованных народов*, т. 1-2, Москва 1996.

When speaking about the author, Martens, Fedor Fedorovich (rus. Федор Федорович Мартенс) was a renowned Russian lawyer and diplomat (1845–1909), an Estonian born in the town of Parnu, an intergal part of Russia at the time, as *Friedrich Fromhold Martens*. He is also famous in literature under the German form of his name: (*Friedrich Fromhold von Martens*), as well as French one: (*Frédéric Frommhold de Martens*). He was the professor of international law at the University in Saint Petersburg.

**4. The general evaluation of major works of the Russian science of international law in the 19th century.** - If we return to the general trends of the Russian thought in the field of international law, as it was expressed in the works of general, and even of systemic character, we come to the undesirable, though not unexpected conclusion.

Trying to explain the basic ideas and concepts of such a large number of authors, expressed on such a large number of pages, would be frivolous and extremely unfair to the same authors. Even when one tries to explain the views of a single theoretician, it is usually a very difficult and unrewarding job, firstly because serious scientists consider a range of different issues, changing to some extent their attitudes over time and so on. No matter how tempting it may look at first sight, an attempt to represent the main characteristics of the approaches of the given authors at one place is bound to fail in advance.

However, as a general conclusion it can be assumed that the starting points of particular authors are sometimes very different. Some are legal positivists, who rely primarily on the actual material, i.e. the existing standards (e.g. F.F. Martens, V.A. Ulianski), the others start from the idea of international solidarity (e.g. N.M. Korkunov), the approaches of the third ones are of more or less idealistic and religious tone and indicate the existence of something, which is usually involved in the notion of the so-called natural law (e.g. L.A. Kamarovsky), while there are those who try to reconcile the legal positivism and natural-legal concept (D.I. Kachanovsky)<sup>41</sup>. In any case, the diversity of approaches, ideas, and interpretations cannot be denied.

When it comes to specific issues that attracted the attention of the authors of the given works, having in mind that those were the systemic works, naturally enough, these are in the first place general issues, such as whether international law is really the law, what is the nature of international law, what are the sources of international law, who are the subjects of international law, the problems related to the emergence and recognition of states, the questions related to the objects of international law, particularly those referring to state territory and its legal nature, to the international legal status of the sea, airspace, the issues in the domain of the contract law, diplomatic and consular law, peaceful settlement of international disputes, peacekeeping, the law of war<sup>42</sup>.

Given that the science of international law had just begun to develop seriously, the Russian writers (especially D.I. Kachanovsky and V.A. Uliansky) put considerable effort to demonstrate that international law is the law like any other, and to provide various arguments for that.<sup>43</sup> In this sense, they point out that the violations of law occur within each particular state; that each norm includes the

<sup>41</sup> More in: Толстых В.Л., 90-95.

<sup>42</sup> More in: Грабарь В.Э., 378-447.

<sup>43</sup> No matter how strange it may be, it can sometimes be heard today that the international law is not the law, but rather a set of desires, moral principles, etc. To read more about it,

assumption that it might be broken, but that this does not diminish its authority; that the fact that in the international community there is no definite legislator does not affect the essence of international law as law, since even in domestic legal systems there are norms that are not created by the legislator, but in a different way (the customary law rules) and so on<sup>44</sup>.

**5. Special topics.** – Logically, not only the systemic works were written in Russia, as well as in other states, but also (to a much larger number) works dedicated to specific concrete problems.

Shorter papers were published in scientific journals in Russia and other countries. Although many of them were extremely interesting, it goes without saying that it is not possible to deal with them here, since that would mean providing too many details. However, the already mentioned works, as well as references of these authors, point to these works, so the reader particularly interested in these issues will easily find the necessary additional information.

In any case, among the most prominent Russian scientific journals and periodicals in general which published the papers, but also the documents from the domain of international law there are four editions of the Ministry of Foreign Affairs, 'A Diplomatic Annual' (*Annuaire diplomatique - Ежегодник*), 'The Proceedings of the Moscow Main Archives of the Ministry of Foreign Affairs' (*Сборник Московского главного архива МИД*), 'The Proceedings of the Consular Reports' (*Сборник консульских донесений*) and 'The News of the Ministry of Foreign Affairs' (*Известия МИД*). At various times of particular importance were also other journals, such as 'The Journal of International and State Law' (*Журнал международного и государственного права*, Санктпетербург), 'The Scientific Memoirs of the Imperial Yuriev University' (*Ученые записки императорского Юрьевского университета*, Юрьев), 'The Kiev University News' (*Киевские университетские известия*, Киев), 'The Journal of Kazan' (*Казанский Вестник*, Казань) and others. Even from these several examples it is obvious that the respective journals and magazines were published throughout Russia, in major scientific, cultural, and especially university centers.

As already noted for very obvious reasons, we will consider only monographs here, and only some among them. Already from the titles that prevail, it may be noted that the Russian science of international law at that time was particularly attracted by the problems such as: the issues of war and peace, the law of war, military occupation, neutrality, reprisals, the principle of non-intervention, the right of seizure at Sea, the international court, diplomatic relations, consular law, international rivers, administrative associations (administrative unions), plebiscite under international law, the problems related to extradition of criminal offenders, etc.

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and especially about the arguments that the international law is the law like any other, sees in: Krivokapić Boris: *Aktuelni problemi međunarodnog prava*, Beograd 2011, 39-50.

<sup>44</sup> Толстых В.Л., 90-91.

In this regard, the following are among interesting contributions: (given in chronological order):<sup>45</sup> Malinowski: *The Reflections on War and Peace* (1803); Leskova: *Historical Research of the Principle of Neutrality Regarding the Maritime Trade* (1821); Spasovic: *On the rights of a neutral flag and neutral goods* (1851); Kapustin: *Diplomatic relations between Russia and Western Europe in the second half of the 17th century* (1852), *The Review of the Subject of International Law* (1856) and *On the Importance of Nationality in International Law* (1863); Bibikov: *The International Law of Ancient Greece* (1852); Denis: *The Review of Papers on Maritime Trade Neutrality* (1854); Kachanovsky: *On the Pirates and Courts for Seizure* (1855), Martens: *On Private Property Law in Time of War* (1869) and *On the Consuls and Consular Jurisdiction in the East* (1873), Kamarovsky: *The principle of Non-intervention* (1874), *On the International Court* (1881) and *The Successes of the Concept of Peace* (1898); Speransky: *The Attempt of Defining the Contraband of War* (1875); Piunovsky: *The Laws and Customs of Warfare under International Law* (1877); Danevsky: *A Historical Review of Neutrality and the Criticism of the Paris Maritime Declaration of 16 April, 1956* (1879); Eihelman: *The Military Occupation of the Enemy's Country: a consideration under international law* (1880) and *On the History of International Law and the History of its Literature* (1885); Lodizensky: *A Plebiscite in International Law* (1883); Nikolisky: *On the Extradition under the Principles of International Law* (1884); Malykov: *Peace and War: A New Approach* (1889); Ivanovsky: *The Geneva Convention and the Law of War* (1891); Taube: *The History of Emergence of Contemporary International Law* vol. 1-2 (1894-1899); Veiner: *The Consuls in the Christian states of Europe and the North American United States* (1894); Kazansky: *Contracting Rivers* (1895) and *Universal Administrative Alliances of States* vol. 1-3 (1897); Grabar: *The Declaration of War in Contemporary International Law* (1904) and *De legatis et Legationibus tractatus varius*. *Collected Papers on the Literary History of the Diplomatic Law until 1625* (1905); Dogel: *Legal status of Individuals at the time of War on Land* (1894), *War Occupation* (1899) and *International Law at the Time of War* (1905); Bogaevsky: *Red Cross in the Development of International Law* vol. 1-2 (1906-1913); Cislov: *The Modern Law of War* (1910); Sobolev: *On the Law of Warfare at Sea and Maritime Neutrality* (1915)<sup>46</sup> and others. What could

<sup>45</sup> If more works by the same author are given, the year of publication of the first cited work determines the place in the review of works presented here. The works were given according to: Грабарь В.Э., 177-472; Лисовский В.И., 38-39; Стародубцев Г.С. (2009), 87-89.

<sup>46</sup> Малиновский В.Ф.: *Рассуждения о войне и мире*, СПб 1903; Лешков В.: *Исторические исследования начал нейтралитета относительно морской торговли*, Москва 1821; Спасович В.Д.: *О правах нейтрального флага и нейтрального груза*, Санкт-Петербург 1851; Капустин М.Н.: *Дипломатические сношения России с Западной Европой во второй пол. XVII в.*, Москва 1852; *Обозрение предметов международного права*, Москва 1856; *О значении национальности в международном праве*, Москва 1863; Бибииков П.С.: *Международное право древне Греции*, Москва 1825; Денис Л.Н.: *Обозрение трактатов о морском торговом нейтралитете*, СПб. 1854; Каченевский Д. И.: *О каперсах и призовом судопроизводстве*, Москва 1855; Мартенс Ф.Ф.: *О праве частной*

be seen even from this, although really superficial, overview is the variety of topics that occupied the Russian legal writers, but also the fact that the study of international law was not reserved for a small circle of privileged experts.

Many of the mentioned works were translated and published abroad, which made them available to the widest range of representatives of the science of public international law, meaning that one way or another they influenced the legal thought in other countries as well.

**6. The contribution of the Russian science of international law.** – Although it is not only ungrateful, but also impossible to generalize the legal thought of any country, especially of the one so large, with so many brilliant minds, and for such a long period, it could be noted that the Russian authors of the epoch reached the level of the science of international law in the most developed countries of the West. One of the specific features of the Russian science of international law is that during that time it was quite progressive, advocating the strengthening of international law, the peaceful settlement of disputes, the renunciation of war, disarmament, etc.

However, the contribution of the Russian science of international law to the development of international law and of the international law doctrine in general, is not only reflected in the mentioned and other works. It is expressed in practice, through the participation of Russian experts (F.F. Martens, M.A. Taube,

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*собственности во время войны*, Санкт-Петербург 1869; *О консулах и консульской юрисдикции на Востоке*, Санкт-Петербург 1873; Камаровский Л.А.: *Начало невмешательства*, Москва 1874; *О международном суде*, Москва 1881; *Успехи идеи мира*, Москва 1898; Сперанский М.Р.: *Опыт определения военной контрабанды*, Одесса, 1875; Пиуновский Д.Б. *Законы и правила войны по международному праву*, СПб. 1877; Даневский В.П. *Исторический очерк нейтралитета и критика Парижской морской декларации 16 апреля 1856*, Москва 1879; Эйхельман О.: *Военное занятие неприятельской страны: Рассуждение по международному праву*, Москва 1880; *К вопросу об истории международного права и истории его литературы*, Киев 1885; Лодыженский А.Н.: *Плебисцит в международном праве*, Ярославль 1883; Никольский Д. П.: *О выдаче преступников по началам международного права*, СПб 1884; Мальков В.И. *Мир и война: новое мышление*, Москва 1989; Ивановский А.И.: *Женевская конвенция и право войны*, Одесса 1891; Таубе М.: *История зарождения современного международного права т.1*, СПб 1894, т.2. Харьков 1899; Вейнер А.П.: *Консулы в христианских государствах Европы и Северо-Американских Соединенных Штатах*, СПб 1894; Казанский П.: *Договорные реки*, Казань 1895; *Всеобщие административные союзы государства*, т. 1-3, Одесса 1897; Грабарь В. Э.: *Объявление войны в современном международном праве*, СПб, 1904; “*De Legatis et Legationibus tractatus varius*”, *Сборник материалов по литературной истории посольского права до 1625 г.*, Юрьев 1905; Догель М.И.: *Юридическое положение личности во время сухопутной войны*, Казань 1894; *Военное занятие*, Казань, 1899; *Международное право во время войны*, Казань 1905; Богаевский П.М.: *Красный Крест в развитии международного права*, ч. 1-2, Москва 1906—1913; Числов А.И.: *Современное право войны*, Москва 1910; Соболев А.И.: *О праве войны на море и морском нейтралитете*, Петербург 1915.

D.A. Miliutin, A.N. Mandelsteim et al.) at various international conferences, by putting forward arguments for certain ideas and concepts<sup>47</sup>.

Among other things, anyone with even an elementary knowledge of international war and humanitarian law must have heard of the Martens Clause, which was named after its proponent, the Russian jurist and diplomat F. Martens.<sup>48</sup> Although formulated over a hundred years ago, the Clause has its place in contemporary international law<sup>49</sup>.

During this period a number of collections of treaties of Russia and other relevant material were published, with the outstanding contributions of Martens, Ivanovsky and Eihelman<sup>50</sup>.

<sup>47</sup> Among others, representatives of Russian science of international law actively participated in international conferences in St. Petersburg (1868), Brussels (1874), The Hague (1899, and 1907) and London (1908-1909) and in some cases substantially contributed to the adoption of the final solutions. Cited according to: Стародубцев Г.С. (2009), 89.

<sup>48</sup> A provision in the Introduction to the 4th Hague Convention on the Laws and Customs of War on Land (1899), which reads: 'Until a complete body of laws on war is adopted, the High Contracting Parties find it useful to confirm that, in cases not covered by the regulations adopted, the residents and combatants remain under the protection and authority of the principles of international law exactly as they result from the established custom among the enlightened nations, the laws of humanity and the dictates of public conscience'. This provision remained unchanged in the revised 4th Hague Convention (1907). The general meaning of this clause is in the agreement of the contracting parties that the means and methods of warfare that are not covered (limited, i.e. prohibited) by the existing contract law, are not by themselves allowed. Bearing in mind that new ways and means of warfare constantly appear, and also the fact that a complete codification of the law of war is not possible, the clause fulfilled the legal vacuum to some extent and confirmed that the warring parties must at all times adhere to the principles of international law, the law of humanity and the dictates of the public conscience. Although these terms (especially the last two) are not closely defined (they represent the so-called legal standards) and are thus subject to change and differing interpretations, this still created the framework for the constraining, i.e. prohibition of the use of the most diverse new inhumane weapons, which appeared after the appearance of clause (e.g. nuclear, chemical) or which will yet emerge in the future.

<sup>49</sup> Not only is the Fourth Hague Convention (1907) still in force today, but the idea underlying the Martens Clause was confirmed in practice and through a series of documents adopted after the Second World War - among other things, in the judgment of the International Military Tribunal at Nuremberg (1946) and The Geneva Conventions for the protection of War Victims (1949 - Art. 63/4 of the First, Art. 62/4 of the Second, Art. 142/4 of the Third and Art. 158/4 of the Fourth Geneva Convention). Slightly modified, the clause is also contained in Art. 1/2 of the Additional Protocol I (1977) to the Geneva Conventions for the Protection of War Victims (1949) in which it is stated: 'In cases not covered by this Protocol or by other international agreements, the civilians and combatants remain under the protection and authority of the principles of international law, derived from the established custom, from the principles of humanity and from the dictates of public conscience'.

<sup>50</sup> Мартенс Ф.Ф.: *Собрание трактатов и конвенций заключенных Россией с иностранными державами*, Санкт-Петербург 1874; Ивановский И.А.: *Собрание действующих договоров, заключенных Россией с иностранными державами*, Одесса 1889 - 1890; Эйхельман О.: *Хрестоматия русского международного права*, Киев 1889.

Finally, already in this period some Russian authors reviewed the most recent literature in the domain of international law. In this regard, some of the most famous works are: *The Review the Latest Literature on International Law* by Danevsky (1876), and *The Review of Contemporary Literature on International Law* by Kamarovsky (1887).<sup>51</sup> In addition to these general references, the specialized ones also appeared, such as for example the work of L.V. Jevdokimov *The Literature of Military Law 1852-1882 in the Russian Language* (1887).<sup>52</sup>

Not only were such reviews extremely useful both for the researchers and theorists of the time, as well as for those who are engaged in the development of the science of international law today, but were also the living proof that the science of international law was, even at that time, quite advanced. Logically, if we want to portray the literature on some issue, the issue itself must be sufficiently developed, as well as the literature on it.

Without going deeper into this problem because it would require a special research, including consulting the respective original works of the given Russian, but also foreign authors of the time, diplomatic correspondence and other documents, it is interesting to note here that at the end of 80s of the 20th century it could be read in the works of the representatives of the then Soviet science of international law that Russia had played a major role in the development of international law. In particular, the Soviet writers emphasized that Russia had recognized the principle of freedom of the open sea long before Grotius, that Russia was responsible for the adoption of the norms on the right to neutrality in naval war, on the fight against the trafficking of black people, on the humanization of war and other norms in the late 18th, i.e. early 19th centuries; that Russia was responsible for the first attempt at codifying the laws of war, etc. Naturally, all this was not possible without the well developed science of international law, and therefore the Soviet authors pointed to the works of the Old Russian scientists, starting from Malinowski, who dealt with the issues of peace and security even at the end of the 18th century.<sup>53</sup>

#### 4.3. *Translations*

No other science, and thus also the science of international law, can be developed without taking into account the achievements of other peoples. Already in this period the translations of important works of leading theoreticians of the

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<sup>51</sup> Даневский В.П.: *Очерк новейшей литературы по международному праву*, СПб. 1876; Камаровский Л.А.: *Обзор современной литературы по международному праву*, Москва 1887.

<sup>52</sup> Евдокимов Л.В.: *Литература права войны за 1852-1882 гг. на русском языке*, Казань 1887.

<sup>53</sup> Кожевников Ф.И. (1987), 10-11.

time were published in Russia, and these, among others, included the works of J. Blunchli, A. Hefter, A. Rivie, F. List, and others.<sup>54</sup>

The works were mostly translated from German and French, and it seems that for the Russian publishers of the time, apart from the systemic works, among the most interesting issues were those that are called today the law of an armed conflict, i.e. the law of the sea, which is evident by the number of translated works on those topics<sup>55</sup>. On the other hand, the national interest probably required that pace should be kept up with the thought of other peoples in this field.

A significant number of works by foreign authors was published in Russian translation in appropriate scientific journals, particularly in *The Journal of the State and International Law* which, among others, published the works of Korsy, Niemeyer, Tripel, Ullmann, Fiore and others on a variety of issues - on international law, on sanctions in international law, on the arbitration courts, etc.

### 5. The Russian science of international law after the October Revolution

It goes without saying that the attack on the Winter Palace in Saint Petersburg (November 7th 1917), which is taken as the date of the October Revolution<sup>56</sup>, did not in itself lead to changes in the Russian science of international law. However, in the years that followed, along with the changes in the very society, some kind of differentiation among Russian theorists in this field of science took place.

In the following years a number of them stopped publishing work for various reasons (death, retirement, withdrawal, etc.). The others, several dozens of them, fled abroad, and continued to publish their works in Russian in Prague, Paris, Berlin, and also Harbin (China) until the Second World War, developing some kind of Russian science of international law in exile. Finally, by far the largest number of experts in international law remained in the country and adapted to the changes in the society. Together with the new generations that they raised,

<sup>54</sup> Блунчли И.: *Европейское международное право цивилизованных государств, изложенное в виде кодекса*, Москва 1878; Гефтер А.: *Европейское международное право*, СПб 1880; Ривье А.: *Учебник международного права*, Москва 1893; Лист Ф.: *Международное право в систематическом изложении*, Юрьев 1902. etc. Some of this works, for example the by List, had several editions in Russian.

<sup>55</sup> Among others: Прудон П. Ж.: *Война и мир. Исследование о принципе и содержании международного права*. Москва 1864; Рише Ш. Р.: *Войны и мир*, СПб. 1905; Ортолан Г.: *Морское международное право*, С.-Пб. 1865; Люшингтон Г.: *Морское призовое право*, С.-Пб 1869; Перельс Ф.: *Современное морское международное право*, ч. 1: *Состояние мира*, С.-Петербург 1884; *Современное морское международное право*, ч. 2: *Состояние войны*, С.-Петербург 1884; Отфейль: *История происхождения, развития и изменения морского международного права*, С.-Пб. 1887.

<sup>56</sup> Because according to the old, Julian Calender, it happened on October 25th.

they became the pioneers and foundation of the new Soviet science of international law, with all its positive and negative sides<sup>57</sup>.

However, these are specific topics, each of which requires due attention and space.

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<sup>57</sup> More in: Krivokapić Boris: “Najnovije tendencije u razvoju sovjetske nauke međunarodnog javnog prava”, *Strani pravni život* 1/1992, 5-22.

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## KORENI I NASTANAK RUSKE NAUKE MEĐUNARODNOG PRAVA

### S a ž e t a k

Nakon uvodnog dela, autor se ukratko osvrće na Kijevsku Rusiju, samo da bi pokazao da je ona bila aktivan učesnik u međunarodnim odnosima, da je zaključivala međunarodne ugovore, primala strane poslanike itd., ali da nisu sačuvani nikakvi konkretni dokazi o nekim radovima koje bismo makar uslovno mogli nazvati delima iz domena međunarodnog prava. Štaviše, suprotno stavovima jednog broja ruskih teoretičara, ni u XIII-XVII v. nema teorijskih, a još manje sistemskih dela iz domena međunarodnog prava. Takav nije ni mnogo hvaljeni rad P. P. Šafirova *Razmišljanja o zakonitim razlozima rata protiv Švedske* (1717).

Međutim, već u XIX veku ruska nauka međunarodnog prava doživljava neverovatan procvat. Tome su doprineli uvođenje međunarodnog prava kao posebnog predmeta na desetak univerziteta, prevođenje radova najvećih svetskih teoretičara, ali i drugi momenti. U svakom slučaju, od sredine XIX v. pojavljuje se veliki broj originalnih radova ruskih teoretičara, i to ne samo članaka i monografija posvećenih odabranim problemima, već i sistemskih dela, među kojima je svakako najpoznatiji dvotomni rad F. F. Martensa *Savremeno međunarodno pravo civilizovanih naroda* (prvo izdanje 1882–1883), objavljen na više jezika. Već 1880. osniva se i Rusko društvo za međunarodno pravo. Ruska nauka međunarodnog prava toga vremena je, opšte uzev, bila prilično napredna i zalagala se za jačanje međunarodnog prava, mirno rešavanje sporova, odricanje od rata, razoružanje, i tome slično.

Ubrzo posle Oktobarske revolucije (1917) dolazi do raslojavanja. Jedan deo teoretičara se povlači, drugi (više desetina njih) beže u inostranstvo i nastavljaju karijeru u emigraciji (ali i dalje uglavnom na ruskom jeziku), dok treći (najveći broj) ostaje u zemlji, podižu nove naraštaje i postavljaju temelje sovjetske nauke međunarodnog prava, sa svim njenim dobrim i lošim stranama.

**Ključne reči:** međunarodno pravo, doktrina, nauka međunarodnog prava, Rusija



## NEW EGYPTIAN CONSTITUTION

Employing normative analysis of the text of the new Egyptian Constitution the paper denies numerous criticisms voiced during its adoption over Islamization and violation of women's equality. The new Constitution is essentially reproduced and resystematized former Constitution from 1971, with the expansion of political rights and increase of the Parliament's independence in relation with the President of the Republic, who apart from that remains extremely strong and dominant state body.

**Key words:** Egyptian Constitution, Islamization, women's equality

### 1. About adoption

In the last days of 2012 new Egyptian Constitution<sup>1</sup> went into effect, having firstly being approved by the Constituent Assembly and afterwards passing in a referendum. As it was the case with the previous constitutions, this Egyptian constitution was also put to referendum for confirmation, and that can be now regarded their constitutional convention since it was used for three constitutions and numerous constitutional amendments (more than thirty times).

In these referendums, and that is a particularity of Egyptian constitutional process, the smallest number of participants has never been determined, as a condition for its validity, therefore this constitution was deemed confirmed although only 33% of voters cast their votes, whereof 67% voted for the constitution<sup>2</sup>. We find similar figures also in all Mubarak's referendums (1980-2007) where the turnout was between 27-45%. In addition to this information it should be mentioned that in referendums for confirmation of Nasser's (1956) and Sadat's (1971) Constitutions the turnout was 97%, whereof 99% voted for confirmation. What is more interesting is the fact that the referendum which was expected to have over 90% turnout, at the peak of Egyptian revolutionary spring, in 2011, had the turnout of only 41%. Finally in addition to all these processes and information before we take final attitude we should remember the state of emergency in Egypt was incessantly in force from 1971 up to 2011.

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<sup>1</sup> [www.egyptindependent.com](http://www.egyptindependent.com), 2 December 2012

<sup>2</sup> [www.electionguide](http://www.electionguide)

The procedure of adopting new Egyptian constitution, from February 2011 up to the referendum in 2012 was marked by uncommonly harsh and exclusive debate in Egyptian parliament and society and occasionally in the part of international community which on this occasion as well actively and openly participated in constitutional debates joining one of opposing sides<sup>3</sup>. In those polemics and debates most of the objections were against intolerance of the governing majority and because of that the representatives of small opposition left the parliament by the end of the process and organized many, large, violent, public protests. The most important of all the remarks that could be heard in those debates was that the new constitution imposed more Islamic system<sup>4</sup> and changed the nature of till-then civil state and country. The purpose of this paper, apart from familiarizing with and comparative assessment of the new text in the world of constitutionality, is to answer the question if these objections are true.

## 2. Volume, structure and systematics

The new Egyptian constitution consists of preamble and 236 articles shaped in European-legal style.

The articles are divided into five parts, and every part has chapters as a kind of inner division, 20 chapters altogether, and within III, IV and V parts the chapters have sections as a kind of even narrower systematic whole, 25 altogether. Every part, chapter and section have numerical sign in front of the text, while the chapters and sections are counted only within each part and always from the beginning. Every part, chapter and section have title.

The titles of the constitution parts (I State and Society, II Rights and Freedoms, III Public Authorities, IV Independent and Regulatory Bodies and V Final and Transitional Provisions) clearly show that it has frequent and prevailing structure of the constitution of European-continental type. When you consider number, types and names of inner systematized text units, it is also obvious its inner structure is extremely rich and developed. However, the former constitution from 1971<sup>5</sup> had also all these formal characteristics.

<sup>3</sup> Mahmoud Mosalem: "Egypt's state of emergency to enter 30th year", [www.egyptindependent.com](http://www.egyptindependent.com), 24 March 2010.

<sup>4</sup> Coleman Isobel: "The explosive debate over Egypt's new constitution", [www.quartznews.com](http://www.quartznews.com), 5 Dec. 2012; Kirkpatrick David: "A vague role for religion in Egyptian draft constitution", [www.nytimes.com](http://www.nytimes.com), 9 Nov. 2012; Award Marwa: "Islamist protests for sharia as Egypt debate constitution", [www.reuters.com](http://www.reuters.com), 9 Nov. 2011; "Endless debate over religion's role", [www.economist.com](http://www.economist.com), 6 Oct. 2012; Carlstrom Greg: "Political clash over Egypt's constitution", [www.aljazeera.com](http://www.aljazeera.com), 20 Oct. 2012.

<sup>5</sup> "Comparison of Egypt's suspended and draft constitution", [www.bbcnews.com](http://www.bbcnews.com), 30 Nov. 2012; Lipin Michael: "Egypt's new constitution – how it differs from old version", [www.voiceofamerica.com](http://www.voiceofamerica.com), 29 Dec. 2012.

### 3. Contents of Constitution

#### 3.1. Preamble

The text with this title is in the Egyptian constitution just below the name of this document.

The preamble of the Egyptian constitution is, as it was the case with the former constitution, extremely long – 742 words of English text, without inner systematization, but a part of its text has numerically marked indents. With such volume the Egyptian constitution remains as before on the sixth place in comparative practice according to preamble length (710 words in the former one) behind five constitutions with much more comprehensive preambles – Iran – 3073, Papua New Guinea – 2108, China – 1071, Syria – 899 and Cameroon – 834<sup>6</sup>. How rare are preambles with such voluminous text shows the fact that out of 140 contemporary constitutions that have preambles, in only 37 of them that text is longer than 300 words<sup>7</sup>.

With regard to the contents, this preamble, as well as the former one's, is very diverse, i.e. at one place we can find all possible contents that have been comparatively found<sup>8</sup>, hence besides the formal and procedural text there are three typical groups of contents: general-historical and social context, aims and values the constitution aspires to and religious contents.

The first group of contents specially explains the reasons of the Egyptian revolution in 2010, and as a curiosity in the shape of an institution it mentions the demonstrations at Tahrir Square, which were media symbol of the Egyptian revolution at the time.

The aims and values the Egyptian constitution aspires to are presented in the form of 11 so-called principles, which encompass 26 mutually different values, from the rule of democracy, then right to defence and security to the Arabic union. The former Egyptian constitution had less precise and elaborate list of those aims (15)<sup>9</sup>. In the new preamble Arabic unity and Arabic identity are more strongly stated and stressed. This re-enforce is reflected in the fact that Arabic unity is not a goal but it is proclaimed hope of Arabic nation and history's call. It is specially important that the unity will be achieved with the countries of the Nile Valley but in Muslim world.

The religious contents of the preamble is stronger in comparison with the former constitution since it made only 3 short references to God in general context of the bases and sources of authorization for adopting constitution. In the

<sup>6</sup> [www.constitutionfinder](http://www.constitutionfinder)

<sup>7</sup> Kutlešić Vladan: "Preamble ustava – uporedna studija 194 ustava", *Anali Pravnog fakulteta u Beogradu*, 2/2010, 64.

<sup>8</sup> Ibid, 65.

<sup>9</sup> Ibid, 66.

preamble of the new Egyptian Constitution faith and religion are mentioned 6 times, whereof 4 times in general context and in 2 cases religious determination of Egyptian nation is taken as a significant determination of its identity, and one religious institution (Islamic monastery Al-Azhar) is proclaimed a leading national institution and beacon for thought. Although comparatively observed<sup>10</sup> we can find more constitutions that are deeper rooted in religion (exp. Iran, Afghanistan), the change of the former text of the constitution is still noticeable and represents emphasized contents.

### 3.2. *State and Society (art. 1-30)*

This is the title of the first part of the constitution, which has 30 articles divided into 3 chapters. Each chapter has title and is devoted to a group of principles of state and social regulation – political, social, ethical and economic.

In the former constitution these contents were divided into two parts (State and Basic Constituents of Society), which had 39 articles altogether.

The first reading is enough to conclude that in the new constitution this part of the text is just reproduced and resystematized former text with few novelties. First, in the definition of Egyptian state, in comparison with the former text, it emphasizes connection of the Egyptian people with other Islamic states (art.1). The second novelty is giving guarantee for personal, legal autonomy to Christians and Jews pertaining to religious affairs, status issues and selection of spiritual leaders (art.3). Thirdly, it determines an obligation to consult eminent scholars from the monastery Al-Azhar in matters pertaining to Islamic law (art.4), fourthly, the state shall foster Arabization of education, science and knowledge (art.12).

The chapter devoted to economic principles is comparatively quite detailed, has 17 articles, and an uninformed reader will be surprised with the number and importance of socialistic and socially protective principles and mechanisms. However, these contents are not new in this constitution, furthermore if they are analysed backwards from 1956 over 1971 from text to text they have been reduced and softened.

Other provisions in this part are well-known principles of multi-party system, division of power, non-discrimination, protection of family with an unusual statement about “the genuine character of Egyptian family” – (art.10), etc.

### 3.3. *Rights and Freedoms (art. 31-81)*

The second part of the Egyptian constitution with this title has 4 chapters and 51 articles altogether. Three chapters are devoted to different groups of rights and freedoms, while the fourth one is entitled: Guarantees for the protection of rights and freedoms.

<sup>10</sup> Ibid, 67.

The former constitution text about rights and freedoms had 42 articles without inner systematization. Because of the difference in systematization and marking difference between the former and new Egyptian constitution it is difficult to compare their contents at first sight.

In the first chapter – Personal rights, 12 articles encompass 14 thematic areas (dignity, individual freedom, secrecy of communication...). The contents and number of these provisions are compatible with a comparative average. As a curiosity among them we point out to the definition of prison given in regard with guarantees when depriving somebody of freedom, and it says: “prison is a place of discipline and reform...” (art. 37).

The second chapter of this part – moral and political rights has 15 articles with 13 thematic areas and there are 4 articles among them that conspicuously and significantly expand freedoms and rights in comparison with the former constitution: freedom of press (art.49), freedom of political organizing, public protests and assemblies (art. 50-51), freedom to form unions (art. 52), protection of Egyptian rights abroad (art. 56).

In this chapter article 44 attracts attention as it prohibits insult or abuse of all religious messengers and prophets, formulated in general way and for all religions, but its practical importance, as it is known, pertains solely to Islam and protection of prophet Muhammad, who has often been a target of caricatures and other comments in the Western press in the last years.

In the third chapter – Economic and Social Rights there are 16 articles that encompass even 22 thematic areas, and some of them include several rights and freedoms (exp. rights of children, rights pertaining to work and education). This group of rights conspicuously and significantly positively differ from the former constitution and represents its obvious normative improvement, especially in respect of education (art. 58-61), work and labour protection (art.63), social insurance and pensions (art. 65 and 66), rights and protection of children (art. 70 and 71), however, at the same time, alongside the obvious expansion in the mentioned groups of rights, in the group of socially protective provisions an important group of those rights is omitted as for example participation in managing profit, participation in managing public institutions etc. or connecting taxes with social justice.

It should be mentioned that some of these provisions have unusual contents as for example the state supports and encourages technical education abroad (art.58); the state shall develop a comprehensive plan to eradicate illiteracy (art.61); the victims of wars and revolution from 2011 and their families as well as victims of national duty have priority in employment (art.64) and everyone has the right to play sports (art.68).

The fourth chapter of this part – Guarantee for the protection of rights and freedoms has 7 articles and its contents were more precisely expressed by the title of the former constitution: The rule of law, this part of the constitution includes

provisions on the right to litigation, the principles of previously defined penalty and a defendant is innocent until proven guilty. Some novelties in comparison with the former constitution are education, but without necessary details, national council for human rights. Also it is interesting that this part of the text includes a theoretical notion from contemporary European and Anglo-Saxon jurisprudence.

### 3.4. Public Authorities (art. 82-199)

The third part of the constitution represents a half of its total volume and has 117 articles that are systematized into 5 chapters and each chapter has sections from 2 to 6, 18 sections altogether. The subject matter of this part encompasses 5 areas: legislative authority, executive authority, judicial authority, local administration and security. The depth and width of the regulatory coverage of these wholes are not uniform since legislative and executive authorities occupy two-thirds of all the provisions, therefore 5 sections have only 1 article per each one, thus their titles turn into headings.

In this part the former constitution had even more provisions (132) which were the result of 3 amendments (1980, 2005 and 2007), but it was also because the old constitution had one part which cannot be found in the new one – fight against terrorism.

#### 3.4.1. Legislative authority (art. 82-131)

Legislative authority comes first in the chapter about public authorities in the new constitution while in the former text it was described after the head of state. This change of systematization anticipates, let us anticipate the presentation, conclusion that we will prove in the end regarding the change of the parliament's and the head-of-state's roles.

At first sight it is obvious that the number and volume of constitutional provisions about the parliament in this Egyptian constitution are quite bigger than a comparative average and very often encompass legislative and business issues.

A number of these provisions have significantly changed the contents. New Egyptian parliament is formally now made of two houses, since the advisory second house set up before due to the changes in 1980 – Shura Council, now becomes a house with equal rights. However, these two houses are not completely equal as Shura Council has no right to propose laws and in case of dispute with the House of Representatives, the House can outvote Council based on a two-thirds majority vote.

In accordance with the mentioned tendency of ideological changes the new constitution does not mandate that half the seats in parliament be held by workers and peasants. A novelty is also the fact that the House of Representatives

chooses its management for a whole tenure and not for a single session and thus significantly strengthens its role and subjectivity.

It is specially important to point out that the president's right to dissolve the House of Representatives is limited by time (cannot do it during its first annual session) and essentially as well, has to win confirmation in a referendum, otherwise if no such majority agrees to the dissolution the president shall resign (art. 121).

So, it is noticeable that the parliament position is strengthened and its dependence on the president of the Republic is lessened.

### 3.4.2. Executive authority (art. 132-167)

This chapter has 36 articles systematized into two sections: the President and the Cabinet.

#### 3.4.2.1. The President (art. 132-154)

New Egyptian constitution, as the former one, encompasses numerous provisions devoted to the president's status, competence and relations with other public bodies. So, apart from 23 provisions of this section there are many provisions in the chapter about the parliament, cabinet or other parts of the constitution.

Comparing the status and competence of the president of the Republic with the old version in this new constitution it is noticeable that some important authorizations especially towards government and parliament are softened or omitted. Thus for instance, although the president remains the head of executive authority, the cabinet is formed independently in the House of Representatives besides the already mentioned limitation pertaining to dissolution of the parliament. In general apart from the mentioned lessening of the status and competence of the president, still he remains a very powerful president who may generally be considered to have stronger position than some presidents in other presidential or semi-presidential systems (USA, France, Russia), because unlike them he still has the right to dissolve the parliament.

#### 3.4.2.2. The Cabinet (art. 155-167)

The government in the new Egyptian constitution unlike in the former one is called the Cabinet and the second section of this chapter with 13 articles is devoted to it. Save for the already mentioned novelty according to which the cabinet is formed independently in the House of Representatives, which definitely adds to its independence and identity of executive authority, its position nevertheless remains what is stated in the first point of the article devoted to its

functions: 1. collaborate with the president in laying down the public policy. The function determined like this is obviously advisory, and it is not in accord with the manner it is formed, and that can also be seen from other provisions on its functions. To put it in other words, apart from the manner it is formed Egyptian cabinet is closer to a group of secretaries standing beside American president than to the governments in France or even Russia.

### 3.4.2.3. Judicial authority (art. 167-182)

This chapter of the new Egyptian constitution is like in the former one a list of principles of the organization and work of judicial authority, it does not include instruments and procedures for their implementation, known in European constitutions, but those instruments and procedures are to be determined afterwards in laws. In the same light it can be concluded that the institution of the State Council remains in this text like in the former one an administrative disciplinary body, not a body which with similar names (Supreme Judicial Council and similar) independently and efficiently provides judicial independence. It should be mentioned that this chapter provides existence of Constitutional Court, but that is only done in a short general statement about its competence and description of its position.

In general the provisions of this part of the constitution are below the guarantee of judicial independence which is well defined in advanced contemporary constitutions in spite of the fact it has several less important novelties (about advocacy and legal profession –art. 179-182)

## 4. Local Administration (art. 183-192)

The fourth chapter of this part of the constitution is made of 10 articles systematized into two sections. These provisions determined 5 named administrative units – governorates, provinces, cities, districts and villages but also a possibility of establishing other units that are not named.

According to the contents of these provisions they are territorial units with the lowest form of decentralization which have just rudiments of self-government but essentially they are units of local administration just as their name says. So when considering typical rights of local administration in Egyptian model we just find a possibility to have their own income and direct election of Local Council whose functions are yet to be regulated by laws (art. 188 and 189). When compared with the former text the fact that local councils cannot be dissolved as part of a “comprehensive administrative procedure” (art. 192) is probably an obvious progress, but that is insufficient for positive assessment when compared with a comparative average.

So this text of the constitution defines just the outlines of institutions, guarantees and decentralization procedures that are novelties in comparison with the former constitution, but which can be considered neither important nor good.

### 5. National security and defence (art. 193-199)

The articles of this chapter are divided into 5 sections in the way that 4 of them are made up of just one article which questions meaningfulness of this systematization.

The first section is devoted to the National Security Council that is a special collective body established and presided by the President of the Republic (art.193). The Council includes in its membership practically the whole Cabinet, the speakers of both Houses, the heads of the Committees of Defence and National Security. This body is responsible for undertaking measures in the country and abroad pertaining to accidents and crises of all kinds. At first sight it is clear that this body with such competence significantly damages the concept of the relations between executive and judicial authorities and quite strengthens the position of the president in the system.

In the other provisions of this chapter there are no novelties that are important and significant and in addition it should be pointed that individuality and subjectivity of army and its constitutional position remain unchanged.

Concerning these provisions it should be indicated that the president of the Republic is designated the Supreme Chief of the police force (art.199) which in this reproduction of the text quite fosters his position, while it turns the organization and competence of the police as a local and capillary armed force of special kind into an organized and united armed force very similar to army. Hence, a big change supervenes on the mentioned provision, in spite of the fact that in democratic systems similar conclusions about the relation between executive authority and the police can be indirectly drawn.

### 6. Independent Bodies and Regulatory Agencies (art. 200-216)

This part encompasses articles divided into 5 chapters, and two of them have sections. The contents of these chapters are devoted to establishing 8 different institutions.

Three of these institutions are categorized and defined as regulatory agencies (Anti-Corruption, Auditing and Central Bank) and two of them do not have generic names but only special names: Economic-Social Council and National

Electoral Commission. Three institutions are grouped together and called independent bodies: for education, for cultural heritage and for press.

In the mentioned list of the institutions it is noticeable that two of them neither are nor they can be independent or regulatory bodies, since when they are comparatively analysed they are typical state bodies which are in other constitutional systems established either in a constitution or in laws – Electoral Commission and Central Bank. Other stated institutions for example Anti-Corruption or for education are also present in some contemporary constitutions and their role pertains to civil society or deetatization as a higher degree of democracy.

The common provisions for all these institutions (art. 200 to 203) provide for all these institutions to have technical, administrative and financial autonomy but their management is appointed by the president of the Republic whom they submit their work reports. Therefore, their qualification as independent and regulatory remains clear decoration.

Save for the press all the other institutions were not present in the former constitution, thus the way the provisions about them are formulated represents more a program for future than a basis for their functioning.

Although it might look like a terminological remark it should be mentioned that comparative-constitution practice in presidential systems, especially in the USA, provides for independent and regulatory bodies but they are creation of parliament in an attempt to limit supremacy of executive authority.

## 7. Final and Transitional Provisions (art. 217-235)

The final fifth part of the constitution has three chapters, without sections. At first sight it is already clear that its title is incorrect, since its first chapter is called: Amendments to the Constitution, and it has also a chapter called General Provisions.

The first chapter of this part regulates the basic elements of the procedure for partial change of the constitution, and the procedure is designed in three parts (draft, proposal and confirmation in a referendum), where to be adopted it has to be approved twice by two-thirds majority which classifies it, comparatively analyzed, into more complex systems of introducing constitutional change<sup>11</sup>, even in comparison with the former constitution which in the draft stage provided for absolute majority.

The second chapter of this part neutrally called General Provisions encompasses comparatively well-known and usual provisions about the capital of the state, flag, publishing of laws, prohibition of retroactive effect and similar. In this group most attention and polemics were focused on the article 219 which defines

<sup>11</sup> Kutlešić Vladan: "Da li je promena Ustava Srbije izuzetno 'teška i vrlo složena' – Usporedna analiza 38 ustava", *Ustav i iskušenja* – posebno izdanje NSPM 2/2008, 139.

the principles of Islamic Sharia, i.e. determines the position of Sharia law, where the critics failed to point that the former constitution from 1971 provided for mandatory Sharia law and the only novelty, which received very sharp criticisms, is actually doctrine and non-legal definition of the components of Sharia law, which is well-known and what's more does not have legal character.

In the third chapter there are numerous provisions which regulate the transitional regime while the constitution comes into effect.

## 8. Conclusion

Further to the given analysis it is possible to conclude that the new Egyptian constitution neither deserves that much attention and importance nor the received criticisms.

The text of the new Egyptian constitution according to its formal characteristics or characteristics of the contents cannot be deemed interesting in constitutional-legal science or should attract special attention. Naturally, this assessment has no importance for defining social and political significance of the text for Egypt itself. That is the reason why the new constitutional text, which differs so little from the former ones from the point of professional criteria, was not necessary, but those changes could be introduced partially – through amendments. To put it in other words, political reasons arising from political changes in Egypt required a new text but not the volume and importance of its changes. Probably the fact that social changes were much bigger and deeper than their consequential outcome in the constitutional text was the reason why the procedure of its adoption received incomparable attention and importance. Probably it was expected to have bigger and deeper grasp in normative aspect as well, hence fears that were not confirmed in the text of the constitution. However, this conclusion does not imply that in some future legislative and other practices important changes will not occur. In political systems where Egypt belongs according to its type, the role of the constitutional text is neither crucial nor inevitable, and it is not a guarantee that the types of legal-political relations will exist in practice (Levenshtein).

So it is true that there is more Islam and Sharia in this than in the former constitution, but the normative importance of those provisions is not in proportion with the number and harshness of voiced criticisms. We come to the same conclusion regarding the constitutional guarantees of women's position which are definitely for a degree, or more precisely for a little bit, weaker than in the former text. However, besides this change one should bear in mind that its importance is objectively smaller than the importance of a number of new, specified or expanded constitutional rights and freedoms, and one should admit that after political victory of the Islamic brothers in Egypt more and worse could be

expected than the criticisms forecast. So in the last year once again we witnessed politicised, functionalized and unobjective criticism based on partial interests. In addition when considering the fact that extremely strong position of the president is partially weakened in his relations with the parliament, as well as the fact that political freedoms especially for organizing and candidacy are expanded in one part, this text as a whole could receive better mark than the former one. The fact that it does not reach characteristics of certain contemporary constitutions and democracies in European and Anglo-Saxon world does not mean that the constitution is inappropriate for present relations in Egyptian society or generally for the relations that culturally, historically, polticologically and in every other way differ very much from so-called role model constitutions that serve for abstract evaluation of democracy degree.

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## NOVI EGIPATSKI USTAV

### S a ž e t a k

Donošenje egipatskog ustava tokom 12 godina bilo je praćeno velikom i oštrom polemikom u svetskim medijima i protestima i sukobima u Egiptu.

Taj tekst je teško i oštro kritikovan najviše zbog islamizacije i sužavanja prava žena, ali se analizom njegovih odredbi to ispostavilo kao netačno.

U celini uzev, radi se o redigovanom i preformulisanom tekstu ranijeg ustava u koji su unete manje izmene koje se mogu pozitivno oceniti (nova politička prava, sticanje ovlašćenja predsednika Republike prema parlamentu).

**Ključne reči:** Egipatski ustav, islamizacija, ženska ravnopravnost

## IMMIGRATION AND INTEGRATION POLICY IN CANADIAN LAW – A COMPARISON WITH THE EU APPROACH – \*\*

Since its foundation Canada has been a federal state and a country of immigration. The Canadian population thus is a multinational and multiethnic mosaic that, alongside the indigenous and the founding peoples, includes many immigrant groups to whom public authorities arrange measures of protection and integration, up to the naturalization and recognition of the (common) Canadian citizenship. In the matter of immigration, the Canadian Constitution provides for shared competences between federation and provinces; today, the federal discipline is enshrined in the Immigration and Protection Refugee Act 2001. Nevertheless, each province is allowed to exercise an exclusive competence in this field on the basis of agreements stipulated with the federal government. This is the case of the 1991 agreement between Canada and Quebec which recognizes to the francophone province the exclusive competence in the selection of immigrants towards Quebec. Even in Europe, the intensification of migration flows in recent decades has compelled the single national systems to face with the need to adopt the most appropriate measures in order to regulate these issues. The Canadian approach to the phenomenon seems to be an interesting laboratory for the European legislator who, behind the reached goal of a common policy on immigration, decided not to regulate the matter of social integration of foreign nationals, so preferring to defer to the single member states the discipline of the affirmative actions directed to the integration of foreigners and their families in the respective territories of immigration.

**Keywords:** immigration, social integration, Canadian law, EU law

### 1. Introduction

Since its foundation, Canada has been a country of immigration. After the World War II, in particular, Canada is one of the countries in the world with increased immigration, which for several decades has been coming especially from non-western countries.

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\*\* This contribution is based on a paper held at the Conference “1982-2012. A trent’anni dalla Patriation canadese. Riflessioni della dottrina italiana”, University of Genoa, 6-7 December 2012.

The enormous linguistic diversity that characterizes this country is a confirmation of the phenomenon. Currently, in Canada more than 200 languages are spoken which belong to 23 different language families. Alongside the two official languages and the languages of indigenous peoples, there are in fact those related to immigration. A percentage of 40% of the immigrant languages are of European origin and the remaining percentage are of non-European origin, especially Asiatic. According to the last census held in 2011, the immigrant languages are the mother tongues of more than 6.8 million people, corresponding to 20.6% of the whole population in Canada<sup>1</sup>.

If from the XV century the waves of immigration had had as protagonists the settlers from France and the British Isles that had been gradually superimposing over the indigenous peoples, in the second half of the XIX century immigration became predominantly British, and only after the World War II the Canadian society has begun to take the current appearance.

Since then, the immigration has determined the adoption of a real government policy, shown by the approval of laws directed both to the integration and naturalization of foreigners<sup>2</sup> and the promotion of multiculturalism<sup>3</sup>. Moreover, if until the end of the '60s, immigrants came prevalently from Europe, since the end of the '90s the course has changed and nowadays the majority of immigrants come from Asia, Africa, Latin America and only a small percentage is still coming from the United Kingdom and the Old Europe.

So, Canada has always been open to immigration also for demographic reasons. It is enough to say that, since 1990, about 200.000-250.000 people per year have been granted the right to a permanent residence. This right allows immigrants to ask for and obtain, on the basis of certain requirements but in a relatively easy way, the Canadian citizenship according to the Citizenship Act 1977, amended in 2009.

On the other side, it cannot be overlooked that in Canada immigration is a part of an order that has chosen, since 1867, the federal option to accommodate the needs of Anglophones and Francophones. This data is not without consequences in the definition of policies relating to the social integration of immigrants.

The Canadian population thus is a multinational and multiethnic mosaic that, alongside the indigenous and the founding peoples, includes many immigrant groups (the so-called new minorities) to whom public authorities arrange measures of protection and integration, up to the naturalization and recognition of the (common) Canadian citizenship.

Outside the Canadian experience, the intensification of migration waves in recent decades has compelled the single national systems to face with the need to

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<sup>1</sup> Data available at: [www.statcan.gc.ca](http://www.statcan.gc.ca) (16.12.2012).

<sup>2</sup> See Canada Citizenship Act 1946 and Immigration Act 1967.

<sup>3</sup> With the institution of the Royal Commission on Bilingualism and Biculturalism 1969.

adopt the most appropriate measures in order to regulate these issues. In Europe, this phenomenon concerned – and still concerns – all the Western countries, including those countries that are not accustomed to immigration but rather to emigration towards other territories. With regard to the issues of immigration, emigration and foreigners' rights, many international and European documents are in force, such as: the Universal Declaration of Human Rights 1948 (art. 13), the ILO Convention no. 143/1974 on Migrant Workers, the Council of Europe Convention on the Legal Status of Migrant Workers 1977, the International Convention on the Rights of Migrant Workers and Their Families 1990, the European Convention on the Participation of Foreigners in Public Life at Local Level 1992.

The Canadian approach to the phenomenon seems to be an interesting laboratory for the European legislator who, after having come to a common policy on immigration, preferred to defer to the single member states the discipline of the affirmative actions directed to the social integration of immigrants and their families in the respective territories. Moreover, the renunciation of common strategies at the supranational level is still clearer in the matter of naturalization of immigrants, because the access to national citizenship still is an issue traditionally reserved to the exclusive competence (and sovereignty) of national states<sup>4</sup>.

## 2. The immigration policy in Canada: a shared matter between federation and provinces with the exception of Quebec

In the matter of immigration, the Canadian Constitution provides for shared powers between federation and provinces, but it also prescribes that, in the case of incompatibility between federal legislation and provincial laws, the former prevails (Article 95 British North America Act – BNA A)<sup>5</sup>. Therefore, in this

<sup>4</sup> Nevertheless, especially in the recent years, the European Court of Justice has been facing the connected issues of EU citizenship and national citizenships. The Court tends to give a more and more inclusive interpretation of the EU citizenship which is additional to the national ones. As a consequence of this case-law, the sovereign power in the matter of national citizenship is going to cease an exclusive competence of each member state of the European Union, because it shall be consistent with EU law (see, for example, judgment 19 October 2004, case C-200/02, *Zhu and Chen v. Secretary of State for the Home Department*; judgment 2 March 2010, case C-135/08, *Janko Rottman v. Freistaat Bayern*; judgment 8 March 2011, case C-34/09, *Gerardo Ruiz-Zambrano v. Office national de l'emploi*; judgment 15 November 2011, case C-256-11, *Dereci et al. v. Bundesministerium für Inneres*, [http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/) (16.12.2012).

<sup>5</sup> See, among others: Woehrling José: "Le politiche della cittadinanza in Canada e nel Québec", 241-260, in: Rolla Giancarlo (ed.): *Lo sviluppo dei diritti fondamentali in Canada. Tra universalità e diversità culturale*, Milano 2000; Le Bouthillier Yves: "Quelques Aspects de la nouvelle loi canadienne relative à l'immigration et à l'asile", 53-64, in: *Derecho de la inmigración y derecho de la integración. Una visión múltiple. Unión Europea, Canadá*,

area provinces may legislate only in a manner consistent with federal law, or in its absence. Conversely, the federal parliament could introduce a different discipline and in contrast with the provincial provisions in force. Between immigration and citizenship acquisition in Canada there is not the same gap that can be found in many European countries where immigration is more recent (such as Italy)<sup>6</sup>, to such an extent that, symbolically, in Canada there is only one department (Citizenship and Immigration Canada, CIC) whose holder is the Federal Minister of Citizenship, Immigration and Multiculturalism.

Until the late '60s, the provinces - including Quebec - have shown little interest to deal with immigration, leaving the door open to federal policies. In fact, the federal parliament approved the Immigration Act in 1976, replaced in 2001 by a new Immigration and Refugee Protection Act (IRPA), in force since 2002.

The federal law is aimed at permanent residents, in turn divided into immigrants arriving in Canada for family reunification, economic or humanitarian reasons. For each of these groups, the legislation specifies the conditions to be met to immigrate to Canada. For those who choose to immigrate for economic reasons and then ask for permanent residency, the IRPA establishes the selection criteria and the so-called points system, unless the stay is denied for criminal or health reasons<sup>7</sup>.

The points are distributed in order to take into account age, studies, language - knowledge of at least one of the official languages of Canada -, work experience, adaptability. After 1976 the points attributed to the above-mentioned requirements have been amended several times, also in consideration of the economic changes in the country, but the system as a whole is still valid. This mechanism applies throughout the country, with the exception of Quebec that,

*España, Quebec y Cataluña*, Girona 2002; Nicolini Matteo: "La disciplina canadese sull'immigrazione tra multiculturalismo, secessionismo e riforme", *Diritto pubblico comparato ed europeo* 2/2003, 726-752; Reitz G. Jeffrey: "Canada: Immigration and Nation-Building in the Transition to a Knowledge Economy, 97-133, in: Cornelius A. Wayne *et al.* (eds.): *Controlling Immigration. A Global Perspective*, Stanford 2004<sup>2</sup>; Groppi Tania: *Canada*, Bologna 2006, 97-107; Carasco Emily *et al.*: *Immigration and Refugee Law: Cases, Materials and Commentary*, Toronto 2007.

<sup>6</sup> Granting the Canadian citizenship is an exclusive competence of the federal authorities (Article 91 BNAA). With regard to the naturalization of foreigners, the Canadian citizenship can be granted to permanent residents (see below §2) who, within the four years immediately preceding the date of the application, accumulated at least three years of residence in Canada (Article 5 Citizenship Act 1977).

<sup>7</sup> According to Article 38/1 IRPA: "A foreign national is inadmissible on health grounds if their health conditions a) is likely to be a danger to public health; b) is likely to be a danger to public safety or c) might reasonably be expected to cause excessive demand on health or social services". Exceptions to letter c) are stipulated for foreign nationals who are protected persons, refugees, members of the family class as spouse, common-law partner or child of a sponsor within the meaning of the regulations, family members of a foreign national referred to in any of the above-mentioned categories (Article 38/2).

on the basis of a specific agreement with the federal government has an autonomous discipline, testified by the presence of a provincial minister for immigration and cultural communities.

With regard to the relations between the federation and provinces, the latter were granted by the IRPA a greater role than in the past in the process of formulation and implementation of immigration policies, even within the concurrent legislative powers provided for in the Constitution. If, in fact, according to the previous Immigration Act, the provinces were allowed to express only a non-binding opinion on the subject, the new IRPA provides for the obligation of the Federal Minister of Citizenship and Immigration to consult the provinces on the fixing of maximum annual number of immigrants who acquire permanent residence, as well as their distribution in the Canadian territory and measures to be taken to facilitate their integration into Canadian society (Article 10/2 IRPA). To this end, the federal government develop five-year plans that set the limit of acceptable immigrants per year. The same provision grants the Minister the faculty to consult the provincial executive on immigration and refugee protection policy and programs; as stated in Article 10/1, in fact, the consultation of the provincial executives aims to “facilitate cooperation and take into consideration the effects that the implementation of this Act may have on the provinces”.

This is the well-known model of “cooperative federalism”, further developed at Article 8 of IRPA, according to which the federal government may stipulate agreements with the provinces, thus giving practical effects to the mechanism of distribution of powers between the federation and provinces described in Article 95 of the BNNA, without prejudice to the exclusive competence of a province with regard to the selection and admission of immigrants which has been assigned on the basis of an agreement. The latter is the case of the 1991 Agreement between the governments of Canada and Quebec which recognized the exclusive competence of this province in order to select the immigrants destined to the territory of Quebec.

### 3. The distinct status of the province of Quebec

In Quebec, the policy immigration and relations with the federation depend on the specific characteristics of this province and the distinct character of the Quebec society; in fact, in Quebec the policy of integration of immigrants must be done in a way that respects the identity of Quebec<sup>8</sup>. For this reason, in Quebec the attitude marked by a lack of interest in the field of immigration began to

<sup>8</sup> Woehrling José, 261-264; Nicolini Matteo, 734-748; Arsenault Jean-Pierre: “La politique d’immigration québécoise”, 73-85, in: *Derecho de la inmigración y derecho de la integración. Una visión múltiple: Unión Europea, Canadá, España, Quebec y Cataluña*, Girona 2002; Camós Victoria Ignacio: “La política de integración y regionalización de la inmigración en la provincia de Quebec”, 219-239, in: *Derecho de la inmigración y derecho de*

change earlier than in the Rest of Canada (ROC): the massive arrival of immigrants, since the end of the World War II, altered the balance between Francophone and Anglophone communities in this province and, above all, put at risk the position and the role of the French language, that is the majority language in Quebec, but a minority one in the ROC. Therefore, in the '60s, with the so-called Quiet Revolution, Quebec inaugurated an active policy on immigration: in 1968 a provincial minister of immigration was created and, on the whole, together with a process of social, political and economic modernization, Quebec started an ambitious language policy aimed at promoting the maintenance of Quebec's distinct society against the dangers arising from the expansion of the English language, also as a consequence of immigration.

So, for economic, demographic and socio-linguistic reasons, Quebec was the first Canadian province to express its intention to exercise the powers conferred by the Constitution on immigration. After the first negotiations with the federal government (agreements stipulated in 1971 and 1975), in 1978 a new agreement between the federal government and the government of Quebec recognized the exclusive power to the province with regard to selection, admission and integration policies for immigrants. In the same year the legislator of Quebec passed a law which regulated the immigration to the province. Therefore, since the late '70s, owing to the above-mentioned agreements and the Quebec legislation, in Canada two separate disciplines have been in force in the field of immigration: a federal one valid for the federation and the Anglophone provinces and a distinct one valid for Quebec only.

At the end of the '80s, Quebec tried, unsuccessfully, to further expand the powers derived from that agreement, also trying to give it a constitutional value. This attempt was realized in a project of constitutional reform (the so-called Meech Lake Agreement), which also contained constitutional amendments directed to satisfy the traditional claims of the province but, as it is well known, that attempt failed (referendum 1995).

As a result of this failure and in order to stop the secessionist threat in Quebec, the federal and the provincial governments concluded a new agreement on immigration in 1991, replacing that of 1978. In essence, the new agreement is similar to the previous one, confirming the exclusive competence of the province in the selection and integration of immigrants, but the powers granted to the provincial authorities are increased.

The agreement relates to the issue of selection of foreign nationals who wish to settle in Quebec in a permanent or temporary way; the conditions for their admission to Canada; their integration into Quebec society; the determination of the levels of immigration in this province. Although it is a competence of the federal government to fix annually the number of applicants at the whole coun-

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*la integración. Una visión múltiple: Unión Europea, Canadá, España, Quebec y Cataluña, Girona 2002.*

try, it must be taken into account the opinion of Quebec - and other provinces where there is a similar bilateral agreement - in relation to the number of immigrants that the (single) province is willing to admit.

By virtue of the 1991 agreement, therefore, the Canadian government continues to define the broad categories of immigrants, to determine the levels of immigration and expulsion measures, to be exclusively competent for the applications of family reunification and refugees who send their request for asylum in Canada, as well as to grant the Canadian citizenship.

On its part, Quebec is responsible for selecting „independent” immigrants (workers, business people, students) and refugees who submit their applications from abroad to the province; Quebec has also the responsibility for the reception services as well as for the socio-economic, linguistic and cultural integration of immigrants who settle in its territory.

According to the provincial Act Respecting Immigration to Quebec 1994, the criteria under which Quebec selects immigrants vary according to the subcategory of immigration, but, in any case, they are based on linguistic and economic considerations. Like in the federation, even in Quebec the aspiring immigrant workers are evaluated according to a point system that takes into account a number of factors specified in the Regulation respecting the selection of foreign nationals (such as: education, age, work experience, knowledge of English and French, personal qualities motivation, expected job, socio-professional profile of the spouse, presence of children, links with Quebec). The weighting of the various factors is provided for in the Regulation respecting the weighting applicable to the selection of foreign nationals.

Within the grid of the requirements to be evaluated, the knowledge of French has a prominent role in the selection of immigrant workers who wish to settle in Quebec<sup>9</sup>; the provincial authorities, in fact, prefer those who come from French-speaking countries or countries where French is, at least, the main second language. In this way, the provincial minister shall ensure that, in the short term, the selected immigration is predominantly composed of people who know French and that, in the medium and long term, as a result of family reunification, the immigrant population speaking French increases progressively.

In addition to the selection, the province is responsible for the integration of immigrants. To this end, immigrants are invited to attend the *Carrefour d'integration* for a first individual meeting during which they are provided information about health, social and educational services, accommodation and language integration. Hopefully, they will be directed towards the integration services in the labour market, recognition of qualifications, French language

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<sup>9</sup> Hepburn Eve: “‘Citizens of the Region’: Party Conceptions of Regional Citizenship and Immigrant Integration”, *European Journal of Political Research*, 50/2011, 514-517, [http://www.astrid-online.it/Immigrazione/Studi-ric/Hepburn\\_European-Journ-Pol-Research\\_june\\_2011.pdf](http://www.astrid-online.it/Immigrazione/Studi-ric/Hepburn_European-Journ-Pol-Research_june_2011.pdf) (31.12.2012).

courses. The mastery of the language of the host society plays a central place in the integration of immigrants, it is a necessary condition for full participation in the economic and institutional life of Quebec society.

In essence, both the Quebec and the federation policies are oriented to promote the integration of immigrants, but this goal is pursued through different paths. In compliance with the integrative and liberal model of “multiculturalism” – i.e. integration without assimilation<sup>10</sup> – the federal system tends to Anglicize immigrants in a spontaneous way, because in Canada immigrants learn English spontaneously and therefore there is no need for coercive measures to achieve this result. Otherwise, the Quebec system promotes the “intercultural” model – i.e. a model of common culture but with a dominant role of the French language and culture – and tries to Frenchify immigrants, for example by limiting the freedom of parents who cannot choose for their children English or French schools, having to necessarily enroll them in a French public school<sup>11</sup>. Consequently, as mentioned above, in Quebec the social integration of immigrants is strongly focused on overcoming the language barrier and encouraging the learning of French.

More recently, even the remaining provinces and territories have signed bilateral agreements on immigration with the federal government, although generally less ambitious than the agreement stipulated with Quebec<sup>12</sup>. In fact, these agreements do not give the provinces the exclusive competence in the selection and admission of foreigners and some only give the provinces a limited power to select a small number of immigrants for the specific needs of the labour market<sup>13</sup>. Last but not least, the agreements with the provinces other than Quebec have been generally promoted by Ottawa rather than by the provinces themselves, so as not to perceive the agreement with Quebec as a significant recognition of a special status to this province.

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<sup>10</sup> According to Article 27 of the Canadian Charter of Rights and Freedoms 1982 and the Multiculturalism Act 1988. About the model of “multiculturalism”, see among others: Kymlicka Will: *Multicultural Citizenship: a Liberal Theory of Minority Rights*, Oxford 1995; Ceccherini Eleonora: “Multiculturalismo (diritto comparato)”, 486-500, in: *Digesto discipline pubblicistiche, Appendice di aggiornamento*, Torino 2008; Groppi Tania: “Il multiculturalismo come strumento per la costruzione dell’identità nazionale: l’esperienza del Canada”, 17-30, in: Amirante Domenico, Pepe Vincenzo (eds.): *Stato democratico e società multiculturale. Dalla tutela delle minoranze al riconoscimento delle diversità culturali*, Torino 2011.

<sup>11</sup> According to the Charter of the French Language (law no. 101/1977).

<sup>12</sup> All the agreements are available at: <http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp> (16.12.2012).

<sup>13</sup> They are the so-called “Provincial Nominee Programs” adopted, for example, in Nova Scotia, British Columbia, Alberta.

#### **4. The EU approach: the common policy for immigration and the renunciation of common measures for social integration**

In Europe, the growing phenomenon of migration from third countries suggested, in 1985, the signing of the Schengen Treaty which came into force a decade later and was progressively signed by the European countries. This Treaty abolished checks on persons at the borders of the signatory states and introduced a uniform visa aimed at granting the freedom of movement throughout the territory of the contracting parties. In this way, it became possible to promote a European framework for the admission of third country nationals and the liberalization of movement of non-EU citizens, regularly settled in one of the states of the European Union. After the Treaty of Maastricht in 1992 had chosen to cover the question of non-EU immigration between matters of common interest in the so-called third pillar characterized by the adoption of the intergovernmental method, with the Treaty of Amsterdam in 1997 the areas of justice, freedom and security were transferred to the so-called first pillar and became subject to the European regulation. Finally, the Lisbon Treaty, in force since 1<sup>st</sup> December 2009, has provided for the assumption of a common policy on visas, asylum and immigration (Article 77 et seq. Treaty on the Functioning of the European Union, hereinafter TFEU).

In addition to the primary legislation contained in the Treaties, the issue of migration and the status of third-country nationals have been regulated within the framework of specific programs adopted by the European Council (Tampere, 1999; The Hague, 2004; Stockholm, 2009) in order to implement the “Area of freedom, security and justice” (Title V TFEU). Nevertheless, those programs have not achieved encouraging results yet as far as the social integration of immigrants and approximation of state legislations on naturalization and citizenship are concerned. In fact, with regard to social integration, the TFEU states that the European Parliament and the Council may establish measures to promote the integration of legally resident non-EU immigrants, but “any harmonization of the laws and regulations of the Member States” is excluded (Article 79/4). Thus the approval of affirmative actions in order to facilitate the inclusion of non-EU citizens in the territory of immigration remains at the discretion of the states.

In implementing the principles enshrined in the European Treaties several directives were approved, including: Directive 2003/86/EC on the right to family reunification, Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, Directives 2004/114/EC and 2005/71/EC on the entry and residence of students and researchers from non-EU countries, Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals. In particular, the Directive 2003/109/EC, which stipulates that member states may require third country nationals to comply with integration measures (see Articles 5/2 and 15/3), takes

an ambiguous approach; consequently, the language and social integration is running the risk of being more a burden on the immigrant than the natural consequence of an inclusive strategy on behalf of the host community<sup>14</sup>.

In the framework of the above-mentioned provisions and program guidelines adopted by international and European bodies, the states distinguish between legal and illegal immigration, according to the possession or not of a valid residence permit and, to this end, determine the criteria to regulate the admissions (immigration quota) and the possible expulsion. In favour of regular immigrants the states provide a more or less detailed catalogue of rights and identify measures to promote social inclusion and employment, without neglecting to safeguard the linguistic, cultural and religious identity of the respective communities.

Integration policies of European states are basically inspired by three models: the model of assimilation which tends to suppress the identity peculiarities and the homologation of members of minority ethnic communities with the national majority group (such as France), the multicultural model founded on respect and exploitation of another's diversity (such as United Kingdom, Sweden, Denmark), the model that, considering immigration as a temporary phenomenon directed to satisfy contingent economic needs, is not concerned with the issue of social integration because the guest-worker is thought as destined to return to the country of origin (such as Germany)<sup>15</sup>.

Each state is also responsible for the discipline concerning the exercise and enjoyment of foreigners' fundamental rights. National Constitutions usually grant them only an indirect protection to the extent that certain rights are recognized to everybody, to all or to individuals as such. On the other hand, the existence of factual differences between nationals and foreigners can justify a

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<sup>14</sup> In many European countries, the parliaments have recently introduced integration courses and citizenship tests directed to evaluate the newcomers' knowledge of the language and customs of the host country. Somewhere, like in the Netherlands and France, the civic integration abroad policies have been introduced; these policies require family migrants to learn the language, life and values of the country they wish to enter before being granted the admission. On these issues, see, among others: Orgad Liav: "Illiberal Liberalism. Cultural Restrictions on Migration and Access to Citizenship in Europe", *The American Journal of Comparative Law*, 1/2010, 53-105; Bonjour Saskia: "Between Integration Provision and Selection Mechanism. Party Politics, Judicial Constraints, and the Making of French and Dutch Policies of Civic Integration Abroad", *European Journal of Migration and Law (EJML)*, 12/2010, 299-318; Murphy Clíodhna, "The Concept of Integration in the Jurisprudence of the European Court of Human Rights", *EJML*, 12/2010, 23-43; Groenendijk Kees: "Pre-departure Integration Strategies in the European Union: Integration or Immigration Policy?", *EJML*, 13/2011, 1-30; Böcker Anita, Strick Tineke: "Language and Knowledge Tests for Permanent Residence Rights: Help or Hindrance for Integration?", *EJML*, 13/2011, 157-184.

<sup>15</sup> De Vergottini Giuseppe: *Diritto costituzionale comparato*, Padova 2011, 368.

different treatment by the legislator if only it is reasonable and on the basis of a balancing test with other constitutional values that can actually come into play.

Despite the apparent favour for the integration, the experience shows a general sharpening in the regulation of the conditions of entry, establishment and granting of citizenship to non-EU citizens<sup>16</sup>. Beyond appearances, the adoption of increasingly restrictive policies in the matters of immigration and acquisition of national citizenship does not seem to really ensure the stabilization of foreigners in the host countries, but rather these stricter measures seem to be directed to reassure the majority population, safeguarding the right to public safety that, for at least a decade, has become the major concern in the Western world precisely in the face of massive migration flows and the threat of international terrorism, especially from Islamic countries.

## 5. Concluding remarks

In Canada the willingness to accept foreign migrants is always dictated by the specific economic and demographic needs and their integration in the Canadian society is grounded in the multicultural policy that directs, at least at the federal level, the activities of the public powers. The situation of Quebec is peculiar; however, this province is also inclined to favour a certain kind of immigration, not only for reasons similar to those inspiring the federation, but also for the need to preserve the French language and culture in this province.

Unlike Canada, Europe is not a federal state and the EU is a supranational organization composed of sovereign states that only in recent decades have been forced to face with a growing migration from non-EU countries. This fact has required not only enacting appropriate actions on behalf of the single states, but also taking a strategy at the European level. However, the identification of a common policy on asylum, immigration and external border control, now expressly provided for in the Lisbon Treaty, has not been completed with the provision of a common strategy to promote the integration of third-country nationals legally residing and to encourage the admission to a so-called citizenship of residence<sup>17</sup>. In fact, beyond the competence of incentives and support from the EU, the adoption of the most appropriate measures for this purpose has been left to the decision of the national authorities with the simultaneous renunciation of harmoni-

<sup>16</sup> International Organization for Migration/European Parliament: *Comparative Study of the Law in the 27 EU Member States for Legal Immigration Including an Assessment of the Conditions and Formalities Imposed by Each Member State for Newcomers*, Strasbourg 2008; Guild Elspeth, Groenendijk Kees, Carrera Sergio (eds.): *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Ashgate 2009.

<sup>17</sup> Nascimbene Bruno: "Cittadinanza dell'Unione europea e cittadinanza di residenza. Recenti profili", 1307-1311, in: *Alle frontiere del diritto costituzionale. Scritti in onore di Valerio Onida*, Milano 2011.

zation measures, both at the level of primary law (Treaty) and secondary legislation (regulations and directives).

In conclusion, the issues of integration of immigrants and the protection of their rights are well known in the European agenda, however, this awareness has not been followed – at least until now – by a concrete implementation. In this sense, it is enough to consider that, on the basis of the Action Plan for the implementation of the “Stockholm Programme 2009-An open and secure Europe serving the citizen”, the European Commission adopted a Communication in July 2011 on a new agenda stating the need that integration policies create favorable conditions for participation in economic, social, cultural and political integration of migrants. Nevertheless, these solemn and important promises are too general as no indications are provided for their effective implementation<sup>18</sup>.

These contradictions and ambiguities still reveal the caution of the European institutions, disinclined, beyond good intentions, to address issues of high “national” impact also in consideration of their economic costs. These issues remain thus to be entrusted to the sovereign decisions of each member state, at least until real adhering to a social context, that is constantly evolving and deeply heterogeneous and cosmopolitan, is not mature. For this purpose, despite the results are still under discussion, it is not possible to underestimate the example of the Canadian model of “multiculturalism” that seeks to accommodate unity and diversities, integration of immigrants and the protection of their identity rights. Nowadays this is the challenge for each society in Europe that really wants to be open, democratic, pluralistic and based - among others - on the values of respect for human dignity, equality, human rights including the rights of persons belonging to minorities, as solemnly affirmed by the Lisbon Treaty (Article 2).

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<sup>18</sup> *Ibid*, 1315.

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## **POLITIKA IMIGRACIJE I INTEGRACIJE U KANADSKOM PRAVU – POREĐENJE SA PRISTUPOM EVROPSKE UNIJE –**

### **S a ž e t a k**

Još od svog osnivanja Kanada je federalna država i zemlja imigracije. Kanadsko stanovništvo je tako multinacionalni i multietnički mozaik koji, zajedno s autohtonim i narodima osnivačima, obuhvata i mnoge grupe doseljenika za koje vlasti organizuju različite mere, počev od zaštite i integracije, do naturalizacije i priznavanja (obično) kanadskog državljanstva. Po pitanju imigracije, Ustav Kanade predviđa zajedničke nadležnosti između federacije i pokrajina; danas je ovo federalno pitanje sadržano u Zakonu o zaštiti izbeglica iz 2001. godine. Ipak, svaka pokrajina ima pravo da ostvaruje isključivu nadležnost u ovoj oblasti na osnovu sporazuma utvrđenog sa saveznom vladom. To je slučaj sa sporazumom iz 1991. između Kanade i Kvebeka, koji priznaje frankofonoj pokrajini isključivu nadležnost prilikom izbora imigranata prema Kvebeku.

Imigraciona politika Kvebeka i uspostavljanje odnosa sa federacijom su usko povezani sa karakteristikama ove pokrajine i posebnim karakterom kvebeškog društva. U suštini, politika integracije imigranata u Kvebeku mora biti ostvarena na način kojim se poštuje identitet ove pokrajine. Na osnovu već pomenutog ugovora, pokrajina je regulisala ovo čitavo pitanje zakonom (Zakon o poštovanju imigracije u Kvebek iz 1994), koji je dopunjen uz pomoć dve uredbe (Uredba o poštovanju izbora stranih državljana i Uredba o poštovanju kriterijuma koji se primenjuju pri izboru stranih državljana).

Čak i u Evropi intenziviranje migracionih tokova u poslednjih nekoliko decenija primoralo je pojedinačne nacionalne sisteme da se suoče sa potrebom da usvoje najprikladnije mere u cilju regulisanja ovih pitanja. Evropskom zakonodavcu kanadski pristup ovom fenomenu liči na zanimljivu laboratoriju. On je, u pozadini postignutog cilja zajedničke politike o imigraciji, odlučio da ne reguliše pitanje društvene integracije stranih državljana, prenevi tako na pojedinačne zemlje članice oblast afirmativnih postupaka usmerenih ka integraciji stranaca i njihovih porodica u dotičnim teritorijama integracije. Uprkos činjenici da se rezultati još uvek razmatraju, naročito nije moguće potceniti primer kanadskog modela „multikulturalizma“ koji teži da objedini jedinstvo i različitosti, integraciju imigranata i zaštitu prava njihovog identiteta. Danas je to izazov za svako društvo koje zaista želi da bude otvoreno, demokratsko, pluralističko i zasnovano – između ostalog – na vrednostima poštovanja ljudskog dostojanstva, ravnopravnosti, ljudskih prava, uključujući prava pripadnika manjina, kao što to svečano potvrđuje Sporazum iz Lisabona (član 2).

**Ključne reči:** imigracija, društvena integracija, zakon Kanade, zakon Evropske unije



## SPANISH GENDER POLICIES FROM A CONSTITUTIONAL STANDPOINT

Gender mainstreaming is a fundamental instrument to eradicate gender inequality. Public policies for equality should ensure the inclusion of this essential instrument in all their areas and actions. The Constitution, through the mandate of article 9.2, covers the actions of public authorities in relation to equality and promotes the implementation of measures that balance the participation of women and men in various areas. Parity, the electoral quota, conciliation, and the reinforcement of punishment in gender based violence situations have become necessary elements to achieve that balance, with the guarantee of constitutional jurisprudence.

**Keywords:** mainstreaming, political participation, gender based violence

### 1. The mainstreaming of gender

The basic structure of gender equality policies in our legal system encompasses two essential tools: the concept of gender mainstreaming (gender mainstreaming) as designed at Beijing World Conference, and in article 9.2 of the Spanish Constitution.

The Fourth World Women's Conference, held in Beijing in 1995, defined the mainstreaming of gender as a central strategy of action leading to greater effectiveness of equality policies that had begun to develop.

The mainstreaming of gender can be understood in two ways: as a strategy involving all social actors in the achievement of gender equality, or as the designation of certain tools for gender analysis, since this approach would be a transforming concept that is aimed at analyzing the impact of differentiated system of gender in women and men, and helping in correcting inequalities. According to M. L. Balaguer<sup>1</sup>, mainstreaming as a technique of equality policy can eradicate gender inequality if carried out in a systematic and coordinated manner. Precisely because of its importance, along with the electoral quota, it is the most controversial measure of equalization in the field of gender equality, and the most difficult to defend according to the principle of equality, since it would diminish

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<sup>1</sup> Balaguer Callejón M. L.: *Mujer y Constitución. La construcción jurídica del género*, Cátedra, Universitat de València, Instituto de la Mujer, Madrid 2005, 91.

the rights of males if these measures couldn't be justified; but fortunately they can be justified in the Constitution, in the mandate of article 9.2.

On the other hand, by virtue of article 10.2 S.C, the Declaration on gender mainstreaming made at the Beijing Conference should be taken into account in interpreting our rights and its application from that instant, since it is not just another measure, but an integral and coordinated one. I don't know if it is the "final" one as expressed by M. L Balaguer<sup>2</sup>, but it is the best possible one, for this reason it is also one of the essential elements of the Organic Equality Act.

This Act, considered a Code-Act, provides that in all public or private activities in which legal relations do occur, equality is always present and it seeks to project itself in the various ambits<sup>3</sup>. The obligation of public authorities is not sufficient to carry out the necessary social changes for equality. What is needed, as stated by the aforementioned author, is a change in the values of the private sector, especially in the workplace, which is why the law is directed to individuals requesting respect for and the promotion of fundamental rights; a question that on the other hand, according to Balaguer<sup>4</sup>, is unprecedented in the legislative development of the Constitution, which only conceives these rights in the State ambit.

But even so, still addressing individuals, I understand that political will is essential because the implementation of gender policies depends on the genuine commitment of public authorities pursuant to the mandate of article 9.2. In addition, institutions must also promote the process of changing values in society, and this also derives from the level of involvement of the public authorities.

One of the milestones in this process of awareness about the problem has actually been the enactment of the LOI. Its implementation required the development of a Strategic Plan<sup>5</sup> that will establish the objectives, the areas and actions of public authorities. Policies that seek to achieve gender equality should be reflected in this Plan.

## 2. The Strategic Plan for equal opportunities

The Strategic Plan for equal opportunities brings together twelve axes of action: social and political participation, economic participation, stewardship, education, innovation, knowledge, health, image and media of communication, diversity and social inclusion, gender violence, foreign policy and development

<sup>2</sup> *Ibíd*, 92.

<sup>3</sup> Balaguer Callejón M. L.: "El derecho a la igualdad de género: La Ley Orgánica 3/2007 de 22 de marzo para la igualdad entre mujeres y hombres", in: Figueruelo Burrieza A., Ibáñez Martínez M. L., Merino Hernández R. M. (ed.): *Igualdad, ¿para qué? A propósito de la Ley para la Igualdad efectiva de mujeres y hombres*, Granada Comares 2007, 57.

<sup>4</sup> *Ibíd*, 57.

<sup>5</sup> Strategic Plan for Equal Opportunities 2008-2011.

cooperation, of which we could stress the importance of three, which by their social impact deserve specific analysis and which are present in the “political agenda”. The public agenda includes issues that are the subject of public debate<sup>6</sup>. There are a number of factors that explain the incorporation of those into the public agenda as indicators or specific studies that detect the problem. The media have an important role in control of the public agenda, especially in the dissemination of events that entail a significant social impact, such as the deaths of women in the cases of gender-based violence. The second stage in the process of defining a problem is the incorporation into the political agenda or discussion produced in the heart of political institutions, although it does not always occur later on but parallel to the incorporation into the public agenda<sup>7</sup>. The implementation of gender mainstreaming as a proposal for the eradication of gender inequality implies that all institutions should consider this issue as a matter that has to be dealt with in every sector of political activity.

### 2.1. On political participation

The political participation of women does not represent a ‘problem’ unlike gender-based violence, nor does it have the same impact in the social emotion. However, together with conciliation and co-responsibility it becomes an “outstanding issue” for women and also for the State and for the society to which they belong.

Parity democracy is a recent concept that involves a major change in the concept of political participation. It starts with the recognition of the fact that women constitute 50 per cent of population, half of the intelligence and potential capabilities of humanity, so that their under-representation in decision-making positions constitutes a loss for society as a whole. As Julia Sevilla states<sup>8</sup> “balanced participation can generate ideas, values and behaviours that benefit the whole of society and therefore calls for a balanced sharing of power”. Why is it so necessary to deal with the question of balanced representation then? Precisely because it benefits the whole of society. On the other hand, the absence of women in posts of representation constitutes a failure for democracy, which must be based on equality.

Parity democracy implies achieving a balanced representation of women and men. Parity implies exact equality of 50%, although the formulas of 40/60, or having a number of representatives of each sex that do not exceed 60%, are

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<sup>6</sup> Cobb R.W.: *Participation in American Politics: The dynamics of agenda-building*, John Hopkins University Press, Baltimore 1983, 10.

<sup>7</sup> Grau Creus M.: “Política medioambiental: la formación de la agenda gubernamental en el Estado Español”, *Justicia ecológica y protección del mediambiente*, Vicente Gómez T. (coord.), Trotta, Madrid, 2-4.

<sup>8</sup> Sevilla Merino J.: *Mujeres y ciudadanía: La democracia paritaria*, Valencia, Institut Universitari d'Estudis de la Dona 2004, 43.

also considered parity by the Organic Act for equality between women and men (O.A.E.3/2007). The diagnosis made by the Institute for women<sup>9</sup> was as follows:

Institution		women
Spanish Parliament	Congress Senate	36 %
		25.1 %
Ranking European Parliament	1.Sweden	EU Average
	2.Denmark	23 %
	3.Holland	
	4.Finland	
	5.Spain	
General Administration	Ministries	50 %
	Embassies	12 %
Autonomy	Government	35.4 %
	Parliament	41.4 %
Town Halls	Councillors	37 %
	Mayors	14.4 %
Institutions	General Council of Judicial Power/ Supreme Court	10.5 %
	Constitutional Court	5 %
	Economic & Social Council	16.7 %
		15.25 %
University	Chancellor	5.8 %
Enterprise	President	2.9 %
	Councilors	3.7 %

The validity of the Plan is reaching its conclusion and the evaluation of the strategic objectives and the impact that the law is making regarding the balanced presence of women in politics. The second additional provision of the O.A. amended the organic act of the General Electoral Regime by adding an article, Article 44bis, to introduce in the nominations to the General, municipal and regional elections the balanced presence in the DA. Firstly: “that each of the sexes assumes a minimum of forty per cent. The proportion will remain in the entire list and in every stretch of five posts”<sup>10</sup>. This provision could, according to some<sup>11</sup>, limit the freedom of political parties to draw up their lists. The 12/2008

<sup>9</sup> *Strategic Plan for Equal Opportunities (2008-2011)*, Spanish Institute for Women (2008), Ministry of Equality.

<sup>10</sup> With the exceptions to the last stretch less than five places to cover less than five, and nominations to the Senate are grouped in lists. And having the barrier of 3,000 inhabitants per municipality.

<sup>11</sup> Rey Martínez F.: “Electoral parity, female quotas”, *Aequalitas, legal magazine of equal opportunities between women and men*, no. 1, University of Zaragoza. The author has maintained that these measures could limit the freedom of action of the parties, as also

judgment of 29 January of the Constitutional Court whose doctrine is reiterated in the judgment of 13/2009, January 19, resolves the challenge to the second additional provision of the LO 3/2007 that incorporates the mentioned precept. After consideration of Comparative and Community law rights arguments, the Court used as a base for solving this matter the broad content of article 9.2 of the Constitution expressly projected in political participation, and adds the idea of “promote” and “facilitate” to the “remove obstacles”. According to the High Court the contested article does not establish a measure of reverse or compensatory discrimination but a formula of gender balance, which is not strictly equal as it is not based on 50 %, but in a maximum proportion of 60 % to 40 %. As regards the objection that can be made about whether it limits or not the freedom of parties, the Constitutional Court determined that this cannot be altered bearing in mind other constitutional values. The legislator has limited this freedom by imposing certain conditions for the preparation of nominations. However, there is one dissenting vote, Judge Rodríguez-Zapata, who is opposed to the judgment because he reasons that the imposition by law of electoral quotas violates the principle of political representation and ideological freedom and self-organization of parties. In its judgment in 13/2009, January 19, in relation to the electoral system of Basque country and statutory institutions, the contested act established a representation of at least 50 women. The CC recognizes that it does not violate provisions of basic State legislation, and although there is a difference (the contested provision makes the minimum presence of men in the lists of 40 to 50 women), it is fully justified because it “is intended to correct the situation of the historical discrimination of women in the public ambit”. On the other hand, the measure does not entail an unnecessary sacrifice of fundamental rights because the difference of percentages is not excessive and no right is in question. Rey Martínez<sup>12</sup> reflects on the methodological thesis of the Court and understands that it has already chosen the “easy way” that reasoning in this way does not need to argue from the view of proportionality, it being enough to consider the reasonableness. In any case both trials are necessary to advance the idea constitutionally legitimated by article 9.2 of the full participation of all persons in the social, political and economic sphere.

Whether speaking of quota or parity representation, it must be borne in mind that the percentage does not intend for women in Parliament to represent “a fortiori”, M<sup>a</sup> Luisa Balaguer<sup>13</sup> explains, interests however specifically female,

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commenting on the judgment 12/2008, of 29 January, arguing that the organic act violates fundamental rights. Rey Martínez F.: “Equality between women and men in the case law of the Spanish Constitutional Court”, *The constitutional studies*, vol. 8, 2/2010, Santiago 2010, 527-564.

<sup>12</sup> *Ibid*, 563.

<sup>13</sup> Balaguer Callejón M. L. (2005), 140.

if not quite the opposite, it's universal content of the policy by eliminating the differences between the sexes.

Gender is a universal category and not a minority. Therefore the rejection of the quota is not questionable by detractors who argue that to open the quota to gender means to open it to any other minority. As well as the argument of merit as justification for the rejection of this measure, it is not acceptable, since this is a concept that has been built without gender perspective, and therefore it is not objective, but refers to values previously set for the model of gender<sup>14</sup>. These values are those that prevent women from breaking the glass ceiling for example. We have started by providing a table that reflected the representation of women in politics; following later with the second central axis in politics you will find that it is also difficult to break into the private sector and professional practice. Can we demand that public policies for equality remove obstacles that prevent the breaking of the glass ceiling? It is obvious that following the mandate of the Constitution in its article 9.2, the answer should be affirmative. Let's look at the following paragraph devoted to conciliation and co-responsibility and the determination of which strategies should be followed.

## 2.2. Conciliation and co-responsibility

The second axis of gender policy focuses on conciliation and co-responsibility, the two concepts that arise with the new pattern of equal or symmetrical family.

In public policies that deal with women and family issues the approaches are directed towards the processes of production and reproduction. The problem is that both processes are sexually marked in our society. Although only the reproductive function is specific to women, the function of upbringing, childcare and the activities related to domestic responsibilities are still being assigned to them. On the other hand, the private sector perceives the issue of conciliation as a 'problem' for women and a threat to job performance.

In Spain domestic responsibilities are one of the main obstacles to the full participation of women in the labour market and in most situations it is the reason for job abandonment. That is why it is so necessary to implement policies of conciliation, or better said stewardship to balance a situation which is completely disproportionate if it wants to comply with the fundamental rule as stated in the Article 9.2 of the Constitution.

Spanish women work fifty-six minutes longer than men daily, and if we add paid and unpaid employment, that means that women in Spain work 6.30 hours more a week than men, i.e. 15 % more than males<sup>15</sup>. This is obviously a product

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<sup>14</sup> *Ibid*, 141.

<sup>15</sup> Buqueras Bach I.: *Tiempo al tiempo*, Planeta, Barcelona 2006, 111.

of the failure of the principle of equality that article 9 intended to protect by providing that public authorities have to remove obstacles that impede equality.

The National Equality Plan presents an analysis that illustrates the reality represented by a percentage of only half of women in the labour market. More than 95 % of women who do not work refer to family care and home as the main reason. And more than 90 % of women who leave the labour market do so for family reasons. What remains a big question is why the role of family care is assigned to women. The business sector still considers that the problems of attribution of tasks and time distribution are a private matter, and also that family responsibilities reduce the effectiveness of women in their work<sup>16</sup>.

From a legal perspective it is not a private matter; while it is true that family responsibilities reduce the workers efficiency, and this is, first because it seems to affect only women, which is not true, or at least, it should not be, and secondly because despite the strategies set by the Equality Plan, co-responsibility has still not been assumed by a broad sector of society.

The strategic objectives of the Equality Plan focus on four aspects: the Family and domestic, promoting the development of a new model of family life; a model of the labour market that promotes also new models of industrial relations; public services that facilitate networking of assistance services, particularly directed to dependent persons; and finally the promotion of a change in social structures that facilitate the reconciliation of times of both men and women.

This would summarize the two most interesting expectations of the resolution of the problem: the reorganization of the times, and the recognition by the State that it is an important question that it has to resolve, or at least perform all actions for its resolution, taking into account gender mainstreaming.

However, policies reflecting these actions lack means to be implemented, and at particularly sensitive moment from the economic point of view that we live in. On the one hand, resources and support to the conciliation services are considered to be clearly insufficient, a failure, which is especially aggravated in rural areas, where it converges with other factors relating to the geographical specificity. On the other hand, the law of conciliation 39/99 is affected by significant limitations and shortcomings, generating even unwanted effects. And finally, directed to inspection and surveillance tasks that have been scarce, conflicts arising from its breach are often resolved in courts, so that the resolution of the problems tends to be as a result of trial or ridden in collective bargaining between the company and the workers.

One of the important gaps in the 39/99 law is in the lack of a specific sanctions regime that penalizes non-compliance, so that when a court sets ruling regarding a case of non-compliance with the legislation, the company is only required to comply with the norm not followed, without any other effect.

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<sup>16</sup> Information given by the Equal Oportunities Plan.

The second drawback is seen in the fact that the law of conciliation has insufficient coverage, only citing the regularized labour population, the following activities that do not tend to be within its protection: women working as domestic servants or doing family support activities, and housewives.

Within the new business possibilities, recourse to part-time work is an option that responds to the division of labour in times of scarcity, but also serves to enable the conciliation. Despite the risks (boomerang effect, cuts and wage, easy solutions for people with little training), sometimes the ability to work part-time has advantages for women as long as it is a voluntary option. The reasons that lead to this choice are varied. There are primarily four reasons: training, family obligations, the type of activity, inability to find full-time work (which is less relevant in cases of higher education). The voluntary nature of the part-time allows the reconciliation of family and personal life and staggers the input and output of the labour market; But if part-time is involuntary the possible disadvantages associated with it -diminished training opportunities, promotion or fewer social benefits,...- acquire special relevance, if we consider that women are the ones who mostly work part time<sup>17</sup>. It is therefore necessary to find ways to avoid that part-time employment is penalized, and it is the task of the social actors involved in the design of public policies.

Given that the employment situation of women is complicated and that they are in a situation of inferiority, especially if they have to make balance between work and family life, it is necessary to improve not only legislation but also the execution and the implementation of effective measures. In the economic times in which we find ourselves now in Spain, and also at the international level, it seems that the “cutback measures” are inevitable. But it would be desirable that equality policies remained, especially in the field of conciliation and co-responsibility, since this is also related to a better employment policy. This idea is connected with one of the proposals for the resolution of the problem previously raised: the reorganization of the time.

This would involve the distribution of working hours, but also of personal and family life. Studies<sup>18</sup> on the reconciliation of family and working life from the Equality Observatory<sup>19</sup> can extract important reflections and recommendations on how to make these policies effective. Perhaps the most interesting is that related to the role of the State and the consideration of the need to understand that conciliation is a social problem since a social good is threatened.

Conciliation is a political problem which must be seen as a problem of co-responsibility between social, economic and State actors, whose resolution could be structured in three main areas: the review and improvement of the law of conciliation, of equality plans and social awareness programs; and, development of a new

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<sup>17</sup> Villar, A.: *Mujeres y mercado laboral en España*, Fundación BBV, Bilbao 2010, 70-73.

<sup>18</sup> Spanish Institute for Women from 2004.

<sup>19</sup> Spanish institution for controlling the policies for equality.

model of labour relations, together with the strengthening and development of full network services and attention and care to minors and dependent persons.

Legislative revisions and implementation of best laid plans are relatively simple. The political will should be enough. However, the political will is not enough for the construction of a new model of labour relations and a complete and efficient development of care services for children and dependent persons, at least when it comes to providing economic assistant to care services. However, and despite the costs, this would be a secure social benefit since this social work has always been done only by women without any cost to the State. The generations of women “available” for the job are progressively disappearing (unless you consider recourse to “grandmothers” as a “safe and cheap” option up to now), and at this point the State has in front of it an important issue whose resolution is not possible if it is left only in the hands of families, mainly women. The care of children and other dependent persons remains a pending matter. For example, although childcare networks need to be increased, especially and if possible in the workplace, one should be aware that minors tend to get sick and “someone” has to take responsibility for their care. It would be wrong to bestow the responsibility only to women especially because the private sector considers it as the responsibility of women, and this can result in the prejudices at the time of hiring women.

The reorganization of work and its reconciliation with personal life is essential. Not only are we witnessing a crisis of the labour market as explained by Victoria Camps<sup>20</sup>, but also we are witnessing a radical change in the way of conceiving and understanding work. Women should have a prominent role in the Organization of these changes, not to supplement what the State can do, but to insist on correcting stereotypes and the dichotomies that derive from the separation between public and private.

### *2.3. The issue of gender violence*

Gender-based violence represents a transcendental problem for governmental equality policies because it affects fundamental basic rights such as the right to life, the right to physical and mental integrity, the right not to be subjected to torture and the right to personal freedom.

Before the gradual process of social awareness and assumption of the problem by the State began, protection for women victims of gender-based violence was carried out solely by means of criminal law, and only in response to flagrant crimes. The rest remained hidden, and was expected to be resolved privately.

The alteration in the consideration of the problem of violence against women as a matter of public competence was the key step towards laying the groundwork for its eradication. However there is a long way to go. We see it every day in the

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<sup>20</sup> Camps V.: *El siglo de las Mujeres*, Cátedra, Madrid 2000, 50-52.

media, and the Ministry of Justice statistics show that the victim rate is not reducing. Since 2004 we have had one of the most important tools to combat violence, the 1/2004 Integral Protection Measure Organic Act against Gender Violence. We have several new institutions, designed by the Act to combat violence, and the political intention so far has been to promote awareness-raising and training campaigns to eradicate it. However the rate of gender-based violence has not decreased. Moreover, what must be added to the 'black figure of violence' is the number of unreported and undiscovered and therefore not punishable offences. Yet, since this is not a work on gender-based violence, but on public policies for gender-based violence, we will try to develop their content and try to assess their effectiveness.

Firstly, it is necessary to insist on the concept of gender-based violence, since it is a relatively new concept that can be confused with other concepts such as domestic violence<sup>21</sup>. Clarification of the concept is important since something is modified in Spain and in many countries that has been in existence for a long time: social and legal intervention that shows that it is a complex problem with many manifestations, which does not only affect women in the household or family<sup>22</sup>. Although in our immediate environment we think almost exclusively about physical or psychological ill-treatment perpetrated by the partner, we must also consider other offences such as the offences against sexual freedom inside and outside of the scope of the family; and in and out of our environment, we can also find other forms of violence such as female genital mutilation, forced marriages or interference in the sphere of sexual and reproductive freedom.

Gender-based violence is synonymous with violence against women, which was brought against simply because they are women; it constitutes a specific category of social violence which has its origin in the structural discrimination against women by the unfair distribution of social roles. But although there are other manifestations of violence against women, it seems detached from the comprehensive law that only protects the violence that occurs in the confines of a relationship (current or past); with that the historic opportunity was missed that the law offered of unifying the concept of domestic violence; on the other hand the law includes protecting especially other vulnerable persons apart from women.

However, the Comprehensive Act is the most complete possible legislative option that incorporates a transversal vision since it undertakes various sectors,

<sup>21</sup> If we have to put a date, although the process has been somewhat diffuse and progressive, we must place ourselves in the 1990s, citing the case of killings and rapes of three teenagers in Alcàsser (1992) and the murder of Ana Orantes, burned by her husband after she had publicly reported him to the authorities, (1997) as events or turning point starting from that date the unceasingly increase in victims of violence gender, which is especially significant, but it would be subject to further study.

<sup>22</sup> Bodelón E.: "La violencia contra las mujeres y el derecho no androcéntrico: pérdidas en la traducción jurídica del feminismo", in: Lorenzo Copello, P., Maqueda Abreu, M. L., Rubio Castro, A. et al. (eds.): *Género, Violencia y Derecho*, Valencia, Tirant lo Blanch 2008, 279.

but there are also other instruments, for example the protection order, or plans against violence. In addition to the National Plan, the autonomous community plans are executed for a better implementation of anti-violence policies, and the basic guidelines that are in the Strategic Plan of Equality also help to guide these policies. The Plan presents as basic actions a series of measures aimed at intervention, but especially focuses on prevention through education.

In fact, education is the only tool that serves to achieve the eradication of violence. With education co-responsibility and parity will be accomplished. In fact education is another cornerstone in the Strategic Plan. Perhaps it is the basic axis upon which others are built because achieving equality depends on education, and education is the main tool for building the foundations to eradicate violence.

The Integral Protection Measures Act against violence recognizes the connection between inequality and violence, and considers that Spanish educational system must include among its objectives training in respect of rights and fundamental freedoms of equality between women and men, as well as the exercise of tolerance and freedom within the democratic principles of coexistence (article 4.1). Again this law echoes the content of article 9.2 of the Constitution to establish that the Spanish educational system will include within its principles of equality the elimination of obstacles impeding full equality between men and women and training for conflict prevention and for the peaceful resolution of the same.

The Constitutional Court also establishes the connection between inequality and violence. The main “measure” in criminal matters assumed by law consists of a “specific reinforcement” in cases of ill-treatment against women; it is a distinct sanction when the perpetrator of the act is the man. From the constitutional law viewpoint and judging by what the High Court ordered with regard to the various issues of unconstitutionality raised about article 37 of the law, “punishment is not imposed by reason of sex of the active subject, or the victim, nor for reasons linked to their biology. It is one greater sanction of more serious actions for which the legislature reasonably believes to constitute a specifically harmful manifestation of violence and inequality”<sup>23</sup>.

On the other hand, the Act provides other measures of intervention and the creation of new specialised institutions (special delegation of Government, State Observatory, and special units of the State security forces and bodies), as well as the establishment of courts dealing with violence against women. Measures designed in the law are developed in different plans of violence of the autonomous communities and shaft 10 of the strategic equal opportunities Plan, which provides for seven essential actions that are the projection of public policies in the field of gender-based violence.

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<sup>23</sup> Statement: 59/2008, May 14, the Constitutional Court, Foundation legal no. 9 also followed the others who settled in the same direction on cumulative identical issues, for example the 762008 sentence or the 972008.

The first two focus on the promotion of awareness of the problem of gender-based violence managing thus their efforts towards the publication and dissemination of studies on the one hand, and on the other towards the strengthening of awareness-raising and prevention measures, to increase the degree of involvement of society to combat it by a better understanding of its causes and its consequences.

The third measure consists of direct intervention with victims. Firstly, it should improve the comprehensive care provided. The measure proposes the improvement of resources, especially for women in particularly vulnerable situations: among them are the mobile “Telecare” Service and collaborative programmes with companies that facilitate the recruitment of women victims of violence. The measures also includes a specialized 24-hour legal aid review.

The fourth measure is aimed at the police and judicial protection. It is necessary to make an individualized treatment through computer applications that enable a connection between police and judicial authorities. Therefore the measure comprises promotion of telematic communications. On the other hand, it encourages the use of electronic devices that allow individualized follow-up for those convicted of gender violence and also adds the implementation and review of re-education programs to offenders. Finally the measure provides the increase of forensic units that provide comprehensive assessment of the damage caused and the assistance of a full team of care to women.

The last three are focused towards professionals and institutions, referring to their training as an essential element for optimal care and especially the coordination between the various institutions involved in the process that takes place after an assault. The last measure comprises the evaluation of policies through data collected by institutions specially created for the comprehensive Bill to ensure better compliance with those: the special delegation of the Government for gender-based violence and the Observatory of Violence.

Thus we arrive at the point where we must wonder what the results of the evaluation of the last years are and what the anticipation of improvement in the situation is, since the reality is quite pessimistic. The Observatory report on the effectiveness of the policies against violence and especially about the implementation of the Integral Act includes some weak points that should be reviewed. It is important to carry out new, methodologically improved research on the prevalence of violence or improve the system of indicators that is insufficient for the elapsed time; but it is especially necessary to make an effort in the ambit of comprehensive social assistance which is still deficient: it continues to use hostels or shelters as emergency centres, there are no interpreters for foreign women, counsel cannot be guaranteed immediately to all victims, valuation units are missing, there is no guarantee as yet for specialized training for legal aid lawyers, and obstacles in the filing of the complaint still persist, especially for illegal women

migrants. Among the obstacles in the effectiveness of these measures, it should be noted that there is a shortage of personnel in the police force and in the bodies for the monitoring and protection of women who suffer violence: even after a protection order has been granted, the police have to evaluate again different cases in the absence of experts; or also the lack of training for court staff in addition to the aforementioned lack of valuation units. In addition to this, we have to mention the reticence of some judges to investigate and treat serious incidences of continued violence because of the ease afforded to them to apply from the first complaint to the implementation of a crime of ill-treatment<sup>24</sup>. All these facts affect the persistence of the phenomenon of secondary victimisation, whose eradication has been so intensely fought<sup>25</sup>.

These shortcomings require measures involving policies against violence to be reviewed and improved. The Government must focus on it without forgetting that women must be the centre of the process. The idea that this is a public matter, without ignoring that this is the key piece of a change in policies against violence, taken to its ultimate consequences, has the risk of depriving women of their needs and control of the autonomy of its vital decisions which must always be taken into account. Sometimes it is difficult to strike a balance between security and freedom but it must be present.

Violence against women is a political issue, not only because in recent years it has been on the political agenda, but also because before entering into theorizing, feminism has given a political significance in which women have gained visibility and prominence. Once entered into the political agenda, the conceptualization of violence in structural terms of domination/subordination represents a real revolution in the legal culture, however, and despite the occurred changes we need to maintain vigilance. Unfortunately the question remains open, and policies on violence against women should be priority.

### 3. Conclusions

Firstly, Gender mainstreaming is an essential instrument to eradicate gender inequality. Public policies for equality should include the perspective of it in all its areas and actions. The Constitution by way of the mandate of article 9.2 covers the actions of public authorities in relation to equality and promotes the implementation of measures that balance the participation of women and men in various areas. Parity, the electoral quota, and the reinforcement of punishment

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<sup>24</sup> Maqueda Abreu M. L., 388.

<sup>25</sup> Barrere Unzueta M. A.: "Género, Discriminación y Violencia contra las mujeres", in: Lorenzo Copello, P., Maqueda Abreu, M. L., Rubio Castro, A. *et al.* (eds.): *Género, Violencia y Derecho*, Valencia, Tirant lo Blanch 2008, 44.

in cases of gender based violence have become necessary elements to achieve that balance, with the guarantee of constitutional jurisprudence.

The goal of parity and the quota does not focus on women representing their interests, but on the universalizing of these policies eliminating inequality between women and men.

Secondly, the Equal Opportunities Organic Act is a legislative action that applies gender mainstreaming and that is projected in each of the objectives of the Strategic Plan for equal opportunities. The Equality Plan constitutes the essential element for the application and implementation of policies of equality. It collects twelve fundamental axes of action, whereby it is worth highlighting their social impact and the fact that they occupy a pre-eminent political debate place: women's political participation, the conciliation and co-responsibility, and gender-based violence, to which we should add education as a basic strategy of action.

Thirdly, the conciliation between personal life and work is a public affair, and not a "woman based issue". For the elimination of gender inequality it is essential that society realizes that it is a problem for the whole of society. Thus the State must commit itself to studying the problem and offering solutions, which cannot only come from private initiative.

Stewardship is the step following the conciliation. Women have come into the public space traditionally occupied by men, but men have not made the reverse journey, and they are not occupying the domestic terrain. It is necessary to carry out a better reorganization of work and time, enabling both women and men to share space on equal terms.

Fourthly, gender-based violence continues to be a social scourge. Fighting against it has advanced much since became a public matter, a relevant issue for the State. However there are outstanding issues to be resolved that could be summed up in two: the shortage of resources to carry out the actions that the Integral Protection Measures Act and the Plan against violence propose to fight gender-based violence, and an exhaustive work for education, which is understood nowadays as the linchpin for ending violence.

It would be desirable that the execution of these actions should have a priority, since the elimination of inequality and violence depends largely on it.

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## **RODNE POLITIKE U ŠPANIJI SA USTAVNOG STANOVIŠTA**

### **S a ž e t a k**

Mejnstriming polova je osnovni instrument za iskorenjivanje nejednakosti među polovima. Javne politike za ravnopravnost treba da obezbede uključivanje ovog osnovnog instrumenta u sve svoje oblasti i delovanja. Ustav, kroz mandat člana 9.2, pokriva delovanje javnih vlasti po pitanju jednakosti i promovise sprovođenje mera kojima se postiže učešće žena i muškaraca u različitim oblastima. Paritet, izborna kvota, pomirenje i jačanje kazne u slučajevima nasilja zasnovanog na različitim polovima postali su neophodni elementi za postizanje te ravnoteže, uz garanciju ustavnih prava.

**Ključne reči:** mejnstriming polova, politička participacija, nasilje zasnovano na polovima

## THE FORMS OF LIFE INSURANCE IN MEDIEVAL SERBIA

In the Middle Ages, monasteries in our country provided support and lifelong care to some secular persons who, as compensation for the value allocated to the monastery, acquired the fraternal right of so called "adelfate" parts, or "komat".<sup>1</sup> By buying an adelfata, individuals acquired the right to live in a monastery or monastic Metohija to death and the monastery had an obligation to feed and clothe them, after their death to bury them and give them prayers for the rest of soul.

**Keywords:** life insurance, medieval Serbia

Monastic records from the fourteenth and fifteenth centuries, but also the ruler's charter, indicate that Serbian rulers and nobles, by bestowing money and property upon monasteries, acquired rights of a founder of a monastery and the monasteries were, in turn, bound to transfer certain material benefits to donors or other persons the ruler determined. Information on lifelong care for the given property is in the documents from Montenegro, Boka and Herzegovina, dating from the period from the fourteenth to the eighteenth century. Providers of support were not only monasteries, but also individuals. Institutions of lifelong care were widespread in our country in the Middle Ages and before, and also after the arrival of the Turks.<sup>2</sup>

The first known purchased adelfata was mentioned in the charter by King Milutin 1318-1321, when he bought from Hilandar 3 adelfata (komat) for 1800 perpera for his monks who did not belong to the fraternity of the monastery. The charter stated that the 3 komat would be given to the king's monks as long as there was the monastery, and on that account they would receive "bread, wine, fat, lentils, clothing and footwear and everything needed by fraternity".<sup>3</sup>

The charter of King Dusan from about 1332-1337 defined the obligations of Hilandar monastery towards Lady Radoslava who made a contribution to Hilandar monastery and thus the monastery had to give to her children komat after

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<sup>1</sup> Subotić-Konstantinović N.: *Ugovor o doživotnom izdržavanju*, Beograd 1968, 8.

<sup>2</sup> *Ibid.*, 9.

<sup>3</sup> Grujić R.: "Svetogorski azili za srpske vladaoce i vlastelu", *Glasnik skopskog učenog društva*, knj. 11, 1932, 71.

her death, in case of her poverty, the children could come to live in the monastery. The Charter also stated that the children after Radoslava's death should not interfere in the administration of monastic lands, but "to make income by the law of the donor and komat vsacijem founder." From this we can conclude that the right of the noblewoman's children was their personal right which did not require of them to become monks, but it established the compensation received for the property.

The right to lifelong support as compensation for a gift made to the monastery was established in the chrysobull in 1343 by King Dusan in which elder Gregory, when he decided to live in St. Archangels was given the right to komat 2 - it was recorded "Kingdom gave me two komat lifelong and supplemental feeding to death."<sup>4</sup>

From these two documents it is apparent that secular people received support and that a term komat was known and determined. It meant needs for food, clothing and housing in a monastery until death of the recipient and depending on the size of individual contributions, the name komat corresponded to what members of fraternity in a monastery received.

Over time, monasteries were obligated to provide life support not only in assets, but in some cases they gave cash as compensation for property or other valuables. Adelfati were given not only to a founder as fees for ongoing annual aid or gifts, but they could have been acquired in one-time purchase which often occurred at the time after the Battle of Kosovo.<sup>5</sup>

After the battle of Kosovo in 1389 which historians have described as "Serbian disaster",<sup>6</sup> Serbian nobility sought to preserve their wealth, but also to secure themselves in case of complete failure. Thus, Vuk Brankovic, in a general depression after Kosovo, in a new situation caused by the Turks, did not feel secure enough in the field of Kosovo and addressed to the citizens of Dubrovnik with a request to move to their town and protect his property and if necessary to seek a shelter for himself and his family. Dubrovnik was very considerate, because there were several important mining sites in Vuk's home place and Kosovo was the transitional route for trade caravans.

Therefore on May 9th 1390, they promised to keep as a deposit his treasure, protect himself and his family in case Vuk could not protect Serbian lands. V. Corovic stated "that Vuk must have been in a feud with his opponents when the people of Dubrovnik," certainly at his request, stressed that they would not surrender him even if this was expressly required by their city, or if even the forces came into their city.

As a bad alternative, they would escort Vuk and his family to where he wished. They agreed, otherwise never having been done before or after, that Vuk could

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, 66.

<sup>6</sup> Ćorović V.: *Istorija Srba*, Belgrade 1999, 263.

build an Orthodox church in their area.<sup>7</sup> In any case, an unusual historic event also indicated that Vuk Brankovic wanted to preserve his property and secure himself and his family in case of further military defeats and bad conditions.

Princess Milica, who suffered a heavy burden due to her people's plights and the country's after the Battle of Kosovo was running state affairs in tough conditions. Serbia recognized the suzerainty of the Turkish emirs, waged a serious war against Hungarian King Sigismund, trying to protect the land and people. However, Milica signed "hrisovulja gift" to Saint Russian monastery St. Panteleimon in 1395.

In this chrysobull Princess Milica (then Eugene nun) with sons Stefan and Vuk bestowed villages and estates upon the monastery St. Panteleimon and made contracts for herself and her children for life support, so that the monastery was to provide for them housing in the very monastery - for the children in the monastery estates, a special care for the princess and her daughters as women could not come to live in Mount Athos. For all this, the monastery was obliged to make a contract with the new patron.<sup>8</sup> The monastery was committed as requested in the charter, which was evident from the responses to the Charter composed at the beginning of 1396 and signed by the abbot Nicodemus that "both in lifetime and after death, not only in specific honors and respect to the founder, but also in constant material aid to them in case they were deposed from power, had serious trouble or became impoverished so that they must seek refuge and aid from their monastery".

The fee which the monastery had to give to the patrons, in case of unfavorable conditions of life, amounted to 30 adelfata, 10 of which belonged to the princess, and 20 to her children. The princess' adelfata had to be given in cash or property outside of Mount Athos, while her sons were entitled to use the adelfata in the monastery though they owned two cells and Spa (Lutra). The documents stated that Vuk and Stefan were not required to become monks if they came to the monastery.

As this contract was signed by more contractors, the relations between all the participants and the monastery were regulated. In the case of a conflict between brothers, Stefan would own the adelfata and the spa, Vuk would own only a half of the adelfata. If Stefan died before Vuk, Vuk would be entitled to own the spa, but Stefan's adelfata would belong to the monastery. This was the case if the princess was not alive. If she was alive, then of Stefan's 10 adelfata, 3 belonged to the princess, 7 remained in the monastery. The same situation was if Vuk died before Stefan and if they both died for the life of the princess, then 6 adelfata belonged

<sup>7</sup> *Ibid.*, 264; Novakovic S.: *Serbs and Turks XIV and XV century*, reprint edition, Belgrade 1998, 224-225. Novakovic regrets that this letter has not survived, but it is certain that there was as part of the Monumenta Miklošičevom SEBIĆ, in a page 215-216 he cited a letter of Vuk Brankovic which confirmed the earlier trade agreement between Vuk and Dubrovnik, and further text referred to the agreement.

<sup>8</sup> Grujić R. (1932), 71.

to her (in addition to her 10). If the children died before the princess and they did not live in the monastery, nor died in the monastery, in addition to these six, she got another 4 adelfata to be bestowed on anybody according to her will, so four persons were entitled to stay lifelong in the monastery and after death of these persons, the adelfata would pass into the ownership of the monastery.<sup>9</sup>

Each contractor had a personal right to own the adelfata, but they had also a right to transfer them during their life to other people for use, so they “could accommodate in their cell whoever they wanted among the monks and if monks died before the patron, the monastery was not entitled to own the adelfate”.<sup>10</sup> These rights regulating the relation between the founder and contractors reflect proprietary law in the part which was related to a lifespan of one of the contractors or altogether (the adelfata inheritance of the surviving contractor or inheritance by the beneficiary, some relatives-sisters or daughters), while the right to use some objects could have been transferred to third parties.<sup>11</sup> The same was applied to the use of the cells in the spa-lutra which were made available to the patrons who could offer their seats to whoever they wanted, even to persons who were not monks.

The contract provided that in case the Lazarevics became impoverished or not being able to come to live in the monastery, the monastery would be obliged to search for them “where they could find them and give them” 20 liters of silver for food every year. “This meant that their life support would turn into money life rent if they were unable to receive the payment in kind. Regarding the monastery as a donor and in case of its inability to fulfill its obligations in payment in kind, it carried it out in cash, so it was evident that it was the obligation arising from the contract, not required by the founder from the monastery.”<sup>12</sup>

According to the contract the creditor was entitled to seek fulfillment of the obligations with the debtor’s entire property, which indicates the obligation of legal character of this contract. It was arranged by the provision, if the monastery did not want to carry out what had been agreed by the contract, regarding the adelfata, memmorial, cells and lutra, anyone in Lazarevic’s family had a right to confiscate all the monastery’s property that had been bestowed on the monastery St. Panteleimon.

There are some documents from the same period indicating that the purchase of adelfata was agreed between monasteries and nobility regardless of the founder’s law which provided the right to life support and regardless of receiving monastic rank. Lifelong care was not granted only by bestowing real estate, but also by donating money (silver or gold).

<sup>9</sup> Grujić R. (1932), 70-72.

<sup>10</sup> *Ibid.*, 72.

<sup>11</sup> Subotić-Konstantinović N. (1968), 11-12.

<sup>12</sup> *Ibid.*, 12.

In addition to this agreement, there were more contracts on lifelong care with Hilandar monastery. Certainly the most notable was an agreement concluded between Ivan Kastriot Arbanian -master and his three sons with Hilandar monastery in about 1430. This agreement was signed before the abbot of Hilandar monastery Athanasius and it instructed that John Kastriot, his sons Reposh, Constantine and Giurgiu should be given residential tower of St. George, the right to four adelfata, vineyards, olive groves and everything else that belonged to the *pirg* as a fee of 60 florins which John Kastriot gave to the monastery.

The contract provided that adelfata were strictly related to the personality of each contractor, and "as soon as someone goes" his adelfata, expired so that "when all four ones go *pirg* and adelfata remain the property of the monastery of which it can freely dispose, but the names of the four adelfators will remain written in the Diptych of the Church." According to the available data, the agreement was implemented, for there is a church record that Reposh died on July 5<sup>th</sup> in 1431 and some surviving manuscripts indicate that a monk Ioakim Kastriot (Ivan) died in Hilandar. It is recorded that the tower of St. George in Hilandar was called "Albanian tower, probably because it once belonged to Kastrioti-Arbanian rulers."<sup>13</sup>

In written documents dating from the sixteenth to the nineteenth century, we find numerous examples of contracts for lifelong care. Mostly, these were individuals who gave their property to monasteries or to some persons, mostly relatives, in compensation for lifelong care. A document from the seventeenth century from Grbaljska district written in Turkish, dating from September 12<sup>th</sup> 1616, noted that there was a court ruling that Radna from Shishic village gave her son a part of heritage which he benefits now.<sup>14</sup>

We find a number of agreements on lifelong care amid the leftover Montegrin and Pastrovic's documents in the period from the sixteenth to the nineteenth century.<sup>15</sup> However, as formulated, we make out these contracts were contracts of inheritance, although our theorists suggest that the purpose of the contract was supporting one or more persons in old age, which indicates a contract of lifelong care.<sup>16</sup>

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<sup>13</sup> Grujić R. (1932), 81.

<sup>14</sup> Hadžibegić H.: *Grbaljski dokumenti iz XVII stoleća, prilozi za orijentalnu filologiju i istoriju jugoslovenskih naroda pod turskom vladavinom*, Sarajevo, I-1950, 26.

<sup>15</sup> Nikčević T., Pavičević B.: *Crnogorske isprave XVI-XIX vjeka*, Cetinje 1964, br. 8, 19, 40 i 42, 64.

<sup>16</sup> Subotić-Konstantinović N. (1968), 16.

## 1. Dusan's code

At the time of adoption of Emperor Stefan Dusan's Code, feudalism in Serbia was at its peak. Dusan's Code primarily contributed to the strengthening of the socioeconomic order and also strengthened and secured a private property institution. Dusan's Code provided, above all, the rules for the safety of property, within which some measures were defined representing certain forms of insurance. The elements of the insurance were found in several articles of this act.<sup>17</sup> It deals with a specific element in relation to the period and the risks which were "covered" by insurance. These risks included: a theft, an arson (deliberate), a robbery, a destruction, and war risks. In regard to the subject of insurance, it referred to the property and an incident to a person. Also a kind of insurance organization was established, which was in accordance with administrative divisions in Serbia of the time. There were administrative regions - as the country (area), - towns, - the parish, - the border of the parish, - the villages and summer pastures. As a part of the administrative division, Dusan's Code laid out an insurance organization. The basic insurance institution factually was a village as a community of risk. Within the village we distinguish the community of individuals: *otroks*, *meropahs*, the environment, citizens of a city and a parish. Moreover, we can speak about some type of a coinsurance in a parish. The whole insurance system was set up on an assumed collective responsibility for a "village" and the responsibility for a damage to third parties. These institutions were characterized by preventive and repressive measures - security guards and if they were not effective, then penalties and payment of compensation were pronounced.

Dusan's Code regulated the status of individual insurers. In fact, there was an institution - governors or masters of a village, then of *Kefalia* and guards as well as lords-borderers. As for the managers or masters of a village, they acted together with the village, as co-insurers, but also independently. As for *Kefalia* and guards, they were obliged to pay for the damage at the expense of their own property, to trace robbers who inflicted the damage and to collect money from the surrounding villages. Otherwise, the landlord had the same duty of protecting property as well as *Kefalia*. As for the lord-borderers, they kept the border area at the time, they had a greater authority and a greater responsibility. This was an insurance institution, the only one dealing with war risk coverage. Another insurance institution stood out and that was the institution of insurance by the Emperor. "Any trader or a monk, who was robbed on the road, had the right to ask for the compensation directly from the ruler. The ruler would compensate from his assets, but as for so-called regress (although this is a regression) he would address to *Kefalia* or the parish landlords."<sup>18</sup>

<sup>17</sup> Ogrizović D.: *Ekonomika osiguranja*, Sarajevo 1985, 226.

<sup>18</sup> Ogrizović D. (1985), 226-229.

An interesting provision is in Article 49 of Dusan's Code dealing with war risks. In fact, as we said before, a lord-borderer had a greater authority and a greater responsibility. He had a duty to guard the border and had a permanent detachment of the army. His duty was to counter an attack of a hostile army and if he was not capable of it, then he would attack and seize its loot when the enemy's army was returning through the territory of the country.<sup>19</sup> Otherwise, he would have to pay for all the damage which the hostile army made. We distinguish a few types of insurance institutes: the subject of insurance, the insured, the place of insurance, the risk, who pays the indemnity, the indemnity, preventive measures and repression.

Besides, Dusan's Code contained a provision about fire risk – an intentional arson.<sup>20</sup> It was anticipated that an individual who set fire to a house or other property should be burned, or “incinerated with fire.” However, if the person was not found, the village had to find and surrender him. Otherwise, the village would pay damages. This was a surety for the damages of the village. Here we can also distinguish the subject of insurance, the insured (the injured party), the risk and who inflicts damages. What should be noted, is the fact that in Dusan's Code, property insurance used the term “insured” for the person to whom it provides an adequate insurance protection. It is, in fact, the injured third-party.<sup>21</sup>

At the end of this section, the attention will be paid to the Status of “otroks” and “meropahs”. Meropahs were dependent peasants - farmers. Otroks were slaves, but slavery was then in decline. There were still household slaves, but a number of slaves were equated to feudal serfs. Practically, a feudal lord was giving an otrok a piece of land which he had to till, so the lord did not receive only the rent, but he equated them with meropahs, because they paid the same rent. Dusan's Code explained that slaves and meropahs were equal in paying cash rent, and depending on the amount of the rent, they would be granted to keep the land as a limited property.<sup>22</sup>

## 2. Development of guilds in Serbia

It is not known whether the city traders had their own guilds in a medieval Serbian feudal organization, but presumably such organizations existed, taking into account a well-developed urban economy in some towns in the thirteenth, fourteenth and fifteenth centuries.<sup>23</sup> The books deal only with the names of crafts and artisans, but written sources of the organization and a number of

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<sup>19</sup> *Ibid.*

<sup>20</sup> Article 99.

<sup>21</sup> Ogrizović D. (1985), 230.

<sup>22</sup> *Ibid.*

<sup>23</sup> Vučo N., *Raspadanje esnafa u Srbiji*, Beograd 1954, 2.

guilds were not noted. In the course of the Turkish occupation of Serbia, the eastern Turkish crafts expanded, followed by guild organizations which had feudal characteristics. According to the tradition, there were about 42 craft-guilds in Serbia in the Turkish period, and 17 of them were privileged for the Turks. Of these guilds, which were mainly located in Skopje, many were existent until the beginning of 20<sup>th</sup> century.<sup>24</sup> There are signs which indicate that the guilds existed in Belgrade during the Turkish rule. A petition on behalf of three Barber masters sent to Prince Miloš in 1829 obviously shows that the barbers had their own guild under the Turks.<sup>25</sup>

During the Austrian rule in Serbia (1718-1739), a merchant guild was founded in 1725 which gathered all Serbian merchants. According to the article 19 of the Regulation, if a man suffered damage (fire, etc.) he was compensated by the municipality. Turkish guild organizations had a very strong impact on the formation of guilds in Serbia after the Second uprising. By extending many Turkish guild customs and getting something from the experience of foreign guilds, especially of those craftsmen who came from Austria, craftsmen and traders in Serbia founded new guilds temporarily until; finally, their own guild regime was established by the regulation of guilds in 1847.<sup>26</sup>

The guilds existed from the thirteenth century in Vojvodina. For example, soon after the declaration of the town and the privilege in 1506, guilds began to emerge in Senta, first boot makers and tanners.

When Turks took possession of a number of countries from Hungary during the sixteenth century, they did not repeal guilds, but they named them guilds or rufeta and allowed them to exist and act. These guilds were confirmed as the guilds of craftsmen by Serbian special letters issued by the patriarchs of Pec in the authority as *miletbaše*.<sup>27</sup>

When Austria managed to expel Turks from Vojvodina finally in the late seventeenth and early eighteenth century, the guild structure was left intact. The guilds only begged new Austrian government for confirmation of their former guild establishment. In 1872, Hungarian Parliament abolished the guilds finally and irrevocably in Vojvodina and Hungary. The guilds were abolished by the law on workrooms in Serbia in 1910, as we have mentioned.

<sup>24</sup> In the charter of king Milutin from 1313 which presented a gift to the monastery of Banjska Bistrica some crafts were mentioned such as smith's, carpenter's, tailor's, scraper's, harness maker's, potter's, bricklaying and goldsmith's crafts (Article 33 of the Charter). During the rule of king Dusan smith's, potter's and goldsmith's crafts were mentioned as well as svace-tailors. See Miletić S.: *O esnafima do 1847*, Delo, knj. 55, Beograd 1910, 272-274.

<sup>25</sup> Ogrizović D. (1985), 246.

<sup>26</sup> Vučo N. (1954), 3.

<sup>27</sup> Ogrizović D., (1985), 246-247.

## Conclusion

The forms of life insurance in medieval Serbia were found in monasteries in our country which provided support and lifelong care to some secular persons who, as compensation for the value allocated to the monastery, acquired the fraternal right of so called “adelfate” parts, or “komat”<sup>28</sup>. By buying an adelfata, individuals acquired the right to live in a monastery or monastic Metohija to death and the monastery had an obligation to feed and clothe them, after their death to bury them and give them prayers for the rest of soul.

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<sup>28</sup> Subotić-Konstantinović N. (1968), 8.

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## **OBLICI OSIGURANJA ŽIVOTA U SREDNJOVEKOVNOJ SRBIJI**

### **S a ž e t a k**

U našim krajevima u srednjem veku manastiri su primali na doživotno izdržavanje i negu pojedina svetovna lica, koja su u naknadu za vrednosti date manastiru sticala pravo na bratske delove tzv. adelfate, adrfate ili komate. Kupovinom adelfata pojedinci sticali su pravo da žive u manastiru ili manastirskim metohijama do smrti, a manastir je imao obavezu da ih hrani i odeva, a posle smrti da ih sahrani i da im daje podušja. Manastirski zapisi iz XIV i XV veka, ali i povelje vladara, kazuju nam da su srpski vladari i vlastela – dajući manastirima imanja i novac – sticali ktitorska prava u određenom manastiru, a manastiri su se, zauzvrat, obavezivali na određena materijalna davanja u korist darodavaca ili drugih lica koja on odredi. Podatke o doživotnom izdržavanju za data imanja nalaze se u dokumentima iz Crne Gore, Boke i Hercegovine iz perioda od XIV do XVIII veka. Kao davaoci izdržavanja pojavljuju se ne samo manastiri već i fizička lica. Ustanova doživotnog izdržavanja rasprostranjena je u našim krajevima u srednjem veku i pre, ali i posle dolaska Turaka.

**Ključne reči:** osiguranje života, srednji vek, Srbija

POLITICS

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## DISCOURSES ON DEMOCRACY

Achieving real, tangible and factual democracy remains questionable for many reasons. First, it is due to serious concerns about whether this is reasonable, feasible, realistic and second, due to concerns in terms of the appropriateness and sustainability, purpose and cost-effectiveness of such a societal endeavor. Third, it is a challenge to contradict those authors who talk about twilight, sunset, crisis and coma of democracy. This would mean that democracy, before signs of its serious downfall and disappearance, has already been affirmed as a realistically operational system. It has been so, maybe at some places and for a little while, at some level and branches of the system, but never in the system as a whole and in general. Fourth, many important tendencies in the world, such as demographic, economic, social, religious, security and environmental do not bring hope that caring about the affirmation of essential democracy and the efforts invested to that goal will ever be a priority when it comes to development challenges in the immediate future.

**Keywords:** models of democracy, pseudodemocracy, national identity, competition, freedoms and rights

Leaving aside the numerous determinations and definitions of democracy (*δημοκρατία*), and adopting its recognized basic semantic meaning - primarily in the area of political conceptualization, and primarily its empirical manifestations, I would like to point to several bases and causes which could be, to a great degree of certainty, ravaging its essence, which in any event hasn't been easy to implement and even harder to sustain over time. I would say that this, actually, has to do with ambivalent aspirations, contradicting desires and efforts, which, consciously or subconsciously, idealize, disregard and anticipate the true nature and the realistic traits and values of democracy; as well as its limitations, shortcomings and weaknesses.

We certainly shouldn't waste words trying to differentiate between rational criticism of democracy; its legitimate and legal assumptions, its grounded values, principles and tenets, its institutional frameworks and public governance capacities; and the negation of its postulates, principles and tenets; or open disagreements and challenges to it; the jibes and even intolerance of democracy.

Such preferences follow a cyclic development; the ups and downs of democracy and its original manifestation throughout its long hundred-years-evolution

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till the modern era. Differences in theoretical and empirical confrontations have stemmed from different societal environments in which democracy, more or less successfully, has been organized and exercised; or where there was no room for affirmation of antidemocratic options - totalitarian, oligarchic, autocratic, and despotic systems. However, such threats haven't blocked debates about the realistic temptations against democracy; its generic and specific structural shortcomings. Such dilemmas have resulted in multiple discussions involving serious doubts in the functional capacity, the point and the feasibility of democracy. The first pertained to discovering the inconsistencies and incoherence of key democratic prerequisites and determinants, primarily in regards to the position and the role of the person, the citizen and his aspirations towards the public interest and values. The second pertains to its expectations - hypothesized by many - in regards to the degree of interest, capability and readiness of people to permanently participate in public life, being, at that, aware of their full accountability for taking part in such a mission. The third appears because democracy with its high goals and noncritical egalitarianism conscientiously conceals the objective separation of the development visions of developed countries and countries with aspirations to become developed; and also the separation of vision and interests of the elite and the masses in both (types of countries). Fourth - democracy doesn't have the most effective, most efficient and most cost-effective mechanisms and instruments to provide for fully coordinated development of the key sectors of a state, its economy and society. Fifth, experience has it, and modern civilization has confirmed it, that in order to create essential, societal strategic policies it is not expected to involve democratic mechanisms, institutions, procedures and corresponding supervision and control mechanisms. Sixth, experience with consociative democracy has turned out to be a serious limitation to any attempt to harmonize environments containing differences between sensitive identities, such as those where ethnicity, nationalism, ideology, culture, religion, etc., are "overheated", particularly in destabilized societies. This is definitely not the end of criticism in discussions about democratic conceptions, because, truth be told, democracy and its traits and attributes must always be referred to in the plural. The reason for this is clear: there cannot be a uniform or "ideal" democratic monotypic model which can stand a longer test of time, have a consistently coherent and continuous development and be fully endowed with a reliable and objective verification. Opponents of democracy, who also advocate rational judgments, persistently search for evidence of the "real" functionality of democracy by testing people's impressions about whether they have the feeling that they live in a democratic society and a democratic state, or how to recognize democracy, or by which of its contents.

Yet, it is in the nature of a state to strive toward oligarchy, monopolization and politicization of the public sphere, regardless of the fact that in formally declared democracies certain limitations have been introduced regarding recog-

dition of the people's sovereignty, individual freedoms and rights and freedom of choice. It is in the nature of the political man to grab power when unrestrained, and thus the limitations to the term of office of elected representatives and the possibility to recall the unsuitable.

But, a compromise occurred: the traditional, imperative term of office has been abandoned when the representative has been connected to the interests and preferences of his voters, and a free term of office has prevailed. However, in quasi-democracies that has also been eliminated, since the political headquarters control the freedom of representatives and their political conduct. In other words, after the elections an elected representative practically becomes a representative of his political party. In pseudo-democracies, the decline can sink lower in the best image of a caricature and it can happen that the elected representative is not "the owner" of his term of office but that of his political party which has secured its interest in advance by providing a signed blank resignation of the "loyal member". Should loyalty fail there is always someone who is next in line. Voters will eventually be informed about the person assigned to be their representative. Such self-denigration doesn't bother the political party, or the representative/MP or voters. Therefore, freedoms and rights make sense only if citizens exercise them, or if there are efficient mechanisms for their protection.<sup>1</sup>

Abusing the original meaning of democracy, conscientiously leaving aside its antic, ancient meaning of the "Agora of Athens" as a system of organization of rule of the people, or the principle that all members of a society are equally enabled access to power centers and have their universal freedoms and rights guaranteed, there are numerous dilemmas about these essential quantitative and qualitative traits. There are the same implications about the elaborated idea of the "sovereignty of the people" in establishing democracy. It is exactly this basic trait, pertaining to the key role of citizens in the governance of public matters in the environment of a constitutional, representational democracy, allowing a wide scope of citizens' freedoms and rights as a great achievement of modern civilization, and of a modern society, that requires careful organization of government organs or the "separation of powers", their balancing and mutual restrictions. The supremacy of any of the branches of power, most frequently the executive power, objectively obstructs and destroys democracy. The "rule of the majority" leads to the same direction of distorting the concepts of democratic principles if it endangers or precludes minority rights, as the "tyranny of the majority" in action. But, the most dangerous thing for (constitutional) democracy is a concealed nondemocratic and antidemocratic, authoritarian and totalitarian motive, which in a deceitful manner (with the help of perfidiousness and cunningness) uses the institutional legacy of democracy and its rules of the game for the sake of winning power. However, the fact also remains that at the end of the XIX and at the beginning of the XX centuries, there was widespread skepti-

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<sup>1</sup> Jacques Ranciere, *Hatred of Democracy*, Verso, London – New York 2006, 72–75.

cism in many European countries exactly towards these particular constitutive elements of democracy; for instance general and equal suffrage, and representation of all classes and confessions.

We find the most striking examples of attempts to mask such risky public choice occurring in both periods of considerable decadence in the XX Century with the confrontational ideologies of the West and East concerning the character of governance, economy and the quality of life of citizens – Capitalism, Fascism/Nazism and Communism/Socialism, Stalinism, Zhdanovism. Both sides plucked out and exterminated the key values of democracy, they attacked the person, the people, opponents of different national, ethnic, confessional and ideological preferences and beliefs by committing outrageous, timeless and unprecedented atrocities.<sup>2</sup>

The manifestations of such tyrannies will be presented by means of ideas of “deliberative democracy” and/or “discursive democracy”, which are used to interpret the empirical contents of representative democracy, or the variables of consensuality in the process of shaping politics and making political decisions. The essence of such an understanding of democracy is more thought through and subtle compared to more traditional definitions of democracy, reduced to the freedom of choice, voting and granted citizens’ rights and freedoms, since it seeks a more complex and deeper meaning of democracy which is reflected in public problematization – deliberation, providing arguments and counter arguments of legitimate rights, interests, needs and values of citizens /the citizenry.<sup>3</sup> A public dialogue, public debate, public advocacy, and public policy take on features of an

<sup>2</sup> In the preface of the second issue of *Constitutional Democracy*, written in Vermont (USA), at the beginning of 1941, Carl Friedrich reminded us of the preface to the first issue: “Within the lifetime of his generation, the present barbarities will be abandoned, and finer, nobler conceptions of life will reassert themselves. There are great latent reservoirs of faith in a higher morality which were overgrown with the slime of nineteenth-century decadence. I do not propose to know how the creative sensibilities will manifest themselves. I will confess to a faith in their potential strength” (CID, Podgorica, 2005, 21). Carl Friedrich (1901–1984), who, otherwise, didn’t believe in direct democracy for very good reasons (he thought that the referendum, as a decision-making method, leads to totalitarianism), and he was reasonably skeptical towards the temptations and potential risks of representational democracy, he would probably have reason to “after two large international civil wars” and fall of socialism (if he had ever seen it ), based on some examples with the most tragic outcomes which describe the XX Century as a century of great suffering and pain. Finally the XX Century will be remembered as the most brutal in history, because it indirectly took lives of close to 200 million people. But, always, (it will be remembered) as a century of great movement of boundaries in many scientific sectors and knowledge, and in particular technology, in its second half.

<sup>3</sup> The term Deliberative Democracy (*deliberative democracy*) stems from Joseph M. Bessette, and is presented in his papers “Deliberative Democracy: The Majority Principle in Republican Government”, 1980, and “The Mild Voice of Reason”, 1994. Later on this term was accepted and elaborated by Jürgen Habermas, David Held, John Rawls, Amy Guttmann, James Fishkin, Dennis Thompson, and others.

institutionalized manner of thinking when the conditions of public choice are met, and when the majority begins to support a selected development course of the discourse quality. The higher and the more complex the level of public participation, political participation compared to simplified, election-related, the voters' stating their opinion in the party-staffing reconstruction of government institutions and organizations, the greater the possibilities for deliberation of competitive development perspectives. Such a level of democratization of the public and political life is conditioned by stability, the level of commitment of the citizens, or the existence and consequentiality of their relations and consensual previous agreement about the meaning and importance of these co-influences.<sup>4</sup>

In any case, the realism of deliberative democracy helps us recognize, with greater accuracy and timeliness, the phenomena which degrade the essence of democracy. Naturally, it is almost redundant to warn that longer lasting and more credible democracies have more success in fighting such dangers; both due to their makeup and an existing civil society. In the light of these phenomena which may, to a greater or lesser extent, compromise and even degrade the meaning and essence of democracy, there are definitely, in addition to other numerous obstacles and limitations, *nationalism, populism and demagogy*, and even more detrimentally – their combination, „commensalism”, by means of which they feed each other, permeate each other, support and culminate in an euphoric energy and a false exaltation of the governing social harmony.

And it is exactly that culmination, along with the visible and humiliating lack of sense of any division, segregation or fragmentation, that is the beginning of the end of such an adventure. After such entropy or disillusionment, modified prejudices and stereotypes are created, as well as antagonisms, indignation, frustration and disorientation. Nationalism, within consistent re-etatization, represents only a relatively new phenomenon which is tied to the period of creation of national states, accompanied by the whole confusion of relations between the nation and the state in which inequality among its members is formally suppressed, but not completely eliminated.<sup>5</sup> Therefore it is understandable that great writers and authorities were only occasionally, or even exceptionally, thinking about nationalism when deliberating about democracy. Truth be told, they much more often dealt with problems of national identity and dignity, though not as a

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<sup>4</sup> Michel Foucault understood a discursive formation, in its original sense, as communication which includes specialized knowledge of a different kind.

<sup>5</sup> National symbols, such as national flags, coats of arms, and anthems didn't exist until the end of the XVIII Century, and in many countries until the end of the XIX Century. And nationalism and populism were not even known as words in the French language when Tokvil was alive (1805–1859) and began writing about „nationalism“, after 1880. Before that, these feelings and impressions were “covered” by a similar term – “patriotism” – although patriotism is, by its nature, “defensive” while “nationalism” is predominantly “offensive”. In the XX and XXI Centuries those become indispensable symbols of pathos and pathetic, disrespect and contempt.

universal phenomenon due to their diversified nature (differing from one country to another), most frequently building their theoretical projections, determinations and conclusions on the relevant parameters of the majority of members of a particular national group. But this is where the difficult question is raised for answering: who and with the help of which means comprises this majority? Considering that it is composed of various groups and persons, individuals for whom the “nation” is not the only but just one of determinants, “therefore, from this standpoint, nationalist movements as the rationalization of interests of a particular elite, create a national identity which, if successful, is safeguarded by the state-nation as a sanctity and spread by means of propaganda among its subjects to such a degree that, then, the “nationalist” will be ready to die for his nation.<sup>6</sup> The pointing of some authors that national identification brings in itself quite specific obligations, based on moral, justice and law, in relations with members of one’s own nation and other ethnic groups and nations, is also indicative. Whether this type of obligation will yield differences in “exclusivity or discriminatory consequences”, “moral particularisms” in relation to “one’s own” or “other” nations and groups will for the most part depend on political, legal and economic conditions, the status of democracy and the experience in the rule of law. Distributive and redistributive policy in many countries has its grounds in the mentioned obligations.<sup>7</sup>

This has certainly constituted undoubted progress compared with the experience with hereditary monarchies, and their dynastic and religious peculiarities where all their members were treated as part of a “patrimonial heritage”. Experience has it that differences in understanding the essence of national identity - “the source of meaning and experience of people” (common origin, ethnicity, territory, and cultural ties, etc.) of members of different national and ethnic groups in which (the groups) differently view national identification and the right to national self-determination, as well as the difference between a nation and a country - may be a permanent, hard to win basis for tension and conflicts. Such confrontations may be overly imbued with an “atavistic warriors’ ethos” which may result in almost incomprehensible and brutal cruelty; which, again, may lead to massive violence of shocking ethnic cleansing and mass and ruthless killings. In after-conflict situations the eruptive nationalism/chauvinism is calmed down, which as a rule, is followed by inconsistent moral dilemmas about causes and consequences, motivation and reality of atrocities committed, consciously or subconsciously, or in any case, on behalf of erroneously understood nationalism.<sup>8</sup> Political philosophy and the political sciences haven’t paid much attention

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<sup>6</sup> Castells Manuel: *Moć identiteta*, Golden marketing, Zagreb 2002, 37.

<sup>7</sup> Miller David: *On Nationality*, Oxford University Press, Oxford 1995.

<sup>8</sup> Fukuyama Francis: *The End of History and the Last Man*, The Free Press, New York 1992. In general, the term „end of history“, mentioned in this paper, has often been the subject of erroneous interpretations in specialized publications. Fukuyama considered that the

to the phenomenon of nationalism after nation-states have been formed. However, interest in its revised interpretation has arisen on several occasions, in the famous processes of reconfiguration of communities of states and complex states in the processes of decolonization, as well as in the process of disintegration of some federal states with extremely heterogeneous national compositions, which were late or haven't had the opportunity to rationally use advantages of multinational and multicultural composition of their state and administrative entities.<sup>9</sup> On the contrary, the prevailing belief is, under the pressure of irrational nationalism, caused by the presence of different ethnicities and ethos, 'when our nation and our state are not in concurrence', that the unfinished process of national and ethnic consolidation under the roof of a mono-national state should be finalized. Between the grindstones of centripetal and centrifugal forces, national and ethnic minorities were worse off. A new "barbarism" has been in action.<sup>10</sup> The stagnation of a constructive one and the sneaking in of a destructive nationalism is not always simple to recognize. There is a whole series of solid examples for such a statement, among which the following are less contentious. First, aspirations towards political independence may hide the contradictory interests of acknowledging the right to a sovereign integrated community within the existing state framework, and acknowledging the right to national self-determination and free choice of a component of the state - one's own or attached to another state entity.

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ideological evolution of mankind and the universalism of western liberal democracy had entered the final stage of the governance system, rather than, literally, thinking that the history had come to its end in terms of great historical events. Therefore, for this author, democracy remains the dominant form among political systems, whose capacities haven't been completely used up, and whose full potential is yet to come and can be strongly promoted by global economic prosperity. We should think about two limitations here: first, democracy can in no way be reduced only to the dimension of a political system, no matter how important it may be for the teleological sense of the entire idea of democracy; and secondly, judging by actual historical experience, no certainty in terms of continuity of economic prosperity exists, particularly not at the global level. For experience today shows that "democratic deficit" appears in supranational institutional forms, in which there are no appropriate control mechanisms for *global governance* or conditions for post constitutional participation of citizens. The warning that the future cannot be imagined outside of the continuity of existing already lived through experience seems questionable (Albrow M.: *The Global Age, State and Society Beyond Modernity*, Cambridge Polity Press, Cambridge 1996).

<sup>9</sup> For instance, Yugoslavia was built on two concepts, a federation of nations and common cultural-historical experience. On the other hand, the different historical heritage of its constitutive nations, as well as their different confessions (very characteristic for Europe) could have become the model of a "transcendental nation", a potential response to any other space. Unfortunately, the tragic collapse of Yugoslavia made such an option an illusion (Smith Anthony D.: *National Identity*, University of Nevada Press, Reno 1991, 146-147).

<sup>10</sup> Raving nationalism has left barely curable consequences on the normalization of the (co) habitation and democratic organization of the state, economy and society in Rwanda, the former Yugoslavia and the former Soviet Union.

Second, moral convictions change in regards to the selected indicators of the basis for confrontations and the outcomes expected by confronted national groups. These differences are made additionally complex when observed through different time, spatial, generic and confessional parameters. Third, it is not always easy to fathom, or otherwise generally accept, the connotations of multiculturalism, which realistically may connect and reinforce a community, which is the case with today's liberal democracy, but can also be an overture of change of the entity/state's status. Fourth, the attitude of some liberals that 'we have greater obligations towards our own citizens than towards other human beings' shows that they can accept the fact that we have some obligations towards *others*, too. A supporter of the liberal community at the state level can hardly deny that human beings, as such, have no mutual obligations to each other. He will probably only claim that we have *greater* obligations towards our own citizens than towards others.<sup>11</sup> This is where we come across the problem of differentiating between *lesser and greater* obligations, considering the seriousness of repercussions of such differentiations abundantly used by passionate nationalists, and in particular convinced chauvinists. Fifth, views that we should stay away from the democratic "fetish," implying that democratic procedures of constitutional government are sufficient to avoid its distortion into "stateism" are correct. In other words, "democratic control could be sufficient to prevent the government to turn into arbitrary one, but it cannot achieve this just by its pure existence". It is obvious that democracy must develop sufficiently efficient and effective defense mechanisms in relation not only to its opponents but also its "friends",<sup>12</sup> since, otherwise, nationalism may "destroy our dearest illusions". Sixth, some supporters of neoliberalism, when they talk about the "liberal community" imply the global community. By observing the basic meaning of the idea of the citizenry they actually convert it to the phrase "a citizen of the world", opening the door to crouching irredentism and specific nationalism which abuses cosmopolitanism to realize their secessionist intentions. In some cases, such efforts are justifiable if the assumptions that state, national and international emancipation can be more efficient if done outside of the constitutional framework are correct.<sup>13</sup> Sev-

<sup>11</sup> Swift Adam: *Political Philosophy*, CLIO, Beograd 2008, 198. But, the convinced nationalist is suspicious and capricious, not just in terms towards members of other national groups, but also when it comes to his "own" people if their national beliefs are insufficiently "patriotic" and softer than his.

<sup>12</sup> Hayek F. A.: *The Road to Serfdom*, Routledge & Kegan Paul, London 1976, 53.

<sup>13</sup> The basic motivation of the Montenegrin leadership to leave the state union with Serbia lay in their estimate that Serbia would be too slow in releasing itself from its transitional "burdens" – Kosovo and The Hague, which would undoubtedly burden the EU accession process for Montenegro. This skepticism has proven to be correct. Although, the basic reasons and goals of the unilateral announcement of Kosovo's independence had a different nature than the reasons in the previous case, still there is an analogy in line with which Kosovo leaders do not tie their EU aspirations to preservation of their autonomy within

enth, banalization of developing nationalism can help camouflage it, and cause serious deferred effects. To that end, a more or less subtle media campaign is used to present nationalist politics in a sufficiently bearable manner and more, with an inevitably selective seduction focusing on groups of the population that are “thirsty” for nationalism. Banal nationalism is most frequently consumed in its “smooth” form, through cheap entertainment, playing with feelings, stereotypes and prejudices about other national groups. The list can include sporting events, used for euphoric expressions of nationalistic triumphs and glorification, but also for mocking and offending competitors. The destructive instinct of this type of hooliganism is, after all, the most dangerous to one’s own nation. In any case, no matter whether it is endemic or extreme nationalism, separatist efforts or a manifestation of xenophobia, modern nationalism is becoming a powerful ideology which can move an avalanche of deadly and destructive violence.<sup>14</sup> The fact remains that nationalism of a specific form first appeared at the end of the XX Century in Eastern Europe, the Soviet Union and in third world countries. Common to all of them was that they left class-related issues in the past and replaced them with crucial and mobilizing national issues, and then focused on forthcoming globalization which has been seen as perfidious “gas wagons for small, spiritual nations”.<sup>15</sup>

But, such a redirection hasn’t been realized in a consensual manner, partially, due to lack of unity and consolidation of pro-democratic oriented elites, which led the mentioned societies to various ideological, national and religious conflicts. Much to the national misfortune of the Western Balkan nations, their endemic nationalisms were imprudently awoken in an inappropriate and historically wrong period. It is irrelevant, in terms of consequences, whether it came alive by its own force or it was a victim of stimulation by other nationalisms, nevertheless, its “heroic” outbursts and detonations left behind dust and ashes and then silence and introspection and then shame and pain. Out of love and care for its own nation, arrogance and hatred arise towards other nations; and among even those who, by all means, couldn’t agree with “original and authentic” nationalism and retaliation committed on behalf of all with the same name. Simple (local) patriotism was built on intoxication with nationalism, due to moral reasons; it first initiated skirmishes and then real war operations, outside of regular armies or within them.

Wars, since the beginning of time, were conducted in order to conquer, oppress or subdue or to confront, defend, protect or liberate. Why the Balkan

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the Serbian country. Time will tell whether such a decision has been incorrect. In any case, we should warn about the contrast present in the current situation, in which domination of the national state’s sovereignty is endangered by emphasizing limited national sovereignty and even by anticipation of its disappearance.

<sup>14</sup> Billig Michael: *Banal Nationalism*, Sage Publications, London 1995.

<sup>15</sup> Rustow Dankwart A.: ‘Democracy: A Global Revolution?’, *Foreign Affairs* 69, 4/1990.

nations so light-headedly accepted the hardest, the most painful and most uncertain option – a war campaign at the end of the XX Century – remains unclear and unexplained, for some from the very beginning and for some at the end and for all of them maybe forever.

However, the conditions and incentives that contributed to the poor “public choice” could be at least anticipated, and in the wording used, they predominantly relied on dominant nationalistic, demagogical and populist politics, which was not practiced bottom-up but was rather “bestowed” from the top-down and which unstoppably spread like a pandemic disease. In the case of Serbia, which, at that time, didn’t have formal sovereignty, despite of its dominant role in the remaining asymmetric federation, the basic reasons for selecting the wrong solution were the following. First, there was a lack of vision about consolidation and the lack of a development strategy of its own country, which remained too long in a latent insecure coexistence with the decreasing number of partners of the former federal state. Second, Serbia with two autonomous provinces, completely asynchronous in terms of their performance and interests, and yet equal as per the Constitution, was recognized as a threat to stability and the dynamics of joint development. The anxiety then and today’s reality in Serbia has confirmed such skepticism.<sup>16</sup> Third, along with the signs of the disappearance and then factual collapse of the Yugoslav state by the most tragic scenario, the marginalization and segregation of the Serbian population occurred in the federal unit where they were a minority nation, which, along with the previous fact, contributed to growing frustration in their leaders and then in the nation without whom neither the first nor the second Yugoslavia could be created. Fourth, the domination of stigmatized and archaic elite who conceitedly thought that it could be a successful arbitrator amidst dramatically deranged international relations by means of military and/or party force. Fifth, an ideological mess also played its part, because the ideology of socialism didn’t translate well into the ideology of capitalism, but into an autochthonous, obscure self-deception about the strengths of the relics of the past, all the way back to the imagined integrative forces of the old, honorable, and virtuous Pan Slavism. Sixth, with that, the Church unexpectedly provided its abundant help, the Church which imprudently entered the secular stage big time, anticipating its basic mission and possibility to be easily and yet heavily abused and then forgotten as many times before. Seventh, economic decline, massive impoverishment and destitution, collapse of the “middle class” as the most reliable social stabilizer and development generator, contrib-

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<sup>16</sup> It is a paradox that nationalisms in the former Yugoslavia were born and strengthened, although the republics at the time didn’t have all the necessary prerogatives of a state, which is an obligatory condition for “state” nationalism to appear in politics, economy, society, sports, etc., and in general, in the public sphere. In other words, we could rather talk about secessionist nationalism. However this discord between theory postulates and practice is exactly the consequence of the fact that nationalism and nations may exist independent from formally established sovereignty.

uted to growth of primitive and vehement chauvinism, selected by the leadership as the last shield in an attempt to defend its (autocratic) rule. Eighth, that sluggishness in constituting a civil society torn apart between high fiction and low reality will turn out to be fatal in terms of powerlessness to restrain growing robust and wild nationalism, which was watching the world and its own country exclusively through a black and white prism, classifying everyone as patriots and traitors, orthodox and others, believers and heretics, etc. Knowledge about natural and factual classifications based on social stratification effects, necessary for any scrupulous and subtle social analysis of economic wellbeing, actions and behavior, was something that the actors of the flammable nationalism were not able to understand and therefore acknowledge. Ninth, not even the Diaspora managed to avoid the nationalist loop which was drawn in the wrong direction with a magnetic force by phony lighthouses of churches, academic and artistic circles. Tenth, the international community certainly had its part in the Yugoslav and then the Serbian tragedy, it has tried to preemptively repair and then restrain domino conflicts in former states in a manner that was perhaps late and erroneous. We say 'tried' because it was illusionary to expect that this amorphous and insufficiently united international community can successfully manage risk and crisis in all parts of the world, and in the area of the West Balkans. Finally, is it realistic to expect that the international community would have greater motivation to save a country which was abandoned by its own constituents?<sup>17</sup>

The fact, however, remains that neither the Yugoslav nor the Soviet country managed to create a stable national identity. The first one in two stages, the second time after 47 years of following a specific socialist path – “soft socialism”, and the other after 74 years of efforts to build “hard socialism”, they were practically just decomposing (themselves). The failure occurred primarily due to their humble democratic capacities, failure to acknowledge the driving force of the market economy, a stunted civil society and the inability to timely prevent the nationalistic aspirations of their constitutive units, primarily those in which the largest nations were a minority. It happened that those countries which could, objectively, confront every potential external aggression, hopelessly destroyed themselves, faster and more thoroughly than ever predicted by prominent Sovietologists, Kremlologists, or Balkanologists.

It is hard enough to establish the true nature and manifestations of the identity of an individual, a person, but it is even harder to do so with the identity of a nation, a phenomenon which is extremely important for the modern world. There are at least several valid reasons for this, its omnipresence, global impreg-

<sup>17</sup> “The second half of the XX Century will enter history as a new era of wide and fast spreading nationalisms, more durable than the horrible, but now ousted tyrants, which also marked our era.... The instinct to express one’s own identity, that need to make others tangibly feel it, is contagious and has to be recognized as a natural disaster even in the strong and seemingly homogenous, world of high technology at the end of the XX Century.” (Hooson David: *Geography and National Identity*, Blackwell, Oxford 1994)

nation, inevitable intertwining of lives of citizens and their community, and finally, its continuously oscillating complexity and unpredictability of exponential accelerated variations.<sup>18</sup> This effort seems utopist in those circumstances when rational and scientific approaches to understanding the phenomenon of national identity are not “in fashion”; when irrational stereotypes are carried with a swollen course of nationalism, demagoguery and populism; and other camouflaged prejudices and self-appeal are preferred.<sup>19</sup> National identity is not simple to determine, for the simple reason that it has been built out of a plethora of different elements of other complementary social identities such as ethnic, cultural, economic, legal-political, confessional, territorial, etc., and personal identities of individuals – of gender, age, education, vocation, family, class, etc., and that under the influence of continuous changes to their rank of importance and influence, the nature and character of national identity also slowly change. The fact is that the world is interconnected with the specters of different, general and specific identities which intertwine and permeate one another and that this is where, a not so insignificant, part of cosmopolitanism and globalism lies. But it is also a fact that these processes haven't had much influence on the fall of vehement, overly emotional nationalism.

Reasons should be sought in a world of turbulent changes and growing uncertainties which stimulate national homogenization, which additionally can be, abused for political reasons – for political gain or preservation of political power. As for the international plan, this type of nationalism may be an expression of mobilization efforts to “close ranks” for attack or defense of threatened interests, whether of large or small nations, whether for progressive or regressive ideas. The degree of passion, nonviolent or violent exaltation, and feelings of power or lack thereof, depends on the depth of these antagonisms, and the relationship between rational and irrational motivation. On the other hand, in order to talk about a threat to national identity, it, first, has to exist, or it has to be recognizably consolidated and reliably empirically and through experience, identified. However, if its substantial and ephemeral traits are subject to diffusion, then space is made available for an outpour of a wild, unrestrained, uncontrolled primarily overly dangerous and detrimental vehement nationalism, which may threaten the existential capacities of its own nation.

<sup>18</sup> Smith Anthony D.: *National Identity*, University of Nevada Press, Reno 1991.

<sup>19</sup> ‘Leaders naturally appear in every wounded community. Passionate or calculated, they, through extremist speeches, heal the wounds. They say that we shouldn't beg for respect owed by others, that it should be imposed on them. They promise victory or revenge, raise ghosts and sometimes use last resort solutions, something that some of their hurt brothers can only dream about in secret. From now on the decor is ready and the war may begin. Whatever happens, the ‘other’ must have deserved it, “we clearly remember everything we had to put up because of them” from time immemorial. (We remember) All atrocities, maltreatments and humiliations, all horrors, names, dates, numbers.’ (Maalouf Amin: *Ubilački identiteti*, Paideia, Beograd 2003, 23)

This is closely related with a search for one's own political, economic and social model or replicating similar models of the societies going through so-called transitional transformation, especially those in close proximity. Because, all those systems have had, in some previous decades, periods of lost years, which have prevented formation of sustainable institutions, professionals and experts, and mutual trust of state-political bureaucracies and citizens. The reasons for a moderate pessimism exist, given the wider, already presented set of reasons which made those societies leave their main development course, and then stigmatized them as countries at the low existential level. There would be fewer reasons for pessimism if they could show stronger efforts to direct their, otherwise limited, energy towards the future and a new altruism instead of wandering around the near or farther past, chained with inhibiting prejudices, stereotypes and xenophobia. Finally, it is much easier to overcome a crisis through a wider framework and the support of many times more developed countries, than with the help of its own visibly weary and shattered society, torn with large social inequalities between a new class of the quickly developed rich and pauperized citizens.

Many times already it has been said that democracy has significantly changed during the XX Century, for the most part because it was conquered by 'irreversible populism', demagoguism and barbarism. It is very likely that 'populist arrangements', according to which the government takes care of the people and the people cannot live without the government and elections, will remain in use for a long time.<sup>20</sup> Great fallacies were removed or "cut into" about the importance of some assumptions of its functional grounding.

The importance of their normative assumption was made relative, especially given their development dynamics and the degree of their substantial sustainability. We have already talked about the problems with difficult and partial institutionalization and operationalization; we have also talked about sustainable discriminations, distinctions, discrepancies, prejudices and discontinuities. In addition to this, unmeasured optimism in terms of the capacities of democracy to provide and guarantee for the long run effectiveness of proclaimed social rights and wellbeing, even for broader classes of people, given the basic democratic con-

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<sup>20</sup> Lukacs John: *Democracy and Populism – Fear and Hatred*, Yale University Press, New Haven 2005. Demagogu (δημαγωγία) refers to a political strategy calculated to gain power by using prejudices, emotions, fears and expectations of the public, through rhetoric and propaganda filled with passionate nationalistic and populist topics. The practice of demagogic performance and communication is very diverse. The following methods have been used: mixing apples and oranges – comparing incomparable sizes; using 'semi truths' – understatements, in order to cover up unwanted effects; referring to 'false authorities' – in order to strengthen one's own; creating 'false dilemmas' – by consciously overlooking other options; 'demonization' – of opponents by spreading threats and fear; recognizing 'straw people' – or the purpose of their humiliation, belittling, underestimating; use of 'non indicative, non corresponding' facts; 'emotional accusations and shaming' – direct attacks on personality.

cept, remains unexplained.<sup>21</sup> For the time being, and who knows for how much longer, this remains “pure fantasy”, since even its most persistent followers admit that the harder part of its deeper consolidation and more convincing legitimization is yet to come.<sup>22</sup> In addition to this, some think that global “super-capitalism” hasn’t suited the development of democracy, primarily political, and quite the opposite it has jeopardized its essence, by stifling the voices of citizens by creating a cacophony of corporation funds of large capital and business, since the power of influence of the corporate voice objectively superseded all other voices. This is how the double paradox occurred: on the one hand the original meaning of democracy is lost in a formal democratic environment, because the citizens voices, of their interests, objectively speaking, have become lower graded, and on the other in nondemocratic, authoritarian, an totalitarian systems, the power of politics which outgrew economic interests by the populist governance phantasm, creates an illusion of pseudo citizens that their interests are the alpha and omega of the people’s government. The additional illusion that the degree of trust of ‘citizens’ in totalitarian government is higher than the followers of the democratically organized government is even being created. Truth be told, that illusion never lasts long, but it is sometimes long enough to cover the span of a generation, and even to be a millstone around the neck of the following one.

The leading capitalist countries are creating a new social-political environment with new competitions and changed ranks of political influences in the sphere of public policy, with repercussion to the quality of democracy. Thus, the traditional competition between the government and the opposition is more and more frequently moved within intervals of election competition, where there is always some room for topics of general, public interest. In the meantime, between these intervals, other types of competitions, of specific and private interests, which are not totally without influence on election games, grow stronger. Competitiveness within parties is more evident than ever, among coalition partners in winning/discharging office, among regulatory agencies, pressure groups, trade unions, between unions and corporation lobbyist with continuous accompanying competitiveness of their clients for better market positioning and more generous benefits, ‘pushed’ by laws of the market, profit and capital. This dichotomy of fragmented, pluralized and institutionalized interests inevitably leads toward the separation of interest aspirations of individuals, depending on their economic and political priorities. This creates additional challenges of the meaning and purpose of democracy which implies other types of values and virtuous,

<sup>21</sup> ‘There is one very wise slogan for free human beings: ‘pessimism of the intellect, optimism of the will’ (Romain Rolland). Note that the author didn’t say ‘optimism of the heart’. The will is something active, defiant, striving. We expect the worst and hope for the best.’ (Ash Timothy Garten: *Slobodan svet – Amerika, Evropa i iznenađujuća budućnost Zapada*, Samizdat, Beograd 2006, 250)

<sup>22</sup> Diamond Larry: *Developing Democracy*, Johns Hopkins University, Baltimore 1999, 31–49.

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empathy and solidarity of citizens. Since, when they disappear, at times of crisis and when more and more people are fighting for diminishing chances to meet their existential needs, feelings of hopelessness and lack of meaning appear, with which not even formal democracy stands a chance. It remains a great dilemma, with many unknown factors, about whether it is possible to successfully harmonize these contradicting opinions and controversial determinisms of the goals of the super-capitalist economy and vibrant democracy. Here, it would be suitable to apply, more than anywhere else, the saying 'better safe than sorry' in terms of this symbiosis in which democracy is quite certainly discredited. But, unfortunately, time and events have shown that this is not always possible. Therefore, expectations that these determinisms in the future may be maintained in the long run, within a controlled distance, in order to keep their original values, seem unrealistic. However, the more probable outcome is – the fate of constant mutual adaptations and intertwining, approaching and departing in the search for their optimal co-existence.<sup>23</sup>

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<sup>23</sup> Reich Robert: *Super Capitalism – The Battle for Democracy in the Age of Big Business*, Icon Books, Ltd., London 2009.

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## DISKURSI O DEMOKRATIJI

### S a ž e t a k

U ovom tekstu izložene su ključne rezerve u pogledu realnosti ostvarivanja suštinske demokratije u savremenim državama, privredama i društvima. Iste se odnose na konceptualizaciju i funkcionalnu vrednost instituta institucija preko kojih i kroz koje se demokratija ostvaruje, od nacionalnog do lokalnog plana. Tu su i ograničenja u pogledu ljudskog potencijala, kako onih kojima se privremeno poverava uloga usmeravanja i vođenja sistema, lidera i javnih menadžera u njihovim ograničenim mandatima, tako i pripremljenosti građana za sudelovanje u javnom životu. Teškoće u pogledu sticanja i obezbeđivanja kontinuirane konsenzualnosti u bitnim pitanjima razvojnih projekcija, između ključnih socijalnih agenasa, vrlo često postaju i ostaju nepremostive prepreke. One se posebno multiplikuju u procesima sinhronizacija konstitutivnih sadržaja sfera politike, ekonomije i društva, kako u „internim“ tako i u „eksternim“, međudržavnim relacijama, u kojima se takođe atestiraju vrednosti demokratskih ustrojstava. U tom smislu, objektivno koegzistiraju brojna ograničenja i insuficijentnosti institucionalnih i funkcionalnih kapaciteta demokratskih poredaka. Što su socijetalne kontradiktornosti izražene, to su veće opasnosti po stabilnost „autentičnih“ demokratskih vrednosti i vrlina.

**Ključne reči:** modeli demokratije, pseudodemokratija, nacionalni identitet, konkurencija, slobode i prava



## THE PRINCIPAL-AGENT APPROACH TO POLITICS: POLICY IMPLEMENTATION AND PUBLIC POLICY-MAKING

The principal-agent framework, developed within the economics of information for various forms of private law contracting, may be expanded to include politics and public sector. Thus, its models can be employed to elucidate problems in interaction between principals and agents in both policy implementation and public policy-making. One then hits upon the *double* principal-agent relationships that are typical of policy cycle, from policy-making to policy implementation and back: (1) government as principal for agents in public service delivery; (2) the population as principal for political agents under various forms of rulership. The ensuing problems in the strategic interaction between principals and agents under asymmetric information explain the recent decline in relevance of New Public Management in policy implementation as well as the steady increase in relevance of rule of law for politics.

**Keywords:** principal-agent interaction, asymmetric information, moral hazard, adverse selection, bureaucracy, New Public Management, rule of law, long-term contracting, short-term contracting.

### 1. Introduction

Two conspicuous features of the early 21<sup>st</sup> century politics and policy-making include:

- a) Policy implementation: The increased externalisation of public services provision;
- b) Policymaking: The increasing call for clean politics and restraints upon politicians.

The first is linked with the success of the NPM reform movement, which was based upon a critique of the classical model of bureaucracy of Weber,<sup>1</sup> whereas the second involves a rejection of the ideal model of a politician, also launched

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<sup>1</sup> Weber M.: *Economy and Society I-II*, Berkeley 1978, 956-1002.

by Max Weber in "Politics as a Vocation".<sup>2</sup> Both of these major events in politics today can be analysed in terms of the perspective upon politics and policies launched by the principal-agent model. It pertinently asks the following:

- i) Which agents are to be employed in policy implementation?
- ii) Can politicians as agents of *demos* be trusted, under what rules of the game?

The principal-agent interaction causes two major difficulties when a principal contracts with a set of agents under asymmetric information, namely moral hazard (*hidden action*) and adverse selection (*hidden knowledge*). These two difficulties surface if the contract is explicit and enforceable in court, as with policy implementation, or the contract is opaque and only enforceable to a limited extent, as with politics.

The principal-agent model has been applied in various private sector settings, such as the remuneration of CEOs, the selection of contracts in agriculture and the client-lawyer interaction.<sup>3</sup> When it is applied to politics, one must model a *double* principal-agent interaction, starting backwards, first with government choice of agents who will handle the provision of services, followed by the choice of the electorate of political agents with different policy preferences.

## 2. The principal-agent model

The most simple principal-agent model analyses the interaction between a risk prone principal and a set of risk avert agents, where the former hires the latter on the basis of a contract involving work effort, salary plus perks involving a basic *quid pro quo*, whereby the agents are paid from the value of the output they deliver. The agents may deliver minimal or considerable effort, which can result in low or high output. As the principal aims for high output, he/she wants to write a contract that elicits great effort. But all contracts are a subject to two basic principles that must be adhered to: the reservation price of the agents on the one hand and incentive compatibility on the other hand. With perfect information one can calculate first best solutions that fulfil these requirements. However, given asymmetric information – hidden actions and hidden knowledge, one has to face suboptimal solutions. They are actually well-known in the literature on bureaucracy and comparative politics, although the language of the principal-agent model has not been used.

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<sup>2</sup> Weber M.: *From Max Weber: Essays in Sociology*, Turner B. S., Gerth H. H., Wright C. Mills (eds.), London 1991, 77-129

<sup>3</sup> Rasmusen E.: *Games and Information*, Oxford 2006.

The Niskanen model of bureaucracy with the public choice school is a principal-agent model where the agents employ their information advantage to supply a non-optimal level of public services. In non-democratic politics, the rulers monopolize the benefits in politics, sometimes reducing the population to a form of political slavery (Burma), but always restrict the choice of the electorate, in order to make *looting* easier. The opposite solution, *exploitation*, is also feasible, for instance in agriculture with powerful landlords (*zamindars*) employing indentured labour or controlling sharecropping contracting.

Between these two extreme solutions, exploitation by the principal versus looting by the agents, one finds all kinds of varying solutions concerning both the value produced and the division of mutual gains from interaction. The output can be either private or public services and the value of the output can be calculated with market prices or the willingness of tax payers to pay. One application of the principal-agent model was less focussed on rent seeking and it targeted for more prestige. The public choice model of public regulation claimed that it had a fundamental credibility problem, as regulators would like to deviate from the original policy intentions behind regulatory schemes.

The following section of the paper focuses on the struggle between a principal and agents about the division of the monetary gains from cooperation. When agents are self-centred and do not refrain from opportunism with guile, then what strategies can they employ in order to get an extra payment using asymmetric information?

### 3. Value of output, remuneration and rent

The agents hired by a principal to deliver a valuable output must of course be paid somehow for their work and effort. The payment of the agents comes from the value of the output, either directly through market prices or indirectly through taxation and public fees. All other things equal, and the agent wants as large remuneration as possible whereas the principal remains the residual claimer, thus being interested in maximising the difference between the value of the output – agent remuneration.

What amount the agent is paid in pecuniary and non-pecuniary forms of remuneration depends on his/her effort, the reservation price and incentive compatibility, given asymmetric information. The occurrence of conditions for moral hazard or adverse selection opens up strategies of opportunism on the part of the agents, attempting to get hold of extra remuneration, a so-called *rent* in economic theory. Long-term contracting invites the option of shirking, whereas adverse selection provides for opportunities of pretending.

#### 4. Policy implementation: from moral hazard to adverse selection

The NPM (New Public Management) revolution in public administration emerged from a background of weariness with big government, public deficits and government overload in the mature welfare state. Intellectually, it was largely inspired by public choice theories, especially their criticism of *long-term contracting*, as with bureaucracy and the public enterprises. Both bureaucracy and the public enterprise were institutional mechanisms that required one key strategy from the agents, namely shirking. Given asymmetric information, government would be in a weaker position, having to take whatever cost increases the bureau or public enterprise came up with. Both bureau and traditional trading department captured an excessive remuneration by expanding activities beyond what was optimal, resulting in excessive number of employees and costs. In reality, there was a form of moral hazard, as the risk ended up one-sidedly with government whereas the benefits would be mostly with the bureau or public enterprise. In long-term contracting, promises are cheap, and memory is short concerning what was promised when outcomes turn out to be undesirable.

NPM recommended short-term contracting as a strategy to strengthen the position of the principal in relation with providers of public services. Instead of bureaucracy and the traditional public enterprise, the principal would apply the following mechanisms suitable for *short-term contracting*:

- a) Outsourcing;
- b) Tournaments;
- c) Auctions;
- d) Incorporation.

All these mechanisms involve employment of tendering-bidding that replaces the authority structure with the capacity of government to exercise authority over its bureaux and employees. Government gives up its power to plan and direct the agents responsible for policy implementation in order to buy specific services in accordance with a private law contract, specifying performance as well as quantities and quality. The public law governed budgetary process is undone, as the private law contract is supposed to cover the most relevant contingencies, including costs and service quantity and quality. Government becomes a contractor, employing private law to arrange the provision of services. Public ownership is transformed through incorporation into the holding of assets through *aktien*, i.e. a private law institution. Government hires agents to manage its capital assets in accordance with private management principles, focussing on rentability in the first place.

The move from long-term contracting to short-term contracting entails government struggling with the problem of adverse selection, i.e. how to figure out which agents forthcoming to bid for all the government contracts can be trusted.

Government is bound to run into a massive transaction costs when it switches from bureaucracy to tendering-bidding, as conflicts arise about what has been agreed upon. Contracting presupposes considerable time and effort for negotiation and can involve substantial costs for enforcement as well as dispute settlement in courts or outside.

Nothing can guarantee that government will be able to reduce its overall costs or increase performance in service delivery, when moving from long-term contracting to short-term contracting. Just as a number of strategies can be used by agents to *shirk* under long-term contracting arrangements, so alternative ways for agents to engage in opportunism exist under short-term contracting, all allowing agents to *pretend* they are better than they really are. It may indeed be costly for the government to reform these pretending strategies, incurring switching costs when turning to another set of agents or being forced to pay more for unplanned costs besides losing court cases where agents exploit written contracts badly.

The principal and the agents have common interests in the agents delivering a big output of value, but agents will only try hard when incentive compatibility is met by the principle. Nothing prevents the agent from demanding a huge remuneration for great effort, i.e. to engage in the opportunism of *looting*. When the traditional public enterprise is incorporated and deregulated, then the temptation of the looting strategy can be irresistible. Thus, with incorporation the number of employees goes down and profits go up, but salaries of the key CEOs tend to skyrocket, especially when large public corporations turn to regional or global strategies outside home country.

### 5. Policy implementation: hidden actions and adverse selection

When governments set out to deliver a set of public services, they have to rely on sets of agents. The classical model of public administration outlined a set of bureaux with specialised functions, accumulating expertise over time. However, under long-term contracting agents have incentives to capture a rent due to asymmetric information. This rent from shirking may consist of X-inefficiencies or merely too much employment. The controller of the bureau – the Ombudsman – investigates the occurrence of hidden actions among agents, i.e. violations of the public law framework of bureaucracy.

Public sector reform during the last twenty years has turned to short-term contracting to remove this rent, favouring externalisation of the delivery of public services, including the incorporation of big public enterprises. However, with tendering-bidding and short-term performance contracting came adverse selection, which provides the agents with another type of opportunistic strategies in

order to capture a rent from pretending. The principal has to assume considerable transaction costs in order to handle the implications of adverse selection.

## 6. Policy-making and asymmetric information

The agency problems involved in hidden action and hidden knowledge characterize not only the policy implementation, but they also figure prominently in politics as policy-making: Can the *demos* as principal trust its politicians as their agents for making of public policies?

The distrust in political elites was theorized in the so-called elite theory with the three Machiavellians: Pareto, Mosca and Michels. They argued that politicians develop their own agendas in order to promote their special elite interests, capturing a rent by means of opportunistic strategies.

Elite theory was much criticised by pluralist theory, mainly by the argument that political elites tend to be pluralistic in terms of both origins and composition. However, this counter-argument does not take into account the fact that political elites from various backgrounds – social and ideological, engage in hidden actions and employ hidden knowledge to increase their remuneration in a broad sense of the term, covering both pecuniary and non-pecuniary rewards.

Moral hazard – pocketing any favourable outcomes – merely luck - while placing the risk with the country – unforeseeable negative results - often occurs in politics. Similarly adverse selection is omnipresent, especially in elections where the *demos* have difficulties in evaluating electoral promises as realistic or unrealistic ones. The rationale of constitutionalism in politics derives from its contribution to undo asymmetric information, revealing hidden actions and hidden knowledge among political elite.

Thus, the mechanisms against political opportunism are handed down in the theory of rule of law, including:

- i) *Judicialization* of politics;
- ii) Referendum and recall;
- iii) Parliamentary opposition;
- iv) Federalism or political decentralization;
- v) Civil society involvement;
- vi) Re-election of politicians: limits on tenure, primaries, etc.

Constitutional democracy consists of a number of institutions that counteract the implications of political elitism. These institutions divide the set of political agents into competing sets resulting in asymmetric information being reduced considerably for the *demos*. Opportunistic strategies based on hidden knowledge – bad politicians – or hidden actions – illegal manoeuvres – trigger

responses or counter strategies. In a rule of law regime, bad politicians are – sometimes at least – eliminated and illegal practices punished.

## 7. Conclusion

Politics involves both policy-making and policy implementation. The *demos* select and instruct a set of agents – the politicians – to come up with a list of policies that the *demos* prefer. Still, politicians do not have time or expertise to put these policies into practice, which is why they – as principals – rely on a set of agents to deliver public services. Thus, one arrives at the double nature of principal-agent interactions in politics.

The move from bureaucracy to New Public Management can be interpreted as the search for strategies that reduce the asymmetric information advantage of bureaux. NPM helps against shirking but calls for another form of opportunism, namely pretending. Adverse selection is not a major problem in long-term contracting, as the principal has a general authority to direct the work of the agents. But in short-term contracting, the selection of bad agents can only be corrected by high transaction costs, as a failure to fulfil a contract will often be contested in court. Shirking may of course also occur in short-term contracting.

The great attention devoted to political scandals in present day politics fits well into a principal-agent approach to elections and policy-making. Politicians as elite have incentives to capture a rent by means of all kinds of opportunism. Only the rule of law regime can counteract the consequences of hidden actions and hidden knowledge.

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## **PRINCIPAL-AGENT PRISTUP U POLITICI: IMPLEMENTACIJA PRAVILA I KREIRANJE JAVNIH POLITIKA**

### **S a ž e t a k**

Poredak odnosa na relaciji principal-agent, razvijen u okviru ekonomike informacija za različite oblike ugovaranja u privatnom pravu, može se proširiti kako bi uključio politiku i društveni sektor. Stoga, njegovi modeli mogu se koristiti kako bi se objasnili problemi u vezi sa interakcijom između principala i agenata kada su u pitanju implementacija i kreiranje društvenih politika. Tada se dolazi do dvostrukih odnosa između agenta i principala, koji su tipični za ciklus politika, uključujući stvaranje politika i njihovu primenu i obrnuto: (1) vlada kao principal za agente u društvenom sektoru; (2) stanovništvo kao principal političkim agentima u različitim oblicima vlasti. Posledični problem između principala i agenata pod asimetričnim informacijama objašnjava nedavno opadanje važnosti novog javnog menadžmenta u implementaciji politike, kao i stabilan porast relevantnosti vladavine prava u politici.

**Ključne reci:** interakcija između principala i agenata, asimetrične informacije, moralna opasnost, birokratija, novi javni menadžment, vladavina prava, dugoročni ugovori, kratkoročni ugovori

## CZECH REPUBLIC – THE FIRST DIRECT PRESIDENTIAL ELECTIONS

The paper describes the effect of the first-ever direct presidential elections in the Czech society. It shows how different were the expectations from the reality as regards the participation of citizens in the elections. The elections surprisingly mobilized self-conscious young generation, university students and open-minded intellectuals. Thanks to them the elections turned into a confrontation of personalities more than of political ideologies in usual division to the “left” or “right”. The election campaign exposed several sensitive issues of the past, still capable to poison the present. The chance to have an experienced gentleman and internationally respected fighter for human rights on the highest post was lost, but 45 % of the votes cast for that chance is a result that corresponds to the present demographic structure of the 20 years old Czech Republic. With Miloš Zeman as President, the Czech Republic may be expected to continue in self-focused position as regards benefits expected from the EU membership, but at the same time may become less irritating as regards further EU development. Without doubt, the Czech Republic will remain and become even more pro-active member of the European Union.

**Keywords:** President, elections, youth participation, policy changes, Czech Republic, EU

### 1. Tradition contra reality

When in 1918 the independence of the Czechoslovak Republic from Austro-Hungarian Empire was proclaimed, it was essentially a desired act of taking over the fate of the Kingdom of Bohemia into the hands of the Czechs. The thousand-year tradition of the kingdom was firmly fixed into the minds and feelings of the citizens. The 19<sup>th</sup> century within the Habsburg Empire was marked by national identification of the Czechs and Germans living for 8 centuries together within the territory of Bohemia and Moravia. Citizens’ activities and social emancipation strengthened at all levels of the society. Village inhabitants could work on their own land. City dwellers enjoyed more opportunities for entrepreneurship or employment in a rapidly growing number of factories and new services in business, transportation, education, and health care, not to mention free occupation in many intellectual and cultural opportunities. However, the Czechs entered the

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First World War with a strange feeling of imbalance between remaining loyalty to the Emperor and a wish to get rid of him, since he refused to accept the Czech Crown. It is no surprise that within the newly proclaimed Republic the “truly selected” President just replaced the imposed “untrue” King. The first President, Mr. Tomáš Garrick Masaryk was a man, who managed to negotiate the creation of the new and independent state returning from emigration to a country, where he had been sentenced as a traitor a few months before. His charismatic figure and humble but authoritative and distinguished behaviour seemed to fulfil all that a head of state should represent. So, Masaryk was treated as the “Father of the Country” – as a person, for whom the Prague Castle, the historical seat of Kings of Bohemia, was just the best place to dwell and from where he actually reigned over the political life of Czechoslovakia for 15 years. This image of a President survived even the difficult years of the German Nazi occupation and the 40 years long era of four Communists in the presidency. When President Václav Havel entered into the office in December 1989, nobody expected that within two years Czechoslovakia would be dissolved. But the title of President elected by members of both chambers of the Czech Parliament remained treated as the highest imaginable position in the social hierarchy of the Czech society.

#### Why direct election of the President?

The tradition of a respected and charismatic personality elected to the post of the President of the Republic by the Parliament was challenged in the time of the new democracy and under the Constitution of the Czech Republic from 1993. Even the election of Václav Havel in January 1993 and February 1998 was not free of complications – there were three rounds needed and a majority of one vote decided. In the election of his successor, it was only Václav Klaus, who continued to next rounds, while his opponents stepped out one after the other. Finally, in the third round he stood against Mr. Miloš Zeman, a retired leader of the Czech Social Democratic Party (CSDP) - the strongest party in the Lower Chamber of the Parliament. It seemed that Mr. Klaus, as former leader of the Civil Democratic Party (CDP), which lost the two preceding parliamentary elections, should not have many chances to win over Mr. Zeman. However, CSDS was not united and its inner split resulted in a loss of a few votes for Zeman and victory of Klaus, even if it was again with a majority of only 142 votes out of 281 in a vote of joint chambers of the Czech Parliament.

It should be noted here that Klaus was forced to bring his government to demise in December 1997 as a result of discoveries of falsified donors to CDP. CSDP won elections in 1998, but could not form a majority coalition. Mr. Zeman, appointed Prime Minister, negotiated with Mr. Klaus and his CDP an agreement of tolerance for the minority government of CSDP. This so-called “Opposition Agreement” marginalized smaller political parties and allowed CSDP and CDP to divide power and many lucrative positions in management of state-own com-

panies and administration offices. Mr. Klaus got a position of the Chairman of the Chamber of Deputies.

After the defeat, Mr. Zeman retired definitively from all political positions and shortly after left CSSD, limiting himself to occasional release of a few well-targeted words against CSSD leadership. Also Václav Klaus started to criticize his successor in the leadership of CDP, and resigned from honorary chairmanship of the party he created. Both Zeman and Klaus thus treated their original political parties as enemies or at least nasty children who need reprimand.

In January 2008 Mr. Klaus stood for re-election to his second term against Mr. Jan Švejnar, who got support from CSDP and smaller parties. While Mr. Klaus did not hesitate to ask for support the Communist Party of Bohemia and Moravia (CPBM), Mr. Švejnar refused to do so. In this case, even three rounds allowed for the parliamentary election of the President did not suffice. The second elections took place in February 2008. There was a hope that Švejnar, an economist with high international reputation may bring about greater respect to the rule of law, separation of economy from politics, transparent financial policy, as well as an end to confrontational policy of the Czech Republic to European Union and its further integration efforts. However, already at that time unfair attacks were used against him like mentioning his emigration from Czechoslovakia in the seventies or inability of his American wife to speak Czech. Some M.P.s supporting him even received bullets by post. When the second election entered the third round, the public was astonished by evidently simulated health problems of a certain opposition M.P., who missed to appear. Due to this Mr. Klaus was finally elected by the closest possible vote of 140 out of 279 present. No surprise that the presidential elections were then considered a dirty political business.

## 2. Constitutional matters

The 1993 Constitution of the Czech Republic is based on principles of a parliamentary democracy with balanced executive, legislative and juridical powers. The role of state president is limited to acts of appointment and representation of the republic.

Legislation power is in the hands of the Parliament. Its Chamber of Deputies is composed of deputies elected in about 14 election regions from lists of candidates presented by registered political parties and mandates distributed in proportion to the votes cast for a given party in the given election region. The Senate is constructed as the main corrective and back-up legislative body composed of senators elected in direct ballots within 81 Senate Election Districts. Note that Senate was elected for the first time in 1996.

Juridical power is conceived as independent in both legislative and executive one. Its structure is similar as elsewhere. The Constitutional Court is endowed

with a power to proclaim a law or a part of it void when found in conflict with the Constitution. Many times it happened that its rulings were commented by President Klaus or governments as controversial or behaving as a third chamber of the Parliament.

In the follow-up of the 2008 presidential election, the idea of a direct presidential elections harvested strong support across the political spectrum. What contributed to it was also disputable attitude of President Klaus towards EU, as well as global climate changes and civil society role on one side.

However, a directly elected President represents a substantial revision of the whole political system of the Republic. It was discussed how to keep balance between a president with a mandate from the whole electorate on one side and the rest of the three powers. In other words, the question was how to introduce direct president elections without opening the way to a semi-presidential or even openly presidential system? And why not to provide a president with a stronger mandate with substantially greater powers? Should not the presidential veto be less easily overrun or should he or she not have a stronger position in formatting the foreign policy of the Republic? Also, once amending the Constitution, why not to reconsider the need or at least the role of the Senate within the new political structure?

All that has been debated in the Parliament lobby for several years. In the beginning of 2012, the Government lead by CDP and backed by the new political party on the right of the political spectrum – TOP09, and another one in the political centre – “Věci veřejné” (Public Affairs Party – PAP) proposed an amendment to the Constitution replacing the parliamentary president elections by direct elections, using a two round election procedure. Any person of age over 18 may propose a candidate for the first round, but has to collect at least 50 000 signatures to a petition supporting the proposal. Also 20 M.P.s or 10 senators may nominate a candidate. Any person of impeccable integrity of age of 45 or more may be elected. The Constitutional Act No. 71/2021 has been adopted by both Parliament chambers in spring 2012 and even signed by President Klaus, who openly expressed his opposition to this change of the Constitution. The amended Constitution entered into force on October 1<sup>st</sup>, 2012, so that the Presidential elections planed for January or February 2013 would be held according to the direct election rules.

Act No. 212/2012 on Elections of the President of the Republic was passed in July 2012. The Presidential elections were officially proclaimed on October 1, 2012. Thus, there were about six weeks left for nominating the candidates, including the collection of 50,000 signatures under nomination supporting petitions, if needed. Ministry of Interior got only one week for checking the validity and acceptability of the petitions. In the case of appealing decision of the Ministry as regards registration of the nominated candidates there were only 3 working days given, and the Highest Procedural Court had to decide within three weeks.

### 3. The candidates

Actually, already at the beginning of 2012 there were some announcements of interest to stand for the election: The country was full of billboards suggesting calling Mr. Zeman to the Castle. CDP politicians talked about candidacy of their vice-chair, Ms. Miroslava Němcová, who presides the Chamber of Deputies, but she declined it. The CDP primaries later won the Vice-Chairman of CDP and former Senate President Mr. Přemyslav Sobotka. The former Prime-Minister Jan Fisher expressed readiness to resign from a position of the Vice-Governor of the European Investment Bank when nominated by citizens. CSDP nominated Mr. Jiří Dienstbier – a lawyer with a dissident past and shortly a Senator with ambitions to transform CSDP into a modern European social democratic party. TOP09 nominated its chairman and founder, Foreign Minister Karel Schwarzenberg, a descendant of a noble family, therefore titled “Duke” by some. The Czech Peoples Party (CPP) announced support to its M.E.P. Ms. Zuzana Roithová. Besides these politicians, the list of candidates also included the personalities who were asked to stand for elections by the civil society: Ms. Tatjana Fisherová, an actor known mostly for her support of Václav Havel, and Prof. Vladimír Franz, a composer, painter and teacher of music popular within the young generation and curious due to artistic tattoo covering all his face. Ms. Jana Bobošíková, a former M.E.P. and presidential candidate of CPBM in 2008, known for her strong anti-EU proclamations also reappeared on the scene. Finally, a few weeks before the official start of the campaign the two following announced their candidacy: the freshly elected Senator Tomio Okamura, born in Japan, known to many Czechs as supporter of young entrepreneurs and Vice-President of the Association of Czech Travel Agencies, and Mr. Vladimír Dlouhý, quite a popular Minister of Economy in 1990<sup>th</sup>. One of those who was asked to stand for the election, but refused to participate in a “run of money”, as he said, was the economist Jan Švejnar. The fears of nomination of highly popular artists or sportsman did not turn into reality. In November 2012 there were 20 candidates officially registered.

### 4. Campaign before the first round

Mass media talked mostly about Jan Fisher as a clear favourite, followed by Miloš Zeman. On the other hand, on the Facebook and in other new-media the users strongly supported Mr. Franz and later also Mr. Schwarzenberg.

The election campaign started as a serious one, free of unfair personal attacks. Nevertheless, some phenomena changed the picture, soon. So, Mr. Fisher had to face criticism due to his membership in the Communist Party of Czechoslovakia

in 1980<sup>th</sup>. Also, Mr. Franz and Ms. Fisherová faced pressure to resign in order to make the victory of stronger candidates more likely.

The private TV channels Nova and Prima provided much space for the presentation and confrontation to the Fisher – Zeman tandem, which was an extreme help especially to Mr. Zeman, who could claim that he was not at all involved in the deterioration of the Czech economy and unpopular measures of the governments since 2001.

However, a very efficient campaign in favour of Mr. Schwarzenberg continued on Facebook. He was presented as a candidate with high personal integrity, and protector of human rights – a politician who understands the needs and hopes of the youth. As a known supporter of Václav Havel, he managed to become a favourite of many university students, scholars, artists and intellectuals, particularly in Prague and other bigger cities.

## 5. Surprising count down

When the counting of votes cast started to appear in the afternoon of January 12, it was no surprise to see Miloš Zeman on the first place, while the three names fluctuated on lower positions– Fisher, Schwarzenberg and Dienstbier. To the surprise of many, joy or regret of some others, it was “Duke” Schwarzenberg, who ended on the second position with 23.4 % cast for him, while Mr. Zeman got only a bit more – 24.2 %. Imagine that some bookmakers accepted bits to the course 27:1 for the failure of the “Duke”. No official surveying agency has forecast such a result!

As concerns other candidates, their results were: Mr. Fisher 16.4 %, Mr. Dienstbier 16.1 %, Ms. Roithová 5.0 %. The remaining 6 % was divided between the three remaining candidates.

## 6. The second round: a conflict of generations or philosophies?

Two weeks were provided for the campaign of the opponents in the second round: Mr. Miloš Zeman and Mr. Karel Schwarzenberg. In immediate reaction to the results of the first round, Mr. Schwarzenberg called his opponent a representative of the political past symbolized by the compound Zeman – Klaus, which introduced into the Czech politics the phenomenon of agreement on division of power and benefits from the state controlled economy and lucrative positions in the state administration. He promised to improve the position of the Czech Republic in the world, introduce new political style based on moral values, lesser confrontation, and understanding for those on lower level of economic welfare.

On the other hand, Mr. Zeman retorted by saying that his opponent shares the responsibility for the “present” harm caused to the Czech society, namely those with lower income, by the coalition government, or by supporting the restitution of property to churches, which may lead to property transfers beyond confiscations made after 1948 and make the definitive separation of the churches from the state too costly. He set as his main goal to successfully promote a law on property declaration, which appeals to many as a chance to reveal who made fortune during the transition period. He also openly talked about the need to make the end to the present Government and enable the victory of the parties on the “left” in the next parliamentary elections.

In reaction to the unexpected results of the first round, the members of Klaus family initiated a sharp and highly unfair campaign against Mr. Schwarzenberg. Václav Klaus junior wrote an article in which he reminded the nation that already Masaryk had abolished the use of aristocratic titles, and mocked over Schwarzenberg as a person that may hardly claim to be a Czech if he does not sing correctly the Czech anthem. President Klaus’s wife in an interview assured people that she would not like to be succeeded on the Castle by a woman that does not know Czech at all. That was an indirect assault on Ms. Therese von Schwarzenberg, who is bound to wheelchair and therefore lives permanently in Wien. The President himself in an SMS expressed a desire to emigrate if the “Duke” wins the election.

The petition of more than 3 000 scientists, scholars, artists, and technicians noted that the policy represented by Klaus and Zeman is only a fake dispute between the Right and the Left, and that the intensity with which this block strives for power only proves that its main interest consists in minimization of the citizens’ participation in policy-making.

The public debates organized by TV channels enabled Zeman to publicly classify his opponent as a member of the degenerate aristocracy, somebody who left the country in difficult times, even a person without clear nationality, wondering whether he is an Austrian or a Swiss. Zeman did not hesitate to mention that there are interests of the Germans who had to leave the country in 1945 behind the support to the “Duke”. In an attempt to clarify his position Schwarzenberg qualified the post-war situation by the present understanding of human rights by saying “... what we did in 1945 would be refused today as a sharp violation of human rights. Perhaps, the Government of that time, including President Beneš, would appear before the Court in der Hague”. For some, especially those not so familiar with the discourse about human rights, this might have been the turning moment in their decision for whom to cast the vote. Others were deeply disgusted by the number of lies, unfair personal attacks and arrogance emanating from Zeman during the TV debates.

The final answer of the electorate was no surprise – it was expected that Zeman should win in Moravia and North-West Bohemia, while Schwarzenberg

was a clear favourite in Prague and bigger cities, as well as in some parts of Central and South Bohemia. The results of the vote confirmed this expectation: from about 8,5 million voters about 5 million attended the elections, out of which 2,7 million cast the vote for Zeman and 2,2 for his opponent.

In joy over the results, President Klaus exclaimed provocatively that we finally have it: "Truth and love won over lie and hatred". This slogan of President Havel was misused in order to mock it. By doing this Mr. Klaus confirmed what was said above – that he hopes for no dramatic change in the style aimed against ideals of fair play, solidarity and citizens participation, on which Havel wanted the policy to be based.

### 7. The impact on the society

On the afternoon of January 26, 2013 it was clear that Miloš Zeman was to become the President of the Czech Republic on March 8, 2013. Of course, unless the Highest Procedural Court does not find one of about 100 appeals against the elections results valid and strong enough to proclaim the elections void. But this seems rather unlikely, even when considering rough and unfair campaign before the 2<sup>nd</sup> round.

The first direct presidential elections in the Czech Republic have demonstrated a clear impact of the on-going demography changes. The youngest generation, those who were not adult before 1990, have shown that their values differ from those of the majority. The post-election data show that the young and some of the oldest wanted a change from the present policy to the ideas represented by Karel more than those represented by Miloš. On the other hand, Mr. Zeman got strong support in the countryside and the regions with higher unemployment, from those stressed by the aggravating social situation. It is also possible to conclude that the possibility to elect the President directly has activated the civil society, specifically the younger and more educated man and woman.

President Zeman may bring changes to the Czech political scene. He is expected, and already acts so as President Elect, to use his presidential rights in a more intensive manner with regards to the Government and the Parliament. He immediately met with the leaders of all parliamentary political parties, with exception of those established by the deputies, who left their original party and set up a new one during the mandate.

It may be also expected that Miloš Zeman will not be a barrier for further European integration, but at the same time will support any activity of the Government aimed at protecting economic interests of the Czech Republic. It is instructive to note his remark after the most recent meeting with Mr. Schwarzenberg: "... we have agreed on nearly all issues of international affairs, with the exception of the Kosovo independence".

For sure we may expect pragmatic and intensive political activities of the new President internally, and only hope that on the international level his activities will not be as devastating as were sometimes those of President Klaus. Taking into account the rhetorical ability and political experience, Mr. Zeman may have a tendency similar to that of Mr. Klaus to give lectures not only to the journalists and local politicians, but also to his hosts and visitors from abroad about what is the right understanding of economic, social and political issues.

The Czech Parliament, especially the Senate, may be under pressure to change the Constitution so as to make the mandate given to the directly elected President more expressed in the scope of powers vested to this highest executive office. Since President appoints Board of Governors for the Czech National Bank and Judges of the Constitutional Court, as well as judges at all other courts, there is a risk of a shift to unbalanced composition in these ranks of justice and bankers regulating the monetary policy. On the other hand, there might also be positive surprises as regards more socially sensitive approach to the economic crises management and the development of international relations with those in Europe who might have similar needs and expectations as the Czech Republic.

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## ČEŠKA REPUBLIKA – PRVI NEPOSREDNI PREDSEDNIČKI IZBORI

### S a ž e t a k

Ovaj rad opisuje uticaj prvih ikada održanih direktnih predsedničkih izbora u češkom društvu. On pokazuje koliko su se razlikovala očekivanja od realnosti po pitanju učešća građana u izborima. Ono što je iznenađujuće je da su izbori mobilisali samosvesnu mladu generaciju, studente i intelektualce otvorenog uma. Zahvaljujući njima oni su se pretvorili pre u sukob ličnosti, nego sukob političkih ideologija po principu uobičajene podele na „levicu“ i „desnicu“. Izborna kampanja razotkrila je nekoliko osetljivih tačaka iz prošlosti koje još uvek mogu da zatruju sadašnjost. Izgubljena je prilika da se na najvišem mestu nađe iskusni gospodin i međunarodno priznati borac za ljudska prava, ali 45 % glasova u korist te šanse predstavlja rezultat koji odgovara sadašnjoj demografskoj strukturi dvadesetogodišnje Češke Republike. Sa Milošem Zemanom kao predsednikom od Češke Republike se može očekivati da nastavi politiku usmerenu na sebe po pitanju beneficija koje se očekuju od članstva u Evropskoj uniji, ali ta politika takođe može da postane manje iritantna kada je reč o daljem razvoju Evropske unije. Bez sumnje, Češka republika će ostati i postati još proaktivnija članica Evropske unije.

**Ključne reči:** predsednik, izbori, učešće mladih, promene politike, Češka Republika, Evropska unija

THE WORLD

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## BEFORE THE BIG BANG: A COSMOLOGICAL CODE

Was there a Big Bang at all, as most of the physicists seem to believe today? Is there a “0 time” at the “very beginning”? What is the origin of the Universe? Was there “something” *before* the Big Bang? Do these questions make sense? Is physics ready to answer them, even if only tentatively? Since there *was* a Big Bang – it was a “singularity”. This unique event has been confirmed and stands on 3 major proofs generally accepted nowadays. It induces the existence of a very mysterious state of reality “before the Big Bang” that mathematicians call the “Initial Singularity”. This singularity can be understood as the “ultimate source” at the origin of our Universe.

The article deals with the question: *what happens before the Big Bang, on the zero point marking the origine of everything?* The idea of the authors is that at zero, there is no real time. Instead, we find this new form of time, called imaginary time. The authors suggest that at zero scale, the observables (in other words the world where we live whose evolution is parametrized by real time) must be replaced by the underlying “cosmological information” whose evolution is not real but parametrized by imaginary time). This is because there exists a deep correspondence -a symmetry of duality- between physical theory (real time / energy) and topological field theory (imaginary time / information).

**Keywords:** Big Bang, time, space, world, cosmological code

Was there a Big Bang at all, as most of the physicists seem to believe today? Is there a “0 time” at the “very beginning”? What is the origin of the Universe? Was there “something” *before* the Big Bang? Do these questions make sense? Is physics ready to answer them, even if only tentatively? Since there *was* a Big Bang – it was a “singularity”. This unique event has been confirmed and stands on 3 major proofs generally accepted nowadays. It induces the existence of a very mysterious state of reality “before the Big Bang” that mathematicians call the “Initial Singularity”. This singularity can be understood as the “ultimate source” at the origin of our Universe.

In 2006, we have written in collaboration with Prof. Dr. Mića Jovanović a book published under the title “Before the Big Bang”. During extensive discussions and exchanges of written notes with Prof. Dr. Jovanović, we realized how

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much a multi disciplinary approach could be useful to solve one of the most difficult problems concerning not only the origin of the Universe but also the origin of the Big Bang itself. In particular, Prof. Dr Jovanovic introduced us to some new instruments and tools in mathematics dealing with statistical analysis, a field where he is an expert. This was very topical considering that statistical mechanics is particularly appropriate to understand the equilibrium state of spacetime on the Big Bang limit and even “before”.

## I.

The Concise Encyclopedia of Mathematics<sup>1</sup> defines “singularity” as “a point in which an equation, surface, etc. blows up or becomes ‘degenerate’”. Physics encountered singularities right after the very first attempts to “marry” the two revolutionary theories of the first decades of the XXth century: theory of relativity and quantum theory. Relativistic quantum field theory of light and matter, Quantum Electrodynamics, formulated by the physicists Dirac, Heisenberg and Pauli in the late 1920s, led to mathematical disasters – singular solutions. The nightmare returned the second time when in the 1960s-70s the mathematician Roger Penrose (and later also Hawking and Ellis) convincingly argued that singularities must be present in every space-time that comes as a reasonable solution of Einstein’s equations of gravitation. Before the “singularity theorems” the existing cosmological models of the expanding universe had a singularity at the “beginning of time”. But was there a hope that, perhaps, with some small adjustments we could build better models? Many tried, with no avail. The singularity theorems of Penrose, Hawking and Ellis put an end to the hopes that the problem can be cured without drastic changes in our understanding of the fundamental laws of the universe. We have tried to deal with this very speculative interrogation and that it is the subject of our research within the Megatrend Laboratory of Cosmology. But the “singularity hypotheses” is so transgressive, so speculative, that it was one of the reasons of a debate all over the world, known later as the “Bogdanoff Singularity”. Another possible reason for the world discussion could be that, in our research, we stumbled upon something very important, some deeply guarded “secret” – the Holy Grail of Science.

Some years ago, our own “mémoire” written for a Master’s Degree in theoretical physics was on the subject of Big Bang and the future evolution of the universe as described by a rather original variation of the Friedmann-Lamaître cosmological model of the expanding universe. This model presents us with a very mysterious problem: the “initial singularity” in the past. The eminent Princeton physicist John Wheeler (the one who invented the word « black hole » and contributed during the fifties to the construction of the first American hydrogen

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<sup>1</sup> Weinstein Eric W.: *CRC Concise Encyclopedia of Mathematics*, CRC Press 1999.

bomb) commented with others on this problem as follows: “No problem of cosmology digs more deeply into the foundations of physics than the question of what ‘preceded’ the « big bang », the ‘initial state’ of infinite (or near infinite) density, pressure and temperature. And, unfortunately, no problem is further from solution in 1973.”<sup>2</sup> Thirty years later the solution was still far away. Indeed, this important and difficult question of the “origin of the Universe” is the main theme of our two Phd thesis and scientific publications. And the question of the “initial singularity” is, as we well understood it, the major “tour de force” of our interests and research in theoretical physics.

In fact, a part of our Ph.D. thesis was on the subject of quantum groups and quantum field theory, particularly on the subject of thermal equilibrium states of quantum systems. Technically these states are required to satisfy the so called KMS (for the names of three physicists, Kubo, Martin and Schwinger) condition. Again, we proposed that the KMS condition should be imposed on the early state of the universe. As we were well acquainted with the highly specialized mathematical machinery that is involved in studying properties of equilibrium states using algebraic tools, we thought that we should be able to develop our ideas and to clarify them.

Our own experience is that discussing with various experts in quantum groups and quantum field theories was quite rewarding. We enjoyed their questions, their ways of answering our questions, the challenging atmosphere of these discussions, with many different subjects from different domains unexpectedly brought in. Our own thinking was stimulated, the depth of our own understanding and mastering of our own domain of expertise was challenged.

## II.

Here we would like to make some comments on the fundamental questions of physics. When discussing the problems of the “initial singularity” or the “Zero Point”, it is necessary to dig deeper than usual and to question the very foundations of physics. Currently physicists believe that there are four fundamental forces in the Universe. Gravitation and electromagnetism are two of them, acting on large scales. Of course, to understand the behaviour of these forces in the “infinitely small” (in the quantum domain) physicists are trying to “quantize” them. So, when it became clear that it was necessary to quantize electromagnetic fields, even more abstract mathematics had to be called upon in order to handle the problem. That led, in the 1960’s, to the more abstract and more general algebraic formulation of quantum statistical mechanics and of quantum field theory, mainly by Rudolph Haag, Daniel Kastler, David Ruelle, Huzihiro

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<sup>2</sup> Misner, C. W., Thorne K. S., Wheeler, J. A.: *Gravitation*, Freeman and Co, New York 1973, §28.3.

Araki and others. At the same time it became more and more clear that the original incompatibility between the geometry based theory of gravitation and the algebra based quantum mechanics persists, and even gets stronger, with the discoveries of infrared and ultraviolet divergences in quantum field theory on one hand, and that of black holes and other singularities in general theory of relativity on the other hand. In the search for a more satisfactory, unified description, two different pathways have been proposed. First of all, following the old ideas of the physicists Kaluza and Klein, an attempt to unify electromagnetism and gravity via the use of additional, “invisible”, space-time dimensions has been revisited and applied to non-Abelian gauge theories. As far back as 1921, Theodor Kaluza described a unification of gravity and electromagnetism by adding just one “extra” space dimension. In 1981 the mathematical physicist Edward Witten published his seminal paper<sup>3</sup>, where he revived the older ideas, with a hope that in more than four space-time dimensions, field theories would be less divergent and more “tamable.” As we wrote elsewhere, Witten’s paper was extremely interesting, and it took us several years, first at CERN and then at University of Bourgogne, to develop a mathematical formalism that would allow formulating within the framework of quantum groups theory some of Witten’s calculations and conjectures. In 2001, we published a paper summarizing the results of our joint research.<sup>4</sup>

Later on, “hyperdimensional physics” was extended to include supersymmetry and string theories – always with the hope that these new additions to the formal structure of field theories would cure the theory from dreadful inconsistencies and infinities.

### III.

Today, after so many lost hopes and unfruitful attempts, it seems that changes of a much deeper nature are needed, and that these changes have to deal with the very nature of quantum theory. Important formal developments in the direction of the unification of quantum theory and gravity are due to the famous mathematician Alain Connes and his pioneer work on non-commutative geometry. In 1993 Robert Coquereaux, together with another mathematical physicist, Michel Dubois-Violette, organized the First Caribbean Spring School of Mathematics and Theoretical Physics in Saint-François, Guadeloupe.<sup>5</sup> It is there that the

<sup>3</sup> Witten, E.: “Search for a realistic Kaluza-Klein theory”, *Nucl. Phys*, B186, 1981, 412.

<sup>4</sup> Bogdanov Grichka, Bogdanov Igor: *Class. Quantum Grav*, 18, 2001, 4341,

<sup>5</sup> Coquereaux R. *et al.* (ed.): “Infinite Dimensional Geometry, Non Commutative Geometry, Operator Algebras, Fundamental Interactions,” World Scientific, Singapore 1995. It is there that Daniel Kastler delivered his ‘Lectures on Alain Connes’ Non Commutative Geometry and Applications to Fundamental Interactions. [This is doubled]

mathematical physicist Daniel Kastler delivered his “Lectures on Alain Connes’ Non Commutative Geometry and Applications to Fundamental Interactions.” Years later, our own lectures were devoted to “Topics in Quantum Dynamics”, where we described new avenues in the very foundations of quantum theory, the avenue that we think can lead to the escape from the dead end, escape from the “quantum trap.”<sup>6</sup>

Many physicists agree that the new theory, the one that can really change the paradigm, must be “sufficiently crazy” – otherwise it would have been already discovered. As we wrote in our books, our “working hypothesis” is that our approach might help in changing something in theoretical physics.

Which category does our work belong to? Are our theories falsifiable? We must admit that we do not belong to any standard category. We developed our original methods of research by applying sophisticated algebraic methods to physical problems.

In particular, as we already observed, we made the proposal to use the KMS condition for the description of a (pre) space-time state of the Universe. It is important to note that before we started to promote such an approach, nobody realised that this idea applies *de facto* to the pre-spacetime description. Indeed, one of the main properties of the very definition of a KMS state on a von Neumann algebra is that the metric becomes “complex”, splitting the time into a real component and an imaginary component. Therefore, if Nature is described by a KMS state at a certain “instant of time” – this state will be subject to “quantum fluctuations”: as we have shown in some of our papers, the KMS condition predicts that the time flow would be somehow *fluctuating*. The evolution of every quantum system, including the Universe, is not always peaceful. There are “quantum jumps”, there are “events”, there are “catastrophes”. To mathematically describe such jumps and events within the standard, even advanced, formalism of quantum theory, as described in textbooks, is impossible. It is necessary to make a full use of the operator algebras, of dynamical semigroups – the mathematical formalism of open quantum systems, and of random processes. One needs to be able to dynamically describe “phase transitions” and breakdowns of a symmetry, such as when water vapour condenses into fluid, and fluid freezes into snow or ice. Change of space-time signature, as described on a global or on a local scale, in the deep past of the Universe, are of this type. Such a change can be dynamically possible only when the Universe is “open”.<sup>7</sup> In order to deal with

<sup>6</sup> For additional information cf., “EEQT – a Way Out of the Quantum Trap”, published in: Breuer, H.-P., Petruccione, F. (eds.): *Open Systems and Measurement in Relativistic Quantum Theory*, Lecture Notes in Physics, Springer-Verlag 1999 (with Ph. Blanchard)

<sup>7</sup> EEQT has been developed precisely for this purpose. A short recent review of EEQT can be found in: Bonifacio Rodolfo (ed.): “How events come into being: eeqt, particle tracks, quantum chaos, and tunneling time”, *Mysteries, Puzzles and Paradoxes in Quantum Mechanics*, American Institute of Physics, Woodbury, NY 1999 [AIP Conference Proceedings, no. 461] ; J. Mod. Opt. 47 (2000), 2247-2263 (with Ph. Blanchard and A. Ruschhaupt). The

the necessary extension of the conceptual and mathematical framework to solve these problems, our minds must be open to new ideas.

#### IV.

There are many ways to look at the Universe around us and one of them may turn out to be much more useful in making further progress than others. The eminent physicist John Wheeler, who was one of the last collaborators of Einstein and recently died being almost a hundred years old, is a good example of a thinker who has been looking at the Universe in many different ways. As a youth, he once touched a 11,000-volt power line, just to *see what it would feel like*. Indeed, one of his disciples, Kenneth Ford wrote: *The same John Wheeler who calculated how an excited uranium nucleus wiggles its way toward fission has also dared to ask "How come existence?"*

It is very interesting to notice that Wheeler had successively three different ways to see reality during his life. First, several decades ago, he began by saying "everything is particles". Indeed, everything we observe may be viewed as a gigantic amount of particles –electrons, positrons and others- that behave in certain ways and that interact with each other according to certain rules. If you adopt this viewpoint, the only task is to understand the rules how these particles move and interact with each other.

Then later, Wheeler used to say "everything is fields". Electromagnetic and other kinds of fields can also support disturbances – excitations that only "look" like particles. Even though the correct description of reality in terms of fields is equivalent to the description in terms of particles – we can't really say whether particles are real and fields are an illusion or the other way around – there undoubtedly exists a significant psychological difference between these two ways of looking at reality. Insights that are obvious in one language can be very difficult in an other language and vice versa.

Finally nowadays, John Wheeler states that "everything is information". In 1969, in a famous lecture entitled "It from Bit", he said: *It from bit symbolizes the idea that every item of the physical world has at the bottom –at a very deep bottom, in most circumstances- an immaterial source and explanation*. Indeed, if we think about ourselves as objects in a gigantic computer game that follows a certain computer program, if you wish, we will also be able to predict what will happen as long as we understand the possible forms of information and the rules of the game properly.

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need for "events" in quantum theory was also discussed by Haag in R.: "Objects, Events and Localization", published in: Blanchard Ph., Jadczyk A. (eds.): *Quantum Future; From Volta and Como to Present and Beyond*, Proceedings of the Xth Max Born Symposium, Przesieka, Poland, 24-27 September 1997, Springer, Berlin/Heidelberg/New York 1999 (Lecture Notes in Physics 517).

Once again, this approach may be fully equivalent to the previous ways of looking at reality. Nevertheless, the psychological difference between these three viewpoints is large, especially at the beginning, before we learn how to calculate. It may be much easier to realize a particular subtlety if one follows the right approach. Each of the approaches encourages people to think about a different kind of new ideas, too. For example, the picture of everything as information has led Wheeler to the following concept.

## V.

All of us should be happy that our world is equipped with time. Without time, everything would be boring and stagnant. Problems couldn't be fixed and nothing else could happen either. One couldn't hope that the future is going to be brighter than the present. As Wheeler said, "time is what prevents everything from happening all at once".

Many new developments in string theory have shown that space is an emergent concept. What does it mean? It means that the primordial form of existence doesn't require any space. Instead, it is based on different kinds of information that don't have a simple geometrical interpretation. Space emerges out of other concepts as long as these concepts conspire so that space becomes possible and large enough to be worth a discussion. We have talked about T-duality, mirror symmetry, and holography – three examples of situations in which even the number of dimensions of space itself and their qualitative shape depend on the way how we look at these situations.

However, if the Universe ever started from nothing, it is not just space but also time that had to be born. Einstein's special theory of relativity, in fact, requires that space and time are inseparable. According to this famous and well-established theory written down in 1905, everything that can be said about space can be said about time, too.

So it should be natural to expect that time is also an emergent and approximate concept. However, it is surprisingly much less understood how time can be emergent and what should be the fundamental entities that are able to conspire so that time suddenly begins its existence. Science is normally supposed to predict the future out of the known facts about the past. Scientific reasoning is analogous to a rope that connects its two endpoints. If we want to understand the origin of time, we must clearly break the secrets of ropes that have one endpoint only. This endpoint, the future, is the familiar physical reality in the future. However, the other endpoint in the past has to be replaced by a non-physical reality and a more general type of information, something that Wheeler has conceived "at the bottom" of spacetime, on the Initial Singularity, and that we call the "cosmological code".

What kind of information is this cosmological code and how do we decode it to learn about our world? Is it analogous to the DNA code of animals in any way? It is easy to imagine that this cosmological code will be based on one of the following concepts: imaginary time, non-commutative time, topological quantum field theory, or the wave function of the Universe. As we have mentioned in some of our papers, a complex time is the time whose value is not a point on a one-dimensional real line. Instead, it is a point in a two-dimensional complex plane. While we are used to time that is real, it might be necessary to learn how to deal with imaginary time and perhaps complex time if we want to understand the birth of the Cosmos.

Also, we are used to various quantities that are simple functions of time. The position of a neutron as well as currency exchange rates depend on time. This also means that if you multiply these quantities by time, it doesn't matter how you order the factors: they are ordinary numbers, after all. This assumption could also be incorrect near the Big Bang. Quantities such as the density of energy could very well refuse to be functions of time. The order of the factors could matter. Time could become non-commutative.

As we have explained, topological quantum field theory doesn't care about the details of the shape of objects and small wiggles: it only cares about their qualitative characteristics such as the number of holes. This basic property of topological quantum field theory could become very useful or even essential in the context of the Big Bang, as we have repeatedly argued, because small variations of time shouldn't have any physical impact if time is required to be tiny anyway.

Finally, the wave function of the Universe, an idea pioneered by Stephen Hawking and James Hartle, could determine the privileged initial conditions for the Universe or its "cosmological code". How does their idea work? Imagine that at some moment of time, the Universe has a finite volume and qualitatively looks like the surface of a four-dimensional ball *i.e.* the so-called three-dimensional sphere. Such a shape is analogous to the two-dimensional surface of Earth but includes one additional dimension. Our task is to calculate the probabilities of various wiggles and various values of fields defined on the sphere: we want to calculate the probabilities that the details of the Universe look in one way or another.

Hartle and Hawking propose a possible answer. They use Feynman's approach to quantum mechanics. If you remember, Feynman has figured out that probabilities of various events in quantum mechanics can be obtained as a sum of a certain quantity over all possible histories that respect the correct initial conditions and one of the interesting final conditions whose probability we want to compute. What kind of histories do Hartle and Hawking choose if they don't know what the initial conditions should be?

They sum over all possible ways how the interior of the Earth, if we use the metaphor, can be filled with fields and particles. The radial direction *i.e.* the distance from the center of Earth plays the role of time. But much like in our

approach, it is actually an *imaginary time* – one that is indistinguishable from space. Moreover, the center of Earth plays no privileged role in this calculation. By allowing the time to be imaginary at the very beginning, we avoid the initial singularity. Indeed, one can show that all points inside the Earth are pretty much equally important and nothing special occurs near the center. Hartle and Hawking can prove that the wave function that determines what happens on the surface satisfies the right equation derived from the general theory of relativity, the so-called Wheeler-deWitt equation. They can also approximately calculate how the Universe looks like but so far it is not quite clear whether one can obtain a more accurate result that agrees with some observed and so far unexplained features of the Cosmos.

In our model of the young Universe, the imaginary time plays an analogous role. As a matter of fact, we have constantly repeated the same question: “*what happens before the Big Bang, on the zero point marking the origine of everything*”? As we have seen in our books, our idea is that at zero, there is no real time. Instead, we find this new form of time, called imaginary time. We suggest that at zero scale, the observables (in other words the world where we live whose evolution is parametrized by real time) must be replaced by the underlying “cosmological information ” whose evolution is not real but parametrized by imaginary time). This is because there exists a deep correspondence -a symmetry of duality- between physical theory (real time / energy) and topological field theory (imaginary time / information).

If this article will help, even a little bit, in this direction, it may then fulfill its task.

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## PRE VELIKOG PRASKA: KOSMOLOŠKI KÔD

### S a ž e t a k

Da li je uopšte bilo Velikog praska, kao što većina fizičara, čini se, veruje danas? Da li postoji „nulto vreme“ na „samom početku“? Odakle potiče univerzum? Da li je postojalo „nešto“ *pre* Velikog praska? Da li ova pitanja imaju smisla? Da li je fizika spremna da odgovori na njih, čak iako samo privremeno? Pošto Veliki prasak *jeste* postojao, to je „jedinственost“. Ovaj jedinstveni događaj potvrđen je i zasniva se na tri glavna dokaza koji su opšteprihvaćeni danas. On podstiče postojanje veoma misterioznog stanja realnosti „pre Velikog praska“ koje matematičari nazivaju „inicijalna jedinstvenost“. Ova jedinstvenost može se shvatiti kao „krajnji izvor“ porekla našeg kosmosa.

Rad se bavi pitanjem: *Šta se dogodilo pre Velikog praska, u nultoj tački, stvarajući poreklo svega?* Ideja autora je da u nuli ne postoji realno vreme. Umesto toga, pronalazimo ovaj novi oblik vremena koji se naziva imaginarno vreme. Autori ističu da na nuli opazivi svet (drugim rečima svet u kome živimo i čija se evolucija meri parametrima realnog vremena) mora biti zamenjen „kosmološkom informacijom“ u osnovi (čija evolucija nije realna, već se meri parametrima imaginarnog vremena). To je zato što postoji veliko poklapanje – simetrija dualnosti – između fizičke teorije (realno vreme / energija) i topološke teorije polja (imaginarno vreme / informacija).

**Ključne reči:** Veliki prasak, vreme, prostor, svet, kosmološki kôd



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