



YOUTH PERSPECTIVES IN THE UNITED EUROPE

**Edited by
Dr. Mihajlo Vučić
Dr. Marko Novaković**

Belgrade, 2017

YOUTH PERSPECTIVES IN THE UNITED EUROPE

Publisher

Institute of International Politics and Economics

For the Publisher

Professor Branislav Đorđević,
Director

Editors in Chief

Dr. Mihajlo Vučić
Dr. Marko Novaković

Reviewing Board

Dr Ezio Benedetti, University of Trieste
Dr. Bojan Milisavljević, Faculty of Law, University of Belgrade
Dr. Bojana Čučković, Faculty of Law, University of Belgrade
Dr. Srđan Korać, Research Fellow, IIEP
Dr. Stevan Rapačić, IIEP

Layout

Sanja Balović

ISBN 978-86-7067-241-3

Proceedings was financially supported by the Ministry of Education, Science and Tehnological Development of the Republic of Serbia within the project: "Serbia in contemporary international relations: Strategic development orientations and consolidation of Serbia's position in international integration processes – foreign policy, international economic, legal and security aspects", number 179029, for the period 2011-2017.

Proceedings of Round Table Conference

**YOUTH PERSPECTIVES
IN THE UNITED EUROPE**

Belgrade, May 9, 2016

Table of Contents

The Average and Vulnerable Consumer in EU Consumer Law <i>Mateja Đurović</i>	11
Europe's Path Towards Independence – Groundwork On A European Standard for The Democratic Legitimization of Independent Institutions <i>Quirin Weinzierl</i>	23
The European Court on Human Rights and The Constitutional Court of The Russian Federation: Relations Revisited <i>Dmitriy Galushko</i>	59
Perceptions of the EU and European Identity in Montenegro <i>Vuk Uskoković</i>	81
The “Red-White-Red Card” Dream: Perspectives of Young Migrants from The Balkans in The Austrian Labor Market <i>Mirjana Lukić</i>	121
European Civilisation of Identities and Right to Citizenship <i>Mirko Đuković</i>	145

**The Adequate Constitutional Framework
as The Fundament of Youth Perspectives-United Europe
and Multiculturalism**

Uroš Bajović 162

**Youth Participation in Solving Environmental Issues
and Creating Environmental Policy in Europe**

Darjana Macanović 188

Misuse of Social Networks for Radicalization of Youth

Nikola Paunović 213

**The International Role of The European Union,
As Reflected By The Eu Global Strategy**

Bogdan Mureşan 244

**Right-Wing Extremism Among
The Youth of Former Warsaw Pact States**

*Vladimir Lužnjanin,
Miloš P. Dimić,
Nemanja Vojinović* 265

Foreword

This collection of articles is a result of a conference for young researchers held on Europe's day, May 9th in Belgrade. The conference was part of a project of the Institute of International Politics and Economics and Hanns Seidel foundation. It gathered together 15 panelists, all of them were young researchers under 35 years of age, from different countries and of various educational profiles. Topics were divided into three thematic sections, „Protection of human rights and youth in the united European space“, „Youth and European identity“, and „Economic and social challenges for youth in Europe“. All the presentations were interactive, with the discussion which included not only the panelists, but members of audience as well, which contained primarily students from various universities in the Republic of Serbia. Although the concept of the conference was set very widely and consisted of various research backgrounds, the conclusions were put forward which are reflected in the following articles. A certain dose of scepticism was put forward in view of the unity in today's Europe towards the solution of problems which challenge young people. European identity, as it has been understood since the creation of the Union, is no longer a pulling force for the deepening of the integration. Youth human rights are protected on paper in many aspects, but practice does not correspond to norm, although the efforts exist to overcome this obstacle. Economic and social problems are numerous – unemployment, gender discrimination related to salary – all these lead to strong grounds for the rise of extremist ideology which in turn additionally destroys European identity (the example is a large percent of youth in the lines of „foreign fighters“). However, all participants concurred that the only way to overcome these problems lies in better education, independent and effective sources of information and the mobility of youth in the common European space. These three factors would enable more active approach of youth in the fight for the realisation of their guaranteed, but endangered rights and the

overcoming of economic and social problems which trammel them in their material and spiritual development. Furthermore, sharing of experiences and contacts leads to the possibility of formation of joint attitudes over these problems, therefore to the opening of the road for strenghtening of common identity in the future.

Editors:

Dr. Mihajlo Vučić

Dr. Marko Novaković

The Average and Vulnerable Consumer in EU Consumer Law

Mateja Đurović¹

assistant professor, City University of Hongkong

Introduction

EU Consumer law makes a distinction between two definitions of consumers. The first definition explains what kind of person is considered a subject for whom protection is provided under the legal regime established by EU Consumer Law, i.e. the scope of application of EU Consumer Law *rationae personae*. The second definition clarifies what a consumer is, as a consumer that EU Consumer Law has been designed to protect.

This distinction is, in particular, notable in case of Directive 2005/29/EC on unfair commercial practices (“Directive”) as the most important piece of the European legislation on consumer protection which has completely prohibited unfair business practices of traders which may affect consumer’s economic interest. The first definition defines the scope of application of the Directive, whereas the second one is to be used for the assessment of a commercial practice’s fairness under the provisions of the Directive.

Consumer as the subject of protection

The first definition describes consumer as a natural person who *is acting outside his trade, business, craft or profession*.¹ The Directive

¹ Art 2(a) of the Directive; the same definition is adopted in two recent legislative pieces dealing with consumer law, see: Art 2(1) of the new Directive 2011/83/EU on consumer rights and by Art 2(f) of the Proposal of The Common European Sales Law, Commission, ‘Proposal of The Optional Instrument on a Common European Sales Law (“The Optional Instrument”)’ COM(2011) 635 final

stipulates that a consumer must always be a natural person, i.e. legal entities are not considered as consumers. However, EU Member States may, and sometimes do, extend consumer-dedicated legal protection to certain legal entities that are deemed weaker economically.² The European Commission (“Commission”) itself is considering to provide ‘consumer-like’ protective measures to certain legal entities, particularly to small and medium enterprises *vis-à-vis* big enterprises.³

Natural persons, however, are not necessarily consumers. The criterion for their recognition as consumers is established based on the activities of a person in each specific case. The definition of a consumer provided by the Directive does not explain who is a consumer, but rather who is *not* to be considered as a consumer. Such a definition is helpful for the interpretation of the *materiae personae* scope of application with respect to the provisions of the Directive, since its legal regime is applicable only for business practices which harm, or are likely to harm, the economic interests of consumers.

In respect to this definition, the Directive did not provide anything innovative in comparison to previously existing EU Consumer Law, but rather confirmed a definition that already existed in other pieces of consumer legislation⁴ and that was confirmed by the Court of Justice of the European Union (“ECJ” or “Court”) in its case law.⁵

² This right of Member States is explicitly recognized by Directive 2011/83/EU on consumer rights, see its Recital 13: *Member States may decide to extend the application of the rules of this Directive to legal persons or to natural persons who are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or small and medium-sized enterprises*; the Directive just points out that its scope is limited to protection of economic interests of consumers, whereas in case of other persons, the Commission is called to *carefully examine the need for Community action in the field of unfair competition beyond the remit of this Directive and, if necessary, make a legislative proposal to cover these other aspects of unfair competition*. (Recital 8 of the Directive)

³ See Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe, COM (2013) 37 final

⁴ Such a definition of consumer was adopted already in the first directive of consumer acquis aimed to protect economic interests of consumers, see Article 2 of Directive 85/577/EEC on contracts negotiated away from business premises

⁵ Joined Cases C-541/99 and C-542/99 *Cape SNC v Idealservice SRL and Idealservice MN RE SAS and Omai SRL* [2001] ECR I-9049 para 17

Consumer as a standard of expected behaviour

The focus of this paper is on the substantive meaning of the notion of consumer, and in particular, on the vulnerable consumer as a subsidiary benchmark for the assessment of fairness of commercial practices. This definition defines the substantive characteristics of a consumer as a legal standard establishing “an idealised image of how a consumer behaves”.⁶ In that aspect, the Directive defines average consumer as “a consumer who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the European Court of Justice”.⁷ This definition represents codification of the notion of an average consumer as already developed by the ECJ in a legislative text for reasons of coherency and legal certainty on the European level since it was identified that some Member States were not applying such a test but were still using their own national standards.⁸

This definition is contained in the Recitals of the Directive, though it was initially proposed as an integral part of the main text of the Directive.⁹ The Commission explained the reason for moving it to the Recitals from the main text of the Directive, it concerned the prescription of a definition would protect further the evolution of the standard of an average consumer through the jurisprudence of the ECJ.¹⁰ However, it seems more likely that the principal reason for its removal was the impossibility to make a consensus among all relevant stakeholders for the adoption of such a standard.

⁶ G Howells, ‘The scope of European Consumer Law’ (2005) 1 *European Review of Contract Law* 360, 366

⁷ Recital 18 of the Directive

⁸ G Abbamonte, ‘The Directive and its general prohibition’ in S Weatherill and U Bernitz (eds), *The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques* (Hart 2007), 25

⁹ Commission, ‘Proposal of the Directive on Unfair Commercial practices’ COM (2003) 356 article 2(b)

¹⁰ Commission, ‘Communication to the European Parliament concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending Regulation [Consumer Protection Cooperation] and directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC (the Unfair Commercial Practices Directive)’ COM (2004) 753 final, 3

Nevertheless, despite being moved to the recitals of the Directive, the Court underlined the fundamental significance of such a definition of the consumer in one of its first judgments on the Directive, in *Ving Sverige*. The case highlights the practical application of the provisions of the Directive, thus confirming its status as the principal benchmark for assessment of fairness of a commercial practice.¹¹ Namely, the Directive prohibits all unfair commercial practices of traders directed towards consumers. In order to verify whether a commercial practice is unfair, the Directive has established a complex three-step mechanism to assess a commercial practice's fairness that a national court must always follow in a strictly hierarchical order as emphasised by the ECJ.¹² The notion of an average consumer plays a key role chiefly for the second step and the three forms of small general clauses, as well as for the third step and the general fairness clause of the Directive.¹³

European average consumer as a compromised solution

The standard of average consumer is, as Weatherill describes it well, “an attempt to navigate a course between the rich diversity of actual consumer behaviour and the need for an operational benchmark”.¹⁴ The question is why the Commission opted for such a rather advanced standard of expected consumer behaviour when it had a chance to incorporate a more consumer friendly standard into the Directive than

¹¹ see Case C-122/10 *Konsumentombudsmannen (Ko) Ving Sverige AB* [2011] ECR I-03903, para 7 and para 22

¹² Joined Cases C-261/07 and C-299/07 *VTB-VAB NV v Total Belgium NV and Galatea BVBA v Sanoma Magazines Belgium NV* [2009] ECR I-02949, para 65; Case C-304/08 *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v Plus Warenhandelsgesellschaft mbH* [2010] ECR I-00217, para 53; Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag v Österreich-Zeitungsverlag GmbH* [2010] ECR I-10909, para 40.

¹³ Case C-428/11 *Purely Creative e.a. v Office of Fair Trading* [2012] ECR I-0000, para 53; Order in Case C-343/12 *Euronics Belgium CVBA v Kamera Express* [2013] ECR I-0000, para 26;

¹⁴ S Weatherill, ‘Who is the “Average Consumer”’ in S Weatherill and U Bernitz (eds), *The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques* (Hart 2007), 135

the one developed by the ECJ. This would also have been in line with the shift brought about by the Directive from a prevailingly negative to a prevailingly positive harmonisation approach in the area of unfair commercial practices.

The expected standard of behaviour developed through the ECJ case law is higher than the standard which had been previously adopted in some of the EU Member States.¹⁵ In other words, expectations related to the presumed consumer behaviour on the market were higher than those initially assumed by national consumer policies. This is not surprising since the establishment of an average consumer as the unified European standard of expected consumer behaviour was not the product of European consumer policy, but rather a result of the tendency to abolish, as much as possible, all kinds of barriers for cross-border trades among the EU Member States.¹⁶

Such a standard of an average consumer as developed by the ECJ was maintained and codified by the Directive, despite the fact that it is now a common European piece of legislation. It was envisaged to be the most powerful instrument for consumer protection. This approach was taken because the achievement of a high level of consumer protection is not the principal goal of the Directive. It indicates another main purpose of its adoption: the requirements for improving the functioning of the internal market.¹⁷ It is as important as the requirement to achieve a high level of consumer protection. The standard of an average consumer is the outcome these two conflicting goals of the Directive.

¹⁵ See, inter alia, Case C-120/78 *Rewe Zentral v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* [1979] ECR 00649; Case C-373/90 *Criminal proceedings against X (Nissan)* [1992] ECR I-00131; *Verband Sozialer Wettbewerb eV v Clinique Laboratoires SNC and Estée Lauder Cosmetics GmbH* Case C-315/92 (1994) ECR I-00317; Case C-470/93 *Verein gegen Unwesen in Handel und Gewerbe Köln eV v Mars GmbH* [1995] ECR I-01923; Case C-210/96 *Gut Springenheide GmbH and Rudolf Tusky v Oberkreisdirektor des Kreises Steinfurt - Amt für Lebensmittelüberwachung* [1998] ECR I-04657

¹⁶ S Weatherill, *EU Consumer law and Policy* (2nd edn Edward Elgar Publishing 2013), 57

¹⁷ Art 1 of the Directive; the legal basis for adoption of the Directive was not article 153 TEC (now Article 169 TFEU), but article 95 TEC (now Article 114 TFEU) whose objective is development of the Internal Market.

The objective of consumer protection urges for the adoption of a more consumer-friendly standard, according to which an average consumer is seen as “naïve and inexperienced”, an argument put forth by Collins two decades ago.¹⁸ On the contrary, the interests of internal markets advocate for the adoption of a standard that would establish as little regulatory obstacles as possible to promote free movements of goods. Therefore, the acceptance of a higher standard of an average consumer could potentially hinder cross-border trade. This is why the average consumer, under such a meaning, was eventually approved as the general standard for assessment of commercial practice’s fairness, taking into account the tradeoffs between strengthening internal markets and achieving a high level of consumer protection.¹⁹

The notion of vulnerable consumer

Besides the average consumer as the benchmark, the Directive recognises the vulnerable consumer as a subsidiary benchmark for the assessment of fairness of trader’s commercial practice. The standard of the vulnerable consumer applies in case of particular vulnerability of a consumer to a commercial practice as a consequence of particular characteristics of that consumer such as *mental or physical infirmity, age or credulity*.²⁰ Such a definition of the vulnerable consumer was criticized as being too narrow and arbitrary, thus neglecting to include some other legitimate causes of consumer’s vulnerability including education, race and ethnicity.²¹ For instance, the ECJ itself has identified a low level of education as one of the causes of vulnerability to consumers, so it is surprising that these grounds were not taken into consideration.²²

¹⁸ See H Collins, ‘Good Faith in European Contract Law’ (1994) 14 Oxford Journal of Legal Studies 229, 248

¹⁹ B Duivenvoorde, *The Consumer Benchmarks in the Unfair Commercial Practices Directive* (Springer 2015), 75.

²⁰ Art 5(3) of the Directive

²¹ J Stuyck, E Terry and T Van Dyck, ‘Confidence through fairness? The new Directive on unfair business-to-consumer on commercial practices in the internal market’ (2006) 43 Common Market Law Review 107, 122

²² Case C-328/87 *Buet v Ministere Public* [1989] ECR 1235

In case of a commercial practice which is targeted towards such a group of consumers, fairness is to be assessed on the basis of the average member of the group to which such a vulnerable consumer belongs. For example, if the potentially misled consumers are young consumers or children at early stages of the adolescence, an average child of that age group would be considered as the average consumer for the purpose of fairness assessment.

Because of their vulnerability, the initial presumption is that vulnerable consumers are especially affected by unfair commercial practices. This is why particular care needs to be taken in order to protect them from traders' unfair practices. In accordance with this approach, a commercial practice could be unfair if assessed on the basis of a vulnerable consumer even if it is considered fair on the basis of the two previous forms of the average consumer.

The concept of vulnerable consumer is the outcome of the European Union's policy to pay special attention to those which are particularly weak.²³ Moreover, this standard was established as a category aimed to remedy relatively high requirements for consumer protection established by the average consumer that was criticised as being particularly harmful for vulnerable group of consumers. This is because in case of some Member States, such as Germany or Scandinavian countries, the adoption of the average consumer as a central benchmark led to the diminishment of the level of consumer protection since their central benchmark before the adoption of the Directive was much more similar to the vulnerable than to the average consumer.²⁴ Hence, the vulnerable consumer attempt is to represent a corrector applicable in case of particularly weak consumers.

The concept of vulnerable consumer is in line with the case law of the ECJ that developed the general standard of the average consumer. The vulnerable consumer is not vulnerable because they behave carelessly and ignores the disclosed information, but rather it is due to characteristics beyond his control, such as age and state of mind, which inhibit them

²³ S Weatherill, *EU Consumer law and Policy* (2nd edn Edward Elgar Publishing 2013), 243-244

²⁴ H Schulte-Nolke, C Twigg-Flesner and M Ebers (eds), *EC Consumer Law Compendium* (Sellier 2007), 453-465

from receiving and profiting from disclosed information. For instance, it cannot be expected that the imposition of the duty of information to be applied in the same manner to all consumers will be of the same benefit to a thirty-year old person in comparison to a ninety-year old consumer.

The examples of vulnerable consumers

As an exclusive concrete example of vulnerable consumers, the Directive identifies children.²⁵ With such an approach, the Directive became the second instrument of European consumer law to provide a particular care about children. The first instrument where children, as well as other vulnerable categories of consumers, were granted additional levels of protection from advertising was Directive 89/552/EEC on television without frontiers²⁶ which was repealed by Directive 2010/13/EC on audiovisual media services²⁷. The vulnerability of children to advertising practices was confirmed in *De Agostini*.²⁸

In EU Consumer Law, the first document where children, i.e. minors, were attributed particular levels of protection was Directive 97/7/EC on distance selling where traders imposed obligation to take into consideration, while fulfilling their pre-contractual information duties from the directive, the principles established by the national laws of Member States protecting those who are unable to give their consent, where minors are mentioned as an example.²⁹ The Commission in its Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices also identifies teenagers as a group of

²⁵ Recital 18 of the Directive

²⁶ Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (1989) OJ L298/23

²⁷ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version) (2010) OJ L 95/1

²⁸ Joined Cases C-34/95, C-35/96 and C-36/95 *Konsumentombudsmannen v De Agostini (Svenska) Förlag AB and TV-Shop i Sverige AB* [1997] ECR I-3843

²⁹ Article 4(2) of Directive 97/7/EC on distance selling

vulnerable consumers for the same reason as young consumers: “their lack of attention or reflection due to their immaturity”.³⁰

Vulnerable consumer in action

The conditions posed by the Directive for the application of the vulnerable consumer standard seem to be too strict, which begs the questions of its effectiveness. For it to be applicable, a particular practice has, first, to be likely to materially distort economic behaviour only of identifiable the group of vulnerable consumers, and, second, the distortion it generates has to be predictable in a manner which the trader could have reasonably be expected to foresee.³¹ The requirements of exclusiveness limits particularly the application of this standard. It means that a practice which endangers both the economic behaviour of the regular average consumers and vulnerable consumers will not be able to be assessed on the basis of a vulnerable consumer. This would be the case in spite of the fact that it materially distorts economic behaviour of vulnerable consumer so that it makes a commercial transaction he would have not otherwise made, if the regular average consumer is not affected by a particular practice.

In practice it is very difficult to prove that certain commercial practices are directed towards vulnerable consumers since they reach all types of consumers, and not only the vulnerable who are their main targets.³² Consequently, such an approach may significantly narrow down potential application of the standard of vulnerable consumer. The requirement ‘reasonably expected to foresee’ gives an objective perspective to the interpretation of the vulnerable consumer.³³

³⁰ Commission ‘Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices’ SEC (2009) 1666, 29-30

³¹ Commission ‘Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices’ SEC (2009) 1666

³² G Abbamonte, ‘The UCPD and its general prohibition’ in S Weatherill and U Bernitz (eds), *The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques* (Hart 2007), 26

³³ HW Micklitz, ‘The General Clause on Unfair Practices’ in G Howells, HW Micklitz and T Wilhelmsson, *European Fair Trading Law. The Unfair Commercial Practices Directive* (Ashgate 2006), 116

The Court has not yet provided the interpretation of the characteristics of vulnerable consumers, particularly how widely they are supposed to be understood. Importantly, all the terms, and particularly *credulity*, can be very widely interpreted to include all imaginable vulnerable consumers. Undoubtedly, vulnerability caused by the lack of education or financial status can be easily subsumed under the cause of vulnerability due to credulity. In general, for their credulity vulnerable consumers are those “who may more readily believe certain claims”.³⁴ However, the lack of a clear European meaning has led to the consequence that the national courts of diverse Member States interpret and apply the standard of the average consumer in an inconsistent and incoherent manner.³⁵

One crucially important task for the competent authority in charge of assessing the fairness of a commercial practice is to decide which of the three types of consumer yardsticks it will use as a basis to perform its task. The potential problem for the national court is the question of how to decide whether a commercial practice is directed towards a group of vulnerable consumers or to the general public, who actually represents vulnerable consumers, and what level of influence a practice should have on a group, i.e. whether it is only directed at vulnerable consumers.

Vulnerable consumer in services of general economic interest

The definition of the vulnerable consumer derived from the Directive is not to be confused with the notion of vulnerable consumer for the purpose of services of general economic interest (“the SGEI”). The Commission defined the SGEI as services “which the public authorities class as being of general interest and subject to specific public service obligations”.³⁶ The access to the SGEI is a fundamental right of all consumers.³⁷

³⁴ Commission, ‘Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices of 3 December 2009’ SEC (2009) 1666, 30

³⁵ B Duivenvoorde, *The Consumer Benchmarks in the Unfair Commercial Practices Directive* (Springer 2015)

³⁶ Commission, ‘Communication on “Services of general interest in Europe” COM (2000) 580

³⁷ Article 36 of the Charter of Fundamental Rights of the European Union

These two notions have, to a certain extent, different meanings and purposes. Under the SGEI, vulnerability is particularly addressed to the economic aspects of consumers, their financial situation, due to which they need special rights related to the admission to the services of general economic interests and protection from disconnection. This is the case, for instance, with limitations on the rights of providers of heating to cut the heating system during winter from a consumer who receives a very low monthly income.

On the contrary, according to the Directive, vulnerability is caused predominantly by non-economic factors. Vulnerable consumers under the SGEI definition are characterized as consumers who are particularly vulnerable due to their hard economic situation or some other characteristic and thus enjoy an additional level of protection.³⁸ For instance, vulnerable consumers are those consumers with extremely low personal income or consumers who live in remote areas of a country. Of course, this does not mean that these two categories will not often coincide in reality.

A comparative example of understanding of average consumer

A comparative example from Canada sheds a different light on the standard of the average consumer. Canada, a country having comparable economic power and traditions of consumer protection similar to the European Union, also applies the standard of an average consumer to assess the fairness of a trader's commercial practice. In a relatively recent judgement, in the case *Richard v. Time Inc.*, the Supreme Court of Canada clarified the meaning of an average consumer.³⁹

In this case, the consumer received an advertisement in which it was falsely claimed that the consumer has won a prize, while the true intention of the trader was to make the consumer subscribe to a magazine under the guise of retrieving his prize. In its judgment, the Supreme Court of Canada has identified that the assessment of fairness of the commercial

³⁸ M. Bartl, 'The Affordability of Energy: How Much Protection for the Vulnerable Consumers?' (2010) 33 *Journal of Consumer Policy* 225

³⁹ *Richard v. Time Inc.*, 2012 SCC 8

practice should be performed on the basis of “the average consumer, who is credulous and inexperienced and takes no more than ordinary care to observe that which is staring him or her in the face upon first entering into contact with an entire advertisement”.⁴⁰ By this judgment, the Supreme Court has overruled the decision of the lower Court of Appeal which had defined the benchmark of the average consumer as possessing “an average level of intelligence, scepticism and curiosity”.⁴¹ It should be noted that the overruled standard of the lower court, the Court of Appeal, is much closer to the European understanding of the average consumer. However, the Supreme Court opted for a more pro-consumer definition, which is the same as the one that applied in case of the national laws in Germany or Scandinavian countries before the adoption of the Directive.⁴²

Conclusive remarks

The average consumer represents a universal European standard of expected behaviour by consumer on the market. Initially developed through the case law of the ECJ, the average consumer was for the first time codified in EU consumer law through the provisions of the Directive. Besides a generally applicable standard of the average consumer, the Directive has also introduced a standard of the vulnerable consumer, as a member of a group of particularly vulnerable consumers due to some of their characteristics and in particular due to their mental or physical infirmity, age or credulity. The standard of the vulnerable consumer is used as a subsidiary standard in case a commercial practice is targeted to a particular group of vulnerable consumers. However, it was possible to see that the case law of the ECJ shows a rather restrictive and exceptional approach towards the use of the vulnerable consumer standard.

⁴⁰ Ibid.

⁴¹ *Time inc. c. Richard*, 2009 QCCA 2378

⁴² U Bernitz, ‘Scope, Ambitions and Relation to Unfair Competition Law’ in S Weatherill and U Bernitz (eds), *The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques* (Hart 2007), 37

Europe's path towards independence – Groundwork on a European Standard for the democratic Legitimization of Independent Institutions

Quirin Weinzierl

assistant professor, University Ludwig Maximilian, Munich

Abstract: The European Union by virtue of its secondary law establishes a vast amount of independent institutions – both, on the level of the EU (so called decentralized regulatory agencies) and on the level of the Member States (so called national regulatory authorities, NRAs). These are vested with ever increasing executive powers, e.g. to prohibit short selling or to impose penalties on data processors. The ECJ however until today has failed to address this development properly with respect to the principle of democracy as enshrined in articles 2, 10 TEU. To the contrary, the Court actively expends the independence demanded towards “full independence” and has displayed a distrust in government and politics that runs counter to the democratic traditions of the Union’s Member States and tramples all over the aim of making the Union more democratic. The essay lays out on what elementary considerations the Court has to base its understanding of democratic legitimization and why doing so is utterly important. It emphasizes the specific contexts of independent institutions at the level of the EU and the Member States and identifies core considerations serving as a groundwork towards the establishment of democratic values we all should fight for in our own interest.

Key words: Independent institutions, European agencies, national regulatory authorities, principle of democracy, democratic legitimization, article 2 TEU, article 10 TEU.

Europe's questionable path towards independence

When thinking of paths towards independence what comes to one's mind are the ideas of self-determination, the enactment of the will of the people and the establishment of true democracy. When becoming independent a people who before was governed by a power that it did not

vote for and that it could not influence now decides for itself. The sovereign powers are then democratically legitimized.

Decision-making by independent institutions may lead to the opposite direction. The decisions are then taken by institutions that a people has not directly voted for and that are not directly controlled by the ones the people voted for, the Parliament or the Government.

Europe, i.e. the European Union is finding itself on the latter of the two paths towards independence. Besides the institutions that are set up as independent bodies within the treaties itself (e.g. the European Central Bank, ECB and the European Court of Auditors, ECA) the European legislator has enacted an increasing number of (secondary) laws establishing new independent institutions. Such institutions are established on the level of the EU and their establishment is demanded by the EU from the Member States. In both cases the level of powers conferred upon these institutions and their level of independence is increasing (C.).

From a legal perspective this development raises significant concerns with respect to the principle of democracy. Especially since it was enshrined into EU's primary law by the Lisbon treaty in 2012 specific attention has to be paid not only to the democratic legitimization of the EU itself but to the way the EU exercises its powers. The ECJ however fails to take this into consideration. Most authors addressing the issue look upon it from a rather national positions. I however intend to lay down why we must examine this questions from a primarily European perspective and which basic considerations have to be taken into consideration when doing so (D.). The paper does and cannot answer the question what exact boundaries the principle of democracy puts on independent institutions. This needs further examination.

However first, I briefly turn to what independence means in the present context (B.).

What is independence?

The concept of independence is not as clear as it seems. Influence on decision making bodies precluding their independence can take place on many levels by a plenitude of persons and institutions. In general, there can be influence from the public and the private sector (as well as from

institutions that form a mixture of the two). The influence they take can be taken on the level of a single decision making process in forms ranging from legally binding instructions to mere lobbying. It can also be taken on a general level by controlling the institutions finances, electing its members and setting its rules of procedure.

The other side of the medal thus is that there is not one “independence”, but independence in the context regulatory und supervisory bodies – so called “independent institutions” – can be defined in very different ways.

First, one can establish from whom an institution is independent. In this respect functional/relative and full/absolute independence may be distinguish. *Functional* would mean independence from something/someone, here: the ones supervised. It basically gives effect to the idea not to set a thief to catch a thief or in other words to let the fox guard the hen house. Consequently, there can be the need for independence from private and/or public sector, depending on who is being supervised or regulated. *Full/complete* independence to the contrary does not have a subject who from independence is demanded. Political power fully independent of any other source of power idealistically merely exists in form of the absolutistic monarch – it is not possible within a democratic system, as at least power has to refer to the people.¹ In the context of independent institutions it means independence from private and public entities at the same time – irrespective of who is being supervised/regulated.

Second, the level of independence from another entity can be measured. The Advocate General – with a view to national regulatory authorities (NRAs) – establishes certain criteria that allow to measure the level of independence from a certain subject. In his view independence is described by the aspects of “institutional”, functional”, and “financial” independence as well as the freedom from pressure or interference.² When applying these criteria to NRAs’ independence however, the AG addresses

¹ See Kai von Lewinski, “»Völlige Unabhängigkeit« von Aufsichts- und Regulierungsbehörden - Umsetzungsmöglichkeiten für ministerialfreie Eingriffsverwaltung im deutschen Verwaltungsrecht”, Deutsches Verwaltungsblatt, March 2013, pp. 342-343.

² Advocate General Campos Sánchez-Bordona, Opinion of 28 April 2016, C-240/15, para. 30.

primarily independence from the government. He states that “the independence of NRAs basically entails the following elements:

Institutional independence, which means that NRAs are established as entities which are separate from ministries and other public bodies.

Functional independence, that is, autonomy to carry out their tasks without interference by other authorities.

The independence of their members and staff from pressure or interference by other authorities.

Financial independence, which means the availability of financial and material resources so that they can perform their activities independently”³.

It has to be noticed, that the Advocate General’s use of the topic ‘functional’ is different from functional independence in the sense of relative independence. One aspect the Advocate General does not address is personal independence, i.e. the question who is in charge of appointing officials of an NRA.

Manly the same criteria used by the Advocate General in order to define and measure independence are used *i.a.* by the German Federal Constitutional Court (FCC) in order to determine the democratic legitimization of governmental acts.⁴ Independence from the government and democratic legitimization are two sides of the same medal. The less influence the Government or the Parliament and thus a people has on the decisions of an institution, the more independent and the less democratically legitimized they are.

Areas of independence demanded by secondary EU law

The principle of independence is well known in the legal history of the EU and its predecessors, the ECSC, the EEC and the EC. Already article 9(5) ECSC treaty established that the “members of the High Authority [predecessor of the EU-Commission] shall exercise their functions in complete independence”. This idea remained unchanged and is today

³ Ibid.

⁴ German FCC, BVerfGE 93, 37 (66 f.): “institutionellen, funktionellen, sachlich-inhaltlichen und der personellen Legitimation“ (original in German).

enshrined in article 17(3) subpara. 3 sentence 1 TEU: “In carrying out its responsibilities, the Commission shall be completely independent.”

However, the idea of and demand for independence did not stop at the level of European primary law, i.e. the treaties. The EC and EU expanded the concept of independence to bodies that were established by or had to be established pursuant to secondary law, i.e. regulations and directives (today: article 288(2), (3) TFEU).

Independent bodies are set up by secondary law in two different context: First, the EC and EU establish independent bodies by regulations on the European level itself (I.). Second, by enacting directives or regulations, the EC and EU demand from the Member States the establishment of independent authorities within their governmental system (II.).

*Independent institutions on the European level,
i.a. agencies and other independent bodies*

At the European level the EC and EU establish a hard to overlook amount and variety of independent bodies. They encompass so called agencies, comitology committees, expert groups etc. Precise definitions that allow for a clear demarcation have not been found until today. However, the ones that are of highest interest to the present issue are the ones that possess the highest degree of independence and the most intrusive executive powers, be it decision making or standard setting. This are the so called decentralized (or regulatory) agencies. Not all, but some of them are vested with wide independence and decision making powers (1.). Others, such as executive agencies and so forth have less independence and/or executive powers (2.) and are thus of less importance when it comes to their democratic legitimization.

Decentralized (regulatory) agencies

European decentralized (or regulatory) agencies, sometimes called “European Satellites”⁵, are – at least in the view of the EU and the

⁵ Michaela Wittinger, “”Europäische Satelliten”: Anmerkungen zum Europäischen Agentur(un)wesen und zur Vereinbarkeit Europäischer Agenturen mit dem Gemeinschaftsrecht”, *Europarecht*, November 2008, pp. 609–626.

Commission – a story of success. Their development began in the 1970ies and since the 1990ies led to an “agencification”⁶ of the EC/EU. Decentralized agencies in a broad sense “perform technical and scientific tasks that help the EU institutions implement policies and take decisions”⁷.

Their development of decentralized agencies can be described in 4 generations.⁸ The first generation consisting of 2 agencies (Cedefop and EUROFUND) established in 1975 had the task of “gathering, analysing and forwarding [...] information”⁹. It was not established as an independent body and did not have any decision making power. Beginning with the agencies of the second generation the EC conferred upon (some) agencies the power to adopt individual decisions which are legally binding on third parties (see e.g. CPVO¹⁰, OHIM now EUIPO¹¹).¹² The agencies in fact had been vested with a certain degree of

⁶ Damien Geradin, Nicolas Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, Jean Monnet Working Paper 01/04, New York, NY, 2004, p. 37.

⁷ https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en.

⁸ See Damien Geradin, Nicolas Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, op. cit., pp. 37-44; Thirid Hustedt, Arndt Wonka, Michael Blauburger, Annette E. Töller, Renate Reiter, *Verwaltungsstrukturen in der Europäischen Union: Kommission, Komitologie, Agenturen und Netzwerke*, Springer VS, Wiesbaden, 2014, pp. 147-150; see for a classification of agencies: Communication from the Commission to the European Parliament and the Council, European agencies – The way forward, COM(2008) 135 final, p. 7.

⁹ Communication from the Commission to the European Parliament and the Council, European agencies – The way forward, op. cit., p. 7.

¹⁰ Regulation (EC) No 2100/94 [Community plant variety rights].

¹¹ Regulation (EC) No 40/94 [Community trade mark], now substituted by Regulation (EC) No 207/2009 as amended by Regulation (EC) 2015/2424.

¹² Beside of these there were agencies that merely (1) had the task to provide direct assistance to the Commission and, where necessary, to the Member States, in the form of technical or scientific advice and/or inspection reports; (2) are in charge of operational activities; (3) are responsible for gathering, analysing and forwarding objective, reliable and easy-to-understand information / networking; and (4) provide services to other agencies and institutions; see Communication from the Commission to the European Parliament and the Council, European agencies – The way forward, op. cit., p. 7.

independence.¹³ When taking its decisions e.g. on the refusal or grant of a Community plant variety right, the acting Committee “shall not be bound by any instructions” (*Weisungsfreiheit*).¹⁴ However the Commission is allowed for a control of legality (*Rechtsaufsicht*), but not of the discretion used by the agency (*Fachaufsicht*).¹⁵ Within the third generation decision making agencies (like ECHA¹⁶, and EASA¹⁷) are “endowed with greater regulatory powers than earlier ones”¹⁸ and vested with even more independence. The control of legality has been eliminated from their founding Regulations.¹⁹ The fourth generation of agencies (ACER and the three financial regulatory agencies [so called “supervisory authorities”] EBA²⁰, EIOPS²¹, and ESMA²²) are *expressis verbis* set up independently and granted wide executive powers. No control of legality

¹³ See Recital 11, 17 Regulation (EC) No 40/94 [Community trade mark], now substituted by Regulation (EC) No 207/2009 as amended by Regulation (EC) 2015/2424.

¹⁴ See article 35(2)3 Regulation (EC) No 2100/94 [Community plant variety rights].

¹⁵ See article 44(1), (2) Regulation (EC) No 2100/94 [Community plant variety rights]; article 118 I, 2 Recital 11, 17 Regulation (EC) No 40/94 [Community trade mark], now substituted by Regulation (EC) No 207/2009 as amended by Regulation (EC) 2015/2424; see Thomas Groß, *Die Legitimation der polyzentralen EU-Verwaltung*, Mohr Siebeck, Tübingen, 2015, pp. 138-139.

¹⁶ Regulation (EC) No 1907/2006 [Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)].

¹⁷ Regulation (EC) No 1592/2002 [common rules in the field of civil aviation], now repealed by Regulation (EC) No 216/2008.

¹⁸ Advocate General Jääskinen, Opinion, 12 September 2013, C-270/12, ECLI:EU:C:2013:562, para. 24 - UK/European Parliament and Council of the European Union.

¹⁹ See recitals 15, 95, 98 and articles 79(1), 85(7), 88 Regulation (EC) No 1907/2006 [Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)]; recitals 11, 14, 16 and articles 2(3)c, 29(1) Regulation (EC) No 1592/2002 [common rules in the field of civil aviation], now repealed by Regulation (EC) No 216/2008; in line with this: European Commission, Communication from the Commission - The operating framework for the European Regulatory Agencies, COM/2002/0718 final, 4.3. Controls, p. 15.

²⁰ Regulation (EU) No 1093/2010 [European Banking Authority].

²¹ Regulation (EU) No 1094/2010 [European Insurance and Occupational Pensions Authority].

²² Regulation (EU) No 1095/2010 [European Securities and Markets Authority].

of discretion is foreseen.²³ They may not only enact individual decisions but also (to some extent) general rules.²⁴

For example, the newly established European Securities and Markets Authority (ESMA) shall act independently.²⁵ ESMA is granted wide executive powers. First, it may adopt individual decisions directed at third parties like financial institutions. Inter alia it has the power to “temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union”²⁶. Its power to intervention in exceptional circumstances, *i.a.* to prohibit short selling,²⁷ provoked a legal dispute before the ECJ in which it held these powers to be lawful.²⁸ Second, its power to adopt decisions entails to some extent the ability to adopt (factually) general rules. E.g. the prohibition of short selling is not addressed to a single or defined multitude group of banks but to the European financial market as a whole. It is thus rather abstract-general, than specific-individual.²⁹

²³ The only exception thereto is the right of the Council to overturn a decisions that “impinges in any way on the fiscal responsibilities of Member States”, common article 38 Regulation (EU) No 1093/2010 [European Banking Authority], Regulation (EU) No 1094/2010 [European Insurance and Occupational Pensions Authority], Regulation (EU) No 1095/2010 [European Securities and Markets Authority].

²⁴ Thomas Groß, *Die Legitimation der polyzentralen EU-Verwaltung*, Mohr Siebeck, Tübingen, 2015, pp. 66-67.

²⁵ Article 1(5), fourth paragraph Regulation (EU) No 1095/2010 [European Securities and Markets Authority].

²⁶ Article 1(5), second paragraph Regulation (EU) No 1095/2010 [European Securities and Markets Authority].

²⁷ Article 28 Regulation (EU) No 236/2012 [Short Selling and Credit Default Swaps].

²⁸ ECJ (Grand Chamber), Judgment of 22 January 2014, C-270/12, ECLI:EU:C:2014:18 – UK v. European Parliament and Council of the European Union.

²⁹ *Ibid.*, para. 33: UK submits that measures on basis of article 28 Regulation (EU) No 236/2012 have “significant long-term consequences”.

Other independent bodies

Others, such as the executive agencies and comitology committees³⁰ have less independence and less decision making power.

Executive Agencies, which are regulated in Regulation (EC) Nr 58/2003, are set up for a limited period of time by the European Commission to manage specific tasks related to EU programs (see article 3(1) subpara. 1 Regulation (EC) No 58/2003).³¹ The Executive Agencies are not independent. They act under the Commissions supervision (article 20(1)1) which may review the legality of any of its acts which injures a third party (article 22(1) subpara 1).

Comitologie Committees³² have the task to provide expert input from the Member States to the Commission with respect to the latter's task of implementing secondary EU-law.³³ Their work is regulated by a Regulation³⁴. In 2014 there were 287 such committees.³⁵ They have a wide-ranging influence on tertiary law-making, however they do not themselves enact the law or take individual decisions. They are composed of representatives of the Member States and the Commission (the latter ones without a vote). They work independently, however the Commission is not bound by their proposals.³⁶

³⁰ See Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

³¹ E.g. the Consumers, Health and Food Executive Agency (CHAFEA) set up by the European Commission in 2006 to run *i.a.* the Public Health Programme. CHAFEA started work on 1 January 2014. Its mandate extends until 2024. It has about 50 staff members based in Luxembourg.

³² The treaty of Lisbon came into force the Comitologie system has been reconfigured with respect to articles 290 and 291 TFEU.

³³ Thomas Groß, *Die Legitimation der polyzentralen EU-Verwaltung*, Mohr Siebeck, Tübingen, 2015, p. 36.

³⁴ Regulation (EU) No 182/2011.

³⁵ Report from the Commission on the working of Committees during 2014, COM(2015) 418 final, p. 7.

³⁶ However, the EGC held, that in case the Commission wants to "disregard the opinion, it must provide specific reasons for its findings [based on] a scientific level at least commensurate with that of the opinion in question", EGC, Judgment of 11 September

Executive agencies and comitology committees will not be discussed in this paper. However the arguments presented may be applied to them in turn. They do have some degree of decision making power and independence and are thus in a need for democratic legitimization as well.

*Independent intuitions on the Member States level
based on EU-law, i.e. supervisory and regulatory institutions*

Beginning in the mid-1990ies EU-Directives demanded from the Member States the establishment of independent NRAs. This process was in line with the European Community (EC) to start to regulate network industries such as telecommunications and energy services.³⁷ The EC intended to liberate and deregulate the respective markets in order to achieve a Single Market within the EC. Along with the enactment of material rules for the respective industries the EC also tended to foresee formal basic requirements for the regulatory authorities. Besides of the establishment of the regulatory authorities themselves a core element of the regulation was the independence of these bodies. This principle nowadays is “deeply rooted in secondary EU law”³⁸.

When analyzing the development one can detect a two step-process with respect to the evolvement of the independence demanded for the regulatory agencies. However, this steps are not perfectly clear cut but do overlap in time.

General development

First step – relative/functional independence

In a first step at the beginning of the 1990ies the EC began to demand the establishment of (real) supervisory/regulatory authorities from the

2002, T-13/99, ECLI:EU:T:2002:209, para. 199 – Pfizer Animal Health SA v. Council of the European Union.

³⁷ Damien Geradin, Nicolas Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, op. cit., p. 9.

³⁸ Advocate General Campos Sánchez-Bordona, Opinion of 28 April 2016, C-240/15, para. 26.

³⁹ Damien Geradin, Nicolas Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, op. cit., p. 22.

Member States.³⁹ The bodies were granted wide executive powers, including decision making powers. Their powers include adoption of rules or guidelines, regulation, supervision, inspection, control and possibly the power to impose penalties. Obviously, not all NRAs have the same level of powers. The first of this kind was a independent body in the field of telecommunications operators.⁴⁰

The regulatory authorities had to be independent primarily from the private persons they supervised (“legally distinct from and functionally independent of all organisations providing”⁴¹ the regulated service⁴²). As some Regulations state expressly the authorities could be integrated into the governmental structure of the Member States (“which can be the Ministry responsible”⁴³). This must be read as encompassing *i.a.* the Minister’s authority to give directives. Only in case the Member State is itself active in the field regulated it had to “ensure effective structural separation of the regulatory function from activities associated with”⁴⁴ the service in question.

The idea behind this new approach was to guaranty for decision-making neutrality in the light of the fact that many states still had ownership shares in national infrastructure providers (such as postal services, ...).⁴⁵ This meant, that the supervisory authority had to be independent from the state (or at least the state’s body that administered ownership functions) only in the case that the state was still a stakeholder within the regulated (here: electricity) industry. The Directives themselves

⁴⁰ Article 7 Commission Directive 90/388/EEC [competition in the markets for telecommunications services].

⁴¹ Article 3(2)1 Directive 2002/21/EC [Electronic Communications Framework].

⁴² To the same extent: Article 23(1)2 Directive 2003/54/EC [Internal Market in Electricity]; article 25(1)2 Directive 2003/55/EC [Internal Market in Gas]; article 11(3)1 Directive 2009/12/EC [airport charges].

⁴³ Article 30(1)2 Directive 2001/14/EC [railway infrastructure].

⁴⁴ Article 3(2)2 Directive 2002/21/EC [Electronic Communications Framework].

⁴⁵ See *e.g.* the German mail service *Deutsche Post*, which is successor to the German mail authority *Deutsche Bundespost*. *Deutsche Bundespost* was formally privatized in 1995. However, only since 2005 Germany holds less than 50 % of the shares. It today still holds 21% of *Deutsche Post*.

called this idea the “principle of the separation of regulatory and operational functions”⁴⁶.

It nevertheless was disputed already at this point whether regulatory authorities should be independent from the Member States’ governments at all, thus acquiring also political independence.⁴⁷ This dispute was raised especially in the light of the renewal of the Electricity and Natural Gas Directive. The Parliament proposed for a more far-reaching solution. In its opinion the regulatory authorities should have had “the greatest possible degree of independence from the Governments of Member States”⁴⁸. However, the proposals of the Commission and the Council prevailed. Thus the established regulatory regimes were adapted to the new approach of the Post and Infrastructure RL only in line with the Commission’s proposed to amend the existing Directives as to contain provisions on independent regulatory authorities.⁴⁹ The Electricity Directive 2003/54/EC (amending Directive 96/92/EC) thus demanded a regulatory authority “wholly independent from the interests of the electricity industry” (article 23).

Second step – (full) independence from the Government

In 2009 the EC finally reached its goal to raise the independence of regulatory agencies on a new level.⁵⁰ It wanted to strengthen their

⁴⁶ Recital 11 sentence 1 Directive 2002/21/EC [Electronic Communications Framework].

⁴⁷ See Henrik Bjørnebye, *Investing in EU Energy Security: Exploring the Regulatory Approach to Tomorrow’s Electricity Production*, Wolters Law International, Alphen aan den Rijn, 2010.

⁴⁸ European Parliament, Position with a view to the adoption of European Parliament and Council Directive 2002/.../EC amending Directive 96/92/EC concerning common rules for the internal market in electricity, P5_TC1-COD(2001)0077A, 13.3.2002, OJ C 47 E/351 (363).

⁴⁹ See article 22 of the Commissions first proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas, COM (2001) 125 final, 13.3.2001, 21.

⁵⁰ See Markus Ludwigs, “Die Bundesnetzagentur auf dem Weg zur Independent Agency? Europarechtliche Anstöße und verfassungsrechtliche Grenzen”, *Die Verwaltung*, 2011, pp. 44–46.

independence in order to ensure a more effective application of the regulatory framework.⁵¹ The newly enacted 2009 Gas and Electricity Regulations (as well as the amendment of Electronic Communication Framework Directive⁵²) aimed at the authorities being “fully independent”⁵³. They established that the regulatory authorities have to be “legally distinct and functionally independent from any other public or private entity”⁵⁴.

Thus compared to the second step, the independence from the public sector was no longer conditioned on the circumstance that the state itself is active in the regulated industry. The regulatory body had to be independent from it at all times. It is forbidden to “seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks”⁵⁵. Moreover, the decisions itself have to be autonomous and independent “from any political body”⁵⁶.

However, the Electronic Communication Framework Directive states that the authority’s independence “shall not prevent supervision in accordance with national constitutional law”⁵⁷. This however may not be interpreted as allowing for any instructions by other governmental bodies

⁵¹ See recital 13 Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic Communications Framework]; see also Recital 33 sentence 3 Directive 2009/72/EC [Internal Market in Electricity].

⁵² See recital 13(2) Directive 2009/140/EC amending Directive 2002/21/EC [Electronic Communications Framework]: The NRA must be “protected against external intervention or political pressure”.

⁵³ Recital 34 sentence 1 Directive 2009/72/EC [Internal Market in Electricity]; recital 30 sentence 1 Directive 2009/73/EC [Internal Market in Gas].

⁵⁴ Article 35(4)a Directive 2009/72/EC [Internal Market in Electricity]; article 39(4)a Directive 2009/73/EC [Internal Market in Gas].

⁵⁵ Article 35(4)b (ii) Directive 2009/72/EC [Internal Market in Electricity]; article 39(4)b (ii) Directive 2009/73/EC [Internal Market in Gas]; comparable: Article 3(3a)1 Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic Communications Framework].

⁵⁶ Article 35(5)a Directive 2009/72/EC [Internal Market in Electricity]; article 39(5)a Directive 2009/73/EC [Internal Market in Gas].

⁵⁷ Article 3(3a) subpara. 1 sentence 2 Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic Communications Framework].

even though such power is normally vested on them by the national constitution.⁵⁸ Such a reading would contradict the prohibition to seek or take direct instructions. The exception must thus be interpreted as relating to *ex-post* “judicial review [and] parliamentary supervision”⁵⁹. Others however argue that formal instructions by the minister in charge are not forbidden. They do not see the Government or a Minister as being a “political body”. This however ignores the fact that the new Directive aimed at extending the functional independence to a “full” independence. The GA follows that NRAs subject to their independence “do not form part of the classic hierarchical administration”⁶⁰.

Nevertheless, some sort of influence from the government still seems to be allowed for. Some Directives allow for “general policy guidelines issued by the government not related to the regulatory powers and duties”⁶¹. This however guarantees nothing more than the general freedom of a government to develop policy goals with respect to the relevant industry and its development.

Special case: Data Protection Authorities

Out of the before described history of independence demanded by EU-law, the EU’s data protection laws mark a somewhat exceptional case.

⁵⁸ The Advocate General in respect of Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic Communications Framework] is citing ECJ (Grand Chamber), Judgment of 9 March 2010, C-518/07, ECLI:EU:C:2010:125 - European Commission v. Federal Republic of Germany, stating that “some parliamentary scrutiny” is possible (Advocate General Campos Sánchez-Bordona, Opinion of 28 April 2016, C-240/15, para. 43). The ECJ itself – recurring on the Advocate General’s opinion – holds that the national parliament may subject the NRAs to certain measures of budgetary control (ECJ, Judgment of 28 July 2016, C-240/15, ECLI:EU:C:2016:608, para. 38 - *Autorità per le Garanzie nelle Comunicazioni v. Istituto Nazionale di Statistica – ISTAT et al.*). They both are reluctant on *expressiv verbis* excluding any influence by the government.

⁵⁹ Recital 34 sentence 2 Directive 2009/72/EC [Internal Market in Electricity]; recital 30 sentence 2 Directive 2009/73/EC [Internal Market in Gas].

⁶⁰ Advocate General Campos Sánchez-Bordona, Opinion of 28 April 2016, C-240/15, para. 25.

⁶¹ Article 35(4)b ii sentence 2 Directive 2009/72/EC [Internal Market in Electricity]; article 39(4)b ii sentence 2 Directive 2009/73/EC [Internal Market in Gas].

As of the late 1980ies the back then EC came to realize the importance of a common standard of data protection within the EC Member States – in part to establish a minimum level of protection for its citizens, in part to achieve a harmonization allowing for the free transfer of personal data within the ECs.

An important part of the establishment of a common standard of data protection was the establishment of procedural safeguards in order to put this standard into effect. The EC demanded from its Member States to establish independent data protection authorities. This was the first time the EC demanded the establishment of independent bodies from the Member States and it turned out that the independence demanded from the Member States is – until today – the most far reaching one.

Wording of the Data Protection Directive

From the beginning of the EDPD's drafting process it was clear that the Member States should be obliged to establish an *independent* data protection authority. The Commission's proposal for the Directive foresaw that "[t]he Member States shall ensure that an *independent* competent authority supervises the protection of personal data"⁶². This was supported by the European Parliament. However, the Council took up a much stricter stance on the question of independence that later became the final version of the Directive. It proposed that the data protection authorities "shall act with *complete independence* in exercising the functions entrusted to them"⁶³.

Establishing this broad terminus was unprecedented in the EC's legislation.⁶⁴ The EDPD was the EC's first act to demand the establishment

⁶² Article 26(1) 1 Proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data, COM(90) 314 final — SYN 287, OJ 90/C 277/03

⁶³ Article 28(1) subpara. 2 Common Position (EC) No 1/95 adopted by the Council on 20 February 1995 with a view to adopting Directive 95/. . . /EC of the European Parliament and of the Council of . . . on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ C 093, 13/04/1995 P. 0001.

⁶⁴ This can neither be based on the Charter of Fundamental Rights nor on the primary law. First, both at the time of the enactment of the EDPD did not foresee the

of supervisory authorities by the Member States. Moreover, the following acts that demanded so did not fall in line with the EDPD's wording. The merely demanded the establishment of functionally independent institutions, i.e. institutions that are independent of the ones governed by them.⁶⁵

This wording of the EDPD was taken over by the most recently enacted General Data Protection Regulation (GDPR), which as of May 25th 2018 takes the place of the old Directive.⁶⁶ In article 52(1) GDPR it states that each "supervisory authority shall act with *complete independence* in performing its tasks and exercising its powers". However, as compared to the EDPD the GDPR is now regulating the independence demanded from the DPAs' with a much higher degree of detail. It dedicates the whole of article 52 GDPR to establish the specific conditions under which the DPAs must be set up.

Interpretation by publicists, Member States and the Commission

However broad in its wording, the most publicists⁶⁷ and also Member States such as the Germany⁶⁸ were of the opinion that the level of independence demanded by the EDPD had to be interpreted narrowly and meaning only "functional" independence. They saw this primarily in line with the underlying idea of independence as pronounced in the more

requirement of an independent data protection authority and second even until today both do only demand independence, not complete or full independence. See article 286(2) EC-Treaty (Nice), today: Article 8(3) Charta, article 16(2)1 TFEU.

⁶⁵ See e.g. article 6(5) Directive 2009/72/EC [Internal Market in Electricity]: "Member States shall designate an authority or a public body or a private body *independent of* electricity generation, transmission and distribution activities".

⁶⁶ Regulation (EU) 2016/679 [General Data Protection Regulation].

⁶⁷ See e.g. Ulrich Lepper, Christian Peter Wilde, „Unabhängigkeit der Datenschutzkontrolle“, Computer und Recht, 1997, pp. 703-707; Stefan Bring, „§ 38 BDSG“, in Heinrich Amadeus Wolff, Stefan Brink, *Beck'scher Online-Kommentar Datenschutzrecht*, C.H. Beck, München, 2016, para. 6-9.

⁶⁸ ECJ (Grand Chamber), Judgment of 9 March 2010, C-518/07, ECLI:EU:C:2010:125, para. 16 - European Commission v. Federal Republic of Germany: "functional independence in the sense that those authorities must be independent of bodies outside the public sector which are under their supervision and that they must not be exposed to external influences".

EC legislation: that the supervisory authority has to be independent *from* the ones supervised.

In the European Commission's opinion however the EDPD was different from the EC's other instruments. The Commission put forward a broad interpretation of the words 'with complete independence', meaning that "a supervising authority must be free from any influence, whether that influence is exercised by other authorities or outside the administration"⁶⁹. The Commission thus followed an approach of absolute independence.

The ECJ interpretation of the level of independence prescribed

In 2010 the ECJ – in an infringement procedure against Germany – followed the Commission's line of arguments and clarified that "complete independence" must be interpreted as independence allowing the supervisory authorities to perform their duties free from external influence. Such independence precludes not only any influence by the supervised bodies, but also any "direct or indirect influence of the State"⁷⁰. The ECJ makes it clear that the independence is not to be understood in a mere functional way.

But what ECJ demands in both cases – the agencies and the supervisory authorities – goes far beyond functional independence: The ECJ demands absolute independence. Absolute means that the government and the executive authorities of a State or the EU may not have any influence in the decision making process, no scrutiny and no last word. The institutions must be established outside the classic hierarchical administration.

Groundwork on the standard of democratic legitimization within the EU

As I have shown above, the EU went almost as far as the horizon on its road to independence. It without doubt pushes forward the

⁶⁹ Ibid., para. 15.

⁷⁰ Ibid., para. 25.

⁷¹ See German Federal Constitutional Court (BVerfG), Judgment of 30 June 2009, 2 BvE 2/08, para. 244 ff. The FCC also touches the issue of democratic legitimization within the EU – however, it does so from a Member State's perspective, para. 261 ff.

development of independent institutions, both, on the European and on the Member States level. However, the EU and especially the ECJ, turns a blind eye on the implications of this development from the perspective of democratic legitimization.

This question may not be confused with the discussions around the democratic legitimization of the EU itself – the democratic legitimization of the EU and within the EU are two pair of shoes (I.). The democratic legitimization of the EU is a question that has to be addressed primarily by the Member States and *in praxi* by their constitutional courts when ruling on the conferral of power on the EU.⁷¹ However, the democratic legitimization of independent institutions established by EU-secondary law is primarily an issue the ECJ has to cope with – it nevertheless fails to do so (II.).

I shall thus try to provide some guidelines as to which considerations the Court would have to take into account when establishing a European legal threshold for the democratic legitimization of independent institutions (III.). Taking up this task may not be easy and I admit already to not having covered all aspects relevant and provided a conclusive answer. We nevertheless have to take up this question as the way we answer (or not answer) it will shape the development of the Union and maybe the organizational structures of a future European State.

Democratic legitimization of the EU and within the EU

When looking at the decision making by independent institutions established by the EU we have to leave the discussion about the democratic legitimization of the EU aside for the moment. It is true, the German Federal Constitutional Court diagnosed a “structural democratic deficit”⁷². But we can agree that the EU itself has a high level of democratic legitimization – conferred to it by the Parliament and the Council.

However, all democratic legitimization of the EU is worth nothing if the EU itself acts in an undemocratic way. Thus we have to look closely to the transfer of power on independent institutions. We need a discussion of what democracy means in this respect - especially since the Lisbon

⁷² Ibid., para. 264.

Treaty puts specific weight on the principle of democracy (see article 2 and 10 TEU).

The EU has seen lengthy discussions on whether and how the EU itself is democratically legitimized. But when allowing for independent decision making we run the risk of giving away all of the democratic legitimization the Union has.

ECJ approach on democratic legitimization within the EU

The ECJ has dealt with the conferral of powers on independent institutions several times. His jurisprudence however can be separated between his approach on regulatory agencies and other independent bodies on the EU level (starting with the *Meroni Case*⁷³) and judgements concerning independent bodies on the level of the Member States (including his judgement on data protection authorities). What is clear from the totality of ECJ cases is that the Court reluctantly has felt the need to address issues of democratic legitimization within its judgement. It has used the term only twice.⁷⁴

a) On the European level: from *Meroni* to *ESMA*

Within its early judgments starting with *Meroni* the ECJ has ruled on the delegation of (discretionary) power by the European Commission to (independent) bodies on the European level. In its judgement it distinguished two different forms of conferral of power.⁷⁵ First, “clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the

⁷³ ECJ, Judgement of 13. June 1958, C-9/56, ECLI:EU:C:1958:7 – *Meroni v. High Authority*.

⁷⁴ ECJ (Grand Chamber), Judgment of 9 March 2010, C-518/07, ECLI:EU:C:2010:125, para. 46 – *European Commission v. Federal Republic of Germany*.

⁷⁵ See ECJ, Judgement of 13. June 1958, C-9/56, ECLI:EU:C:1958:7, p. 152 – *Meroni v. High Authority*; see Matthias Ruffert, “Europarecht: Rechtsgrundlagen und Rechtsetzungsbefugnisse von Agenturen: Verbot von Leerverkäufen durch die Europäische Wertpapieraufsichtsagentur ESMA ist unionsrechtskonform”, *Juristische Schulung*, 2014, p. 280.

delegating authority”⁷⁶. Second, “discretionary power, implying a wide margin of discretion which may, according to the use which is made of it, make possible the execution of actual economic policy”⁷⁷. It held that “to delegate a discretionary power to bodies other than those which the Treaty has established [...] would render less effective the *guarantee resulting from the balance of powers*”⁷⁸. The ECJ thus focuses its ruling on the principle of institutional balance rather than on the principle of democratic legitimization.

The so called *Meroni doctrine* was then regarded the bedrock for any delegation of powers. However – in the view of most publicists – the powers delegated to agencies, especially the ones of the 4th generation (see supra C.I.1.), apparently went much further than originally allowed for by the Court and today includes discretionary measures, such as the powers conferred to ESMA.

Irrespective of this factual development the Court neither expressly reshaped its *Meroni doctrine* nor did it declare unlawful any delegation of power to an agency. Again most recently in a case regarding the competences of ESMA, the ECJ reaffirmed its *Meroni* judgement.⁷⁹ This time however it was factually and without expressly saying so reshaping it to some extent. The Court apparently is willing to allow the delegation of (more) discretionary power to independent agencies.⁸⁰ Nevertheless expanding the possible competences of independent agencies the Court (again) turned a blind eye on the even more pressing question of the democratic legitimization of such powers. Although the claimant, UK, has not raised the issue this is rather surprising. First, in 2012 the Lisbon treaty has integrated the principle of democracy into the TEU at an outstandingly

⁷⁶ See ECJ, Judgement of 13. June 1958, C-9/56, ECLI:EU:C:1958:7, p. 152 – *Meroni v. High Authority*.

⁷⁷ *Ibid.*, p. 152.

⁷⁸ *Ibid.*, summary no. 10 and p. 152.

⁷⁹ ECJ (Grand Chamber), Judgment of 22 January 2014, C-270/12, ECLI:EU:C:2014:18, para. 41 ff. – *UK v. European Parliament and Council of the European Union*.

⁸⁰ The Court accepts “ESMA’s margin of discretion” and relates it’s due to certain considerations, *ibid.*, para. 50; see also Magdalena Skowron, “Die Zukunft der europäischen Agenturen auf dem Prüfstand”, *Europarecht*, 2014, p. 251.

prominent position: Articles 2 and 10 TEU both refer to it as principle the Union is founded on.⁸¹ Second, the Court's aim at strengthening its position as a constitutional court in particular longed for a declaration on this.

The only exception to the Union Courts' blind eye on the topic of democratic legitimization marks one case decided by the General Court (EGC). In its *Pfizer* judgement it held that the members of a committee of experts "although they have scientific legitimacy, have neither democratic legitimacy nor political responsibilities"⁸². They lack "the European Parliament's political control"⁸³. This line of argument was however not adopted by the ECJ.

b) On the Member States level: the Data Protection Authorities

With respect to independent institutions on the level of the Member States, foremost concerning NRAs, the ECJ has in most of its cases merely elaborated on the degree and nature of independence prescribed by the secondary law. Only in one case – regarding the Data Protection Authorities – has the ECJ taken a stance on constitutional issues like democratic legitimization.

In its judgement against Germany from 2010 concerning the independence of Data Protection Authorities the ECJ expressly addressed the concerns raised by Germany with respect to the principle of democracy and the lack of democratic legitimizations of the Data Protection Authorities. The Court acknowledges the principle of democracy as being one of the foundations of the European Union.⁸⁴

⁸¹ This becomes even more astonishing as the Court in contrast has extensively elaborated on other amendments by the Treaty of Lisbon, namely articles 290 and 291 TFEU, in order to back up its judgement; see ECJ (Grand Chamber), Judgment of 22 January 2014, C-270/12, ECLI:EU:C:2014:18, para. 72 ff. – UK v. European Parliament and Council of the European Union.

⁸² EGC, Judgment of 11 September 2002, T-13/99, ECLI:EU:T:2002:209, para. 201 – Pfizer Animal Health SA v. Council of the European Union.

⁸³ Ibid.

⁸⁴ ECJ (Grand Chamber), Judgment of 9 March 2010, C-518/07, ECLI:EU:C:2010:125, para. 41 – European Commission v. Federal Republic of Germany: referring to article 6(1) TEU (Nice), now article 2 sentence 1 TEU (Lisbon).

However, in its view the principle does not require any governmental control over supervisory authorities and allows for “the existence of public authorities outside the classic hierarchical administration”⁸⁵. To the contrary, parliamentary influence suffices in order to establish democratic legitimization, if it fulfills three specific criteria:⁸⁶

First, the appointment of the management of the supervisory authorities;

Second, the definition of the powers of those authorities;

Third, the obligation on the supervisory authorities to report their activities to the parliament.

The first, the appointment of the management, may also be delegated to the government.

The ECJ does state that the authorities can be “more or less” independent of the government. It however, besides of the three criteria cited above, does not state any further prerequisites as to when the independence from the government is justified. Thus, apparently, there are none. It requires a certain level of democratic legitimization to be fulfilled. However, it does not express a tendency of the Treaties that this principally has to be guaranteed through a hierarchical governmental structure. The democratic legitimization of the execution of supervisory authority may *equally* be secured by a hierarchical governmental structure or a direct influence by the parliament.

Critic and need for a diverse European approach

The ECJ has – if at all – taken a rather superficial approach towards the democratic legitimization of independent institutions. Considering the ongoing tendency to delegate regulatory tasks to independent institutions and the fact that Member States are conferring ever more competences on the EU the ECJ cannot but develop a more differentiated approach on the matter.

⁸⁵ Ibid., para. 42.

⁸⁶ Ibid., para. 44-45.

First it is important to notice, that the standard adopted by the Court has to be two-fold, reflecting the two different situations of independent institutions on the EU and on the Member States level (1.).

Second, with respect to both the Court has to take into account quite different considerations when developing its standard towards independent institutions on the European (2.) and the Member States level (3.). Only by doing so it can do justice to the 'Treaties' and the Member States' principle of democracy.

*The need for a two-fold approach
for a standard of democratic legitimization*

It is important to recognize that two very distinct situations are in question here. It is far from evident that the establishment of independent bodies on the European level and within the administrative systems of the Member States by virtue of secondary EU-law follows the same rules. Although the execution of power in both cases is in need for democratic legitimization the specific contexts are very different.

On the EU level their democratic legitimization can and must be answered with respect to the primary law, i.e. articles 2 and 10 TEU as well as the general principles of EU law⁸⁷. It must ask how, under the Union's given status and structure sufficient legitimization can be conferred upon agencies and their individual decisions which are legally binding on third parties as well as general norms enacted by them.

In case the EU demands from the Member States the establishment of independent bodies, be it via a Directive or a Regulation, the basic threshold for measuring the democratic legitimization needed is again the primary law. However, these bodies derive their legitimization in part from their integration into the government structure of the Member States. E.g. do the Member States appoint their members, guarantee their budgets, and supervise their decisions (be it by the executive or the judiciary). Thus these structures must be recognized when defining their

⁸⁷ Which admittedly consist mainly, but not exclusively of fundamental rights; see ECJ, Judgment of 29 May 1997, C-299/95, ECLI:EU:C:1997:254, para. 14 – Friedrich Kremzow v. Republik Österreich.

democratic legitimization. This goes hand in hand with the fact, that the Treaties guarantee respect for the Member States' "national identities, inherent in their fundamental structures, political and constitutional"⁸⁸.

Currently the ECJ does not seem to care much about the principle of democracy in its case law relating to the two situations at all. It is hard to tell if it has different approaches towards their legitimacy. However, it is true that it is focusing on different argumentative topics. Regarding regulatory agencies it focuses on institutional balance (see *Meroni-doctrine*), a principle only relevant on the EU level. With respect to NRAs it is not dealing with the lawfulness of such institutions at all (except the case of *Com/Germany* where he was "forced" to do so) but focuses on the prerequisites for a "rightful" fulfillment of their tasks. Seemingly it thus treats them different. Whether this would and will be true regarding the principle of democracy as well cannot be told at the moment.

On the EU level (for e.g. regulatory agencies)

a) Specific relevance of the principle of democracy

Regarding independent institutions on the level of the EU, especially regulatory agencies of the third and fourth generation, the principle of democracy and thus to one of democratic legitimization is of outmost importance. The principle of democracy's central feature is that the citizens elect and remove those who govern them.⁸⁹ Facing sub-delegation of power this requires a "chain of democratic legitimacy"⁹⁰ under which every exercise of sovereign power must be linked to the people.⁹¹

The ECJ may not only stick with the principle of institutional balance (and the questions of competence). This principle and the democracy

⁸⁸ Article 4(3)1 TEU.

⁸⁹ Porras Ramirez, "Art. 10", in Hermann-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary*, Springer, Berlin Heidelberg, 2013, para. 1.

⁹⁰ *Ibid.*, para. 13.

⁹¹ Coming to the same conclusion: Jörg Philipp Terhechte, "§ 1 Einführung", in Jörg Philipp Terhechte, Andreas von Arnould (eds.), *Verwaltungsrecht der Europäischen Union*, Nomos, Baden-Baden, 2011, para. 28.

principle address completely different questions. The first relates to the horizontal distribution of power among the European institutions, i.e. the Council, Parliament, and Commission. It thus resembles around questions of checks and balances and separation of powers. The second however relates to the vertical perspective between people and their government. It addresses the question on what basis governmental power is exercised over (a) people. However intertwined, the second question must be answered first. If the power exercised is not legitimate, the structuring of the power is without relevance.

Considering this the ECJ has failed to address the more important of the question in its judgements. Starting with *Meroni* he has focused on institutional balance – even though at the time of his most recent *ESMA* judgement the treaty of Lisbon was yet in force.

b) Derivation of the necessary criteria

It is rather easy to state that the ECJ is missing the point and that it has to take into account the principle of democracy using it as a justiciable legal provision. It is far more difficult to determine the content of the principle under EU law.

Interpreting articles 2 and 10 TEU in the light of their wording does not get one far. This merely confirms that the basic idea is the government by the people (from δῆμος [dêmos, “people”] + κρατέω [kratêō, “I rule”, “I command”]). At the same time the Court must take into account the other provisions of the Treaties also relating to the establishment of the European executive branch, such as article 298(1) TFEU, which states that there shall be an “independent European administration”.⁹²

The interpretation has to be done in the light of the norm’s telos, its history and foremost the “constitutional traditions common to the Member States”⁹³. The Court however should not follow its approach in

⁹² The origin of which may be rooted in the Swedish constitution that foresees that administration officials shall be free from control by the (political) government; see Thomas Groß, *Die Legitimation der polyzentralen EU-Verwaltung*, op. cit., pp. 89-90.

⁹³ ECJ, Judgment of 29 May 1997, C-299/95, ECLI:EU:C:1997:254, para. 14 – Friedrich Kremzow v. Republik Österreich.

Com/Germany where it factually referred itself to the Member States that allow for the most independence of decision making bodies.⁹⁴ This runs contrary to the Courts approach when it comes to the finding of general principles of law where it takes into account traditions that are common to the Member States.⁹⁵ Moreover, within 28 Member States the ECJ will always find one State that allows for a great portion of independence in a specific field. The standard the ECJ is then likely to adopt is a minimum standard of democracy. Such as democratic race to the bottom does however not fit the Treaties' underlying idea of holding up the torch of democracy within the Union.

c) Specialties on the EU level

Nevertheless, the Court may only rely on the common traditions of the Member States to some extent. It must also take into account the peculiarity of the EU.

First, the EU is no (/not yet a) centralized parliamentary democracy. The power is not concentrated at elected members of parliament but to a (at least equal amount) also enacted by the Council. This does not necessarily diminish to democratic legitimacy of the Union as a whole. But it at least distributes it differently from the political system of most Member States. Even though the European Parliament has a closer relationship with the European people, both – the Parliament and the Ministers in the Council –, answer to it and can be held responsible by it.⁹⁶ The EU – although dedicated to the principle of representative democracy – can link executive powers to both, the Parliament and the Council. This is done so as the Commission – especially due to the changes in the treaty of Lisbon – is now more than ever controlled by the parliament (see article 17(8) TEU, article 234 TFEU). It is however necessary under any perspective that the exercise of all executive and

⁹⁴ This applies equally to interpreting article 298(1) TFEU – it has to be seen in a European, not merely Swedish context.

⁹⁵ ECJ, Judgment of 29 May 1997, C-299/95, ECLI:EU:C:1997:254, para. 14 – Friedrich Kremzow v. Republik Österreich.

⁹⁶ Porras Ramirez, “Art. 10”, op. cit., para. 11.

political power is linked to either the Parliament and the Council or the Commission, generally giving them a direct influence on each and every single decision.

Second, the EU does not possess a single organ that bares the executive power and the political leadership. Within the Member States, e.g. Germany, both powers are bestowed upon the Executive branch, i.e. the government (*Bundesregierung*). In the case a decision is issued by a Ministry it can review it with respect to its legality and its political implications. Within the EU both powers are split upon the Commission⁹⁷ on the one side and the European Council and the Council⁹⁸ on the other side. However, all of them are controlled (be it via the EP or national parliaments) by the people. As far as regulatory agencies exercise executive and political powers, it is not perfectly clear that it is the Commission that must have control over both of them and thus have the sole role to review decisions. However, article 10(1) TEU demonstrates a clear preference for the parliamentary representative system. Taking also into account the role of the Commission as the primary guardian of the treaties and its political competences the Court should put specific weight on the supervision by the Commission. This moving the Commission closer to an executive of the Member States is what the Lisbon treaty tried to engineer.

One cannot argue to the contrary that the parliamentarization of the Commission, whilst it having supervision over regulatory agencies, runs counter to the goal of objectively enforcing laws. On the one hand side agencies like ESMA themselves take decisions that entail discretion and thus a political choice. Allowing the Commission to supervise decisions of an agency is thus not impairing their objectivity. On the other hand side, concentrating supervision e.g. at the Parliament would be even “worse” as it is primarily a politic body. It however goes without saying

⁹⁷ It shall “ensure the application of the treaties, and of measure adopted [...] pursuant to them” (17(1)2 TEU) and has i.a. the power and monopoly of initiative (article 17(2)1 TEU); see Eduardo Gianfrancesco, “Art. 17”, in Hermann-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary*, op. cit., para. 25.

⁹⁸ Which has “policy-making [...] functions” (article 16(1)2 TEU) and (minor) executive functions, as it can delegate implementing powers to the Commission, article 291(1) TFEU; see Vêrane Edjaharian, “Art. 16”, in Hermann-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary*, op. cit., para. 27-28.

that functional independence must be guaranteed for. This however applies merely to the Data Protection Authority as far as it is supervising the Union. The Union – unlike the Member States – is however not involved in any services or industries regulated by its agencies.

Third, the Court should take into account that some or all members of some independent bodies are governmental official of the Member States (e.g. members of the agencies' Administrative Council⁹⁹). On the one side this can increase the democratic legitimization of their actions, as the act dependent on their Member States governments. However on the other side as far as these do not act independent themselves the body could as well be put under the supervision of the Commission, as political influence is not excluded in general.

On the Member States level, i.e. in case the EU is imposing requirements on Member States e.g. for supervisory agencies

With respect to independent bodies on the level of the Member States the ECJ has at least addressed the issue of democratic legitimization in its judgment in *Com/Germany*. As laid out above it has established prerequisites that in its eyes fulfill the demands set up by the Treaties towards their standard of democracy. However, even after this judgement the Advocate General Campos Sánchez-Bordona stated that the Court has “yet to give a ruling on the political independence of NRAs”¹⁰⁰.

In line with this I think that the Court's findings are roughly convincing. They fail to address not only the overwhelming complexity of institutional arrangements demanded by the EU (a). It also fails to address the principle of institutional sovereignty of the Member States (b). Lastly it displays an unprecedented distrust in the national Governments and politics as a whole that is not only not justified but detrimental to the Union's goal of strengthening (representative) democracy (c).

⁹⁹ See e.g. article 37 Regulation (EC) No 2100/94 [Community plant variety rights]; article 127 Regulation (EC) No 207/2009 as amended by Regulation (EC) 2015/2424 [Community trade mark].

¹⁰⁰ Advocate General Campos Sánchez-Bordona, Opinion of 28 April 2016, C-240/15, para. 31.

Complexity in the multi-layer system (*Mehrebenensystem*)

When demanding the establishment of independent bodies from the Member States the legal framework governing their legitimization becomes overwhelmingly complex.

First, it has to be clarified which principle of democracy – the European under articles 2, 10 TEU or the one entailed in the Member States' constitutional law – governs the acting of the body. The EU demands the establishment and sets the requirements regarding its independence. Nevertheless, the body is part of the Member States' administration, acting in their name and is in this capacity issuing decisions to persons within the State.

Second, the factual influences on the NRAs have to be taken into consideration. The NRAs are founded by EU secondary law which to a great extent also establishes their rights and duties and prescribes their tasks. At the same time, the NRAs' staff is elected by the Member States, the NRAs have to report to the national parliaments and their actions are controlled by the national courts.

Thus an assessment of NRAs' democratic legitimization would always have to take into account the legitimization conferred on NRAs though their integration into the Member States' political systems. However their differences and unique constitutional traditions make it even harder to find a legal threshold that serves all Member States. In the light of this, the ECJ may not refer to the standards of some Member States and apply it to the whole as he does in *Com/Germany*. He basically holds that such vast, absolute independence as demanded from the Data Protection Authorities is ok under EU primary law because it is ok in some Member States. Within 28 Member States the ECJ will always encounter one State that allows for a great portion of independence in a specific field. The standard the ECJ adopts here is a minimum standard of democracy. Such a race to the bottom may work with respect to the fundamental freedoms and to product standards. But we cannot found our European concept of democratic legitimization on a race to the bottom. Article 10 TEU calls for more, not less accountability within the EU. Even if the question is to be addressed only in the light of the principle of democracy as enshrined

in the Treaties, the ECJ's stance must take into account the constitutional standards of all Member States.

Sovereignty of the Member States in institutional matters and application of own principles of democracy

At the same time the EU is demanding the establishment of independent institutions from the Member States, the Member States lose the possibility to themselves decide upon the setup of their executive branch.¹⁰¹ This development conflicts with the principle of respect for the national identity (article 4(2) TEU), the principle of subsidiarity as enshrined in article 5(1)2, (3) TEU and its outflow in article 291(1) TFEU: The Member States right to execute the laws of the Union. The Court has to take all of these into consideration.

The principle of subsidiarity basically prescribes that the higher hierarchical unit shall only act in case the lower unit is not capable of fulfilling its task.¹⁰² It is underlying the constitutional order of many federal systems. Within the Union it is conferred to the exercise of the Union's competences allocated to it within the Treaties. In a general manner it is restated – albeit not expressly – in article 291(1) TFEU according to which the Member States are obliged to “adopt all measures of national law necessary to implement legally binding Union acts”. This norm marks the heart of the so called execution federalism (*Vollzugsföderalismus*¹⁰³). It can be derived from the rule-exception-

¹⁰¹ In this respect it must be noted, that NRAs and other independent bodies are a part of the executive branch, not a newly established fourth branch of government. The Executive is defined in the negative – everything that is not legislative or judiciary – and the NRAs are not a part of either of these. *Mutatis mutandis* BVerfGE 20, 238, 252 f. For a different view see: Thomas Petri, Marie-Theres Tinnefeld, “Völlige Unabhängigkeit der Datenschutzkontrolle: Demokratische Legitimation und unabhängige parlamentarische Kontrolle als moderne Konzeption der Gewaltenteilung”, *MultiMedia und Recht*, 2010, pp. 157–161.

¹⁰² Albrecht Weber, “Art. 5”, in Hermann-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary*, op. cit., para. 7.

¹⁰³ Hans von der Groeben, “Art. 291 AEUV”, in Hans von der Groeben, Jürgen Schwarze, Armin Hatje (eds.), *Europäisches Unionsrecht: Vertrag über die Europäische Union - Vertrag über die Arbeitsweise der Europäischen Union - Charta der Grundrechte der Europäischen Union*, Nomos, Baden-Baden, 2015, para. 6.

relationship of paragraphs (1) and (2) of article 291 TFEU. According to the principle the Union generally does not execute its acts itself and moreover does not regulate the execution, too, but leaves it to the Member States to execute the acts and decide on the rules of procedure. In line with the principle some Directives expressly recognize that the “requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States”¹⁰⁴.

The Union’s demand for “full”, absolute independence of NRAs infringes on the Member States’ choice for an institutional setting of national authorities drastically. Countries like Germany follow the concept of a hierarchically structured executive with ministerial line of authority (“*ministerieller Weisungsstrang*”). Exceptions are allowed for, however they must be well reasoned. In a broad sense, functional independence seems accepted, too. However full/absolute independence in case the state is supervising private interties is not legitimate.

Taking the principle of respect for the national identity (article 4(2) TEU) serious the Court must put specific weight on such constitutional traditions and fundamental principles of the Member States.

ECJ’s distrust in the government and politics

One reason for demanding full/absolute independence even in situations where the State would not supervise itself but merely supervises private actors seems to be the Court’s distrust in the Member States’ governments and politics as a whole. This distrust can be sensed between every single line of the Court’s judgement in *Com/Germany*. The ECJ does not trust the Government, it does not trust the Executive, and it does not trust politics. To the contrary, the ECJ finds independence to be a value by itself.

The ECJ states that “[t]he guarantee of the independence [...] is intended to ensure the effectiveness and reliability of the supervision”. The thus needed objectivity and impartiality in fulfilling the authority’s

¹⁰⁴ Recital 11 sentence 2 Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic Communications Framework]; recital 47 sentence 3 Directive 1997/67/EC as amended by Directive 2008/6/EC [Postal Service].

task can only be secured in case the institution remains “free from any external influence, including the direct or indirect influence of the State”. In other words: the State – the ECJ means primarily the Government – is in itself unable to act objectively and impartially. Stating this the ECJ puts into question the whole idea of hierarchical administration and the unity of executive and political leadership.

In addition, the Court rules out the possibility of establishing a relationship between the national parliament and the NRA that would entail political supervision. Prohibiting influence by the state bars the Member States from merely cutting NRAs out of the governmental structure and docking it on to the parliament in a way the Government itself is connected to the parliament. To the contrary, the ECJ merely allows Member States’ parliaments to “impose an obligation on the supervisory authorities to report their activities to the parliament” – it does not allow the parliament to instruct or direct to NRA’s actions.

To the contrary, the Court seem to entrust the fully independent agencies with taking the necessary political decisions. It states with respect to the data protection supervisory authority that it has the task to strike “a fair balance between the protection of the right to private life and the free movement of personal data”¹⁰⁵. As stated before, the Court seems to deny the political character of such decisions.¹⁰⁶

However, I ask: what else is the task of a parliament, government, and thus a political decision then to strike a balance between conflicting rights and finding a “fair” solution? Such fairness cannot be determined objectively and absolute. It entails the decision to finally value one right more than another one. Finding such fairness is – in the outer boundaries of constitutional human rights – a political task. How much privacy do we wish for, how far do we accept to sacrifice economic potentials on its

¹⁰⁵ “Officially” the Court however denies the political character of the decisions taken by NRAs and the Data Protection Authorities.

¹⁰⁶ See e.g. ECJ (Grand Chamber), Judgment of 22 January 2014, C-270/12, ECLI:EU:C:2014:18, para. 41 – UK v. European Parliament and Council of the European Union, where the Court reiterates *Meroni* and thus the differentiation between “clearly defined executive powers” and “discretionary power [which may entail] the execution of actual economic policy”. It does not accept UK’s argument that ESMA must take ‘highly subjective judgment[s]’, *ibid.*, para. 28.

behalf? What is the level of market insecurity we do accept in order to ensure economic prosperity? These are essential and essentially political questions.¹⁰⁷

With respect to ESMA this is supported by the fact that the practical value of some of ESMA's potential measures (such as the prohibition of short selling, article 28 Regulation (EU) No 1095/2010 – ESMA) is doubted among experts.¹⁰⁸ Thus taking such action includes a rather political choice as it is not guaranteed that they work on addressing macroprudential risks.

Entrusting independent – expert – institutions more with answering these questions then letting them be part of a political process is undemocratic at its core. We need to answer them democratically, through public debate, representative parliamentary actions and accountable governmental decisions.

At the crossroads: Only the groundwork is done

The European Union's way towards independence with respect to independent institutions is at a crossroad. Both, independent institutions on the European level and on the Member States' level are rising in number and power. The ECJ – however anxious to become Europe's leading constitutional court – lets go one chance after the other to hold up the principle of democracy as enshrined in articles 2, 10 TEU. To the contrary, it pushes to institutions' independence to a level unprecedented in many Member States' governmental systems.

The ECJ has not found a persuasive answer to the issue of democratic legitimization.¹⁰⁹ It fails to define the principle of democracy, take into

¹⁰⁷ See UK statement in *ibid.*, para. 28: "ESMA will be required to take potentially controversial decisions. The taking of such decisions will involve ESMA in the implementation of actual economic policy and require it to arbitrate between conflicting public interests, make value judgments and carry out complex economic assessments."

¹⁰⁸ See Marcus Lutter, Walter Bayer, Jessica Schmidt, *Europäisches Unternehmens- und Kapitalmarktrecht: Grundlagen, Stand und Entwicklung nebst Texten und Materialien*, de Gruyter, Berlin, 2012, § 17, para. 341-344, providing further reference.

¹⁰⁹ And it is overlooked by most authors that this question first of all has to be answered from a European perspective, based on the primary law of the treaties, not the

account the specific contexts of independent bodies at the level of the EU and the Member States and pay due regard to other principles of the Union that are intertwined with the present issue.

As a result – with respect to *agencies* – for example ESMA is free to decide what threatens the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union. No minister of economy or finance will have a say when ESMA answers this question. Judicial review by the ECJ of such decisions will most likely grant ESMA a wide margin of appreciation already because of the Courts’ own lack of knowledge in the field of financial regulation. The power of the agency is thus virtually unlimited. These points have to be addressed when establishing a European standard of democratic legitimization.

With respect to the obligation to establish *independent institutions within the Member States* the situation is equally devastating. First, the ECJ fails to define what level of democratic legitimization the treaties demand and prescribe. It merely states that it is enough if the parliament or government may appoint the management of independent institution and that the legislator may define the powers they have. But then: let them do whatever they want. Second, within its jurisprudence the ECJ fails to take into account the constitutional structure of the Member States and give due regard to their “institutional autonomy and constitutional obligations”¹¹⁰. Lastly, the Court displays a distrust in government and politics that runs counter to the democratic traditions of the Union’s Member States and tramples all over the aim of making the Union more democratic.

In doing so the ECJ undermines the democratic standards we all should fight to preserve – or, with a view to the EU, we all should establish in our own interest. We, as European youth and future Member States thus have to find answers to the question of independent decision making. We have to define the principle of democracy in this respect and we have to

standards national constitutions apply to similar issues on the national level; one out of many walking down this road: Thomas Züll, *Regulierung im politischen Gemeinwesen*, Mohr Siebeck, Tübingen, 2014, pp. 109-115.

¹¹⁰ Recital 11 sentence 1 Directive 2002/21/EC as amended by Directive 2009/140/EC [Electronic communications framework]; recital 47 sentence 3 Directive 1997/67/EC as amended by Directive 2008/6/EC [Postal Service].

entrust our political institutions. If not, independence will not lead to self-government but to our political immaturity.

Literature

- Henrik Bjørnebye, *Investing in EU Energy Security: Exploring the Regulatory Approach to Tomorrow's Electricity Production*, Wolters Law International, Alphen aan den Rijn, 2010.
- Hermann-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary*, Springer, Berlin Heidelberg, 2013.
- Damien Geradin, Nicolas Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, Jean Monnet Working Paper 01/04, New York, NY, 2004.
- Hans von der Groeben, Jürgen Schwarze, Armin Hatje (eds.), *Europäisches Unionsrecht: Vertrag über die Europäische Union - Vertrag über die Arbeitsweise der Europäischen Union - Charta der Grundrechte der Europäischen Union*, Nomos, Baden-Baden, 2015.
- Thomas Groß, *Die Legitimation der polyzentralen EU-Verwaltung*, Mohr Siebeck, Tübingen, 2015.
- Thurid Hustedt, Arndt Wonka, Michael Blauburger, Annette E. Töller, Renate Reiter, *Verwaltungsstrukturen in der Europäischen Union: Kommission, Komitologie, Agenturen und Verwaltungsnetzwerke*, Springer VS, Wiesbaden, 2014.
- Ulrich Lepper, Christian Peter Wilde, „Unabhängigkeit der Datenschutzkontrolle“, *Computer und Recht*, 1997, pp. 703-707.
- Kai v. Lewinski, „»Völlige Unabhängigkeit« von Aufsichts- und Regulierungsbehörden - Umsetzungsmöglichkeiten für ministerialfreie Eingriffsverwaltung im deutschen Verwaltungsrecht“, *Deutsches Verwaltungsblatt*, March 2013, pp. 339-347.
- Markus Ludwigs, „Die Bundesnetzagentur auf dem Weg zur Independent Agency? Europarechtliche Anstöße und verfassungsrechtliche Grenzen“, *Die Verwaltung*, 2011, pp. 41-74.
- Marcus Lutter, Walter Bayer, Jessica Schmidt, *Europäisches Unternehmens- und Kapitalmarktrecht: Grundlagen, Stand und Entwicklung nebst Texten und Materialien*, de Gruyter, Berlin, 2012.

- Thomas Petri, Marie-Theres Tinnefeld, "Völlige Unabhängigkeit der Datenschutzkontrolle: Demokratische Legitimation und unabhängige parlamentarische Kontrolle als moderne Konzeption der Gewaltenteilung", *MultiMedia und Recht*, 2010, pp. 157–161.
- Matthias Ruffert, "Europarecht: Rechtsgrundlagen und Rechtsetzungsbefugnisse von Agenturen: Verbot von Leerverkäufen durch die Europäische Wertpapieraufsichtsagentur ESMA ist unionsrechtskonform", *Juristische Schulung*, 2014, pp. 279–281.
- Magdalena Skowron, "Die Zukunft der europäischen Agenturen auf dem Prüfstand", *Europarecht*, 2014, pp. 250–62.
- Jörg Philipp Terhechte, Andreas von Arnould (eds.), *Verwaltungsrecht der Europäischen Union*, Nomos, Baden-Baden, 2011.
- Michaela Wittinger, "'Europäische Satelliten': Anmerkungen zum Europäischen Agentur(un)wesen und zur Vereinbarkeit Europäischer Agenturen mit dem Gemeinschaftsrecht", *Europarecht*, November 2008, pp. 609–626.
- Heinrich Amadeus Wolff, Stefan Brink, *Beck'scher Online-Kommentar Datenschutzrecht*, C.H. Beck, München, 2016.
- Thomas Züll, *Regulierung im politischen Gemeinwesen*, Mohr Siebeck, Tübingen, 2014.

The European Court on Human Rights and The Constitutional Court of The Russian Federation: Relations Revisited

Dimitri Galushko

assistant professor, Voronezh University

Abstract: in his paper the author analyzes development of relations between the European Court on Human Rights and the Constitutional Court of the Russian Federation during recent years in the light of contradictions in decisions of these two courts. The paper characterizes normative basis and legal practice of execution of ECHR judgements in the legal system of the Russian Federation. The author highlights general approaches of the Russian Constitutional Court to issues of interaction of two legal orders — international and national — via issues of execution or nonexecution of the ECHR judgements in a case of violation of norms of the Russian Constitution by these judgements. The author specifies features of the conflict between Russia and the European Court on Human Rights and some reasons of its origin, legislative response of Russia to this situation, opinion of the competent bodies of the Council of Europe. The paper also investigates first experience of use of new legislation by the Constitutional Court in the *Anchugov and Gladkov case*. The author points out some perspectives of development in the sphere, highlighting, that the newly established powers of the Constitutional Court of the Russian Federation should be used in exceptional cases.

Key words: European Court of Human Rights, European Convention on Human Rights, Council of Europe, Constitutional Court of the Russian Federation, implementation, interaction between international and domestic law.

Introduction.

With the Federal Law of March 30, 1998 N 54-FZ «On ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols»¹ the Russian Federation has undertaken an obligation to respect provisions of the European Convention on Protection of Human Rights and Fundamental Freedoms of 4 November 1950. On that

¹ Federal Law of March 30, 1998 N 54-FZ «On ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols», www.kremlin.ru/acts/bank/12169, 01.04.2017.

date Russia, in accordance with Article 46 of the Convention, has been obliged to implement final judgments of the European Court on Human Rights (hereinafter - ECHR) in any case, in which the Russian Federation participates as a party.

Paragraph 4 of Article 15 of the Russian Constitution stipulates, that «the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied»². These provisions have been further developed in Article 5 of the Federal Law No101-FZ of July 15, 1995 «On International Treaties»³, according to which, international treaties of the Russian Federation shall, together with generally-recognized principles and norms of international law, be an integral part of its legal system in accordance with the Constitution of the Russian Federation. If other rules have been established by an international treaty of the Russian Federation than those provided for by a law, then the rules of the international treaty shall apply. The provisions of officially published international treaties of the Russian Federation which do not require the publication of intra-State acts for application shall operate in the Russian Federation directly. Respective legal acts shall be adopted in order to effectuate other provisions of international treaties of the Russian Federation.

International law thus was proclaimed as the criterion of the legal ensuring of human rights and freedoms in the Russian Federation. And we are talking about a very large volume of legal material, defined as the universally recognized norms of international law. According to the Ruling of the Supreme Court Plenum (Board) of the Russian Federation of 10 October 2003 «On Application of Generally Recognized Principles and Norms of International Law and the International Treaties of Russia by Courts of General Jurisdiction», contents of these principles should be contained in documents of the United Nations and its specialized agencies.

² Constitution of the Russian Federation, www.constitution.ru/en/10003000-01.htm, 01.04.2017.

³ Federal Law No101-FZ of July 15, 1995 «On International Treaties», rg.ru/1995/07/21/mejdunarodnye-dogovory-dok.html, 01.04.2017.

In particular, this group includes the principles and norms, contained in the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter and other international documents⁴.

According to the ratification Law, Russia recognized the jurisdiction of the ECHR over the interpretation and application of the Convention and its Protocols, in cases of alleged violations of the Convention by the Russian Federation (Art. 1(7)).

This provision was later concretised by the Ruling of the Plenum (Board) of the Supreme Court of the Russian federation No. 21 of June, 27, 2013 «On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by the Courts of General Jurisdiction»⁵. Article 2 stated, that «as follows from Article 46 of the Convention, Article 1 of Federal Law of 30 March 1998 no. 54-FZ On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, the legal positions of the European Court of Human Rights contained in the final judgments of the Court delivered in respect of the Russian Federation are obligatory for the courts». Based on the aforesated the Russian Federation is obliged to execute the decisions of the European Court of Human Rights on specific cases in respect of Russia.

At the same time, Paragraph 1 of Article 15 of the Russian Constitution determines that the Constitution of the Russian Federation shall have supreme legal force and direct effect, and applies to the entire territory of

⁴ Ruling of the Supreme Court Plenum (Board) of the Russian Federation of 10 October 2003 «On Application of Generally Recognized Principles and Norms of International Law and the International Treaties of Russia by Courts of General Jurisdiction», rg.ru/2003/12/02/pravo-doc.html, 01.04.2017.

⁵ Ruling of the Plenum (Board) of the Supreme Court of the Russian federation No. 21 of June, 27, 2013 «On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by the Courts of General Jurisdiction», rg.ru/2013/07/05/konvencia-dok.html, 01.04.2017.

the Russian Federation. Laws and other legal acts adopted in the Russian Federation, must not contradict the Constitution.

In accordance with Article 3 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation»⁶, to protect the foundations of the constitutional system and the fundamental human and citizen rights and freedoms, and to ensure the supremacy and direct effect of the Constitution of the Russian Federation on the entire territory of the Russian Federation, the Constitutional Court of the Russian Federation:

1) shall decide cases on conformity with the Constitution of the Russian Federation of:

a) federal laws, normative acts issued by the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation;

...

d) international treaties of the Russian Federation pending their entry into force.

...

Article 6 of the Federal Constitutional Law provides, that the decisions of the Constitutional Court of the Russian Federation shall be obligatory throughout the territory of the Russian Federation for all representative, executive, and judicial bodies of State Power, bodies of local government, enterprises, agencies, organizations, officials, citizens and their associations.

Article 79 states, that the decision of the Constitutional Court of the Russian Federation shall be final and may not be appealed. The decision of the Constitutional Court of the Russian Federation passed on the outcome of the consideration of a case assigned for hearing in the session of the Constitutional Court of the Russian Federation shall come into force immediately upon pronouncement. The judgment of the Constitutional Court of the Russian Federation adopted under the procedure stipulated by Article 471 of the present Federal Constitutional Law shall come into force from the day of its publication in accordance with Article 78 of the present Federal Constitutional Law. Other decisions of the Constitutional Court of

⁶ Federal Constitutional Law «On the Constitutional Court of the Russian Federation», www.ksrf.ru/ru/Info/LegalBases/FCL/Pages/default.aspx, 01.04.2017.

the Russian Federation come into force from the day of their adoption. The decision of the Constitutional Court of the Russian Federation shall be directly applicable and shall require no affirmation by other bodies and officials. The legal force of the judgment of the Constitutional Court of the Russian Federation deeming the act to be unconstitutional may not be overcome by the new adoption of the same act.

The Russian Federation, having ratified the European Convention on Human Rights, recognized thus the jurisdiction of the European Court of Human Rights. The Convention entered into force in the territory of Russia on 5 May 1998. In this connection the ECHR judgements became mandatory for execution in the Russian Federation.

History of the conflict of the Russian Federation and the ECHR

More than two decades decisions of the Russian Constitutional Court in many cases were based on legal positions, formulated by the ECHR. In turn, the ECHR judgements also often contain references to the legal positions of the Constitutional Court in cases concerning Russia. Execution of the ECHR judgements in the conditions of the Russian legal reality is often very politicized and scandalous topic⁷. And the problem occurs, when a judgement and a ECHR legal position as its basis, counter to a position of the Russian Constitutional Court on the issue, begins to be treated as a binding precedent, requiring changes to the Russian legislation⁸.

A serious conflict arose between the two instances on October 7, 2010, after the ECHR judgment on the Markin Case⁹, which contradicted rulings of the Constitutional Court of the Russian Federation. The ECHR found Russian legislation, applied in this case, is not compatible with the Convention. The Court considered as necessary general measures at the national level in accordance with the guarantees of Article 14 of the Convention.

⁷ Paul Kalinichenko «K voprosu o kollizii mezhdu postanovlenijami ESPCh i Konstituciej Rossii v svete pozicii Konstitucionnogo Suda RF», *Aktual'nye problemy rossijskogo prava*. No 2, 2016, p. 42.

⁸ Valentina V. Lapaeva «Delo 'Konstantin Markin protiv Rossii' v kontekste problemy nacional'nogo suvereniteta», *Sravnitel'noe konstitucionnoe obozrenie*. No 2, 2012.

⁹ Konstantin Markin v. Russia / No. 30078/06 (ECHR, Oct. 7, 2010).

Another sharp conflict between the Russian Federation and the ECHR appeared in connection with the YuKOS Case¹⁰. The court considered the case as early as 2011. After returning to his review, on July 31, 2014, the ECHR ordered Russia to pay a compensation to former shareholders of YuKOS.

Grounds for issuing such a decision were the following. First, Russian courts, during consideration of issues of taxation of YuKOS, violated Article 6 of the European Convention on Human Rights, providing for the right to a fair trial. According to the opinion of the ECHR, in 2000 the YuKOS Company did not have sufficient time to prepare its defence.

Second, the Strasbourg Court paid attention to the violation of Article 1 of Protocol No. 1 to the Convention (protection of property). The violation was connected with taxation of YuKOS in 2000-2001. The judges, in particular, noted, that Russia at that time didn't have the legal basis for the calculation of fines for non-payment of taxes, which were charged to the YuKOS Company.

On this basis, the ECHR awarded the compensation for pecuniary damage em former shareholders of YuKOS of ver € 1.866 billion. In addition to this, the ECHR obliged Russia to compensate the claimants their legal costs of almost 300 thousand euros.

The Russian Ministry of Justice appealed the ECHR judgement. On October 29, 2014, in accordance with the provisions of Art. 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms the Ministry sent a petition to the European Court of Human Rights. It demanded to refer the case to the ECHR Grand Chamber and to review the previously taken judgment in the «YuKOS v Russia» case.

The Ministry of Justice of the Russian Federation drew attention to the unfair and not objective approach to the Court's assessment of the legal and factual circumstances of the case. The ECHR, in particular, ignored the fact that fines for tax offenses of YuKOS was lawful and made on the basis of relevant federal law. This situation was considered and confirmed by the Constitutional Court of the Russian Federation.

¹⁰ OAO Neftyanaya Kompaniya Yukos v. Russia / No. 14902/04 (ECHR, July, 31, 2014).

¹¹ Minjust: nekotorye postanovlenija ESPCh po delam RF protivorechat normam mezhdunarodnogo prava, tass.ru/politika/2109509, 01.04.2017.

The Ministry of Justice considered the ECHR judgement to provide the status of «victims» to all, without exception, 51 thousands of YuKOS's shareholders as «unprecedented and paranormal». During the trial, the Ministry stated, the ECHR had ignored the existence of legitimate property claims to the applicant company from its creditors, which, unlike the majority shareholders of the company, had no relation to illegal schemes, that were used as the so-called tax optimization¹¹. However, the ECHR dismissed the Ministry's claim and refused to reconsider its earlier decision. Thus, the decision entered into force on July 31, 2015.

We should also pay attention to opinions of members of the Constitutional Court of the Russian Federation on this issue of relationships between the ECHR and Russia, who noted that there are a number of unresolved methodological, theoretical and organizational issues related to the implementation of ECHR judgements in Russia¹².

Chairman of the Russian Constitutional Court Valerii Zor'kin in this regard pointed out three sets of problems, that require development of theoretical and practical tools:

- it is necessary to have «distinction of situations requiring Russia to adopt measures of individual or general (systemic) nature. The systemic ones are collisions, for the elimination of which it is necessary to develop mechanisms to address recurring problems»;
- during implementation of the individual measures, it is necessary to distinguish between cases, that are related to the revision of judgments, and situations, when you can use a non-judicial means of redress for an infringement of rights;
- during the development process of general measures it is necessary to determine a body, which, in its turn, could determine obligations of the state, arising from an ECHR judgment, and a procedure for adoption of such measures.

In cases, connected with the need to make changes or additions to the existing legislation, it is the Constitutional Court, according to V. Zor'kin,

¹² See e.g.: Sergei P. Mavrin «Reshenija Evropejskogo Suda po pravam cheloveka i rossijskaja pravovaja sistema», www.ksrf.ru/ru/News/Documents/Выступление%20Маврина.doc, 01.04.2017.

is the body most suitable for the initiation and organization of procedure for legislative norms discussion, adoption of which derives from the ECHR judgments¹³.

Chairman Zor'kin also stated the need for the introduction of «national sovereignty protection mechanism», allowing to block judgements of the European Court of Human Rights, which differ from positions of the Constitutional Court of the Russian Federation. According to him, the Committee of Ministers of the Council of Europe cannot demand Russia to execute a decision of the Strasbourg Court, if it is contrary to a decision of the Constitutional Court, which has a regulatory framework to protect rights and freedoms. This stems directly from the Constitution, but if there is a request, such a mechanism can be formalized through the interpretation of Art. 15 of the Constitution, according to which the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system¹⁴.

As an alternative option of resolution of the conflict, it is possible to fix a binding rule, according to which, if an object of a complaint to the Strasbourg court has previously been the object of proceedings of the Constitutional Court of Russia, the complaint won't be considered by the European Court of Human Rights, by analogy with sub-paragraph b) of paragraph 2 article 35 of the Convention on the protection of rights and fundamental freedoms, according to which the Court does not accept an individual application, which is substantially similar to that which has already been examined by the Court or has another procedure of international investigation or settlement¹⁵.

All of these ways to resolve this situation would have the right to exist, if it was possible to amend the European Convention on Human Rights and Fundamental Freedoms, which, at present, clearly specifies that the Strasbourg Court accepts complaints from any person for violation of the rights, protected by the Convention, and that meet general eligibility

¹³ Valerii Zor'kin «Konstitucionno-pravovye problemy sudebnoj sistemy RF», rapsinews.ru/judicial_analyst/20121218/265821471.html, 01.04.2017.

¹⁴ *The Kommersant*, №215/P (4515), 22.11.2010, www.kommersant.ru/doc/1544077, 01.04.2017.

¹⁵ Valerii Zor'kin «Predel ustupchivosti», rg.ru/2010/10/29/zorkin.html, 01.04.2017.

requirements, and the Russian Federation is obliged to abide a final judgment of the European Court of human rights in any case, to which Russia is a party.

In this respect it is worth to mention a position of a judge of Russian Constitutional Court in retirement, Tamara Morschakova, who considers, that the reference of Valerii Zor'kin, on the matter, to Article 15 of the Russian Constitution is not entirely correct, since, in her view, issues of the protection of human rights and freedoms should be regulated by Article 17 of the Constitution, according to which, In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution¹⁶. This article is a special to Article 15 of the Constitution, which should be applied in all other matters connected with International law, except for rights and freedoms¹⁷.

The Russian legislative response

Since the Convention does not provide for any specific ways of application its rules, the processes of entering into force of the Convention's norms by national laws are significantly different in different States Parties¹⁸. Thus, in December 2015, Russian legislative authorities adopted a law, amending the Federal Constitutional Law «On the Constitutional Court of the Russian Federation». According to the document, the Constitutional Court of the Russian Federation «shall upon requests by federal executive body competent to operate in the field of protecting Russia's sovereign interests within the procedure of considering complaints filed against the Russian Federation, which is carried out by the interstate human rights

¹⁶ Constitution of the Russian Federation, www.constitution.ru/en/10003000-03.htm, 01.04.2017.

¹⁷ *The Kommersant*, №215/P (4515), 22.11.2010, www.kommersant.ru/doc/1544077, 01.04.2017.

¹⁸ Andrew Z. Drzemczewski *European Human Rights Convention in Domestic Law: A Comparative Study*, New York: The Clarendon Press; Oxford University Press, 1983; G. Ress «The Effects of Judgments and Decisions in Domestic Law» in *The European System for the Protection of Human Rights*, Dordrecht, 1993, pp. 801-851.

protection institution according to an international covenant to which Russia is a party, resolve the issue of feasibility of the enforcement of the interstate human rights protection institution's decision» (Art. 3).

This decision marks a significant turn in the Russian position on the issue of relationships between the ECHR and the Russian Federation.

The State Duma deputies from all factions on June 11, 2015, formally asked the Constitutional Court to clarify, in what part the ECHR's judgments may be applicable in the territory of the Russian Federation, if they relate to the constitutional norms and the Russian Constitutional Court's acts¹⁹.

As deputies, signatories to this request, believed, that a number of ECHR judgments had, as their ultimate goal, the erosion of boundaries of state sovereignty of the Russian Federation, based on the supremacy of the Russian Constitution and the priority of the jurisdiction of the Constitutional Court of Russia as the only state body, authorized to carry out constitutional review.

The authors of the request noted that, under Article 79 of the Constitution, the Russian Federation may participate in interstate associations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation²⁰. In their view, the contested rules obliged the courts and other state bodies to implement certainly the ECHR judgements even against Russia's Basic Law. As a result, the State Duma deputies thought, state bodies were put in a no-win situation, as such a conflict might be insoluble. Based on this, they considered the contested provisions inconsistent with the Constitution of the Russian Federation (parts 1, 2 and 4 of Article 15 and Article 79).

Having considered the request of the State Duma deputies, the Constitutional Court of the Russian Federation made some noteworthy provisions²¹. The Court

¹⁹ Ruling of the Constitutional Court of the Russian Federation No 21-II of July, 14, 2015, doc.ksrf.ru/decision/KSRFDecision201896.pdf, 01.04.2017.

²⁰ Constitution of the Russian Federation, <http://www.constitution.ru/en/10003000-01.htm>, 01.04.2017.

²¹ Ruling of the Constitutional Court of the Russian Federation No 21-II of July, 14, 2015, rg.ru/2015/07/27/ks-dok.html, 01.04.2017.

found that, by participating in any international treaty, the Russian Federation does not give up its national sovereignty. ECHR judgements, based on the European Convention, cannot override the priority of the Constitution of the Russian Federation. And their execution is ensured, if all internal constitutionally established intra-state means of judicial protection have been exhausted.

The Constitution of the Russian Federation has supreme legal power in relation to the standards of the European Convention and at the stage of their implementation in the Russian legal system. Moreover, since the basis of the Russian Federation and the European Convention is shared by the same basic values, the emergence of conflicts between them is possible only if the ECHR will provide interpretation of the Convention contrary to the Russian Constitution. Since the rule of the Basic Law operates in the Russian legal system, it means that Russia should abandon the literal following the decision of the Strasbourg Court.

To prove its position, the Constitutional Court mentioned the practices of higher courts of European countries, e.g.: Germany, Italy, Austria, the United Kingdom, which are based on the principle of the priority of the norms of national constitutions in the execution of the ECHR judgments. At a resolution of such conflicts, the Constitutional Court has recommended to engage a dialogue for constructive cooperation with the ECHR. Only on this basis there can be built a harmonious relationship between the legal systems in Europe, being based not on subordination, but mutual respect.

The Constitutional Court specially emphasized, that the supremacy of the Constitution in the execution of the ECHR judgments can be provided exclusively by the Constitutional Court of the Russian Federation within one of the following procedures:

- by the Constitutional Court of the Russian Federation on request the relevant courts, while reconsidering in the procedure established by the procedural legislation a case in connection with adoption of a judgment by the ECHR, in which is ascertained violation in the Russian Federation of human rights and freedoms at application of a law or its individual provisions, having come to the conclusion on the possibility of application of a respective law only after confirmation of its conformity to the Constitution of the Russian Federation, petitions the Constitutional Court with a request to review constitutionality of this law. In any event court of general jurisdiction, arbitration court,

carrying out proceedings of reconsideration of a judicial act having entered into legal force on application of a person, on whose complaint the ECHR passed a judgment, ascertaining violation of the CPHR by the provisions of the legislation of the Russian Federation, applied in this person's case, is obliged to suspend proceedings and petition the Constitutional Court with a request to review their conformity to the Constitution of the Russian Federation;

- as a part of the interpretation of the Constitution at the request of the President or the Government of the Russian Federation, if the authorities have come to the conclusion on the impossibility to execute a judgment of the ECHR passed on a complaint against Russia, because in the part obliging the Russian Federation to take measures of individual and common character it is based on the provisions of the CPHR in the interpretation leading to their divergence with the Constitution of the Russian Federation, are entitled to petition the Constitutional Court with a request to interpret respective provisions of the Constitution of the Russian Federation with the aim to eliminate uncertainty in their understanding, bearing in mind the revealed conflict and international obligations of Russia as applied to the possibility to execute the judgment of the ECHR and to take measures of individual and common character aimed at ensuring fulfilment of the CPHR;
- during the use by the Constitutional Court of a special legal mechanism to ensure the supremacy of the Constitution in the execution of ECHR judgments, if such a mechanism will be established by the federal legislator.

In any case, as a result of consideration of the problem, should the Constitutional Court come to the conclusion that the judgment of the ECHR, so far as it is based on the European Convention in the interpretation contradicting the Constitution of the Russian Federation, cannot be executed, such judgment in this part is not subject to execution.

On December 15, 2015, the Federal Constitutional Law No 7-ΦK3 of December 14, 2015 «On Amendments to the Federal Constitutional Law «On the Constitutional Court of the Russian Federation»²², developed

²² Federal Constitutional Law No 7-ΦK3 of December 14, 2015 «On Amendments to the Federal Constitutional Law «On the Constitutional Court of the Russian Federation», rg.ru/2015/12/15/ks-site-dok.html, 01.04.2017.

pursuant to the ruling of the Constitutional Court of the Russian Federation No 21-II, dated 14 July 2015, entered into force.

The law gives the Constitutional Court the power to verify compliance of decisions of interstate body with the Constitution of Russia, stating that «3.2) at a request of a federal executive body, vested with competence in the field of ensuring the protection of interests of the Russian Federation during the proceedings at the interstate body for the protection of human rights and freedoms of complaints, filed against the Russian Federation on the basis of an international treaty of the Russian Federation, decides the possibility of execution of a judgement of an interstate body for the protection of human rights and freedoms».

It should be noted, that the used term of «an interstate body» may include not only the ECHR, but also other international bodies, acting in the sphere of protection of human rights and dealing with individual petitions, which jurisdiction has been recognized by the Russian Federation, for example, the UN human rights bodies. We should also admit, that this term «the interstate body for the protection of human rights and freedoms» do not include international courts for disputes, involving States, even if a particular proceedings may affect issues of human's rights protection, and international arbitration institutions, which are not inter-state themselves, even if they may proceed with cases, involving a state as a party.

Article 104.3 of the amended Federal constitutional law sets the limits of review, providing, that the Constitutional Court of the Russian Federation in resolving the issue of the possibility of execution of a judgement of an interstate body for the protection of human rights and freedoms checks the possibility of execution, in accordance with the Constitution of the Russian Federation, of a judgement of an interstate body for the protection of human rights and freedoms, issued on the basis of provisions of an international treaty of the Russian Federation in their interpretation by the interstate authority for the protection of human rights and freedoms, in terms of the fundamentals of the constitutional system of the Russian Federation and in terms of legal regulation of a man's and a citizen's rights and freedoms, established by the Constitution of the Russian Federation.

Article 3 of the Federal Constitutional law «On the Constitutional Court of the Russian Federation» has initially provided, that the Constitutional

Court of the Russian Federation shall rule exclusively on matters of law. This provision is also applied to the new powers of the Court. As the Constitutional Court cannot review the judgement on the merits, it can only determine whether the execution of such judgements would contradict the fundamental principles of the Russian constitutional system.

The procedure for initiation of proceedings on the case on verification of the possibility or impossibility of execution of an interstate body's judgement provides an appeal to the Constitutional Court of the Russian Federation with a relevant request, made by the competent federal executive body. That body is the Ministry of Justice of Russia, because one its tasks is to ensure the protection for human rights, in general, and the protection of the interests of Russia to the ECHR, in particular²³. It can send a request on its own initiative or based on the opinion of other federal governmental agencies, whose competence includes enforcement of decisions of an interstate body.

Thus, by adopting the new federal constitutional law Russia didn't refuse the jurisdiction of international courts and their future decisions. However, the Federal Constitutional Law regulates relations within a situation, when Russia has an obligation, derived from international legal norms, but at the national level there will be set a ban on any action, aimed at its implementation.

Prior to the adoption of the amendments to the Constitutional Law, the mechanism of the ECHR judgements' review at the national level was formed in the Constitutional Court's ruling of July, 14, 2015. The law only fixed this mechanism at the level of federal constitutional law.

The Council of Europe's opinion on the issue

Such significant changes to Russian law caused an interest of the Council of Europe. During its March session, the Venice Commission adopted the interim opinion on these amendments²⁴. The Commission stated, that

²³ Ukaz Prezidenta Rossijskoj Federacii ot 13 oktjabrja 2004 g. N 1313 «Voprosy Ministerstva justicii Rossijskoj Federacii», rg.ru/2004/10/19/minjust-dok.html, 01.04.2017.

²⁴ «Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation» adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)005-e.

according to the new amendments the Russian Constitutional Court has been empowered to declare an international decision as «unenforceable», which prevents the execution of that decision in any manner whatsoever in the Russian Federation. This is incompatible with the obligations of the Russian Federation under international law. Moreover, states have to remove possible tensions and contradictions between rulings of the European Court of Human Rights and their national systems, including — if possible — via means of dialogue. This is a tool which has proven its effectiveness in many instances, in several Council of Europe member States. The Russian Federation should have recourse to dialogue, instead of resorting to unilateral measures, which are at variance with the Vienna Convention on the law of treaties which stipulates that a state has to interpret the treaty «in good faith» (Article 31)²⁵.

But in spite of the abundant criticism, the document is completed with very neutral proposals to amend the Law on the Constitutional Court:

- the power and any reference to the power of the Constitutional Court to rule on the “enforceability” of an international decision should be removed from the Federal Constitutional Law on the Constitutional Court; “enforceability” should be replaced by “compatibility with the Russian Constitution of a modality of enforcement, proposed by the Russian authorities, of an international decision”; this power should be excluded in respect of a specific measure of execution indicated by the European Court of Human Rights itself in its judgment;
- the Federal Constitutional Law on the Constitutional Court should make clear that individual measures of execution contained in judgments of the European Court of Human Rights, such as the payment of just satisfaction, may not be the object of an assessment of constitutionality;
- new Article 1044 paragraph 2 and Article 106 part 2 of the Federal Constitutional Law on the Constitutional Court should be removed;
- provision should be made in the Federal Constitutional Law on the Constitutional Court for the duty of the Russian authorities, if the

²⁵ «Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation» adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)005-e, p. 25.

Constitutional Court rules that a measure of enforcement is incompatible with the Russian Constitution, to find alternative measures for executing the international decision. One of these possibilities might be to amend the legislative framework, even the Constitution;

- article 47 of the Federal Constitutional Law on the Constitutional Court should be amended so as to ensure that any proceedings before the Constitutional Court of the Russian Federation involving the assessment of the compatibility with the Russian Constitution of a measure of execution of an international decision should necessarily involve the individual who acted as applicant before the relevant international court or body²⁶.

New Russian law on the Constitutional Court in action

The first example of use of the new powers of the Constitutional court of the Russian federation was the Ruling of April 19, 2016 No 12-II²⁷.

By its ruling, the Constitutional Court answered to the request of the Ministry of Justice of the Russian Federation on the question of the possibility to execute the Judgment of the European Court of Human Rights of 4 July 2013 in the case of Anchugov and Gladkov v. Russia in accordance with the Constitution of the Russian Federation. The ECHR in its judgment concluded that a restriction on electoral rights of citizens who are kept in places of deprivation of liberty under a court sentence, envisaged under Article 32 (Section 3) of the Constitution, violated the subjective right to take part in elections ensured by Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. According to the ECHR opinion, a blank prohibition, provided in Art. 32 of the Constitution of the Russian Federation, is in direct contradiction to the established European consensus, which requires a differentiated approach to deprivation of prisoners of their voting rights (e.g. the ECHR judgement on the Hirst case).

²⁶ «Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation» adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)005-e, pp. 25-26.

²⁷ Ruling of the Constitutional Court of the Russian Federation of April 19, 2016 No 12-II, rg.ru/2016/05/05/sud-dok.html, 01.04.2017.

The Constitutional Court begins its reasoning by stating that the European Convention, as an international treaty of the Russian Federation, forms an integral part of its legal system, and because the state is obliged to execute the ECHR's judgement on a complaint against Russia with regard to persons, involved in a case, and within a specific subject of a dispute. Thus, implementation of measures envisaged by the ECHR's judgment – both of individual and general character – must be carried out in accordance with Article 15 (Section 4) of the Constitution of the Russian Federation also on the basis of recognition of such judgment as an integral part of Russia's legal system.

The Constitutional Court continues in the light of dualist theory on interaction of international and domestic law, stating, that the interaction of the European conventional and the Russian constitutional legal orders is impossible in the conditions of subordination, so far as only a dialogue between different legal systems is a basis of their appropriate balance, and the effectiveness of norms of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Russian legal order in many respects depends on the respect of the European Court of Human Rights for the national constitutional identity.

At the same time the Court initially points out the need in dialogue between the ECHR and itself for future successful cooperation, recognizing the fundamental significance of the European system of the protection of human and civil rights and freedoms, judgments of the European Court of Human Rights being part of it, the Constitutional Court of the Russian Federation is ready to look for a lawful compromise for the sake of maintaining this system, reserving the determination of the degree of its readiness for it, so far as it is the Constitution of the Russian Federation which outlines the bounds of compromise in this issue.

From this starting position the Constitutional Court of the Russian Federation begins its dialogue with the ECHR in the form of criticism of the arguments, laid down by the ECHR in its judgement on the Anchugov and Gladkov case.

In 1996 Russia signed and in 1998 ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in the light of understanding, that provisions of Section 3 of Article 32 of the Constitution were in full accordance with the norms of Article 3 of Protocol No. 1 to the

Convention and therefore didn't need any alteration. The control bodies of the Council of Europe did not have any concern in relation to possible contradictions between them either. In other words, both Russia and the Council of Europe agreed, that Article 3 of Protocol No. 1 to the Convention by the moment of its ratification by the Russian Federation and Article 32 (Section 3) of the Russian Constitution were in full accordance with each other. From that moment and until now these corresponding norms did not get any textual change.

The Constitutional court admits, that, on the contrary, in its judgement in the Anchugov and Gladkov case the ECHR attributed to Article 3 of Protocol No. 1 to the Convention the meaning, implicitly contemplating alteration of Article 32 (Section 3) of the Constitution of the Russian Federation, to which Russia as a High Contracting Party to the multilateral international treaty, which is the Convention for the Protection of Human Rights and Fundamental Freedoms, did not give consent during its ratification. And the ECHR did not take in to account the above-mentioned fact, that Article 32 (Section 3) of the Constitution of the Russian Federation and Article 3 of Protocol No. 1 to the Convention did not contradict each other.

In the section 4.3 of its ruling, the Constitutional Court of the Russian Federation observes that legal positions of the European Court of Human Rights with respect to the prerogative of a State to restrict voting rights of convicted (imprisoned) persons have been undergoing «evolutive» alteration and may hardly be considered as well established. For instance, in *Labita v. Italy* Case the ECHR found that while the disenfranchisement of the applicant violated Article 3 of Protocol No. 1 since his association with a criminal group had not been established, it did not, however, challenge the compatibility of temporary removal from the register of electors with the Convention, should the guilt of a defendant had been properly proven. In *M.D.U. v. Italy* Case the Court reached a conclusion that a ban on voting for a two-year period imposed in connection with a conviction for tax fraud met the proper functioning and preservation of the democratic regime, and, two years later, that disenfranchisement was possible only if an individual was convicted for committing a «serious offense», notably on the condition that it was directly referred to in the sentence (*Hirst v. the United Kingdom* Case).

Thus, through decades and by means of «evolutive» interpretation of Article 3 of Protocol No. 1 to the Convention the specific content of criteria

of “non-automatism”, proportionality and differentiation in legal positions of the European Court of Human Rights has been subject to substantial changes.

It should be recalled that within the context of subsidiarity principle by which the European Court of Human Rights is guided in its activities, the “evolutive” interpretation of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms must have substantial basis confirmed by consent, whether explicit or implied, of States Parties to the Convention regarding respective standards. However, according to the Constitutional Court, such consensus has not yet been achieved, since within a significant number of States Parties to the Convention convicted persons (prisoners) are either completely deprived of electoral rights, or somehow are restricted in their active right to vote.

Thus, the Constitutional Court explicitly states, that it does not consider a conclusion on the contradiction ECHR Art. 32 of the Constitution to the Convention as convincing. This implies the absence of a duty of the Constitutional Court for the interpretation of Art. 32 in the light of the ECHR’s judgement. For the Constitutional Court the principle of *pacta sunt servanda* should be applied to the value of the Art. 3 of Protocol No 1, which has existed at the time of signing the Convention by Russia, and not in the sense, which is now attached to the provision by the ECHR.

Responding to the proposal to execute the ECHR’s judgement via constitutional interpretation, the Constitutional Court stated, that such interpretation is impossible, as it would be the interpretation *contra legem*. According to the Constitutional Court, nothing would be at odds with both the literal meaning of Section 3 of Article 32 of the Constitution and its meaning in the system of constitutional norms, taking into account the historical circumstances of preparation of the Constitution’s draft text.

After citing these arguments, the Constitutional Court again reiterates, that, taking into consideration its multiannual experience of a constructive cooperation and mutually respectful dialogue with the ECHR, the Constitutional Court of the Russian Federation notes that if it deems it necessary to enjoy the right to objection as an exceptional case, it is only in order to make contribution to the crystallization of the developing practice of the European Court of Human Rights in the field of suffrage protection, whose decisions are called upon to reflect the consensus having formed among States Parties to the Convention.

Conclusion

After analysis of development of relationships between the Constitutional Court of the Russian Federation and the European Court on Human Rights, we must say, that both instances nowadays seek a dialogue among each other. The ruling of the Russian Constitutional Court of April 19, 2016 No 12-II directly contains an appeal to the ECHR along with setting out its own position and arguments. In its turn, the ECHR and the Council of Europe, via the Venice Commission, have also expressed their wish to search for points of contact by the Council of Europe bodies to continue the dialogue with the Russian Federation as its Interim opinion contains sharp transition from criticism to the specific proposals on amendments of Russian legislation.

In accordance with the position of the Constitutional Court, the newly established powers of the Constitutional Court of the Russian Federation should be used in exceptional cases, where the execution of ECHR judgments would affect the rights of others, because the Russian Constitution provides for them a greater level of protection. And this is really justified, because, on the basis of the adopted amendments to the Federal Constitutional Law «On Constitutional Court of the Russian Federation», to check the hundreds of existing ECHR decisions on complaints against Russia to the question of their compliance with the Russian Constitution seems unthinkable and useless waste of time. Therefore the mechanism of rejection of execution of the ECHR's judgements, forming in the Russian legal system, would be used on selective occasions and will concern a limited number of cases.

Obviously, extramural dialogue of two courts will continue, but on the basis of other applicants' complaints. But what is more important, it is to avoid the politicization of the selection process of the ECHR judgments, which should be considered by the Constitutional Court as to their execution in the legal system of the Russian Federation. Because there is no doubt of the need for application and enforcement of the European Convention and the ECHR's practice by the Russian courts. The European Convention establishes the highest values of humanity — fundamental rights and fundamental freedoms, interpreted by the ECHR, they undoubtedly constitute the core of both international and national law. Common values, in question, are not the products of a particular culture,

can be changed from age to age or by subjective views of some individuals, but they are universal to all mankind, common cultural value, regardless of nations, ideologies and religions.

Literature

Constitution of the Russian Federation, www.constitution.ru/en/10003000-01.htm, 01.04.2017.

Andrew Z. Drzemczewski *European Human Rights Convention in Domestic Law: A Comparative Study*, New York: The Clarendon Press; Oxford University Press, 1983

Federal Law No101-FZ of July 15, 1995 «On International Treaties», rg.ru/1995/07/21/mejdunarodnye-dogovory-dok.html, 01.04.2017.

Federal Law of March 30, 1998 N 54-FZ «On ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols», www.kremlin.ru/acts/bank/12169, 01.04.2017.

Federal Constitutional Law «On the Constitutional Court of the Russian Federation», www.ksrf.ru/ru/Info/LegalBases/FCL/Pages/default.aspx, 01.04.2017.

Federal Constitutional Law No 7-ΦK3 of December 14, 2015 «On Amendments to the Federal Constitutional Law «On the Constitutional Court of the Russian Federation», rg.ru/2015/12/15/ks-site-dok.html, 01.04.2017.

«Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation» adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)005-e.

Konstantin Markin v. Russia / No. 30078/06 (ECHR, Oct. 7, 2010).

Paul Kalinichenko «K voprosu o kollizii mezhdru postanovlenijami ESPCh i Konstituciej Rossii v svete pozicii Konstitucionnogo Suda RF», *Aktual'nye problemy rossijskogo prava*. No 2, 2016, p. 42.

Valentina V. Lapaeva «Delo 'Konstantin Markin protiv Rossii' v kontekste problemy nacional'nogo suvereniteta», *Sravnitel'noe konstitucionnoe obozrenie*. No 2, 2012.

- Sergei P. Mavrin «Reshenija Evropejskogo Suda po pravam cheloveka i rossijskaja pravovaja sistema», www.ksrf.ru/ru/News/Documents/Выступление%20Маврина.doc, 01.04.2017.
- Minjust: nekotorye postanovlenija ESPCh po delam RF protivorechat normam mezhdunarodnogo prava, tass.ru/politika/2109509, 01.04.2017.
- ОАО Neftyanaya Kompaniya Yukos v. Russia / No. 14902/04 (ECHR, July, 31, 2014).
- G. Ress «The Effects of Judgments and Decisions in Domestic Law» in *The European System for the Protection of Human Rights*, Dordrecht, 1993, pp. 801-851.
- Ruling of the Supreme Court Plenum (Board) of the Russian Federation of 10 October 2003 «On Application of Generally Recognized Principles and Norms of International Law and the International Treaties of Russia by Courts of General Jurisdiction», rg.ru/2003/12/02/pravo-doc.html, 01.04.2017.
- Ruling of the Constitutional Court of the Russian Federation No 21-II of July, 14, 2015, doc.ksrf.ru/decision/KSRFDecision201896.pdf, 01.04.2017.
- Ruling of the Constitutional Court of the Russian Federation of April 19, 2016 No 12-II, rg.ru/2016/05/05/sud-dok.html, 01.04.2017.
- The Kommersant, №215/P (4515), 22.11.2010, www.kommersant.ru/doc/1544077, 01.04.2017.
- Ukaz Prezidenta Rossijskoj Federacii ot 13 oktjabrja 2004 g. N 1313 «Voprosy Ministerstva justicii Rossijskoj Federacii», rg.ru/2004/10/19/minjust-dok.html, 01.04.2017.
- Valerii Zor'kin «Konstitucionno-pravovye problemy sudebnoj sistemy RF», rapsinews.ru/judicial_analyst/20121218/265821471.html, 01.04.2017.
- Valerii Zor'kin «Predel ustupchivosti», rg.ru/2010/10/29/zorkin.html, 01.04.2017.

Perceptions of The Eu and European Identity in Montenegro

Vuk Uskoković

assistant lecturer, University of Donja Gorica

Abstract: This paper examines the perception of the EU in Montenegro (i) by looking into popular, party, government attitudes towards the EU and (ii) by deconstructing a specific ideology of Europe and European identity which has largely shaped this perception. The first part finds that a positive perception of the EU and unconditional support for EU membership function as the nation's only national interest on which a practically universal consensus has been reached at both popular and elite level. The second finds that the image of Europe and European identity in Montenegro is laden with auto-colonial and authoritarian legacy of Balkan modernising projects of the past two centuries and that this discourse may subvert the very transformative processes of EU integration which the EU is supposed to support.

Key words: Montenegro; European Union; European Identity; EU accession; nationalism; Balkans.

Introduction

In this paper I wish to explore (i) the way the EU has been perceived in Montenegro over the past decade; (ii) the dominant ideology of “European identity” which I believe has considerably shaped this perception. After reviewing party attitudes, government policies, the existing opinion polls on the perception of the EU in Montenegro, I proceed to examine a very specific ideology, which I term “Balkan modernism”, which views Montenegrins and other Balkan nations as “inherently European” or possessed of a “European identity” yet somehow deficient in the quality, for the full realisation of which they require the moral and political authority and supervision of the EU. There was much in this discourse that was outrightly auto-colonial and authoritarian. Still, the moral authority enjoyed by the EU could have exerted a benign and truly transformative role in the process of the country's democratisation and accession to EU. At this moment, after the EU's different approaches to the Macedonian and Montenegrin political crises of 2015-2016, i.e. its

opting for the preservation of the *status quo* in Montenegro, my fear is that, without losing much of its authority and influence in the country, or indeed suffering much damage to its perception in Montenegro, the EU will come to be viewed primarily, and especially among the younger generations, as a way out of Montenegro.

The first half of the paper focuses on what opinion polls conducted in the post-independence period tell us of Montenegrin citizens' disposition towards the EU (which is overwhelmingly favourable), their attitude towards EU membership (which they overwhelmingly support), and their ideas thereof (which though often vague not ideally informed are still far from utopian and unreasonable expectations). These popular attitudes are faithfully reflected in the universal consensus of Montenegrin political parties and civil sector that the EU is entirely without alternative for Montenegro, and EU integration has come to function as the divided country's national interest and *raison d'état* of sorts.

In the second half of the paper I propose, on the tracks of Maria Todorova's deconstruction of Balkanism,¹ to engage a political ideology which, though having (I believe) dominantly shaped both lay and learned discourses of Euro-Balkan relations, has largely been ignored so far. I call it "Balkan modernism" and define it as the belief that a Balkan nation-state, with its state-building middle-class intelligentsia and bureaucrats, has a moral purpose in raising the lagging-behind "traditional" Balkan culture to the level of "civilised" and "advanced" Europe. This discourse is shared equally by Balkan nationalists, communists, and liberals, and presents the dominant way in which political elites conceptualise their own role and their countries' position in relation to Europe. Although the existing polls hardly allow us to generalise on the extent to which this discourse has shaped popular ideas about Europe and the EU, I think that its presence in academia, the media, and education is sufficiently attested as to invite the question of whether perhaps this auto-colonial and authoritarian perspective on Balkan modernity has in fact subverted the modernising processes in the Balkans.

¹ Maria Todorova, *Imagining the Balkans*, Oxford University Press, Oxford, 2009.

Perception of the EU in Montenegro: Polls, Party Programmes, and Policies

The perception of the EU in member states themselves has largely been shaped by issues of (democratic) legitimacy, conflicting national and supranational interests, and a conceptual impasse between the very idea of nation-state and a union which though operating very much as a confederation contents to call itself a *sui generis* international organisation. What is frequently overlooked in intellectual discussions on e.g. the European identity, citizens' identification with the EU, poll turn-outs at European Parliament elections, the problem of democratic deficiency, is that there exists a contradiction in the very constitutional and philosophical architecture of the European Union. Nation-state, (i) built on the fiction of the social contract, (ii) construed as a fictional sovereign entity dedicated to the life-or-death pursuit of its public good and its national interests, (iii) of which the evolution over the past half millennium has mostly consisted of making good its claim to exclusive rule over its territory and its people, removing all medieval and early modern allegiances and authorities above and beneath itself, can only to a certain degree accommodate, constitutionally speaking, the existence of a supranational entity derived from itself. The EU, contracted between its member states for the purpose of discharging a considerable portion of their sovereign functions, in theory can either be a federation/"superstate" or a more prosaic international organisation, and not something in between. The fundamental problem of EU integration, one implicitly shaping its perception among EU citizens, is not merely that of supplying its sovereign decisions with democratic legitimacy, or of aligning conflicted (supra)national interests within it, but of how such a thing can exist at all. It was the whole point of social contract to summon *one* sovereign entity into existence and to control it; what do we do now with both the nation-state and the EU stemming from it with blurred sovereign authorities?

While Montenegro and other former Yugoslav republics obviously share the same constitutional form, their constitutional histories have been somewhat different. Contrary to their specific nationalistic claims, neither of these states has been the product of uninterrupted, centuries-long transmission of national consciousness and sovereignty, but were given their current legal status and borders by the communist Yugoslavia. They

were created by a supranational entity rather than the other way round. This is not merely a jurisprudential or philosophical observation. Consider the example of Montenegro. Communist Yugoslavia not only restored Montenegro's separate statehood but also transformed, via industrialisation and urbanisation, what had likely been the most backward region in Europe into a modern state. Furthermore, these republics were administered by local communist elites under central supervision, from which they eventually, bloodily or peacefully, broke; in Montenegro, the local apparatchiks are still in power (having changed but the name of the party, and having made the long journey from hardcore communism via Serbian nationalism to Montenegrin nationalism); in all of these states the continuity with the old regime is most obvious in participacy, security structures, public administration, and social and political attitudes and values. While researching the sudden return of the largely atheist and anticlerical Montenegrins to the Church following the fall of communism, Bešić and Đukanović hypothesised that the converts and returnees sought in the teachings and traditions of the Church the comprehensive worldview, moral certainty, and sense of belonging they had lost with communism.² Could it be similarly argued that, having grown tired of independence for which they proved so clearly inept, the former third-class communist apparatchiks are now seeking in the EU the Yugoslavia from which they had seceded?

*A National Consensus: EU Integration
as Montenegro's raison d'état*

The EU and the overwhelmingly positive image Montenegrins have of it are one of the very few matters on which a practically universal consensus has been reached in this country otherwise torn by very real party divisions and imaginary ethnic and national lines. It has even been enshrined in the Montenegrin Constitution, adopted in October 2007 after intense partisan infighting in the aftermath of the proclamation of independence. The preamble of the Constitution adduces "the dedication to cooperation on equal footing with other nations and states and to the

² Miloš Bešić and Borislav Đukanović, *Bogovi i ljudi: religioznost u Crnoj Gori* [Of Gods and Men: Religiosity in Montenegro], CID, Socen, Podgorica, 2000, pp. 213-7.

European and Euro-Atlantic integrations” as one of the chief motives of the legislator. Thus the very purpose of Montenegro’s independent existence has been expressly and irrevocably tied to the EU.

I should like to clarify that this consensus is hardly utopian and is not altogether deprived of criticism. Critical voices, concerns over the effects of EU laws and policies, and misinformed views are as frequently heard in Montenegro as they are in most EU member states.³ Montenegrins themselves readily admit in polls that they are dissatisfied with the education they receive on the EU. This, however, seems to have the opposite effect of feeding anti-EU opinions. Ignorance and misinformation, alienation and distance, elitism and technocracy, instead of fostering fear and disaffection as in most EU member states, have paradoxically contributed considerably to the welcoming attitudes towards the EU; or rather, have not harmed an already existing positive attitude towards Europe and the EU. It was not merely the perceived advantages or disadvantages of EU membership that have swayed people in their perception of the EU. Rather, and this is the first thing to note on the perception of the EU in Montenegro, EU membership has come to be seen as an absolute necessity for Montenegro. While NATO strongly divides the citizens and political actors of Montenegro, the EU is perceived as having no alternative. Neither utopian nor dystopian, this attitude may best be described as a kind of desperate realism.

This national consensus is most easily exemplified by the fact that, with the exception of one fringe opposition party (reputed by other opposition parties to be a secret service project to divert Serb voters from the opposition), all political actors are unreservedly in favour of EU

³ Recently one of the leaders of the opposition DF alliance, Nebojša Medojević, spoke with a somewhat eurosceptic tone on the implications of Brexit for the immediate future of European integration and the long-term format of the EU. He criticised the government’s failure to appreciate the possible stall to the integration as a consequence of Brexit, and rehearsed the standard conservative litany against the Brussels bureaucracy, which he heavily qualified by an insistence on European values and European unity. So far this has been practically the only even remotely “eurosceptic” public statement in Montenegro. “Medojević: Nismo euroskeptici ali nije Evropa isto što i EU” [“Medojević: We Are Not Eurosceptics, But the EU Does Not Equal Europe”], *Portal Analitika*, 30 June 2015, available at: <http://www.cdm.me/politika/medojevic-nijesmo-euroskeptici-ali-nije-evropa-isto-sto-i-eu>; last accessed 12 October 2016.

membership and integration. The majority of these parties is social-democratic and leftist, most of them are either Montenegrin, Serbian, or Bosniak nationalists, and with the exception of the two largest, the ruling Democratic Party of Socialists (DPS) and the chief opposition subject, the Democratic Front alliance (DF), which have broader bases, most comprise people of a similar socio-economic background and represent narrow class or minority interests. Most of them are involved in deep ideological and practical political contradictions. The ruling DPS, in spite of its leftist appellation, its base in the middle-class employed by or dependent upon the government, and being run by former communist apparatchiks, has been responsible for neoliberal economic policies which have proven detrimental for the country's economy. Its former coalition partner, the Social Democratic Party (SDP), a party of upper-middle-class professionals with a fierce social democratic rhetoric and still fiercer Montenegrin nationalism, claims to have supported these economic policies as a price of Montenegro's independence; a faction of the party, no less social-democratic and no less nationalistic, split and formed a new party (Social Democrats, SD) with the intention of lending further support to the neoliberally-minded DPS. The DF alliance, comprising a varied spectrum of political subjects ranging from a conservative pro-independence and pro-NATO party to Serbian nationalistic parties, united with the purpose of toppling the regime, recognises the detrimental effect of government economic policies and seeks to redress it via criminal prosecution for corrupt privatisations and embezzled public funds, but does not, like any other party, challenge the existing economic arrangement. The pro-government Bosniak Party (BS) publicly decries the Serbian nationalism of some of the opposition parties while lending support to the ruling DPS responsible, back in the day when they espoused Serbian nationalism, for the fateful deportation of Bosnian refugees to the authorities of the Republic of Srpska. So great is the authority enjoyed by the EU and its values in Montenegro, and so general and overwhelming is the support for European integration that it has become a common strategy of pro-government parties and media to seek to discredit the blatantly pro-EU opposition by accusing it of being "anti-European" and "anti-state".

In short, party attitudes towards the EU are not conditioned by their ideology, programme, policies, and ethnic affiliation. Rather than interpreting their stance towards the EU in the key of the specific policies,

goals, and visions they pursue, most parties choose the very reverse discursive practice: they legitimise their policies by describing them as European/pro-EU/in accordance with European standards, which, as we have seen above, can encompass a most varied range of political and ideological stances.⁴ In the absence of a genuine national consensus, where the ruling DPS identifies itself with the state and purposely promotes, in a typical *divide et impera* strategy, a Montenegrin nationalism aimed at excluding those Montenegrins who simultaneously identify as Montenegrins and Serbs (which had been until very recently the party line of DPS), who in turn feel alienated not only from the government but from the nation itself, EU integration is the one common denominator shared by all political subjects of relevance in the country, and the lubricant of public political discourse. For the regime, EU membership would in reverse legitimise its thitherto policies and demonstrate that it had been on the right track all along; for the opposition, the EU, its standards, values, and the accession process are the benchmark against which the policies and abuses of the regime are judged.⁵

The absolute priority of EU integration is such that government policies aimed thereat appear to be conducted by few other considerations than concluding negotiating chapters as soon as possible. The official negotiating positions give little reason to believe that behind them there lies a clear idea of national interest or an inflexible minimum below which

⁴ In the above “eurosceptic” statement by Medojević, the current state of affairs in the EU is described as coming short of a more general, non-EU, European ideal. Even supposed euroscepticism is framed within a pro-European attitude.

⁵ Writing back in 2012, Sošić and Marović similarly found that “[t]he ruling coalition tends to emphasise the positive assessments of Montenegro made by EU officials, such as the European Commission in its Annual Progress Reports on the candidate and potential candidate countries for EU membership... [T]he opposition parties generally focus on the problems highlighted in the Progress Reports, calling on the government to deliver results and to ensure the implementation of the adopted legislation. In effect, the opposition’s critique seeks to cast doubt on the government’s commitment to the goal of EU accession.” Marko Sošić and Marija Marović, “European Integration and Party Politics in Montenegro” in Corina Stratulat (ed), *EU Integration and Party Politics in the Balkans*, European Policy Centre Issue Paper № 77, September 2014, p. 36, available at http://www.epc.eu/documents/uploads/pub_4716_eu_integration_and_party_politics_in_the_balkans.pdf; last accessed 12 October 2016.

the government finds it impossible to continue the negotiations. Not only is there no Montenegrin equivalent of Icelandic fisheries but even within negotiable terms there is no pressure from the Montenegrin side to exact more favourable arrangements. The government makes no demands but rather formulates its negotiating positions in a manner which presents EU demands and standards as its own goals. From its very beginning, Montenegro's handling of the negotiations has been criticised for its partisanship, non-transparency, incompetence, and lack of focus.⁶ The discrepancy between the adoption of the *acquis* and its implementation has become a leitmotif in the political jargon home and abroad, to the extent that the serious implications of such a discrepancy are routinely overlooked. Furthermore, the official communication between EU officials and Montenegrin statesmen has taken up tones which are highly inappropriate in diplomatic commerce between sovereign actors. Back in 2010 when Štefan Füle, the then enlargement commissioner, presented Prime Minister Đukanović with the Commission's favourable Opinion of Montenegro's candidacy, he spoke with frankness which is perhaps best removed from diplomacy: "That is the most common question. Give us a date. Give us a calendar. I won't. I am not in [the] business of sharing calendars. I am in the business of sharing the homework. As soon as you fulfil your homework, the EC will make clear to the member states that the time has come to start accession negotiations." The discourse was taken up by PM Đukanović: "We are well aware that the objectives set out in the EC Opinion are very demanding, but we are determined to meet them."⁷ Again, writing a congratulatory piece on the jubilee of Montenegro's tenth anniversary of independence, Miroslav Lajčák, the Slovak foreign minister and the EU supervisor of Montenegro's

⁶ Slađan Blagojević, "Što očekivati od pregovaračkih struktura Crne Gore sa EU" ["What to Expect from Montenegro's Negotiating Structures with the EU"], *Evropski puls*, Elektronski mjesečnik za evropske integracije [*European Pulse*, Electronic Monthly Magazine for European Integration], № 78, Centre for Civic Education, March 2012, pp. 4-7, available at <http://media.cgo-cce.org/2013/06/CGO-Evropsk-puls-78.pdf>; last accessed 12 October 2016.

⁷ "Commissioner for Enlargement: 'Accession talks to start as soon as Montenegro achieves key priorities'", EU Delegation in Montenegro Press Release, 10 November 2010, available at <http://www.delmnec.europa.eu/code/navigate.php?Id=965>; last accessed 12 October 2016.

independence referendum in 2006, made use of similar infantilising imagery in praising Montenegro's precocious progress.⁸ This discourse has also gained such wide domestic currency that even "activities towards emending and ameliorating our economic system" were described by the then Prime Minister Igor Lukšić as "homework".⁹

Much like the party consensus, official government policies do not reflect clear policy goals or a coherent conception of the national interest, but rather the very integration and accession seem to have replaced not only the lack of a national consensus about the nation's mission but also of its specific short- and long-term interests. Thus government has brought itself in a position in which it conforms with the EU demands not in spite of its own negotiating position, but in the absence thereof. And this position is very frequently, by both parties, stripped even of diplomatic niceties.¹⁰

Popular Perceptions of the EU

The elite consensus more or less faithfully reflects the popular consensus. Citizens of Montenegro, regardless of their real or imagined ethnic distinctions, ideological and party affiliations, socio-economic class, and education overwhelmingly support EU membership and with a large majority have a positive perception of the EU. It should be noted here that

⁸ Miroslav Lajčák, "Mala a velika i ozbiljna zemlja" ["A Small Yet Grand and Serious Country"], *Pobjeda*, Special Independence Day Edition, 21-23 May 2016, p. 5, available at <http://www.pobjeda.net/protected/listalica/2016-05-21/files/assets/common/downloads/publication.pdf>; last accessed 12 October.

⁹ "Fonografski zapis: Treća posebna šednica prvog redovnog zasijedanja Skupštine Crne Gore 24. saziva 15. 16. i 17. mart 2011. godine" ["Phonographic Record of the Third Special Sitting of the First Regular Session of the Parliament of Montenegro of the 24th Assembly"], Parliament of Montenegro, Podgorica, 2012, pp. 33-34, available at http://www.skupstina.me/~skupcg/skupstina/cms/site_data/FONOGRAFSKI%20ZAPISI/TRECA%20SJEDNICA%20PRVOG%20REDOVNOG%20ZASIJEDANJA.pdf; last accessed 12 October 2016.

¹⁰ V. e.g. "Generalna pozicija Vlade Crne Gore o pristupanju EU" ["The General Position of the Government of Montenegro re EU Accession"], Ministry of Foreign Affairs and European Integration, 7 March 2014, available at: <http://www.mvpei.gov.me/ResourceManager/FileDownload.aspx?rid=159492&rType=2&file=Generalna%20pozicija%20Crne%20Gore.pdf>; last accessed 12 October 2016.

here I use the term “perception of the EU” in the threefold meaning of (i) popular attitude towards EU membership of Montenegro, (ii) popular attitude towards the EU and its institutions, and (iii) popular ideas and expectations of the EU. The consensus and the positive perception hold consistently over the past ten years, yet the reasons and expectation people adduce for their support do appear somewhat incoherent and vague, though by no means utopian or fantastic.

Let us look firstly into the most recent researches on the subject: the project *Homo Europeanus: Overcoming the Knowledge Deficit*, conducted in nine EU member states (Spain, Italy, Slovakia, Czech Republic, Croatia, Latvia, Poland, Slovenia, and Bulgaria) and three candidate states (Montenegro, Macedonia, and Serbia), the results of which were presented in May 2016.¹¹ The research inquired not only into the perception of the EU, but also into the correlation between the perception and citizens’ education and information.

To a higher degree than respondents from member states (50,7), respondents from Montenegro (58,2%) believe that national and European identity are not mutually exclusive, much like in Serbia (76,5%), but unlike in Macedonia (43,5%). A high consensus in respondents from all countries identified European culture, political freedoms, democratic values, the common currency, the common history, and the geographical unity as key elements of European identity; Montenegrin respondents were indifferent towards the flag, the anthem, success of the European economy, and the motto “Unity in Diversity”. The commonest expectations they had from EU membership was (i) an economic boom after accession like that of Central and Eastern European states, (ii) peace and stability, (iii) a better quality of life, (iv) higher ecological standards, and (v) fight against organised crime. It is not clear, however, if citizens believe these goals achievable without the EU; I would expect any poll to find that they did not; at least this poll found that respondents from all

¹¹ “Research on Knowledge, Perception, and Expectations of Europeans from the EU”, *The Homo Europeanus—Overcoming the Knowledge Deficit Project*, Data for Montenegro collected and published by Centre for Civic Education (CGO), Podgorica, 10 May 2016, available at <http://media.cgo-cce.org/2016/05/opinion-polls.pdf>; last accessed 12 October 2016.

countries predominantly thought they were better off in the EU re key political and economic areas. An overwhelming majority of 68,5% considers EU membership to be a good thing, regardless of the level of their civil or EU education. Similarly, the image of the EU was predominantly positive in Montenegrin respondents (61,5%), as it is in Macedonian (73%), while in Serbia the majority perception is neutral (46%); the average opinion from all countries was positive (50,4%). It is important to note here that Montenegrins perceive the EU positively regardless of their education on the EU, which, when had, only serves to strengthen respondents in their perception. The positive attitude, however, is not conditioned by the education. Montenegrins are unabashed about their level of education re the EU: majority of them, e.g., do not consider themselves well-informed on civil rights of EU citizens (75,8%), not unlike respondents from member states (74%).¹²

A research by DeFacto Consultancy conducted in November and December 2015 presents a somewhat more reserved attitude towards the EU though fundamentally of the same pro-EU disposition.¹³ Most importantly, the research is in line with a similar poll from 2013, and shows not only a stable pro-EU majority but in fact a rise in support for EU membership. The majority (68,5%) believe Montenegro will become a member of the EU, regardless of whether they personally support it, while 58.6% do in fact support it; this is an increase from 2013 (57%); a negligible fall has been observed in those who “absolutely” support the membership (from 33,5 to 31.3%), and a rise in those of a more lukewarm support (from 23,5 to 27,3%). In the same vein, 54,3% of respondents would vote for EU membership in a referendum, as opposed to 19,1% who would vote against (the 2013 figures are 53,7 to 18,1%, respectively). The latter predominantly adduce two reasons for their opposition to EU membership: the belief that Montenegro would not be better off in the EU and that the membership is in the interest of the political elite rather

¹² Ibid.

¹³ “Istraživanje o percepcijama javnosti i komuniciranju procesa evropskih integracija u Crnoj Gori” [“Research on the Public Perceptions and Communication of European Integration in Montenegro”], DeFacto Consultancy, presented in January 2016, available at http://www.eu.me/images/PrezentacijaMNE_def.pdf; last accessed 12 October 2016.

than the general population; only a tiny minority cited displeasure over how the EU treated Montenegro or the loss of sovereignty. The fears of those who would vote against correspond with the expectations of those who support EU membership: where the first expect the key indicators of national welfare (economic, social, and political) to remain unchanged or decrease with accession, the latter expect a turn for the better, in a percentage ranging from 30,1 to 51,7% (marking considerable increase from 2013 in practically all areas). The optimism is lowest when it comes to expectations of the financial prospects of the EU itself: while 26,3% expect them to improve, respondents mostly (33,8%) expect it to remain unchanged. The expectation of the national economy to rise (as expect 41,5% of respondents) and the European to stagnate may appear conflicting but may also testify to the fact that purely economic considerations are not the only or the primary motive of the pro-EU stance in Montenegro.

The predominantly positive view of the EU indeed seems independent of any particular expectation. Consistently has a considerable majority of Montenegrin citizens expressed a favourable view of the EU: on this occasion, 17,2% had a “very positive” attitude towards the EU and 40% registered a “mostly favourable” disposition, totalling 57,2%, with a rise from 2013 (16,9 and 17,7% respectively). There had been an increase in those who have a “mostly negative” view of the EU (15 to 16,3%), but a decrease in those with a “very negative” attitude (9,5 to 8,4%). When it came to their primary identification most respondents adduced their local community (42,3%) and Montenegro (32,8%), with but 4,4% identifying primarily with “Europe”, whereas re their secondary identification they provided varied answers, with local geographical region (28%), Montenegro (30%), and Europe (23,2) splitting a roughly similar share of allegiance.

It is interesting to note that respondents were not so much unrealistic about their expectations of the EU—which in spite of the lack of education on the matter display a reasonable degree of caution and awareness that the EU is not a utopia—as they projected onto the EU the hopes that they commonly feel are betrayed by their own country. Thus 59,4% respondents expressed their belief in the expertise and education of EU employees (with 61,5% fearing nonetheless that the EU is too bureaucratic), 65,1% thought EU employment was obtained chiefly

through merit rather than political connexions, still higher a percentage of 67,4% considered EU institutions efficient, while 46,9% estimates the influence of individual member states at roughly equal. However, only 35,9% thought citizens exerted direct influence over EU institutions. Overwhelming majorities (ranging from 60% to 80% per item) expect that the EU membership would bring about internal reform, takedown on corruption and organised crime, a greater efficiency of the government and the judiciary, consumer protection, a better standard of living, new jobs, and better human rights protection. What is particularly interesting is that 64,6% of respondents (71,1% in 2013) saw in EU membership a confirmation that Montenegro has always been a “European country”. The group respondents considered most likely to benefit from EU membership were the young, while such expectations re other social groups (pensioners, employees, the unemployed, civil servants, marginalised group, entrepreneurs) were more lukewarm, receiving roughly from 30 to 40% of respondents’ votes; only 33,4% thought they personally would profit therefrom. Respondents rarely expressed concerns over loss of identity and national independence, and few thought Montenegro was economically viable outside the EU. Citizens therefore do not exhibit exaggerated or fantastic expectations from the EU; it is as if they thought the objective parameters of social, economic, and political life to improve upon accession and the actual quality of life to lag somewhat behind in a long process of adaptation and growing into European standards and norms.¹⁴

What is particularly of note in these responses was a high degree of incertitude. Normally up to a quarter of respondents answered questions with “I do not know”. The poll itself found respondents’ informedness and education on the matter highly insufficient. While 36,7% and 38,1% declared themselves, respectively, “mostly” and “sufficiently” informed on the EU (with almost identical numbers re EU integration process), 20,8% confessed they did not understand the subject matter with approximately 40-50% indicating lack of interest, non-transparency, or lack of clarity in the media as chief causes of the lack of knowledge;

¹⁴ It should be noted, however, that the percentage of people who thought Montenegro’s independence was of a greater value than the benefits of EU membership grew from 22,8 to 30,5%, marking perhaps a rise in state-sponsored Montenegrin nationalism.

moreover, 61,7% could not tell if Montenegro made use of IPA funds, 72,3% did not possess a clear idea of what negotiating chapters were, and 92,1% never sought any addition information on the EU.

These two most recent polls give us a glimpse into the ideas and the level of informedness which accompanies what we had already known was an overwhelming commitment to EU integration and a generally favourable attitude towards the EU. Polls conducted by CEDEM illustrate finely the trend of a slowly though steadily decreasing but still overwhelming support for EU membership.

TABLE: Centre for Democracy and Human Rights (CEDEM) Polls on Citizens' Support of EU Membership, September 2005–July 2016

<i>Date</i>	<i>In Favour</i>	<i>Against</i>	<i>Undecided</i>
September 2005 ¹⁵	80,1	5,6	14,3
December 2005 ¹⁶	77,7	6,4	16,6
June 2006 ¹⁷	81,5	5,5	13,0
August 2006 ¹⁸	76,5	5,6	17,9
February 2007 ¹⁹	74	8,4	17,6
June 2007 ²⁰	78,3	6,5	15,2
October 2007 ²¹	72,4	9,4	18,2

¹⁵ "Public Opinion of Montenegro", Annual Report № 2, May 2005: September 2005, December 2005, April 2006, CEDEM, Podgorica, June 2006, p. 45, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=346&pdf=3>, last accessed 12 October 2016.

¹⁶ Ibid, p. 81.

¹⁷ "Public Opinion of Montenegro", Annual Report № 2a: June 2006, August 2006, CEDEM, Podgorica, December 2006, p. 30, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=345&pdf=3>; last accessed 12 October 2016.

¹⁸ Ibid, p. 57.

¹⁹ "Public Opinion of Montenegro", Annual Report № 3: February 2007, June 2007, October 2007, February 2008, CEDEM, Podgorica, March 2008, p. 17, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=347&pdf=3>; last accessed 12 October 2016.

²⁰ Ibid, p. 35.

²¹ Ibid.

<i>Date</i>	<i>In Favour</i>	<i>Against</i>	<i>Undecided</i>
February 2008 ²²	72,8	9,2	18
March 2008 ²³	78,2	9,1	12,7
June 2008 ²⁴	70,8	12,1	17,1
November 2008 ²⁵	73,9	11,5	14,6
March 2009 ²⁶	75,9	10,5	13,6
October 2009 ²⁷	76,2	9,8	14
October 2010 ²⁸	70,4	10,3	19,3
December 2010 ²⁹	70,3	14,2	15,5
September 2011 ³⁰	62	16	22
December 2011 ³¹	66	14	20
July 2012 ³²	66	18	16

²² Ibid, p. 84.

²³ “Public Opinion of Montenegro”, Annual Report № 4: February 2007, June 2007, October 2007, February 2008, CEDEM, Podgorica, January 2009, p. 17, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=348&pdf=3>; last accessed 12 October 2016.

²⁴ Ibid, p. 35.

²⁵ Ibid, p. 52.

²⁶ “Public Opinion of Montenegro”, Annual Report № 5: March 2009, June 2009, October 2009, CEDEM, Podgorica, January 2010, p. 20, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=349&pdf=3>; last accessed 12 October 2016.

²⁷ Ibid, p. 52.

²⁸ “Public Opinion of Montenegro”, Annual Report № 6: July 2010, June 2010, October 2010, CEDEM, Podgorica, January 2011, p. 33, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=350&pdf=3>; last accessed 12 October 2016.

²⁹ Ibid, p. 50.

³⁰ “Public Opinion in Montenegro”, Annual Report № 7: September 2011, December 2011, CEDEM, Podgorica, January 2012, p. 23, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=351&pdf=3>; last accessed 12 October 2016.

³¹ Ibid, p. 50.

³² “Political Public Opinion”, CEDEM, July 2012, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1119-political-public-opinion-july-2012>; last accessed 12 October 2016.

<i>Date</i>	<i>In Favour</i>	<i>Against</i>	<i>Undecided</i>
September 2012 ³³	60	22	18
March 2013 ³⁴	61	23	16
September 2014 ³⁵	61	25	14
July 2015 ³⁶	63,3	23,3	13,5
November 2015 ³⁷	63,7	19,7	16,6
June 2016 ³⁸	61,7	24,5	13,8

The explanation for the demise of the exorbitantly high initial percentage of support at the very opening of the prospect of EU membership, when Montenegro was still in federation with Serbia and was yet to determine its political status, is to be sought elsewhere than in

³³ “Political Public Opinion in Montenegro”, CEDEM, September 2012, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1145-political-public-opinion-september-2012>; last accessed 12 October 2016.

³⁴ “Political Public Opinion in Montenegro”, CEDEM, March 2013, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1146-political-public-opinion-march-2013>; last accessed 12 October 2016.

³⁵ “Citizens’ Attitudes on NATO Integrations”, CEDEM, September 2014, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1147-citizens-attitudes-on-nato-integrations-september-2014>; last accessed 12 October 2016.

³⁶ “Citizens’ Attitudes on NATO Integrations”, CEDEM, July 2015, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1692-citizens-attitudes-on-nato-integrations-july-2015>; ; last accessed 12 October 2016.

³⁷ “Citizens’ Attitudes to NATO Integrations”, CEDEM, November 2015, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1717-political-public-opinion-poll-november-2015>; last accessed 12 October 2016.

³⁸ “Political Public Opinion of Montenegro”, CEDEM, June 2016, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1819-political-public-opinion-june-2016>; last accessed 12 October 2016.

a rise of euroscepticism in Montenegro. I believe it is to be found in the discrepancy between the progress of the integration process, with all its demands and complexities, and the stagnation of Montenegro itself. The disappointment, however, is not such as to have generated, or is ever likely to generate, a truly eurosceptic and hostile attitude towards the EU. The initial expectations of EU membership, no matter how sobered the citizens may have been by the road thereto, still soar high and are no less strongly entertained for all the drawbacks of domestic and international politics. In this enthusiasm Montenegro apparently followed a general Central and Eastern European pattern:

[I]n the CEE context, it was found that people's feelings towards regime change, by extrapolating from past to present conditions and to what the future may bring, strongly influence their views on 'Europe'. For instance, the better the domestic system is perceived to work when compared to the previous communist rule, the less likely that people will enthuse about EU accession. In contrast, the greater the national benefits of EU membership are expected to be, particularly when post-communist governments' performance is negatively evaluated, the more favourable people stand to be towards European integration.³⁹

With the deepening political crisis in Montenegro, which the coming election will rather exacerbate than soothe, the lasting effects of the global economic crisis, and the very palpable consequences of the government's economic policies, it is to be expected that Montenegrin citizens will fluctuate between a hard long-term commitment to EU membership and short-term bouts of pessimism and disappointment with their European journey. It is of vital importance in the meanwhile that the pessimism and the disappointment do not turn into a permanent state of civic stupor, passivity, and disengagement, in which the very prospect of EU membership subverts the transformative purpose of the integration process itself. In other words, we should fear lest the discourse we have of the EU retard the democratic transformation of Montenegro.

³⁹ Corina Stratulat, "Introduction" in Corina Stratulat (ed), *EU Integration and Party Politics in the Balkans*, European Policy Centre Issue Paper № 77, September 2014, pp. 10-11, available at http://www.epc.eu/documents/uploads/pub_4716_eu_integration_and_party_politics_in_the_balkans.pdf; last accessed 12 October 2016.

The youth and the EU

We have seen already that EU integration is perceived as primarily an opportunity for the younger generations to travel, study, and work abroad. These expectations are shared by the young people themselves. In the only poll on Montenegrin youth's attitudes towards the EU, conducted by DeFacto Consultancy among high school students back in 2010, roughly 80% expected that EU membership will primarily benefit their population group, while in terms of specific expectations their attitudes were mostly lukewarm though on the whole pro-EU; e.g. whereas 80,1 and 71,3% believed that in the EU it will be easier to travel and study, respectively, they seemed less convinced they would easily find a job there (50,4%) or enjoy equal rights as other EU citizens (61,8%), or indeed that the EU would prove a guardian of Balkan peace and stability (46,5%).⁴⁰ On the whole, the younger generation shared both the enthusiasm for EU membership (67,3%) and the caution we have observed *supra* in their parents' generation: 48,8% expected economic prosperity upon accession, 81,3% did not have a clear idea of the EU's chief institutions, and most of them (30,1%) expected Montenegro to have joined the EU by 2015. Having graduated in the meantime from high school and university and having faced an already satiated job market, still without the possibility of emigrating to the EU, one wonders if these high hopes have turned into resentment.

The research gave us not only an insight into how young people perceived the EU but into how their class position and family background influenced their European attitudes. The research identified beside the dominant pro-EU stance three minority eurosceptic dispositions towards the EU ("anti-globalist euroscepticism", "non-European statism", "cultural ethnocentrism") which combined various traits of nationalism,

⁴⁰ A more recent research, conducted in 2015 by the Faculty of Administrative and European Studies, Podgorica, focused on high school graduates' basic knowledge of the EU and found that it was of a higher quality than their basic knowledge of Montenegro. "Results of the Research 'Montenegro and Europe'", Faculty of Administrative and European Studies, Ministry of Foreign Affairs, June 2015, available at http://www.fdes.me/wp-content/uploads/2015/07/Rezultati_istrazivanja_-_Crna_Gora_i_EU.pdf; last accessed 12 October 2016.

conservatism, and anti-globalism. What is of note is that the pro-EU attitude was more likely in students who lived in town centres (as opposed to suburban and country youth), who were members of a minority with a recent history of persecution (such as Muslims), had better marks, considered themselves “happy”, and were content with the current state of affairs and the condition of young people. What is even more important, these correlations notwithstanding, pro- and anti-EU stances were not clearly drawn along these lines.⁴¹

In short, of the perception of the EU in Montenegro in the post-independence period the three following generalisation may be safely drawn from the existing public opinion polls, party programmes, and government policies: (i) the support for EU membership is overwhelming and virtually undisputed, and while the perception of the EU is largely positive, the discrepancy between the very high number of those who support the membership and the more sober judgment of its merits indicates that people see the EU not as a panacea for Montenegro’s ills but rather as something which, for better or worse, has no alternative; (ii) the EU with its values and institutions is perceived as the paramount moral and political authority by Montenegrin citizens, political parties, and the government, dominantly shaping the political discourse of Montenegro and supplying the nation with the only interest recognised as common by a nearly universal consensus; (iii) at closer inspection, however, this consensus does not appear, in either the citizens or the political parties or the government, to be founded on a coherent and principled set of ideas, goals, and policies but rather functions as a surrogate thereof. It might be said that EU membership has come to function as the national interest of Montenegro.

I propose now to depart from the relatively well explored terrain of opinion polls and venture less safe generalisations about how this perception may have been shaped by some dominant assumptions of the mainstream

⁴¹ “Stavovi mladih prema Evropskoj uniji i evropskim integracijama: Rezultati istraživanja” [“Young People’s Attitudes to the EU and European Integration: Research Results”], De Facto Consultancy, Podgorica, July 2010, available at [http://www.unicef.org/montenegro/izvjestaj_EU_istrazivanje_2010l_\(1\)_sa_Aneksom.pdf](http://www.unicef.org/montenegro/izvjestaj_EU_istrazivanje_2010l_(1)_sa_Aneksom.pdf); last accessed 12 October 2016.

political culture of Montenegro and the neighbouring nations with which it shared a common political and cultural focus until very recently.

The “European Identity” in Montenegro: the Imaginary Europe of Balkan Modernisers

In the dominant, liberally-minded academic and journalistic discourse about the political culture of the former Yugoslav republics, words like authoritarianism, corruption, nationalism, intolerance, etc. are the norm.⁴² And the traits these signify are easily confirmed by field research. The political cultures of these nations indeed are authoritarian, and nationalism and corruption flourish therein. This state of affairs is commonly presented as an issue primarily of mentality which the slow process of “transition” will set aright. What is wrong is the mentality and the kind of political culture it engenders, and not a specific nation-state with its apparatus and policies, nor indeed the very institution of the nation-state. The political, economic, and administrative superstructure, in a kind of mock-Marxism, is perceived as being corrupted by a faulty mentality and destructive atavism, which prevents the “normal functioning” of the nation-state, wherefore the superstructure needs to be strengthened in order to correct the “mentality”. The Balkan nation-state, like all nation-states, is perceived as an agent of modernisation, progress, and civilisation, though frequently held hostage by a nationalism portrayed as a “traditional” force of atavism and anti-modernism.

Before we deal more closely with this discourse, let us consider first the supposedly opposite discourse of Balkan nationalists. The fundamental myth of all Balkan nationalisms presents their nineteenth- and twentieth-century nation-states as the teleological and natural accretion of uninterrupted millennial national histories, traditions, and statehoods. Balkan nationalisms without exception combine a Romanticist

⁴² A very good example of scholarly generalisations in which historic context is subjected to political-science abstractions, and the supposedly nationalistic and authoritarian political culture of Montenegro subjected to a “criticism” which is itself authoritarian and nationalistic, is to be found in Radule Knežević, *Politička kultura* [Political Culture], Crnogorska akademija nauka i umjetnosti, Podgorica, 2012, pp. 377-412.

understanding of the people and *its* nation-state (the latter being an emanation of the former) with essentially Enlightenment ideas of an elite of nationally-conscious experts charged with aggressive modernisation in order to catch up with “the West”. Balkan nationalists, like their liberal ideological opponents, view this nationalism as an organic growth of their histories. Both throw a rear glance over the “national history” and see the whole course of it charged with meaning and purpose, a mighty flowing of the national blood under the rush of the national spirit, carrying all before it towards the predestined port of modernity, the ones waiting to throw themselves into it, the others fearing lest it flood the port.

The Discourse of Balkan Modernism

The two discourses therefore are not as unlike as their proponents like to imagine. Both operate on two identical assumptions: (i) there exists a “traditional”, essentialist, atavistic national character; (ii) the nation-state is an agent of progress which is to discipline, organise, and lead this national character through modernisation. The difference between the two is therefore merely ideological: nationalists view the “national character” with pride, their opponents with apprehension; though both task the nation-state with the mission of educating, enlightening, and reforming the people, nationalists view the state as an organic part of the nation, while liberals view it as a harness imposed upon the half-minded and unruly national body. Yet in both, the nation-state is the rational principle ruling over the irrational impulses of the people. This is a model shared, *mutatis mutandis*, equally by nineteenth-century nationalists who sought South Slavic emancipation from foreign imperial rule, ideologues of the Serbian and Montenegrin monarchies, communist state-builders, and “transitional” post-communist regimes of all political persuasions. All presuppose that the Balkans share a “European identity” with Europe, a vague and never defined identity which combines geographical, Christian, Roman, and racist ideas, and of which Balkan nations but imperfectly partake.

The philosophical foundation thereto was supplied by an obscurantist book of very clear renown and a cult status, which vindicated its central thesis largely by having in its liberal, enlightened, progressive devotees and pupils produced the very culture it sought to expose and condemn in the

general populace: a culture of uniformity, close-mindedness, correct opinion, and fear of the other. Radomir Konstantinović in his *Philosophy of the Borough* portrayed the populace of former Turkish towns (*palanka*) as The Other of the urban educated bourgeoisie whose views he voiced: an atavistic mindless tribe, neither rural nor urban, settled in dismal towns governed by hypocrisy and a fake culture, from which it is unable and unwilling to escape.⁴³ This portrayal has recently, amid a minor national controversy, been described as orientalist, cultural racist, and auto-colonial.⁴⁴ But the consequences of such political thinking can be far more sinister: the cult status which the book enjoys not only among the liberal and progressive “Other Serbia” but the professional middle class in general indicates an insurmountable class rift between the state-building bourgeoisie and the masses of working-class people. While unabashedly and collectively distancing themselves from the great, prejudiced, irrational, “antimodern”, backward unwashed, the middle classes seem to remain blissfully unaware that it is they who are producing and perpetuating an authoritarian top-down political culture of exclusion, patronising, and uniformity. The supposed deficiency and inferiority of the national culture becomes the source of a brooding superiority in those who have become aware thereof.

Balkan nationalisms, and the authoritarian political culture associated with them, contrary to their and their ideological opponents’ claims, are eminently modern phenomena. They are the product of Balkan state-building in the Romanticist-Enlightenment mould over the past two centuries, and not some “traditional”, atavistic and essentialist, preconditions thereto. It is indeed a typically nationalistic thought to seek the “causes” of nationalism in anything other than the nation-state; whatever in the medieval and early modern history may have contributed to the rise of nationalism and added to its ideological content, it was the

⁴³ Radomir Konstantinović, *Filosofija palanke* [*The Philosophy of the Borough*], Otkrovenje, Belgrade, 2008 [1969]. I chose to translate the Serbo-Croat *palanka* with the English *borough* with the hope that Dickens’s or Hogarth’s ridicule of the “rotten boroughs” might convey some of the claustrophobic, hypocritical, half-mad (though utterly cheerless) atmosphere of Konstantinović’s *palanka*.

⁴⁴ Zoran Ćirjaković, „Filosofija palanke—Knjiga koja je podelila Srbiju na prvu i drugu” [„The Philosophy of the Borough—the Book That Split Serbia in Two”], *Politika*, 22 April 2016.

nation-state which shaped it, taught it, and used it. Balkan nation-states, like all nation-states, are not agents of some historic destiny or moral purpose, but powerhouses of wealth, domination, and force. An idolatry of the nation-state is no more acceptable from a liberal than from a nationalistic ideological standing. It is no less authoritarian to use force to transform nationalistic brutes into enlightened cosmopolitans than it is to transform nationally-unconscious peasants into brainwashed soldiers of the nation-states. If it is to be truly liberal and emancipatory, the “Other-Serbian” intelligentsia, with its brood of Montenegrin nationalists, is to accept the fact that it too, no less than its nationalistic ideological opponents, is the product of a process of authoritarian state-building, and bears the stamp thereof. It needs to accept too that there was something “wrong” with the very history of state-building in the Balkans, not the supposed “traditional” soil whereon it is built. It needs to accept that there was something “wrong”, as the Frankfurt School admonished, with the nation-state and the whole project of the Enlightenment.

Nothing illustrates this more fittingly than the philosophical and political career of Latinka Perović, the Yugoslav communist stateswoman and the historian, philosopher, and matriarch of the “Other Serbia”, who in both her political and literary pursuits upheld a set of beliefs and values in direct opposition to nationalism. As a champion of liberal or quasi-liberal, Enlightened, self-consciously “Western” ideals, and a chronicler of those whom she considered her like-minded predecessors in Serbia, she was yet a stateswoman of an authoritarian and illiberal regime, and in her historiography she is only surpassed by nationalistic authors in interpolating a moral purpose and political teleology into history. In both she was led by the profound belief, shared with Konstantinović, that all reform was doomed from the beginning and bound to fail. In her portrayal of the nineteenth-century liberal statesman Milan Piroćanac, Latinka Perović romanticises him as a misunderstood and ill-fated outsider, surpassing greatly the general mediocrity of his nation which was simply not up to the task of his grand vision.⁴⁵ This discourse of romanticised

⁴⁵ Latinka Perović, “Milan Piroćanac—Zapadnjak u Srbiji XIX veka” [“Milan Piroćanac—A Westerner in the 19th-Century Serbia”] in Latinka Perović (ed), *Srbija u modernizacijskim procesima 19. i 20. veka: Uloga elita* [*Serbia in the Modernising Processes of the 19th and 20th Century*], Vol. III, Belgrade, 2003, pp. 11-72.

failure is reminiscent of the secularised Kosovo myth preached by such nationalist poets as Matija Bećković, and reveals, again, a class affinity between nationalists and their liberal opponents formed within a similar middle-class environment and sharing middle-class political preoccupations. Both may stand as icons of an intelligentsia at odds with the nation-state yet created by it and for it.⁴⁶

To paraphrase Konstantinović's famous dictum "Our experience has been that of a rotten borough", wherewith he opens *The Philosophy of the Borough*—our experience has been that of an authoritarian modernity. Whether from a nationalistic or a liberal or a communist perspective, the moral purpose of Balkan nation-states was to modernise and to reform what it saw as the retrograde and lagging-behind Balkan man and his atavistic, "Oriental", "non-Western" culture. Unlike during the early modern period, when the local culture found ways of adopting and assimilating "Western" influences, though often perceiving them as foreign and threatening, Balkan modernising projects, whether nationalistic, liberal, or communist sought entirely to refurbish their societies in accordance with a Western social model, on the assumption that it was culturally, socially, and morally more advanced and therefore superior, and then to adapt to it what they saw fitting from the local culture.⁴⁷ The secularised Kosovo myth—a typical medieval ecclesiastic rationalisation which interpreted the failure of the medieval Serbian kingdom as a conscious and deliberate choice of the heavenly kingdom over the terrestrial one—became an ideological tool for Balkan-level imperialism and conquest by the Serbian and Montenegrin kingdoms, an imperialism very "Western" in ideas, design, and execution. Similarly, the

⁴⁶ Ljubinka Trgovčević has traced in considerable detail the creation of the educated elite in nineteenth-century Serbia via the state: *Planirana Elita: O studentima iz Srbije na evropskim univerzitetima u 19. veku* [*The Planned Elite: Students from Serbia in European Universities in the 19th Century*], The Institute of History, Belgrade, 2003.

⁴⁷ V. e.g. Monika Fin, *Centri srpske culture XVIII veka* [*Centres of Serbian Culture in the 18th Century*], Akademska knjiga, Novi Sad, 2015. The perception of "Western" influences was founded not upon a supposed cultural or civilisational rift between "East" and "West" but rather upon the political and theological threats which the imperial government and Catholic theology, respectively, posed to the self-understanding, privileges, and identities of early-modern Serbs in the Austrian monarchy.

early modern Balkan resistance to the Ottomans, motivated by local communal interests and framed by its original participants within a religious key, was reinterpreted by communist historians as a teleological class struggle and anti-imperialism. While the Enlightenment project everywhere sought the abolition and sweeping of the “traditional” institutions, notions, and values it perceived as quaint and harmful, the specificity of the Balkan modernising projects was that they saw themselves not only as a political, social, and moral reform but also as a cultural one. Enlightenment presupposed that “traditional” societies were vitiated by bad institutions, abuses, and superstition; the Balkan Enlightenment presupposes that Balkan “traditional” societies are vicious and resilient to reform and progress in a degree unfound elsewhere. The “West” as a paradigm of cultural superiority is therefore indispensable for Balkan modernisers: it exemplifies an objectively superior stage of human culture which has overcome the barriers of “tradition” and “primitivism”; furthermore, without this paradigm the modernisers themselves would lose their role of authoritative interpreters and executors of the superior cultural model. One wonders if that is a role, like that of the hypocritical and close-minded burgesses of Konstantinović’s imagination, which one should like to leave.

What was “wrong” therefore with Balkan modernising projects was, in my view, an auto-colonial, cultural racist, and in varying degrees authoritarian discourse within which they understood themselves irrespective of their particular political ideologies.⁴⁸ The discourse is one which of itself breeds exclusion, hierarchy, and inequality, again irrespective of any particular political ideology. The very image of Europe it has engendered in the Balkans is one entirely at odds with the democratic, egalitarian, and pluralistic values which Europe has come to embrace; it is the old Europe with her *mission civilisatrice*, the Europe of

⁴⁸ When in a note to the *Philosophy of the Borough*, Konstantinović (*loc. cit.*, pp. 286-300) discusses Serbian anti-European ideologies founded upon the *Volksgeist* theory, he seems quite unconscious of the fact that the content of these ideologies, Nietzschean, Spenglerian, “esoteric”, etc, has entirely been imported from Europe. Similarly, in the following note on Serbian Nazism (*ibid.*, pp. 301-326), it escapes him that the Serbian Nazi sympathisers took a similar cultural attitude towards Europe as he did; their ideals diverged greatly, but the attitude is one that bears comparison.

the last stage of some Enlightened scheme of world history, the Europe of “scientific racism” and racial anthropology, to which Balkaners by virtue of being “white”, (mostly) Christian, and geographically located in Europe do in a sense belong, but somewhat imperfectly and insufficiently, and to the cultural status of which they are yet, if ever, to rise. Thus even the contemporary Europe of equality, human rights, and diversity is seen through the prism of the old imperialistic imagery; democratic values of contemporary Europe are seen as a sign of her cultural superiority no less than a century ago her world dominance, cultural pre-eminence, and educational system. No less than the nationalistic and liberal bourgeoisie a century ago, the contemporary Balkan elites function and view themselves as brokers of this not so imaginary colonisation of the Balkans.⁴⁹

Balkan history has been typically told as a story of modernisation frustrated by bouts of atavistic and traditionalist regressions. The surfeit of history the Balkans are said to produce without being able to consume is rarely seen as merely a belated though similarly troubled process of modernisation that had been undergone by other parts of Europe some decades before. The problem is identified in the supposed “traditional” substratum of mentality, atavism, and thitherto history which persistently haunts and hinders the process of modernisation. Over and over, modernisation is conceived as a thorough and total break with the past: nineteenth-century nationalists sought a break with what they saw as the servile, mercenary, and “nationally unaware” early modern history, communists sought a break with the nationalism which they thought had betrayed national emancipation and became an instrument of capitalist enslavement, the post-communist “transition” is often understood as a radical departure from the past, either as an exodus from the dark Egypt of communism or a Babylonian captivity from the communist promised land, depending on one’s ideological prejudice. But in reality there is no such discontinuity; e.g., surveying various theories about how the old communist regime preconditioned transitional party politics in Eastern

⁴⁹ A very fine example of the convergence between the domestic auto-colonial and outrightly colonial discourse may be found in Adelina Marini, “Montenegro Wants to Leave the Balkan Autistic World”, *Euinside*, 8 October 2016, available at <http://www.euinside.eu/en/news/montenegro-wants-to-leave-the-balkan-autistic-world>; last accessed 12 October 2016.

Europe, Evans and Whitefield neatly sum up one possible way of looking at it which may well serve us in the Montenegrin or ex-Yugoslav context:

According to the modernization thesis, issue dimensions were also structured by factors such as education, urbanization and the growth of professional expertise and technocracy in decision making. Individuals had an awareness of their interests and were able to situate themselves on a left-right continuum. As a consequence, the most modernized sections of the population expected to improve their position by operating in market conditions. Indeed, it was held that the success of communism in modernizing pre-industrial societies itself created the basis for a successful transition to liberal market democracy.⁵⁰

In short: contrary to the standard narrative, Balkan history is not “traditional” in the sense that onto a medieval or early modern social structure have been added some modern institutions, notions, and practices. Rather, Balkan history is thoroughly modern, in the sense that specific Balkan nation-states, with their national narratives, are modern nineteenth- or twentieth-century phenomena, and what is more, that their very progress and modernisation has been thwarted to a large degree by how they chose to conceptualise their modernity. The authoritarianism of the Balkan political culture, however “traditional” Balkan culture may have contributed thereto, is an eminently modern phenomenon, sustained mostly by the above dissected ideology of modernisation, the spectre of the superior “Western” culture, and colonial or quasi-colonial political and economic relations that have tied the Balkans to the great imperial centres of the past two centuries.

*A False Emancipation:
How Pro-EU Attitudes Subvert EU Integration*

It is indeed necessary to address the presence of this spectre in the political culture of Montenegro and other former Yugoslav republics in order to understand more thoroughly the perception of the EU in

⁵⁰ Geoffrey Evans and Stephen Whitefield, “Identifying the Bases of Party Competition in Eastern Europe”, *British Journal of Political Science*, Vol. 23, № 4, October 1993, p. 531.

Montenegro. On the one hand, it can be argued that those born and raised in the communist Yugoslavia, who make up the majority of Montenegro's citizens, recognise in the EU a fulfilment of their longing for the multinational, socialistic, and bureaucratic super-state of their youth. On the other hand, even if it were so (and we are yet to see a research into the correlation between yugonostalgia and pro-EU attitudes), we still need to account for the fixation with the state and the "West" as a superior cultural model; this, I tried to argue *supra*, is the legacy of the specifically Balkan modernity pursued by a bourgeoisie beholden to Western ideals (of either nationalistic or liberal provenance) yet stuck in colonial or quasi-colonial relations from which it cannot extricate the nation-state it is building.

The banal thing to begin with is that in Montenegro and neighbouring nations the EU is not merely an external entity to which the citizens form their attitudes based on an interaction between the (mis)information they have about it and their varying political and ideological stances, but rather the perception of the EU is greatly predetermined by the existing ideas about Europe and European identity. These ideas predispose people to a belief that, whatever its shortcomings, the EU is a club of European nations to which Balkaners, as deficient Europeans, should aspire to belong because only within it can their particular nation achieve a "civilised" way of life.⁵¹

This is finely exemplified by a bizarre Europeanising discourse developed in Montenegro by self-styled pro-European, Atlanticist, "antifascist", Montenegrin-nationalist intellectuals during and after the civic anti-regime protests in October 2015. This discourse has since become the regime's official interpretation of political opposition in Montenegro. The discourse presents the opposition as an enemy of (i) the state; (ii) Euro-Atlantic integrations; (iii) "civilisation" itself. Paradoxically, this discourse has been most succinctly formulated by the Montenegrin PEN Centre, an association which one would expect, on account of its self-proclaimed humanistic, emancipatory, and cosmopolitan mission, to

⁵¹ If I may be allowed to speculate in the absence of polls, I can hardly imagine that Montenegrin citizens would so overwhelmingly be supportive of a similar integrative process with Russia, to which they would perhaps feel themselves no less sentimentally attached.

be opposed to any kind of nationalism. Their press statement released in the aftermath of the brutal dispersion on 17 October of the anti-government sit-in before the Parliament which, led by the DF alliance, lasted from 27 September—in a police action which involved violence against protesters, MPs, and journalists—read as follows: “The unwelcome scenes as we are witnessing on the streets of the Capital of Montenegro had long been prepared and foreboded so as to prevent Montenegro in its further Euro-Atlantic integration, for the ideologues of these destructive protests have not yet come to terms with Montenegro’s independence, international recognition, and its sovereign right to make decisions in accordance with its national interests.” The statement then called for “resolute action by state authorities and public condemnation”, and warned that “Montenegro is today at yet another historic crossroads between returning to the dark of the nineties and going forth along the only path which guarantees long-term stability and universal progress; our country’s accession to the EU and NATO is of fateful importance, and not only for the present generation.” Finally, the PEN Centre and the Montenegrin Association of Independent Writers, co-signers of the release, call for the national and international public “to condemn the retrograde political forces who seek to jeopardise with violent means Montenegrin statehood, Montenegrin cultural and national distinctiveness, the multicultural character of Montenegrin society, and the Euro-Atlantic orientation of the majority of Montenegrin citizens.”⁵² It was no small irony that the same PEN Centre had itself been the victim of the same police’s obstruction and harassment in early nineties, controlled then as now by the same party, espousing then the Serbian and now the Montenegrin nationalism.

Whatever the motives of the protests’ organisers may have been, the public rallying against police brutality was motivated by other reasons than mere political or party allegiance. The sheer number of people who walked on 18 and 24 October in protest against the regime, police repression, and the breach of constitution and elementary human and political rights, estimated by police at 6.000 and the organisers at 20.000,

⁵² “Pres Release of the Montenegrin PEN Centre and the Montenegrin Society of Independent Writers”, 22 October 2015, available at <http://crnogorski-pen-centar.me/aktuelnost=25>; last accessed: 12 October 2016.

indicates that this was no mere party affair. The Protest Memorandum, which was signed by more than hundred non-partisan public intellectuals, NGO activists, and private citizens, calling for the protests to be peaceful and in defence of the constitutional order of Montenegro, trampled not by protesters but by the government and the police, pretended to give voice to what it saw as the dominant motivation of most protesters: civic defence of public liberties. Perhaps uniquely in modern Montenegrin history, the protests united people of all nationalistic and non-nationalistic provenances, of pro- and anti-NATO stance, and all other Montenegrin dichotomies that had thitherto been greatly at variance, in what was presented as a civic struggle for the common good; for the first time a purely civic ideology was employed in Montenegrin public discourse. Again, whatever the motivation for political action, this was an important discursive emancipation of Montenegrin public culture. Civic values, rights, and principles were advanced not because they were “European”, but because they were citizens’ due.⁵³

This civic discourse indeed failed to unite the anti-government opposition in a single united civic block, either before or in the aftermath of yet another brutal dispersion of protests (24 October). Inter-party rivalry and bickering were the most obvious obstacles thereto; but it should be noted that the upper-middle-class opposition parties such as SDP (the former coalition partner to DPS) or Demos, though unanimous with the rest of the opposition in the accusations of corruption, organised crime, and mismanagement against the ruling DPS, were either convinced (like DPS) in the “anti-state” and “anti-European” character of other opposition parties on account of the Serbian nationalism of some of them, or were simply averse to their political imagery, rhetoric, or manner of protesting.⁵⁴

⁵³ “Dižemo glas građanski i nenasilno u odbranu ustava” [“We Are Raising Our Voice in Defence of the Constitution”], *Vijesti Online*, 23 October 2015; available at: <http://www.vijesti.me/vijesti/dizemo-glas-gradanski-i-nenasilno-u-odbranu-ustava-857078>; last accessed 12 October 2016.

⁵⁴ It is worth noting, here, however, that the “Montenegrin” and “Serbian” identity in Montenegro do not signify two distinct ethnic groups, but rather the same majority, nominally Orthodox, Slavic-speaking population of Montenegro, split in half over their interpretation of Montenegrin history, a disagreement which in the aftermath of the independence referendum produced two separate “nations”.

On account of nationalistic suspicions and cultural racist stereotyping, inter-party unity and collaboration seemed impossible even where virtual civic unity was achieved and common political goals pursued. One's own nationalism was rendered acceptable by another's nationalism; even one's sincere opposition to government policies was assuaged by one's ideological aversion to other opposition parties' presumed or real political attitudes. The criterion for political morality ceased to be the convergence between a political actor's discourse and his actions, but rather his aesthetics. The political culture of Montenegro thus remains nationalistic in spite of having extricated itself from Serbian nationalism and having taken a high universal "pro-European" course; instead of overt nationalism, now the very "pro-Europeanness" becomes a criterion of "othering" and exclusion. Having distanced oneself from the Serbian nationalism of the nineties—a laudable political act—yet having at the same time embraced another kind of Balkan nationalism hardly constitutes political emancipation from nationalism; what is worse, having cloaked one's nationalism in an internationalist pro-EU mantle will only serve to camouflage the persistence of a nationalistic and authoritarian political culture.

What has happened in Montenegro is that Europeanism has become the discourse which covers and legitimises the Montenegrin variety of the Balkan nationalistic, auto-colonial, and authoritarian model of modernity. Indeed, the dominant nationalism in Montenegro is no longer Serbian, but after its fashion has been created a no less virulent though not outwardly menacing Montenegrin nationalism. The ideology and rhetoric of "European values" take primacy over actual civic and democratic virtues, which are postponed for the coming "European future" of Montenegro. Finally, even police brutality is promoted to an instrument of European integration. The fundamental modernising model, however, is unchanged: (i) state-centrism and nationalism; (ii) a quasi-colonial identification with "European culture"; (iii) authoritarian top-down political culture in which an Enlightened minority is charged with instructing and reforming an atavistic populace and wringing it from its flawed "traditional" culture.

There is a genuine yearning among Montenegrin citizens for democracy, rule of law, and human and political rights, as the opinion polls clearly indicate. These, however, are commonly perceived as something intrinsically belonging to Europe as a superior cultural model, within the

sphere of which Montenegro and its neighbours are only slowly being integrated. Democracy becomes an ideal politically unattainable without “cultural elevation”. Imperialistic and colonial spectres haunt even the basic civic and democratic values. I believe that in order for Montenegro to become “European” in the sense of a functioning democracy and a civic republic it needs to disentangle itself not only from Serbian and Montenegrin nationalism but from this auto-colonial perception of Europe. It needs to stop framing its problems within the discourse of “mentality” and cultural inferiority, but rather face the negative effects of its modernity for what they are: products of Enlightened authoritarianism which can’t be solved by more Enlightened authoritarianism.

As much as Montenegro needs to emancipate itself from the above discourse about Europe, so too the EU policies in Montenegro should reflect a care not to perpetuate and strengthen this quasi-colonial perception of the EU. The presence of this discourse I believe should be a matter of policy consideration.⁵⁵ On a more general note, are EU policies in Montenegro purposeful if instead of fostering a civic political culture they feed an image of Europe which smothers and hinders a civic political culture? More specifically, however, in relation to the year-long political crisis in Montenegro which is to culminate with the parliamentary elections of 16 October, should the EU give support to a regime which promises a steady process of integration and slow reform, yet ridden with corruption, mismanagement, and incompetence, or uphold an opposition which in spite of its ideological dissonance and its inability to guarantee predictability in the political life of Montenegro has yet practically shown democratic and civic capacities? Should the EU take the side of the regime which uses European integration as an excuse for police brutality, nationalism, and disastrous public policies, or rather lend credence to an opposition which,

⁵⁵ Writing on the discrepancy between Georgia’s self-identification with Europe/the EU and the EU’s more reserved attitude towards Georgia, Bolkvadze and Naylor stress that “[f]or the transformative power of Europe to succeed, however, it is necessary that the actor’s self-conceptions are also shared and positively acknowledged by the ‘target’ partner”; however, the problem of EU-Montenegro relations is that the perception itself, even when shared, may be an obstacle to “transformative power of Europe”. Ketevan Bolkvadze and Rachel Naylor, “Popular and Elite Perceptions of the EU in Georgia”, in Veit Bachmann and Martin Müller (eds), *Perceptions of the EU in Eastern Europe and Sub-Saharan Africa*, Palgrave MacMillan, 2015, p. 106.

in spite of appearing to be a less safe geopolitical bet, is bent on eradicating corruption, particracy, and which was able to put behind its conflicting nationalisms in favour of a common public interest? The approach for which the EU opted seems to be that of neutrality. This differs greatly from the proactive role the EU had taken in a similar crisis in Macedonia, where EU mediation brought about the resignation of the Prime Minister Grueski and sought to create preconditions for free and democratic elections.

This approach of neutrality, I think, is subversive to EU policies in Montenegro. The neutrality of the EU in Montenegro means the preservation of the *status quo* in the only unreformed, undismantled communist regime in Europe, in which the communist party has but changed its name into “Democratic Party of Socialists”, has been adapting to vicissitudes of the past twenty-seven years by transitioning from Serbian to Montenegrin nationalism and by combining state employment to secure votes with neoliberal macroeconomic policies, and has kept control over public institutions via seriously flawed and hardly fair elections. In light of its utterly dissimilar approach to the Macedonian crisis, the ongoing economic and refugee crisis, and the Ukrainian and Syrian war, this approach has done some damage to the reputation of the EU in Montenegro, although, paradoxically, I think this will only strengthen, in the long run, the support for EU membership among the citizens of Montenegro, especially its younger population. Why? Because political failures of the EU will only accentuate its social, economic, and welfare roles which are its most attractive features to the average citizen of Montenegro. But that is self-defeating. The great authority the EU and its values enjoy in Montenegro, instead of being an incentive to civic action, democratic growth, and true reform, become the very opposite: an incentive for civic passivity, resignation, political stagnation, and preservation of the *status quo*. The citizens then turn to the EU as a labour market to which they will emigrate upon accession.

Conclusion

The first part of this paper analysed party attitudes, government policies, and popular opinion of Montenegro re the EU and European integration. The conclusion was that a national consensus, enshrined in

the Constitution, professed by all relevant political subjects, and indicated by opinion polls, has defined EU membership as Montenegro's top priority. In a country torn by imaginary national divisions, growing class rift, and an economic and political crisis, EU integration functions as the only national interest on which practically everyone agrees, a kind of Montenegro's *raison d'état* if not its *raison d'être*. The overwhelming support for EU membership and the generally positive image of the EU rest on often conflicting ideological and political stances, has so far failed to produce a coherent national approach to negotiations, is largely unfounded on solid information and education in the general population, and in spite of this is far from utopian and unrealistic in terms of expectations. The EU is, simply put, perceived as being without alternative to Montenegro.

In the second part I examined a model of thinking about Europe and the Balkans which I think has largely shaped these attitudes towards the EU. In Montenegro and former Yugoslav countries the perception of the EU is conflated with that of Europe as *the* model of culture and civilisation to which Balkan nations need to aspire and conform themselves. This discourse is a legacy of the authoritarian Balkan modernity in which Balkan elites, whether nationalistic, communist, or liberal, conceived the nation-states they were building as agents of cultural and moral transformation of what they perceived as lagging-behind "traditional" Balkan culture after what they perceived as the superior "European" cultural model. Thus the Balkan perception of Europe, and by extension of the EU, has often been framed within an auto-colonial, authoritarian, and cultural racist discourse.

This kind of thinking about the Balkans and the EU may have a detrimental effect on the transformative processes Balkan nation-states are undergoing towards EU membership. In Montenegro, the overwhelming pro-EU attitude and the immense authority and prestige Europe/the EU enjoys among its citizens has been abused by the government and Montenegrin nationalists to create an ideology which terms every opposition to the government as "anti-European". What is more, the EU's passivity in the ongoing political crisis in Montenegro, as opposed to its more proactive role in a similar crisis in Macedonia, has contributed to the preservation of the *status quo* in the only regime in

Europe in which the former communist party has not been voted out of power. Such EU approach most likely won't diminish its authority or the positive perception and pro-EU attitudes among Montenegrin citizens but, which is worse, may indispose them to a more engaged and civic approach to politics and active participation in the country's transformation towards the EU membership. Thus, I fear, the dominant discourse about the EU may in fact subvert the very purpose of the integration process.

The national elections of 16 October will likely prove a test not only of Montenegro's democratic capacities to overthrow the regime in spite of unfair electoral contest but also of the EU's foreign policy and indeed its mission. If in the aftermath of the election the EU were by either passive acquiescence or outright siding with the regime to prevent democratic change, for the sake of Montenegro's accession to NATO, then its authority, good name, and credit in Montenegro might suffer an irreparable blow. The EU would thereby sacrifice the very values upon which and for which it stands, and the very mission of a united, prosperous, and democratic Europe, for the sake of a short-term geopolitical expediency of the US and at no gain for itself. Such a stance might contribute to the rise of euroscepticism in Montenegro and a polarisation of Montenegrin citizens along the lines which divide them re NATO. Thus both the EU and Montenegro would prove equally unable to formulate and pursue their long-term vital interests, with dire results.

Literature:

"Citizens' Attitudes on NATO Integrations", CEDEM, July 2015, available at <http://cedem.me/en/programmes/empirical-research/political-public-opinion/summary/33-political-public-opinion/1692-citizens-attitudes-on-nato-integrations-july-2015>; last accessed 12 October 2016.

"Citizens' Attitudes on NATO Integrations", CEDEM, September 2014, available at <http://cedem.me/en/programmes/empirical-research/political-public-opinion/summary/33-political-public-opinion/1147-citizens-attitudes-on-nato-integrations-september-2014>; last accessed 12 October 2016.

"Citizens' Attitudes to NATO Integrations", CEDEM, November 2015, available at <http://cedem.me/en/programmes/empirical-research/political>

- public-opinion/summary/33-political-public-opinion/1717-political-public-opinion-poll-november-2015; last accessed 12 October 2016.
- “Commissioner for Enlargement: ‘Accession talks to start as soon as Montenegro achieves key priorities’”, EU Delegation in Montenegro Press Release, 10 November 2010, available at <http://www.delme.europa.eu/code/navigate.php?Id=965>; last accessed 12 October 2016.
- “Dižemo glas građanski i nenasilno u odbranu ustava” [“We Are Raising Our Voice in Defence of the Constitution”], Vijesti Online, 23 October 2015; available at: <http://www.vijesti.me/vijesti/dizemo-glas-gradanski-i-nenasilno-u-odbranu-ustava-857078>; last accessed 12 October 2016.
- “Fonografski zapis: Treća posebna sjednica prvog redovnog zasijedanja Skupštine Crne Gore 24. saziva 15. 16. i 17. mart 2011. godine” [“Phonographic Record of the Third Special Sitting of the First Regular Session of the Parliament of Montenegro of the 24th Assembly”], Parliament of Montenegro, Podgorica, 2012, available at http://www.skupstina.me/~skupcg/skupstina/cms/site_data/FONOGRAFSKI%20ZAPISI/TRECA%20SJEDNICA%20PRVOG%20REDOVNOG%20ZASIJEDANJA.pdf; last accessed 12 October 2016.
- “Generalna pozicija Vlade Crne Gore o pristupanju EU” [“The General Position of the Government of Montenegro re EU Accession”], Ministry of Foreign Affairs and European Integration, 7 March 2014, available at: <http://www.mvpei.gov.me/ResourceManager/FileDownload.aspx?rid=159492&rType=2&file=Generalna%20pozicija%20Crne%20Gore.pdf>; last accessed 12 October 2016.
- “Istraživanje o percepcijama javnosti i komuniciranju procesa evropskih integracija u Crnoj Gori” [“Research on the Public Perceptions and Communication of European Integration in Montenegro”], DeFacto Consultancy, presented in January 2016, available at http://www.eu.me/images/PrezentacijaMNE_def.pdf; last accessed 12 October 2016.
- “Medojević: Nismo euroskeptici ali nije Evropa isto što i EU” [“Medojević: We Are Not Eurosceptics, But the EU Does Not Equal Europe”], *Portal Analitika*, 30 June 2015, available at: <http://www.cdm.me/politika/medojevic-nijesmo-euroskeptici-ali-nije-evropa-isto-sto-i-eu>; last accessed 12 October 2016.

- “Political Public Opinion in Montenegro”, CEDEM, March 2013, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1146-political-public-opinion-march-2013>; last accessed 12 October 2016.
- “Political Public Opinion in Montenegro”, CEDEM, September 2012, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1145-political-public-opinion-september-2012>; last accessed 12 October 2016.
- “Political Public Opinion of Montenegro”, CEDEM, June 2016, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1819-political-public-opinion-june-2016>; last accessed 12 October 2016.
- “Political Public Opinion”, CEDEM, July 2012, available at <http://cedem.me/en/programmes/empirical-research/politacal-public-opinion/summary/33-political-public-opinion/1119-political-public-opinion-july-2012>; last accessed 12 October 2016.
- “Pres Release of the Montenegrin PEN Centre and the Montenegrin Society of Independent Writers”, 22 October 2015, available at <http://crnogorski-pen-centar.me/aktuelnost=25>; last accessed: 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 2, May 2005: September 2005, December 2005, April 2006, CEDEM, Podgorica, June 2006, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=346&pdf=3>, last accessed 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 2a: June 2006, August 2006, CEDEM, Podgorica, December 2006, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=345&pdf=3>; last accessed 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 3: February 2007, June 2007, October 2007, February 2008, CEDEM, Podgorica, March 2008, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=347&pdf=3>; last accessed 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 4: February 2007, June 2007, October 2007, February 2008, CEDEM, Podgorica, January

- 2009, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=348&pdf=3>; last accessed 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 5: March 2009, June 2009, October 2009, CEDEM, Podgorica, January 2010, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=349&pdf=3>; last accessed 12 October 2016.
- “Public Opinion of Montenegro”, Annual Report № 6: July 2010, June 2010, October 2010, CEDEM, Podgorica, January 2011, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=350&pdf=3>; last accessed 12 October 2016.
- “Public Opinion in Montenegro”, Annual Report № 7: September 2011, December 2011, CEDEM, Podgorica, January 2012, available at <http://www.deso.mk/GetFile.ashx?f=3&pd=351&pdf=3>; last accessed 12 October 2016.
- “Research on Knowledge, Perception, and Expectations of Europeans from the EU”, *The Homo Europeanus—Overcoming the Knowledge Deficit Project*, CGO, 10 May 2016, available at <http://media.cgo-cce.org/2016/05/opinion-polls.pdf>; last accessed 12 October 2016.
- “Results of the Research ‘Montenegro and Europe’”, Faculty of Administrative and European Studies, Ministry of Foreign Affairs, June 2015, available at http://www.fdes.me/wp-content/uploads/2015/07/Rezultati_istrazivanja_-_Crna_Gora_i_EU.pdf; last accessed 12 October 2016.
- “Stavovi mladih prema Evropskoj uniji i evropskim integracijama: Rezultati istraživanja” [“Young People’s Attitudes to the EU and European Integration: Research Results”], De Facto Consultancy, Podgorica, July 2010, available at [http://www.unicef.org/montenegro/izvjestaj_EU_istrazivanje_2010l_\(1\)_sa_Aneksom.pdf](http://www.unicef.org/montenegro/izvjestaj_EU_istrazivanje_2010l_(1)_sa_Aneksom.pdf); last accessed 12 October 2016.
- Bešić, Miloš, and Đukanović, Borislav, *Bogovi i ljudi: religioznost u Crnoj Gori* [Of Gods and Men: Religiosity in Montenegro], CID, Socen, Podgorica, 2000.
- Blagojević, Slađan, “Što očekivati od pregovaračkih struktura Crne Gore sa EU” [“What to Expect from Monenegro’s Negotiating Structures with the EU”], *Evropski puls*, Elektronski mjesečnik za evropske

- integracije [*European Pulse*, Electronic Monthly Magazine for European Integration], № 78, Centre for Civic Education (CGO), March 2012, pp. 4-7, available at <http://media.cgo-cce.org/2013/06/CGO-Evropsk-puls-78.pdf>; last accessed 12 October 2016.
- Bolkvadze, Ketevan, and Naylor, Rachel, "Popular and Elite Perceptions of the EU in Georgia", in Bachmann, Veit, and Müller, Martin (eds), *Perceptions of the EU in Eastern Europe and Sub-Saharan Africa*, Palgrave MacMillan, 2015, pp. 105-122.
- Ćirjaković, Zoran, „Filosofija palanke—Knjiga koja je podelila Srbiju na prvu i drugu” [„The Philosophy of the Borough—the Book That Split Serbia in Two”], *Politika*, 22 April 2016.
- Evans, Geoffrey, and Whitefield, Stephen, "Identifying the Bases of Party Competition in Eastern Europe", *British Journal of Political Science*, Vol. 23, № 4, October 1993, pp. 521-548.
- Fin, Monika, *Centri srpske culture XVIII veka* [*Centres of Serbian Culture in the 18th Century*], Akademska knjiga, Novi Sad, 2015.
- Knežević, Radule, *Politička kultura* [*Political Culture*], Crnogorska akademija nauka i umjetnosti, Podgorica, 2012.
- Konstantinović, Radomir, *Filosofija palanke* [*The Philosophy of the Borough*], Otkrovenje, Belgrade, 2008 [1969].
- Lajčák, Miroslav, "Mala a velika i ozbiljna zemlja" ["A Small Yet Grand and Serious Country"], *Pobjeda*, Special Independence Day Edition, 21-23 May 2016, p. 5, available at <http://www.pobjeda.net/protected/listalica/2016-05-21/files/assets/common/downloads/publication.pdf>; last accessed 12 October.
- Marini, Adelina, "Montenegro Wants to Leave the Balkan Autistic World", *Euinside*, 8 October 2016, available at <http://www.euinside.eu/en/news/montenegro-wants-to-leave-the-balkan-autistic-world>; last accessed 12 October 2016.
- Perović, Latinka, "Milan Piroćanac—Zapadnjak u Srbiji XIX veka" ["Milan Piroćanac—A Westerner in the 19th-Century Serbia"] in Perović, Latinka (ed), *Srbija u modernizacijskim procesima 19. i 20. veka: Uloga elita* [*Serbia in the Modernising Processes of the 19th and 20th Century*], Vol. III, Belgrade, 2003, pp. 11-72.

- Sošić, Marko, and Marović, Marija, "European Integration and Party Politics in Montenegro" in Stratulat, Corina (ed), *EU Integration and Party Politics in the Balkans*, European Policy Centre Issue Paper № 77, September 2014, pp. 31-46, available at http://www.epc.eu/documents/uploads/pub_4716_eu_integration_and_party_politics_in_the_balkans.pdf; last accessed 12 October 2016.
- Stratulat, Corina, "Introduction" in Stratulat, Corina (ed), *EU Integration and Party Politics in the Balkans*, European Policy Centre Issue Paper № 77, September 2014, pp. 1-12, available at http://www.epc.eu/documents/uploads/pub_4716_eu_integration_and_party_politics_in_the_balkans.pdf; last accessed 12 October 2016.
- Todorova, Maria, *Imagining the Balkans*, Oxford University Press, Oxford, 2009.
- Trgovčević, Ljubinka, *Planirana Elita: O studentima iz Srbije na evropskim univerzitetima u 19. veku* [*The Planned Elite: Students from Serbia in European Universities in the 19th Century*], The Institute of History, Belgrade, 2003.

The “Red-White-Red Card” Dream: Perspectives of Young Migrants From The Balkans in The Austrian Labor Market

Mirjana Lukić

Ph.D candidate, University of Vienna

Abstract: The purpose of this paper is to inspect how the introduction of the “Red-White-Red” Card influenced perspectives of young educated migrants from the Balkans in the Austrian labor market. Over the past decade the definition of the average migrant has been thoroughly reversed due to “elite migration”. A new generation of migrants consisting of young educated people from third world countries in search of a better life has replaced the generation that came in the ‘70s and ‘80s. The “Red-White-Red” Card is a new tool that allows immigration and resettlement of economic migrants from third world countries and it is issued only after a careful examination of the labor market to ensure full protection of Austrian and EU citizens. This study is based on a thorough investigation of the Austrian labor market laws and its immigration policy. Some of the main findings rely on a survey, underlining the thesis that a relationship between young migrants from the Balkans and the Austrian labor market is mutually beneficial in spite of restrictive immigration policy.

Key words: “Red-White-Red” Card, new generation of migrants, Austrian labor market, immigration policy.

Introduction

Austria has been a land of opportunity for the average Balkan emigrant since 1960s, when the Austrian government implemented a guestworker model in order to satisfy contemporary labor market needs. A large number of migrants from then-Yugoslavia emigrated to Austria in a wave during the 1970s and ‘80s and settled there permanently, which was hardly the intention of policy makers. The majority of these immigrants were uneducated, limiting their job prospects to difficult manual labor and preventing them from accessing Austrian society and its language.

In 1992, the legislation was changed from a guest worker model to an immigration model, which allowed migration for family reunification and humanitarian reasons. Over the past decade the definition of the average

migrant has been thoroughly reversed due to “elite migration”. A new generation of migrants consisting of young educated people from third world countries in search of a better life has replaced the generation that came in the ‘70s and ‘80s. Unlike their predecessors, they integrate well and tend to learn the language quickly. Before 2011, young people were emigrating to Austria with academic intentions, along the way hoping for lucky circumstances that would enable a permanent stay. The introduction of the “Red-White-Red” Card in 2011 allowed immigration and resettlement of economic migrants from third world countries, which appeared to be a window of opportunity for young professionals from the Balkans. However, it is enabled under strict requirements only for certain professions. Furthermore, the “Red-White-Red” Card is issued only after a careful examination of the labor market to ensure full protection of Austrian and EU citizens. While students from third world countries are allowed to work ten to twenty hours per week with a special permit from Public Employment Service, they are not entitled to social welfare if they work less than twenty hours per week. Hence, young migrants support the Austrian economy while being a minimal burden on social programs. On the other hand, the young people who successfully finish their studies in Austria are given the opportunity to find a job without the examination of labor market being undertaken, providing a balance between restrictive policy and a promising future.

Migration history to Austria

There is no official definition of migration in Austria nor in the EU. Migration can be defined as a process of people crossing borders to permanently or temporarily stay and work abroad. In the last decade, international migration significantly shifted its meaning, including phenomena like refugees and “elite migration” – the migration of educated people. So, who are these people with an immigrant background? This term includes all persons whose parents were born in a different country than the one in which they (the child and parents) reside. In 2009, there were around 1,468 million people with immigrant background living in Austria, which represents around 17,8% of the whole population. Around 1,082 million of these people are first generation migrants, meaning they

were born abroad and moved to Austria. The second generation consists of those who were born in Austria from parents with foreign origins.

Where do they come from? Most people with an immigrant background come from third world countries. According to statistics from 2010, the second greatest number of immigrants to Austria came from Serbia and Montenegro - around 207.000 people.¹

Austria's post-World War II economic boom led to a growing demand for labor and an important shift in immigration policy. Following the example of Germany and Switzerland, Austria made bilateral agreements with southern and southeastern European states in the 1960 in order to recruit temporary workers. Agreements with Turkey (1964) and Yugoslavia (1966) quickly led to the settlement of significant numbers of these workers and their families in Austria. In 1969, the number of foreign workers from Turkey and Yugoslavia reached the number of 76.500. By 1973, numbers had almost tripled to 227.000 - 178.000 of which came from Yugoslavia and 27.000 from Turkey.²

The oil crisis in 1973 radically reduced the demand for guest workers, resulting in a new law, the Aliens Employment Act, which passed in 1975 and restricted foreign employees from accessing the Austrian labor market. This law remains one of the primary control mechanisms of foreign employment. When the economy recovered, many former migrants from Yugoslavia returned. While active labor recruitment was stopped, other forms of migration, such as family reunification, spontaneous labor migration and, by the late 1980s, clandestine migration and asylum became more important. The legislative change from a guest worker model to an immigration model in 1992 allowed family migration and humanitarian intake.

However, labor migration initiated in the 1960s clearly had lasting effects on both the current composition of the foreign resident population in Austria and subsequent migration inflows. In 2001, 62,8 percent of the

¹ "Migration und Integration in Österreich", Europainformationswebsite der österreichischen Bundesregierung, <http://www.zukunfteuropa.at/site/7216/default.aspx>, 20/04/2016.

² Michael Jandl, Albert Kraler, "Austria: A country of immigration?", Website of Migration Policy Institute, <<http://www.migrationpolicy.org/article/austria-country-immigration>, 07/05/2016.

total foreign resident population came from the two recruitment regions, former Yugoslavia and Turkey.³ With the introduction of the “Red-White-Red” Card in 2011, the scene has been set for the immigration and settlement of economic migrants from third world countries, bearing in mind that EU citizens have been the source of additional labor since 1995, the year of Austria’s membership to the EU.⁴

Young generation of migrants

A new generation of migrants consisting of young educated people from third world countries in search of a better life has replaced the generation that came in the ‘70s and ‘80s. Unlike their predecessors, they integrate well and tend to learn the local language quickly. Before 2011, young people were emigrating to Austria with academic intentions, along the way hoping for lucky circumstances that would enable a permanent stay. The introduction of the “Red-White-Red” Card in 2011 allowed immigration and resettlement of economic migrants from third world countries, which appeared to be a window of opportunity for young professionals from the Balkans.

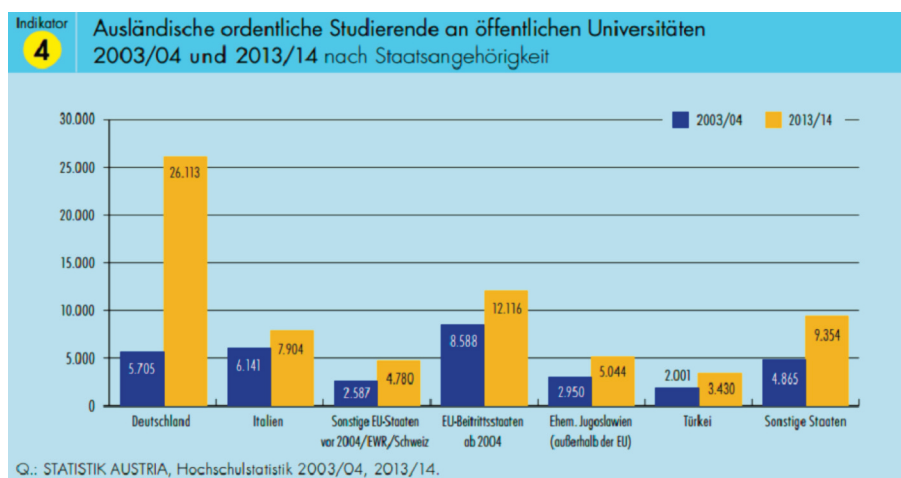
The number of foreign students in Austria constantly grows. In comparison to the 1990s almost 50.000 more foreign students enrolled to Austrian universities during the winter semester of 2013/2014, which emerges to be one fourth of all students in Austria. Around 7% of them are people from ex-Yugoslavia. In comparison to the winter semester of 2003/2004, the number of students from ex-Yugoslavia has almost doubled.⁵

³ Michael Jandl Albert Kraler, “Austria: A country of immigration?”, Website of Migration Policy Institute, <<http://www.migrationpolicy.org/article/austria-country-immigration>>, 07/05/2016.

⁴ Gudrun Biffl, Anna Faustmann, „*Österreichische Integrationspolitik im EU-Vergleich. Zur Aussagekraft von MIPEX*“, Studie im Auftrag des Bundesministeriums für Inneres. Schriftenreihe Migration und Globalisierung, Krems (Edition Donau-Universität Krems), 2013, p.VI

⁵ “Migration & Integration”, Statistik Austria, Kommission für Migrations- und Integrationsforschung der Österreichischen Akademie der Wissenschaften, Wien, 2015, p. 48.

Graphic 1: Foreign students in Austrian public universities in 2003/04 and in 2013/14.⁶



In 2014, workers with an immigrant background were predominantly employed as blue-collar workers (43%), while among people without an immigrant background only 23% held blue-collar jobs. Most immigrant blue-collar workers were persons from former Yugoslavia (61%) and Turkey (56%). The most significant difference among people with an immigrant background is the gender distinction when it comes to profession choice. Around 60% of women were employed as white-collar workers, while 52% of men were working as laborers. The numbers are similar among people without immigrant background.⁷

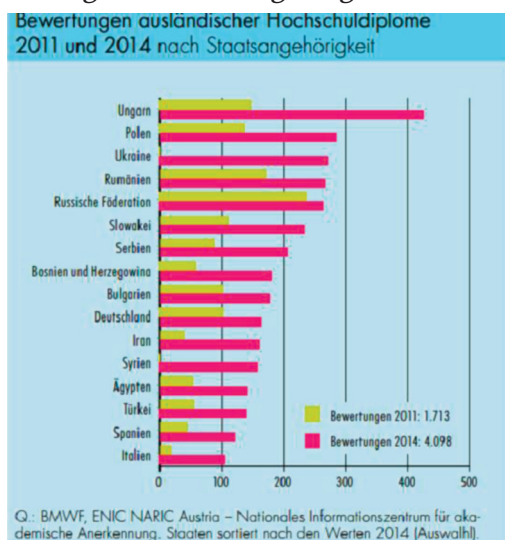
While this underlines the thesis that people from former Yugoslavia are predominately laborers, the sad truth is that many of them are overqualified for their current employment. More than one fourth of the labor force with an immigrant background (28%) indicated in 2008 that they are overqualified for their jobs. Women were more frequently overqualified than men and particularly affected were women from former Yugoslavia (36%), a typical hardship for the first generation of migrants.

⁶ *Ibid.*

⁷ *Ibid.* p. 57.

In the past decade, the situation has changed significantly with a wave of young educated migrants. In 2014, The National Information Center for Academic Recognition, ENIC NARIC Austria, carried out evaluations of foreign diplomas. The results showed that graduates from Serbia and Bosnia and Herzegovina had their university degrees recognized with above-average frequency.⁸ This might have been a direct result of introducing the “Red-White-Red” Card.

Graphic 2: Recognition of foreign degrees in 2011 and 2014⁹



Austrian labor market principles

Austria is rather restrictive when it comes to its labor market principles. The main goal is the protection of Austrian and EU citizens, which is guaranteed through examination of the labor market. This suggests that Austrian and EU citizens have prioritized access to the labor market over third country nationals.

⁸ *Ibid.* p. 58.

⁹ *Ibid.*

Work permit

A work permit is issued by the Public Employment Service, applied for the employer for one specific opening. The migrant has to prove that they may legally stay in Austria, as even minor criminal offenses constitute a reason for denial of a work permit. Another significant condition is equal treatment of migrants regarding wage, working hours, working conditions, etc. A work permit can be revoked at any time if any important information regarding the employee appears to be false.¹⁰

Work permit for students

Pupils and students from third world countries as well as from Croatia require an employment permit. The application for the permit has to be filed with the Public Employment Service by the employer.

Young migrants are allowed to work ten to twenty hours per week during their studies without examination of labor market being undertaken, which is a significant benefit to their economical situation. Although it is a significant benefit for an average foreign student, the waiting period for the work permit can vary from one to six weeks, which can represent a significant obstacle on the road to finding a student job. Moreover, they are not entitled to social welfare if they work less than twenty hours per week¹¹. Hence, young migrants predominately support the Austrian economy while being a minimal burden on social programs. The only exception is accident insurance, guaranteed to each student during his studies. This insurance is, however, limited only to accidents related to university activities whilst traveling to or from university. Accidents that happen at home while studying are not covered by this insurance.¹² Furthermore, one of the requirements for a legal stay in Austria is a proof of sufficient funds in order to prevent entitlement to

¹⁰ Wolfgang Brodil, Martin Risak, Cristoph Wolf, “*Arbeitsrecht in Grundzüge*“, LexisNexis Verlag ARD Orac GmbH & Co KG, Wien 2013, p. 75.

¹¹ “Arbeitslosengeld” <http://www.arbeitslosengeld.at/>, 27/04/2017.

¹² Wolfgang Brodil, Michaela Windisch-Graetz, “*Sozialrecht in Grundzügen*“, Facultas Verlags- und Buchhandels AG, Wien 2013, p. 100-101.

social welfare: €491,43 a month for students under age 24 and €889,84 a month for students above age 24.¹³ Nevertheless, a benefit of working a part-time job is often a good path to getting the “Red-White-Red” Card.

Labor market test (Arbeitsmarktprüfung)

Employment permits may be granted with or without a labor market test. Permits will only be granted if the labor market test shows that there is no Austrian worker or non-Austrian worker (already integrated in the Austrian labor market) registered with the AMS available for the job.¹⁴ As of 1 July 2011, employment permits may be granted without labor market tests if students are employed for up to ten hours per week or for up to twenty hours per week, provided that they have completed a Bachelor’s program or the first part of a diploma program. Employment permits for more than ten or twenty hours per week can only be granted after the labor market test. Pupils and students from Croatia are given unlimited labor market access, to be confirmed by the AMS, after twelve months of continuous employment based on an employment permit.

The “Red-White-Red” Card

The “Red-White-Red Card” is a relatively new tool regarding third country nationals (TCNs), which allows permanent immigration of third

¹³ “Aufenthaltsbewilligung für Studierende: Voraussetzungen”, Stadt Wien AT, <https://www.wien.gv.at/amtshelfer/dokumente/aufenthalt/aufenthaltsbewilligung/bescheinigungen/studierender.html>, 27/04/2017.

¹⁴ “Act Governing the Employment of Foreign Nationals”, Article 4b: “The situation and the development of the labor market (§4 (1)) shall permit the issue of an employment permit if, for the vacancy to be filled by the foreign national specified in the application, neither an Austrian national nor a domestic labor market-based foreign national ready and able to do the job under the conditions recognized by law is available. Among the foreign nationals available preference shall be given to those entitled to unemployment insurance benefits, to EEA nationals, Swiss nationals, Turkish workers under association agreements (§4c) and to foreign nationals having unrestricted access to the Austrian labor market (§17). The examination shall be based on the job profile specified in the application for an employment permit, such profile having to be in line with in-house requirements. Proof of the training background necessary for doing the job, or of any other special skills, shall be furnished by the employer.”

world country workers and their families to Austria. It was introduced in 2011 and represents a significant step in facilitating the economic immigration of TCNs. However, Austrian immigration policy is still far from liberal, especially considering that the “Red-White-Red” Card is enabled only under strict requirements. The “Red-White-Red” Card can be issued only for a period of twelve months¹⁵ with a possibility of renewal provided that employment is guaranteed by one specific employer. Only certain groups of immigrants are entitled to apply for the “Red-White-Red” Card and each of them undergoes a different set of criteria.

Very highly qualified workers

Requirements for the Job Seeker Visa, a visa that is approved by the Public Employment Service (AMS) for a period of six months, in which time the migrant is to find a suitable employment—are by far the strictest. A candidate must achieve at least 70 out of 95 points by submitting proof of very high education, work experience, language skills, studies in Austria and biometric information. Some of the most important criteria are “young” and “suitable.” It is very difficult to apply for this visa above age 45 due to the scoring system. Also, it is crucial that the employment corresponds to the education and qualifications of the candidate in order to become eligible for the “Red-White-Red” Card. However, even if the candidate fulfills all the necessary requirements and they find a suitable employment, the “Red-White-Red” Card is guaranteed only after a labor market test and a submission of all required documents (such as evidence of locally customary accommodation, evidence of health insurance covering all risks, evidence of adequate means of subsistence, etc).¹⁶

¹⁵ The Amendment to “Act Governing the Employment of Foreign Nationals” extends this period to two years. It is a questionable benefit, considering that an employee will have to work for one specific employer longer in order to acquire free access to the labor market.

¹⁶ “Very highly qualified workers”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 03/05/2016.

Other key workers

According to the current status, the necessary requirements for “Red-White-Red” Card are: salary in amount of € 2.490 gross a month for people under the age 30 and salary in amount of € 2.998 gross¹⁷ a month for people above the age 30. Although these requirements are already hardly reachable to the average immigrant from the Balkans, the conditions do not end here. A labor market examination has to be carried out, verifying that there are no Austrian or EU jobseekers in the labor market that are equally qualified. The last step is reaching at least 50 points out of 75 on the list of criteria, which includes education, language, abilities and other achievements.¹⁸

Skilled workers in shortage occupations

A list of occupations facing employment shortages is updated each year in a regulation (*Fachkräfteverordnung*) issued by the Federal Minister of Labor in consultation with the Federal Minister of Economics. Which occupations are considered as shortage occupations depends on the development of the Austrian labor market. In this case, the labor market test does not take place. However, a candidate must meet all the other requirements in order to collect the minimum of 50 points necessary for the “Red-White-Red” Card.¹⁹

Self-employed key workers

Third country nationals have the possibility to apply for a “Red-White-Red” Card for self-employed key workers, if their self-employed occupation in Austria: 1) implies a constant transfer of investment in Austria; 2) creates new jobs and secures the pre-existing ones; 3) involves

¹⁷ For the year 2017.

¹⁸ “Ausländische Schlüsselarbeitskräfte“, Arbeitsmarktservice Österreich, http://www.ams.at/_docs/001_RWR_Schluesselkraft.pdf, p.1, 27/04/2017.

¹⁹ “Skilled workers in shortage occupations”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 13/07/2016.

the introduction of new technologies; 3) represents a significant benefit for the entire region. In this case there is no points system and no labor market test, but the Public Employment Service is obliged to issue an expertise on the macroeconomic benefit of the intended professional activity within three weeks of the moment the application being started. Self-employed key workers can also switch to a “Red-White-Red” Card for non-self-employed workers if they achieve the respective number of required points and prove a legally binding offer of employment.²⁰

Graduates

Graduates from third world countries are entitled to a six months²¹ settlement in Austria for the purpose of finding an employment if they successfully completed a diploma program or if they obtained a Master’s degree at any Austrian public university, university of applied sciences, or an accredited private university. This period of time allows graduates to find suitable employment which corresponds to their level of qualifications without a labor market test being undertaken, provided that the employer is ready to pay the locally customary gross minimum salary which comparable Austrian graduates would receive (a minimum of € 2.241 a month for the year 2017), including special payments (holiday and Christmas pay), and they fulfill the general requirements under Austrian settlement and residence legislation (such as locally customary accommodation, health insurance coverage, etc.). There is no points system for graduates.²² Therefore, it is no wonder why many people from the Balkans decide to pursue a Master’s degree in Austria, since it offers by far the best possibility of getting the “Red-White-Red” Card.

²⁰ “Self-employed key workers”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 13/07/2016.

²¹ The Amendment introduces a possibility of one year settlement and includes also graduates from Bachelor’s degree programs.

²² “Students and graduates”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/de/formen-der-zuwanderung/dauerhafte-zuwanderung/studierende-und-studienabsolventinnen/>, 27/04/2017.

The “Red-White-Red” Card plus

The Red-White-Red Card plus entitles holders of the “Red-White-Red” Card, if they were employed in accordance with the requirements decisive for receiving the “Red-White-Red” Card for at least ten months within the preceding twelve months, to permanent settlement and unlimited labor market access. The Red-White-Red Card plus is issued for a validity of one year. Persons who have been lawfully settled in Austria for at least two years and who fulfill Module 1 of the Integration Agreement can receive a “Red-White-Red” Card plus valid for three years.²³ Module 1 of the Integration Agreement demands German language skills at the A2 level according to the Common European Framework of Reference for Languages.²⁴

Very highly qualified workers, skilled workers in shortage occupations, other key workers, students, and graduates can apply for the “Red-White-Red” Card plus if they were employed in accordance with the related criteria for at least ten months within the preceding twelve months.

However, self-employed key workers can receive a Red-White-Red Card in the first year, and after that a Niederlassungsbewilligung (settlement permit) if all legal requirements are met. The settlement permit is issued for a period of twelve months and entitles its holder to fixed-term settlement and the pursuit of the self-employed occupation. After a completed total settlement period of two years the settlement permit is issued for three years.²⁵

²³ “Red-White-Red Card Plus”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 22/08/2016.

²⁴ “Integration Agreement”, Bundesministerium für Innern, http://www.bmi.gv.at/cms/bmi_niederlassung/english/start.aspx, 22/08/2016.

²⁵ “Self-employed key workers”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 22/08/2016.

Other work permits

EU Blue Card

Third-country nationals may be granted an EU Blue Card if they 1) have completed a course of study at a university or other tertiary educational institution with a minimum duration of three years; 2) have received a binding job offer for at least one year in Austria and the employment corresponds to the applicant's education; 3) will earn a gross annual income of at least one and a half times the average gross annual income of full-time employees (in 2016: at least € 58.434 which is about € 4.174 gross monthly income plus special payments); 4) the labor market test shows that there is no equally qualified worker registered as a jobseeker with the Public Employment Service (AMS) available for the job.²⁶ This card is issued predominately to experts of their field and it can be distinguished from the "Red-White-Red" Card on the grounds of the monthly salary and validation period. The EU Blue Card is valid for three years.

Long-term Resident - EU

The residence title "Long-term Resident – EU" may be granted to third country nationals, if they: 1) have been entitled to reside in Austria during the last five years without interruption; 2) have fulfilled the general requirements; 3) have completed Module 2 of the Integration Agreement (i.e. German language skills at B1 level according to the Common European Framework of Reference for Languages). The following requirements must be met for the title "Long-term Resident – EU" to be granted: 1) adequate means of subsistence - the third-country national must have a fixed and regular income enabling them to meet their living needs without resorting to welfare aid from local authorities. The income needs to be equal to or exceed the standard income rate. In 2016, this standard income rate amounts to €882,78 for singles, €1.323,58 for married couples and an additional €136,21 for each child; 2) health insurance

²⁶ "EU Blue Card", The Federal Government's official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 22/08/2016.

coverage - the third-country national must have health insurance coverage, providing benefits in Austria and covering all risks; 3) adequate accommodation according to local standards - the third country national must provide evidence of a legal title to an accommodation (e.g. a lease contract), considered adequate for their family size according to local standards.²⁷ As a result, young people who legally stay in Austria for at least five years have the possibility to gain unlimited access to the Austrian labor market as long as other criteria are met. In reality, it is difficult to have a regular income in the amount of €882,78 when working less than twenty or twenty hours per week.

Survey

Structure

In an online survey that was created and carried out for the purposes of this paper, 202 participants answered questions regarding their life in Austria.²⁸ The participants were born and raised in the Balkan region, with the following structure: 49,5% of them were from Bosnia and Herzegovina, 40,6% from Serbia, 3% from Montenegro, 1% from Macedonia and 5,9% from other countries in the Balkan region.²⁹ Slightly more participants were female (55,9%), while 89 of them are male. Age structure shows that the most of participants were between the ages 21 and 26 (47%), followed by participants between the ages 27 and 30 and between the age 16 and 21. In fourth place were people between the age 31 and 35 (8,4%), followed by people who were above 35 years old (5,9%).

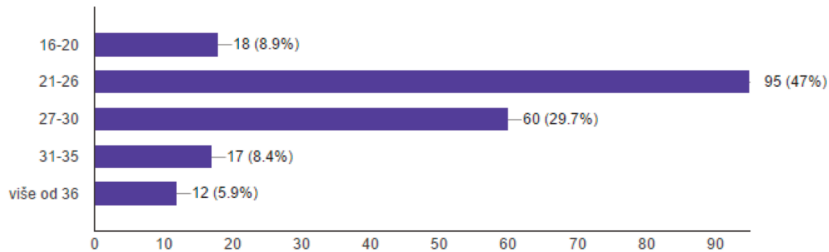
²⁷ "Long-term Resident EU", The Federal Government's official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>, 22/08/2016.

²⁸ "Perspektiva mladih ljudi sa Balkana na austrijskom tržištu rada", online survey, <https://goo.gl/forms/g7bnxsxEYNPPfz3s2>

²⁹ The option "other" includes people from Croatia, Slovenia, the second generation of migrants who were born and raised in Austria and eventually people from the Kosovo region who do not recognize Serbia as their homeland.

Graphic 3: Age group of participants

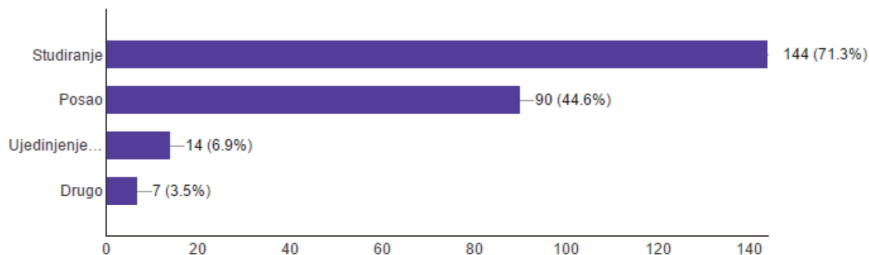
Starosna grupa (202 responses)



Most of participants came to Austria in order to pursue an academic degree (71,3%) and 90 of them are hope to find employment and stay in Austria.

Graphic 4: Purpose of migrating to Austria

Cilj dolaska u Austriju (202 responses)



The “Red-White-Red” Card

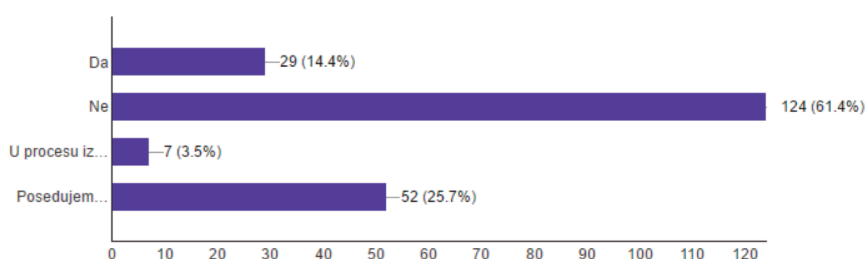
Considering the fact that the most participants are students below age 30, only 14,4% of them have the “Red-White-Red” Card. 3.5% were in the process of applying for the “Red-White-Red” Card at the time of the

study and 25,7% of participants have another kind of work permit.³⁰ Almost 61,6% of them do not have the unlimited access to the Austrian labor market, but many of them do have a work permit for students.

Graphic 5: Percentage of “Red-White-Red” card holders

Posedujete li radnu dozvolu? (Rot-Weiß-Rot Karte ili Rot-Weiß-Rot plus Karte)

(202 responses)



Of those who have the “Red-White-Red” Card, most of them are classified as other key workers (37,9%) or very highly qualified workers (34,4%), followed by graduates from some of the Austrian public universities, universities of applied sciences or accredited private universities (24,1%). A very low percentage of the “Red-White-Red” Card holders are self-employed key workers, indicating that it appears to be very difficult to start an independent business in Austria. This is the case in regulated professions, which require the proof of specific qualifications for setting up a business. Austria tends to protect consumers by regulating access to the profession rather than through consumer protection legislation.³¹

³⁰ Niederlassungsbewilligung, which is issued for the period of five years and allows the unlimited access to the Austrian labor market. It can be issued after Red-White-Red card plus if all legal requirements are met.

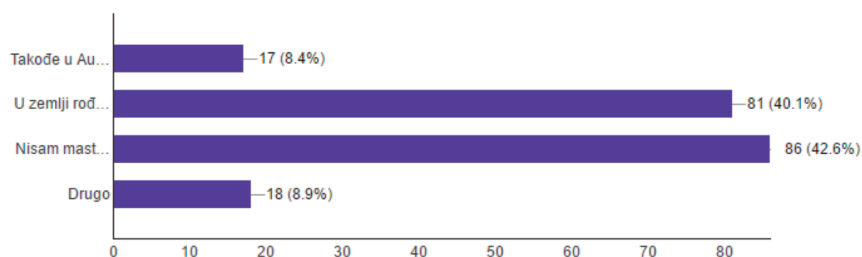
³¹ Gudrun Biffl, Anna Faustmann, „Österreichische Integrationspolitik im EU-Vergleich. Zur Aussagekraft von MIPEX“, Studie im Auftrag des Bundesministeriums für Inneres. Schriftenreihe Migration und Globalisierung, Krems (Edition Donau-Universität Krems), 2013, p. VII-VIII

According to this survey almost all participants who have the “Red-White-Red” Card had previously worked part time for at least six months for the employer who provided them the “Red-White-Red” Card.

This is a significant trend in getting a work permit in Austria. However, the most interesting result suggests that almost one third of the participants who have the “Red-White-Red” Card came into possession of one during or after Bachelor’s studies in Austria. This implies that the labor market examination took place. As previously discussed, the simplest way of getting the “Red-White-Red” Card in terms of requirements is obtaining a Master’s degree at an Austrian public university, universities of applied sciences or accredited private universities, which the result of this survey confirms. Almost 40% of participants came to Austria in order to pursue a Master’s degree.

Graphic 6: Percentage of students pursuing Master’s degree in Austria

Ako ste master student, gde ste završili Bachelor? (202 responses)



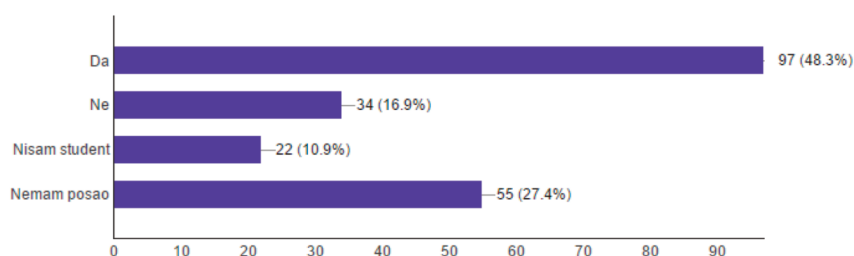
Work permit for students

Almost half of all participants were employed based on the work permit for students (Arbeitsbewilligung). Most of them are allowed to work ten hours per week, followed by Master’s students and diploma program students, who are allowed to work twenty hours per week. However, 6,9% of them work more than allowed, which implies one of three possible options: 1) they registered a trade; 2) they are illegally employed; 3) they might have a visa for researchers, which is based on a work contract with the university and allows work in amount of thirty

hours per week.³² Graphic 7 suggests that the second option is the most probable. This is a common problem among students from the Balkans. The main cause is insufficient knowledge of the German language, which makes them easy targets for employers who exploit them as cheap labor force. Additionally, most of these predatory employers are predominately also from the Balkans. Exactly 22,3% indicate that their employers are also coming from the Balkans, while 43,6% have Austrian employers. Almost 21% of the participants are working more or less hours per week than they are allowed, and around 16,9% are not paid in accordance with the collective bargaining agreement.

Graphic 7: Percentage of people who are not paid in accordance with the collective bargaining agreement

Da li ste plaćeni prema kolektivnom ugovoru? (201 responses)

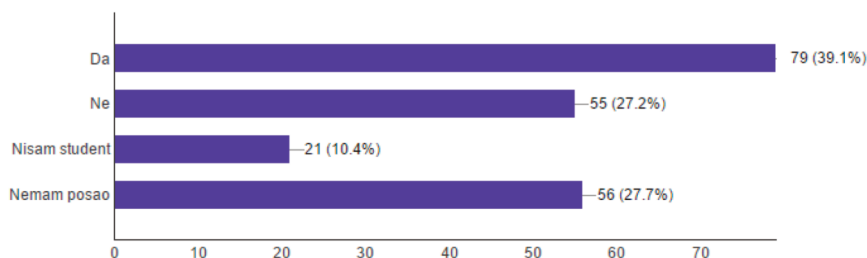


Another 27,2% claimed that they do not receive payment for long hours and for other benefits, such as the thirteenth and fourteenth salary, night shift premiums etc.

³² This visa falls into the group of short-term work permits and does not allow the unlimited access to the labor market.

Graphic 8: Percentage of people who receive special payments

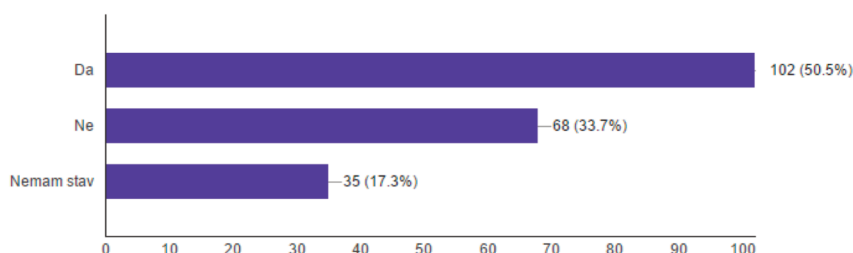
Da li su vam plaćeni prekovremeni rad i ostali dodaci? (202 responses)



The most controversial answers appeared to be related to the question about whether or not participants felt discriminated against in terms of employment in Austria. Exactly 50,5% of participants felt discriminated against, while 17,3% chose not to give an exact answer.

Graphic 9: Percentage of people who feel discriminated in terms of employment in Austria

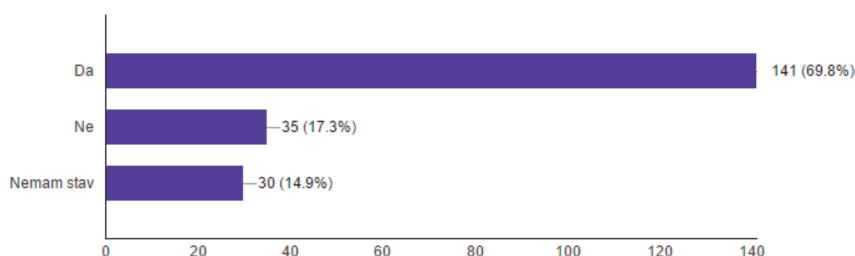
Da li se osećate diskriminisano po pitanju posla u Austriji? (202 responses)



Nevertheless, the majority (almost 70%) envisages a good future, claiming that job prospects in Austria do exist, while 17,3% are not that optimistic.

Graphic 10: Percentage of people who are optimistic about future employment

Da li se može reći da imate perspektivu što se tiče zaposlenja u Austriji?
(202 responses)



Perspectives of young migrants in the future

The European Parliament approved amendments to the EU's Visa Directive on 11 May 2016, making study and research in the European Union more attractive for non-EU students. The changes effectively merge two previously separate directives – one for students and another for researchers – in a bid to harmonize entry and residence rules.

It is now regulated that: 1) Non-EU nationals can now stay for at least nine months after concluding their studies or research in order to look for a job or set up a business; 2) Non-EU students and researchers can move more easily within the EU and no longer need to file a new visa application when moving from one EU country to another (rather, they need only to notify the country to which they are moving); 3) Researchers are entitled to bring their family members with them, and those family members are allowed to work during their time in Europe (this provision does not apply to students, however); 4) Non-EU students are entitled to work at least fifteen hours per week during their studies.³³

³³ "New rules to attract non-EU students, researchers and interns to the EU", Website of European Parliament, http://www.europarl.europa.eu/news/en/news-room/20160504_IPR25749/new-rules-to-attract-non-eu-students-researchers-and-interns-to-the-eu, 15/05/2016.

“Directive 2004/114” (The Visa Directive) sets even conditions under which non-EU nationals can enter the European Union to study, conduct research, volunteer, or take up internships or au-pair assignments. It represents an effort from European Parliament to harmonize visa regulations for non-EU students and researchers among member states – but also to attract talented and educated young people to Europe.

The directive enters into force the day after its publication in the European Official Journal. Member states will then have two years in which to implement its provisions into their national laws. Good news is that the Austrian Parliament has already taken steps to implement its provisions by creating an Amendment to “Act Governing the Employment of Foreign Nationals”. The Amendment allows all non-EU students to work up to twenty hours per week, improves conditions of the point system and allows a one year settlement in Austria for the purpose of finding an employment if third country nationals successfully complete a diploma program or if they obtain a Bachelor’s or a Master’s degree at any Austrian public university, university of applied sciences, or an accredited private university.³⁴ The Act should have entered into force on 1 April 2017. However, it appears that the Public Employment Service still delays its application.

Conclusion

As detailed in this paper, Austria leads a pretty restrictive labor market policy, which is a direct consequence of its previous importing of human capital for its labor force. Now, Austria’s main goal with regard to migration is to protect its citizens from an overburdening of the labor market. Unsurprisingly, therefore, in comparison to some other EU countries it scores fairly low on the Migrant Integration Policy Index.³⁵ Nevertheless,

³⁴ “Änderung des Ausländerbeschäftigungsgesetzes”, Website of Austrian Parliament, https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00275/fname_574531.pdf, 28/04/2017.

³⁵ According to the MIPEX (Migrant Integration Policy Index) Austria is ranked number 24, behind Switzerland, with a score of 42 in 2010, in an international comparison of 31 countries – the 27 EU+MS plus Norway, Switzerland, the USA and Canada. See more: Gudrun Biffl, Anna Faustmann, „*Österreichische Integrationspolitik im EU-Vergleich. Zur Aussagekraft von MIPEX*“, *op. cit.*, p. VI.

with the introduction of the “Red-White-Red” Card in 2011, a new hope emerged, increasing the number of young educated migrants from the Balkans to what is officially the best city in the world for living.³⁶ Yet this path is by no means an easy one - an average young migrant has to overcome numerous difficulties, including mastering the German language. Although there is a set of possibilities that allow a legal stay in Austria, they are followed by endless paperwork. The best way to become a proud owner of the “Red-White-Red” Card is by pursuing a Master’s degree at an Austrian public university, university of applied sciences, or accredited private university, which is the road that many young people from the Balkans decide to take in order to avoid the labor market examination. Subordinate to this fact is that almost all graduates who became holders of the work permit had previously worked a part-time job for the employer who later provided their “Red-White-Red” Card. These two facts create a stable trend that is a helpful observation for those trying to find a way to migrate to Austria. However, many young people experience difficulties in the process of finding a part-time job as many employers refuse to wait one to six weeks for the work permit for students. Therefore, a significant number of them turn to illegal work and end up being underpaid, humiliated, or even sentenced one to ten year employment ban. Although many of them feel discriminated against, a great majority are optimistic about their future employment in Austria. The Amendment to “Act Governing the Employment of Foreign Nationals” promises a better new future for students from third world countries and a hope that the dream of the “Red-White-Red” Card will come true.

³⁶ “Western European Cities Top Quality of Living Ranking – Mercer”, Webpage of Mercer, <http://www.mercer.com/newsroom/western-european-cities-top-quality-of-living-ranking-merc.html>, 25/08/2016.

Literature

- “Act Governing the Employment of Foreign Nationals”, Article 4b can be found in: http://www.migration.gv.at/fileadmin/downloads/gesetzes_texte/auslbg_aktuell_1_jaenner_2014_en.pdf, current status 1.1. 2014.
- “Arbeitslosengeld” <http://www.arbeitslosengeld.at>
- “Aufenthaltsbewilligung für Studierende: Voraussetzungen”, Stadt Wien AT, <https://www.wien.gv.at/amtshelfer/dokumente/aufenthalt/aufenthaltbewilligung/bescheinigungen/studierender.html>.
- “Ausländische Schlüsselarbeitskräfte“, Arbeitsmarktservice Österreich, http://www.ams.at/_docs/001_RWR_Schluesselkraft.pdf
- “Änderung des Ausländerbeschäftigungsgesetzes”, Website of Austrian Parliament, https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00275/fname_574531.pdf
- EU Blue Card”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- Gudrun Biffl, Anna Faustmann, „*Österreichische Integrationspolitik im EU-Vergleich. Zur Aussagekraft von MIPEX*“, Studie im Auftrag des Bundesministeriums für Inneres. Schriftenreihe Migration und Globalisierung, Krems (Edition Donau-Universität Krems), 2013
- “Integration Agreement”, Bundesministerium für Inneres, http://www.bmi.gv.at/cms/bmi_niederlassung/english/start.aspx
- “Long-term Resident EU”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- Michael Jandl, Albert Kraler, “Austria: A country of immigration?”, Website of Migration Policy Institute, <http://www.migrationpolicy.org/article/austria-country-immigration>
- “Migration & Integration”, Statistik Austria, Kommission für Migrations- und Integrationsforschung der Österreichischen Akademie der Wissenschaften, Wien, 2015
- “Migration und Integration in Österreich, European information website der österreichischen Bundesregierung, <http://www.zukunfteuropa.at/site/7216/default.aspx>

- “New rules to attract non-EU students, researchers and interns to the EU”, Website of European Parliament, <http://www.europarl.europa.eu/news/en/news-room/20160504IPR25749/new-rules-to-attract-non-eu-students-researchers-and-interns-to-the-eu>
- “Perspektiva mladih ljudi sa Balkana na austrijskom tržištu rada”, online survey, <https://goo.gl/forms/g7bnxsxEYNPPfz3s2>
- “Red-White-Red Card Plus”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- “Self-employed key workers”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- “Skilled workers in shortage occupations”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- “Students and graduates”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- “Very highly qualified workers”, The Federal Government’s official information website on migration to Austria, <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/>
- “Western European Cities Top Quality of Living Ranking – Mercer”, Webpage of Mercer, <http://www.mercer.com/newsroom/western-european-cities-top-quality-of-living-ranking-mercero.html>
- Wolfgang Brodil, Martin Risak, Cristoph Wolf, *“Arbeitsrecht in Grundzüge”*, LexisNexis Verlag ARD Orac GmbH & Co KG, Wien 2013
- Wolfgang Brodil, Michaela Windisch-Graetz, *“Sozialrecht in Grundzügen”*, Facultas Verlags- und Buchhandels AG, Wien 2013

European Civilisation of Identities and Right to Citizenship

Mirko Đuković

assistant professor, University of Donja Gorica

Abstract: A key global player and the third economy of the world needs a unified approach to the issue of identity. There is a general agreement that EU needs more strength to deal with various issues, and the only way is to stay united in diversity, fostering mutual understanding. In order to achieve goals, common interests are needed. However, mostly national interests determine those interests. The purpose of the paper is to analyse different concepts of identity and the connexion/relation between identity and the issue of citizenship. The overarching problem, in spite of the subject matter's breadth and complexity, is how to achieve a common European identity acceptable to most of its citizens that would be able to make the EU closer to them.

Key words: European Union, Identity, Multiculturalism, Citizenship, the European Court of Justice, Political System, Political Entity, National Culture.

Introduction

Culture and identity are inextricably entwined. Talking about European identity presupposes understanding of the concept of multiculturalism. The definition of multiculturalism depends heavily upon the context in which it is discussed. In sociology, multiculturalism is generally taken to mean that minority cultures should not be expected to exist in private whilst the majority culture is taken as the public norm, but that the majority and minorities should participate on equal terms.¹ In that context it is impossible not to mention the obvious differences between cultures of Eastern, Western, Southern and Northern Europe or indeed the differences within one nation-state given the immigration process that took place in decades after 1945. In connection to this, one specific moment has tackled issue of differences, a moment of denunciations of multiculturalism as it few years ago cleared by Mrs Merkel.²

¹ A. Giddens, *Sociology*, 5th edition, Polity, 2006, Page 482

² "Multiculturalism is an utter failure and ethnically diverse groups do not enjoy living side by side." German Chancellor, Angela Merkel, at the Youth wing of her own party, the Christian Democratic Union (CDU)

Ever since the Single European Act of European Community, EU strived towards a closer relationship with its citizens. The most common definition of the EU is that amongst other it is a legal system established to deal with a series of question, problems in order to realise a set of goals that individual states felt unable to manage alone.

However, some politicians and observers argue that the EU needs a stronger identity to be viable. Fundamental disagreements were brought to light during work on the EU Constitutional Treaty, which sparked heated debates about references to 'God' and 'Christianity' in its preamble. A compromise was reached by referring to the "cultural, religious and humanist inheritance of Europe", a phrase which was included in the Lisbon Treaty.

Representatives of the Catholic Church have been among the most prominent actors in debates on European identity. In an address to members of the European People's Party on 30 March 2006, Pope Benedict XVI said Europe needed to value its Christian roots and strengthen its awareness of belonging to a common civilisation to better meet the challenges it faces.³

According to the Commission of the Bishops' Conferences of the European Community (COMECE), explicit references to God or Christianity "would have been a strong signal supporting the identity of Europe". Universal rights and values, such as democracy and the rule of law, developed from the Christian inheritance of Europe, COMECE stress.⁴

The European People's Party (EPP) believes Europe has managed to preserve a shared cultural heritage. This sense of belonging together can only be based on common cultural values and convictions. On this basis, it is high time to define EU borders.⁵

<https://www.theguardian.com/world/2010/oct/17/angela-merkel-germany-multi-culturalism-failures>

³ Vatican: Address of his Holiness Benedict XVI to the members of the European People's Party http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/march/documents/hf_ben-xvi_spe_20060330_eu-parliamentarians_en.html

⁴ http://www.comece.org/upload/pdf/pub_const_treaty_050311_EN.pdf

⁵ The European People's Party official web site: <http://www.epp-ed.org/group/en/unionofvalues-final.asp>

By contrast, the liberal ALDE group in the European Parliament promotes the idea of the EU as political community “based not on religion or faith, but on mutual respect for common democratic and fundamental values”. Turkey’s EU membership prospects and the fact that there are millions of Muslims already living in the EU should push forward this process, not least to avoid a “clash of civilisations”, in ALDE’s view.⁶

Concerning “immigration minorities” and the fact of quite high degree of “ethno cultural” pluralism and current constitutional and civil rights in Europe, there is no alternative for the integration model. Because of cultural issues, social and economical reasons even between immigrants’ minorities in almost all European countries, there is a strong tendency of forming parallel societies. In most cases people are willing to adapt to new culture and life styles, as their benefits are more than obvious.⁷ Back in days when being aspiring democrat and in that time he held a post of Prime Minister, Recep Tayyip Erdogan underlined that by accepting Turkey as a member, the EU would prove that “it is not really a Christian club, but a place where civilisations meet”.⁸ On 16 January 2008, the Grand Mufti of Syria, the first religious leader to address the European Parliament during the European Year of Intercultural Dialogue 2008, told MEPs that although religion gave culture its moral values, “it is we who build civilisation”, arguing that “we must create states on a civil basis” rather than a religious one.⁹ This paper offers examination of the EU identity through political community, its politicisation and citizenship as an essential part of the process.

Europe as a space of encounters

During the 20th century, term “collective identity” is understood as a sphere where people are about each other and with each other, think and speak in the form of “we”.¹⁰ Collective identity mainly points to an idea

⁶ <http://europarl.europa.eu/common/getfile.asp?mfd=off&ID=17375&logonname=guest>

⁷ Tomas Majer, *Identitet Evrope*, Albatros plus i Službeni glasnik, Beograd 2009. Page 79.

⁸ <http://www.tusiad-de.org/vot/vote20050701.pdf>

⁹ <http://centers.law.nyu.edu/jeanmonnet/papers/05/050901.pdf>

¹⁰ An-Mari Tijes, *Kulturna proizvodnja evropskih nacija*, Identitet (I) Pojedinač, grupa, društvo, Clio, 2009, Page 332–333.

of the common attitudes and beliefs. It includes the distinction with the other. Historical events, symbols, famous people contribute to the strengthening of the collective consciousness and in the end institutions provide a form of collective action and ability.

First official use of term European identity belongs to a period that is considered to be prehistoric compared to nowadays term in use. In 1973 European leaders agreed: *“Europe needs to speak to the world with one voice”*. Amongst other, “joint heritage, joint interests, and common values”, coherence with regards to “others” and pointing out principles such as rule of law, social justice and respect of human rights in order to achieve economical prosperity were main features of that voice.¹¹ At the Copenhagen Summit of 14th and 15th December 1973, nine Member States of the enlarged European Community affirm their determination to introduce the concept of European identity into their common foreign relations. One of the main goals of European communities was *“survival of European identity at the international level”*.

However, European identity in the context of which we discuss these days became one of the main focuses of European polity during nineties. With new enlargements after Maastricht Treaty, there was a clear necessity that European citizens should identify themselves not only with their nation states but also with the EU. Alas, EU was not supposed to become “supranational state” which has one European identity that will collide with national one. The treaty on EU requires from the EU not only to defend its own identity but also to respect and defend national identities of Member states.¹² In accordance with the principle “unity in diversity”, the Union shall promote the diversity of its cultures, while *“bringing the common cultural heritage to the fore”*(article 6 (3) TEU).

It is obvious that it was difficult to find balance between economical rational guidance and new aim of affiliation to one political and cultural identity. This balance weights much more today then ever before, as there is 28 national identities combined in such a picturesque

¹¹ Hajnrih Šnajder, *Evropski identitet, Evropa od A do Š, Priručnik za evropsku integraciju*, Konrad Adenauer Stiftung, Beograd 2011. Page 132

¹² Ibidem p. 132

¹³ The article was presented and thus written, before UK referendum

diversity.¹³ Do diversity and contrasts belong to European identity (Discordia concors)?

Parekh argues that we all benefit from multiculturalism as it brings cultures into dialogue with each other, expanding the horizons of us all. In this sense multiculturalism is not simply cultural pluralism – the existence of numerous different cultures within a society.¹⁴ Cultural pluralism *describes* most societies around the world over a very long time period. However, multiculturalism is, in reality, a political issue of state policy. Did we reach the point that states should encourage and promote multiculturalism as the best way to achieve social solidarity? In the current atmosphere of immigrant crisis and the fact that in few countries right wings parties are taking over the political scenery, it is highly doubtful.

Constructivists believe that “a ‘European identity’ could emerge as a consequence of intensified civic, political and cultural exchanges and cooperation. As identities undergo constant change, European identity would encompass multiple meanings and identifications, and would be constantly redefined through relationships with others.”¹⁵ “United in Diversity” would mean participation in collective political and cultural practices. However, according to critics, too much diversity can eventually lead to a loss of identity, orientation and coherence, and thus undermine democracy.¹⁶

There should not be comparison of the EU with a federal state or organisation, but with what EU really is, a *sui generis* polity of international law, “a Union of states that keep their sovereignty” with common goals, thus this would make the EU stronger both politically and economically. We wonder how will the sovereign state position itself and its cultures within the frame of what was described above? The question that we cannot avoid is how much national identity of those sovereign countries weighs in everyday life. The process of building political community, through the identity building was and is a top down project

¹⁴ Parekh, B. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Palgrave Macmillan, 2000, page 249

¹⁵ “European values and identity” available at <http://www.euractiv.com/en/culture/european-values-identity/article-154441?display=normal>

¹⁶ Ibid.

and also the bottom up process for the EU. Some argue that affirmation of national identity is needed in order to develop modern democracy, individual freedoms and autonomy so that the social cohesion and solidarity is created; for others, national identity evolution is an obstacle to civil/civic identity affirmation.¹⁷

It is not possible to discuss European identity if discussion on political identity does not take place. European identity therefore has several main features two amongst others are concept of multiculturalism and political identity. One problem with certain strands of multiculturalism is their reliance on “identity politics.” “Identity politics” refers to the tendency to define one’s political and social identity and interests purely in terms of some group category: race, ethnicity, class, gender, nationality, religion, etc. Identity politics became more popular after the 1960s for many of the same reasons that multiculturalism did.¹⁸

Surveys show that EU citizens continue to identify first of all with their own countries. According to a survey published in May 2008, 91% of the interviewees felt attachment to their nations and only 49% to the European Union. While two-thirds of Belgians (65%) and Poles (63%) declared their identification with the Union, only a quarter feel the same way in Cyprus (25%), Finland and the United Kingdom (both 27%). Low levels of attachment can be found both among founding countries, such as the Netherlands (32%), and in new member states, like Estonia (34%).¹⁹ In addition survey from 2012 records even lower scores.²⁰

Low voter turnout in European Parliament elections (the lowest was reached in 2014, when only 42.61% of the EU electorate voted, compared to elections in 1979 when 62% voted) seems to indicate a general lack of

¹⁷ V. Vujčić, *Kultura i politika*, Politička kultura, Zagreb 2008, page 146.

¹⁸ G. Jay, *What is multiculturalism?*, available at: <https://pantherfile.uwm.edu/gjay/www/Multicult/whatismc.pdf>

¹⁹ European Commission Eurobarometar 68, Public opinion in the EU report available at: http://ec.europa.eu/public_opinion/archives/eb/eb68/eb_68_en.pdf

²⁰ Following a significant deterioration since the spring 2010 survey (EB73), Europeans who are attached to the European Union are now in the minority: 46% are attached to the EU (-7 percentage points) compared with 52% who feel no attachment to it (+7), 15% of whom are “not at all attached” to it (+2). Report available at: http://ec.europa.eu/public_opinion/archives/eb/eb77/eb77_citizen_en.pdf

interest and attachment to the European political project.²¹ Relatively low political participation and weak attachment in turn present the EU with a legitimacy problem. But there is little agreement on how identification can be strengthened.

Defining identity within the political community

It is commonly said that nation tends towards creation of nation state.²² Kymlicka emphasises that building up of a nation is not incompatible with a western democracy; forming of the mutual national identity is not in contradiction with adhering to common political principles. Common values are not enough for the process of creating a social and political unity in a community. For such a thing to happen, only an identity accepted by the majority is required. The very needed is identity accepted by majority.²³ Kymlicka clearly states that “democracy, economy, prosperity and mutual tolerance are great achievements but in its definition they are not sufficient for the challenges of intercultural differences”.²⁴ In any case national identity is a main point in determination of all other identities. In this case European identity does depend on nation states, in many ways.

In the current theoretical discourse there are various categorizations of different theoretical approaches, but there are some that distinguish among others creating three concepts of European identity building: ethno-cultural, civic and pluralistic.²⁵

Ethno-cultural concept; was introduced by Anthony Smith who claimed that European identity couldn't be formed without formation of common European memories, traditions, values, myths and symbols.

²¹ Report available at the European Parliament website: <http://www.europarl.europa.eu/elections2014-results/en/election-results-2014.html>

²² Hajnrih Šnajder, Evropski identitet, *Evropa od A do Š, Priručnik za evropsku integraciju*, Konrad Adenauer Stiftung, Beograd 2011. Str. 132

²³ W. Kymlicka, N. Wayne, *Citizenship in Diverse Societies*, Oxford University Press, Oxford, 2000, page 34.

²⁴ Ibid.

²⁵ M. Jovanovic et al., *Democracy and Human Rights in the European Union*, POGESTEI Editions, Maribor/Belgrade 2009, page 53.

Shared continuity and memories of earlier periods and collective belief in a common destiny are main features in the identity formation process. It is important to bear in mind that cultural identity is connected to national identity.²⁶ According to Smith, it is a fact that Europeans sharing a common values such as culture, history, languages and lifestyles are not enough, but collective identity that is growing and will grow up over several generations that share “common destiny” will overcome said dissimilarities and grow to an “over arching identity”.²⁷ Nowadays more than ever, this is on test.

Two chief proponents of the civic concept opposed Smith’s theory. First one is Habermas who sees the civic conception of a nation opposed to an ethnic one as democratic citizenship establishing legally mediated solidarity between strangers. It is a circular process in which democracy and the nation state stabilized each other. The main idea is that “democratic citizenship needs not to be rooted in ethnic identity”.²⁸ The “constitutional patriotism” should be enough for achieving civic unity in new political communities. It is a foundation of civic identification and civil society identity. Democracy without constitutionalism, to put it bluntly, is a tyranny of an ethnic majority.²⁹

The second one was Weiler who introduced model of supranational citizenship explaining it as a combination of national and European citizenship. The concept is based on a simultaneous identification with their own nation and with European supranational values.

Communitarians believe that a polity can only be stable if it possesses a “thick identity”, anchored in a common history and culture. They emphasise that European identity has emerged from common movements in religion and philosophy, politics, science and the arts. Therefore, they tend to exclude Turkey from the ranks of possible future member states, and argue for stronger awareness of the Christian (or Judeo-Christian)

²⁶ Ibid. 54

²⁷ A. D. Smith, *Nation and Nationalism in a Global Era*, Polity, Cambridge 1995, page 74.

²⁸ M. Jovanovic et al., *Democracy and Human Rights in the European Union*, POGESTEL Editions, Maribor/Belgrade 2009, page 58.

²⁹ Majkl Ignjatijef, *Ljudska prava kao politika i idolopoklonstvo*, Službeni glasnik, Beograd 2006, page 51.

European tradition. For them, “united in diversity” is taken to refer to Europe as a “family of nations”. On this basis, they believe it is high time to define the EU’s borders.³⁰

Liberals and republicans, on the other hand, argue for a common political culture, or civic identity, based on universal principles of democracy, human rights and the rule of law expressed in the framework of a common public sphere and political participation (or “constitutional patriotism”, a term associated with German scholar Habermas). They believe that cultural identities, religious beliefs etc. should be confined to the private sphere. For them, a European identity will emerge from common political and civic practices, civil society organisations and strong EU institutions. ‘United in diversity’, according to this view, means that citizens share the same political and civic values, while at the same time adhering to different cultural practices. However, the limits of the community are to be addressed to the question of politics and not culture.

European political identity consists of two components: a *civic and cultural component*.³¹ A civic component is identification with institutions of the community, with a state; hence to a relevant political system for its citizens; and the cultural one consists of a comprehension of affiliation to a culturally important community, thus their perception of a belonging to a group is a more vivid inside that group than outside of it.

Concept of European identity is based on multiculturalism and a full understanding on national interest must necessarily take into account various national features and characteristics. Having in mind what ethno cultural concept is, it is hardly likely that in a union of 28 different nationalities with so many interests and subcultures we can rely on what is EU motto “*In varietate concordia*”.

The EU is divided along national interests. Citizens are forming their attitude about EU on the basis of their own economical interests and political values.³²

³⁰ Boldea, M., Silasi, G., Dragoi, I. *The European Space: “A family of nations”, Intercultural Europe vs. European Identity*, available at <http://www.revistarue.eu/RUE/0805.pdf>

³¹ M. Bruter, *Citizens of Europe? The Emergence of a Mass European Identity*, Palgrave Macmillan, Hampshire, 2005, page 11

³² Sajmon Hiks, *Politički sistem Evropske unije*, Službeni glasnik, Beograd 2007, page 378.

Politicization of European identity

One of the main characteristics of the EU's identity is that it is so called "postmodern" identity.³³ This type of identity is multilevel political identity that does not have only transnational feature, but it is formally and informally attached to political orientation of concrete institutions.³⁴ For legitimacy of EU and its institutions coherent identity policy is needed. European identity as supranational and transnational has three main characteristics. The first one is that this identity relies on political and social institutions of EU, the second one is that it is combined out of different spheres of political action among its citizens on national, regional and global level. The third one is that this identity is combined out of formal element of civil society and institutions with which citizens are identified.³⁵

Political identity does not need to rest on a definite conception of what it means to be European. This is so far for two reasons: one has to do with the transformation of the very nature of political identification with one's community in modern societies and the other with the mixed nature of the EU as multilevel polity comprising both intergovernmental and supranational levels of governance.³⁶ Castiglione argues that debate on European identity is connected to the nature of the EU as political project. On the other side Holmes argues that people of Europe are continually negotiating among liberal and illiberal registers of identity; almost all identity projects are in some way related to European integration, though not necessarily the outcome of any EU policy initiative per se or, for that matter, under EU institutional control or supervision.³⁷ Sociologist Fligstein, examined political consequences of integration development. While centre-right and centre-left parties are largely supportive of the European projects, parties of the Left and the Right oppose Europe, if on

³³ Tomas Majer, *Identitet Evrope*, Albatros plus i Službeni glasnik, Beograd 2009. Page 53.

³⁴ Ibid. page 54.

³⁵ Ibid. page 55.

³⁶ D. Castiglione, *Political identity in a community of strangers*, European Identity, Cambridge, 2009, Page 30

³⁷ D. Holmes, *Experimental identities (after Maastricht)*, European Identity, Cambridge, 2009, Page 52

different grounds. The Left sees Europe as a capitalist plot that seeks to eliminate the welfare state, the Right sees Europe as a frontal attack on the nation-state.³⁸

A Europe of Citizens

European communities were set as communities of nations.³⁹ For the first time after almost 20 years during Presidents Summit in Paris 1974, one *ad hoc* group got assignment to examine under what conditions citizens of the member states can be granted civil rights in the community.

Main goal of the EU's citizenship policy is setting up civil rights and obligations on wide EU space while building up European communities common market was a prime target of founding countries. During some period of time different laws were applicable on this market so that in a sense of international private affairs many countries adopted these laws. Creating such a strong legal base, main pillars of common market were created. Today we know them as four freedoms of movement of goods, services, capital and people. From that point on some Member States gave certain rights to foreigners, such as political right to vote. As more laws were harmonized among communities and Member States it was more visible that there is obvious incoherence between effects of laws on State's citizens on one side and a deficiency of identification of those citizens with communities.⁴⁰ Thus new discussion heated up politics and on 20th of September 1976 European Council voted in favour of "Act concerning the election of the Members of the European Parliament by direct universal suffrage."⁴¹ Within this Act European citizens were given right to participate in the EU's politics by electing members of European Parliament. In Fontainebleau during European Council meeting in 1984 *ad hoc* committee "Europe of citizens" was formed. Under presidency of Pietro Adonnino two

³⁸ N. Fligstein, *Who are the Europeans and how does this matter for politics*, European Identity, European Identity, Cambridge, 2009, Page 132

³⁹ Article 3, 17 – 22 of the EEC Treaty, Rome 1958

⁴⁰ A. Gimbal, *Državljanstvo Unije, Evropa od A do Š, Priručnik za evropsku integraciju*, Konrad Adenauer Stiftung, Beograd 2011. Str. 65

⁴¹ European Commission official site, EU citizenship: http://ec.europa.eu/justice/citizen/index_en.htm

reports were made. Both contained proposals on issue how to bring European Communities closer to its citizens – Member states citizens.

Maastricht Treaty formally established European Union's citizenship, as citizenship had traditionally been the preserve of nation-states, the creation of the European Union citizenship raised the question of the sort of political community that could be established beyond the nation-state. At the heart of this question lay further questions: what relationship would it have with national political communities?

According to Bellamy there are three key components of modern citizenship. First one fostered an emphasis on individual rights. Lack of ascribed status led individuals to being treated as equals possessing certain rights, including the right to be treated equally before the law. Meanwhile, it looked to the state to provide social and economic rights. According to second component, citizenship meant belonging to the national community. It encourages reciprocity and solidarity in both economics and politics; whilst the third one was the capacity and right to participate as a full and equal member within the economy and the polity.⁴²

Bellamy identifies *rights*, *participation* and *solidarity* as central to modern citizenship. By rights he refers to civil rights (autonomy and dignity of the individual: freedom of expression, religion, respect for privacy and family life, right to property and trade). Participation equals the right to political representation (the right to vote, stand for political office) and solidarity means social rights. Social rights require that the difference be both recognized and valued, meaning that there should be protection from discrimination.

If these rights form the core of modern citizenship, its content has been shaped by the nature of the political community surrounding it.⁴³ One thing we should consider is a fact that migrations in Europe after Second World War influenced the issue of citizenship in EU. Even though this question was not brought up in the initial EC Treaty, but in the Tindemans Report in 1975, by then there was a large number of people having resident status in Member states and not belonging to nationalities of those states. From 1960 until Maastricht Treaty this number rose up to 9 per cent of general

⁴² Chalmers D. et al., *European Union Law*, Cambridge, 2006, page 563

⁴³ Ibid. 564.

population.⁴⁴ Even though migrants were not formally granted the status of citizens, they were granted denizen status: a status that gave them a bundle of rights and entitlements almost equalling those of citizens.

As EU citizenship contains elements of both types of citizenship: (nationality and participation) it is considered to be a *composite citizenship*. To be a European citizen, one must first be a national of a Member State. Also EU citizenship is considered to have a *complementary* nature. In *Micheletti*⁴⁵ the Court of Justice held that a Member State was not entitled to restrict the effects of a nationality granted by another Member State by imposing an additional condition on recognition of that nationality. If an individual was able to provide a proof of nationality of a Member State, other Member States were not entitled to dispute that status on the ground that the person was also national of a non-Member whose nationality would normally take precedence under the host state's law. This reasoning went a step further by the Court of Justice in *Chen*⁴⁶ case. The Court held that Member State could not look behind the grant of nationality by other Member State, and added a further condition with a view to restricting the rights granted to the EU citizen.

When it comes to political citizenship and representation rights it is so that according to a modern citizenship concept one can be fully and equally engaged in the common affairs of the political community.⁴⁷ EU citizens have *prima facie* right to vote and stand in a municipal and European Parliament elections across the Union. The grant of the right to vote and stand in municipal elections is highly significant as question is governed by Directive 94/80/EC.

A Commission study in 2002 found the proportion of non-national EU citizens registered to vote to be very low.⁴⁸ It ranged from just over 9% in

⁴⁴ Y. Soysal, *Limist of Citizenship: Migrants and Postantional Membership in Europe*, University of Chicago Press, Chicago, 1994, page 23.

⁴⁵ Case C-369/90 *Micheletti v Delegacion del Gobierno Contabria* (1992) ECR I-4239

⁴⁶ Case C-200/02 *Zhu and Chen v Secretary of State for the Home department* (2004) ECR I - 9925

⁴⁷ Chalmers D. et al., *European Union Law*, Cambridge, 2006, page 574

Greece and Portugal to 54,2% in Austria. The message was clear, either there was not enough publicity campaign to inform citizens or citizens did not feel sufficient attachment to their place of residence to wish to participate.

It is clear that EU citizenship is yet again connected with an issue of identity and the problem of who can take an active part in political system. For decades minorities in many western countries were object of manipulation for better political score on elections, but never really stimulated to take active part in political life of EU.⁴⁹ That is what it is discussed at the moment, to which extent immigrants will be the one to say about certain questions that are considered to be “national”.

Conclusion

Statement: “concept of multiculturalism is dead” cannot be seen in any other sense but as a result of keeping the *immigrant question* off the agenda. Does it mean that those groups should live separated from the majority group in a Member state? Are we talking about “parallel societies”? Period of 2015 and 2016 was a period of great political challenges for the EU. Immigration process is not over and the rising issue of the incoming refugees from the Middle East provides new tests for the EU. So we must enquire if hopes for a single European identity are fading? The “brexit” itself showed how far citizens are from the Union, but it also opened new chapter. Economic integration has advanced faster and further than predicted, yet the European sense of “who we are” is fragmenting. As it seems the citizenship presupposes political identity but it seems that the notion of belonging to nation state is winning the battle. Citizens of the Member States do not feel attached to the institutions of the Union. The economic crisis is one of the factors of self-doubt for many States.

Integration indeed contributes to a Euro-global development of a common cultural identity and affiliation to a group. Just as it was a case

⁴⁸ EC Commission, Report to the European Parliament and Council on the Application of Directive 94/80/EC on the Right to Vote and Stand as a Candidate in Municipal Elections, COM (2002)

⁴⁹ To see more: Jonathan Lowrens and Justin Weis article http://www.foreignpolicy.com/articles/2011/03/28/the_dis_integration_of_europe

with human rights, which from a local level progressed to a global one, identity should be gaining prominence on the political community agenda. Identity creates a need for a dialogue. On the basis of that dialogue exists *social contract* that is a foundation for a political system we live in.

The melting pot concept was not appropriate for Union; in return the concept of coexistence and multiculturalism was introduced and somehow it was expected it would work out without discussing cultural identity of political entities. What determines borderlines between cultures? Human's social life is nothing else but networking with other carriers of cultures and identities.⁵⁰ The future of EU as civilisation lays down on the concept of differences and their values.

Index of Authorities

Books and Articles:

- A. Gimbal, Državljanstvo Unije, *Evropa od A do Š, Priručnik za evropsku integraciju*, Konrad Adenauer Stiftung, Beograd, 2011
- A. Giddens, *Sociology*, 5th edition, Polity, 2006
- A. M. Tijes, *Kulturna proizvodnja evropskih nacija*, Identitet (I) Pojedinač, grupa, društvo, Clio, 2009
- A.D. Smith, *Nation and Nationalism in a Global Era*, Polity, Cambridge, 1995.
- Bruter M., *Citizens of Europe? The Emergence of a Mass European Identity*, Palgrave Macmillan, Hampshire, 2005
- Chalmers D. et.al., *European Union Law*, Second edition, Cambridge, 2010
- Chalmers D. et.al., *European Union Law*, Cambridge, 2006
- D. Castiglione, *Political identity in a community of strangers*, European Identity, Cambridge, 2009
- D. Holmes, *Experimental identities (after Maastricht)*, European Identity, Cambridge, 2009
- Hajnrih Šnajder, *Evropski identitet, Evropa od A do Š, Priručnik za evropsku integraciju*, Konrad Adenauer Stiftung, Beograd 2011

⁵⁰ Vuk Perišić, „Šta je zapravo multikulturalizam?“ preuzeto sa <http://www.pescanik.net/content/view/6402/1368/>

- Huntington S. P., *Who we are? The Challenges of America's National Identity*, Free press, 2004
- Hiks S., *Politički sistem Evropske unije*, Službeni glasnik, Beograd 2007
- Jovanovic M. et. al., *Democracy and Human Rights in the European Union*, POGESTEI Editions, Maribor/Belgrade 2009
- Ignjatijef M., *Ljudska prava kao politika i idolopoklonstvo*, Službeni glasnik, Beograd 2006
- Kymlicka, W. Wayne, N., *Citizenship in Diverse Societies*, Oxford University Press, Oxford, 2000,
- N. Fligstein, *Who are the Europeans and how does this matter for politics*, European Identity, European Identity, Cambridge, 2009
- Parekh, B., *A New Politics of Identity*, Palgrave Macmillan, Hampshire, 2008
- Parekh B., *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Palgrave Macmillan, 2000
- Soysal, Y., *Limist of Citizenship: Migrants and Postantional Membership in Europe*, University of Chicago Press, Chicago, 1994
- Smith A. D., *Nation and Nationalism in a Global Era*, Polity, Cambridge, 1995
- Majer T., *Identitet Evrope*, Albatros plus i Službeni glasnik, Beograd 2009
- Vujčić V., *Kultura i politika*, Politička kultura, Zagreb, 2008

Cases:

- Zhu and Chen, Case C-200/02 (19 October 2004)
http://www.ena.lu/judgment_court_justice_zhu_chen_case_c_200_02_19_october_2004-2-23090
- Micheletti and others v Delegación del Gobierno en Cantabria, Case C-369/90 (7 July 1992)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61990J0369:EN:NOT>

Reports:

- EC Commission, Report to the European Parliament and Council on the Application of Directive 94/80/EC on the Right to Vote and Stand as a Candidate in Municipal Elections, COM (2002)

Internet sources and treaties:

http://www.foreignpolicy.com/articles/2011/03/28/the_dis_integration_of_europe
<http://www.pescanik.net/content/view/6402/1368/>
<https://pantherfile.uwm.edu/gjay/www/Multicult/whatismc.pdf>
<http://www.euractiv.com/en/future-eu/austria-haider-affair-gave-eu-emergency-brake/article-151443>
<http://www.euractiv.com/en/culture/european-values-identity/article-154441?display=normal>
<http://www.ucm.es/info/audesco/RUE/0805.pdf>
http://ec.europa.eu/publications/booklets/eu_documentation/05/txt_en.pdf
<http://www.foreignaffairs.com/articles/48950/samuel-p-huntington/the-clash-of-civilizations>
http://ec.europa.eu/justice/citizen/index_en.htm
http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm
http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/march/documents/hf_ben-xvi_spe_20060330_eu-parliamentarians_en.html
http://www.comece.org/upload/pdf/pub_const_treaty_050311_EN.pdf
<http://www.epp-ed.org/group/en/unionofvalues-final.asp>
<http://europarl.europa.eu/common/getfile.asp?mfd=off&ID=17375&logonname=guest>
<http://www.tusiad-de.org/vot/vote20050701.pdf>
<http://centers.law.nyu.edu/jeanmonnet/papers/05/050901.pdf>

The Adequate Constitutional Framework as The Fundament of Youth Perspectives-United Europe and Multiculturalism

Uroš Bajović

Ph.D candidate, University of Belgrade

Abstract: This article argues that youth perspectives in general need some preconditions and can only operate effectively if there are vital ones present. In the first part of the paper we have analyzed role of constitutionalism and the rule of law in making a democratic framework where youth can flourish and live according to education gained with numerous opportunities. It was discussed about different approaches in different states, with special interest into the rule of law, the *Rechtsstaat* and *Etat de Droit* ideas. In the second part of the paper it was widely argued that judiciary through activism and bureaucracy are two main spots, typical cornerstones, for transcending the concepts from theory to reality. Judiciary was pointed out as the more important concept, and bureaucracy was analyzed as additional one, but still very valid for direct implementation of constitutional ideas and rules. In the last section it was pictured that united Europe is living its multicultural realm, but without multiculturalism as the general concept anymore. The divinity of that idea has failed and 1990s have shown that it was crowned with no reason. Despite the negatives, the lack of success of the concept does not mean the complete failure of the idea. That allowed paper to take multicultural Europe as the given and influential fact.

Key words: youth, perspective, constitutionalism, rule of law, judiciary, bureaucracy, multiculturalism

Introduction

Democracy, peace and development – are the cornerstones of every society. The same could be applied at the position of young generation in Europe.

If we discuss about the term “perspective“ in general way, it is clear that there is no future in any field without that three basic aspects highlighted above. There is absolutely no perspective without peace and development in progressive society, which can be equalized with democratic society.

Young generations are one who are considered as main pillars of perspectives. Not only in terms of human genetics, but even further in aspects of motivation and willingness to change and adapt to every possible new flows in respected surrounding. Still, youth and perspectives are dually dependable. Youth need space and opportunity to establish the respectable positions, and the future of society depends on youth. In this case the future of society is something similar to term “perspective”.

If we continue our term analyses, we should land at words “youth”, “united” and “united Europe”. The meaning of word “youth” is different and diverse. The reasons for these differences lay down in some practical reasons or simple beliefs. As the example, “youth” in Serbia are we all – people trying to find their place in developing system and the term here is not deeply connected with age. Of course, age is the main ratio of this term – but in our society not the only one. Probably, there are differences in different systems.

When we talk about term “united” the main ratio should stay at this point: united for what purpose? United in interest and united in faith and beliefs are two completely different things and the gap between that two is immense. For every further discussion we have to accept only the latter meaning.

After this terminal analyses which gave us dark shadows of the theme, we should turn our focus at key points of youth position in united Europe.

The first of all, we come out to the everyday field of easily seen advantages like traveling with no formalities, studying in different places (same as local), changing Universities and experiences, and united labor market with basic and clearly established regulations. After that, people perspectives are built through the Americanized maxim „moving till I find perfect job, perfect salary, robust car and big house“ and united Europe gives that without or with only few limits.

Still, we suggest to take a journey through some other angles of the given topic and shoot a glance at given Constitutional systems with established perspectives through multicultural framework.

The dream behind the united Europe idea was the dream of long-lasting peace and prosperity of the old Continent. That dream was realized through political compromises and continual development of relations,

even between century-lasting enemies. The development of European Union as the political process gave us the fundamentals of Europe composed of non-national state, of Europe without borders and Europe with wide perspectives for all.

As the idea of united Europe developed, the number of opportunities emerged from situation drastically multiplied. The same happened to perspectives of youth in modern united Europe. The practical ruling of no borders, cultures brought together and above all, united labor market, brought numerous opportunities to young mobile people.

The value of united European labor market is not only consisted of economic and law regulation advantages, which is always firstly seen as perspective for youth. The core value of united Europe (inside it united labor market) is indexed in historical, philosophical and cultural exchange, though based on more prolific things like politics, labor possibilities and economy.

Still, if we understand the perspectives of youth in right manner, we should highlight these aspects and insist on huge modern law branches like human rights and Constitutional law. Most of people will insist on further explanation, and it is really needed.

Human Rights have two dimensions – inter state which is reproduced through the guaranties supplied into the written or non written Constitution and international one which is layed up in the International Community System based on United Nations.

United Europe gave the pillars about these topics. It insisted on the rule of law system which established perspectives of modern Europe and youth in different Continent than our ancestors. Historical dimension is overrun by other hot aspects, which showed us that united Europe as a project succeeded in the first goal – reconciliation. The historical injustices were not on political agenda any more, so it gave the politicians (and others) room for the modern “national” states in Europe, focused on establishing not only the *Rechtsstaat*, more the equity principle. Justness as the component of modern European state is fully connected with youth perspectives.

We will attempt to indicate at the questions connected with legal and philosophical research of constitutionalism, the rule of law and multiculturalism as the constitutional movement and the term of young

generation perspectives which are deeply connected with modern European societies.

We will point out at the fact that there is no perspective for youth without gaining justness through the Constitutional framework and accepting some of the terms as the foundation of modern Europe.

Basic aspects of youth perspectives are established through several constitutional questions of supreme importance. First of all, the basis of modern society is concentrated around the vital concepts of constitutionalism and the rule of law. This paper will give attempt to explain why there is fountain of modern state in that two concepts. Furthermore, it will construct the thesis about constitutionalism being the ground stone of equitable and developing society.

While constitutionalism and rule of law are cornerstones of the concept, the means for making it real are based, proposed, into the few points of united Europe. First and foremost, bureaucracy and birocratical activism and then, more importantly, judicial activism.

Constitutionalism

If we discuss about constitutionalism our first task should be giving the general definition of this very wide and undirected term. Under the comfortable meaning of this term we understand the situation where government authority is based and used through law or group of laws. More directed meaning would be based on a belief that constitutionalism exists only if government and all legal aspects of a state are based on Constitution.

If we decide to look beyond these definitions, we could land at separated explanation of this crown term:

1. Constitutionalism is consisted of norms, principles and spirit written (or not written) into that highest legal act.
2. Constitutionalism is basically consumed through clear limitations of government.
3. Constitutionalism exists only if there are two aspects simultaneously: written act (or living principles) and awareness plus full respect of that act.

After we have done these brief considerations of the most general and widespread definitions of constitutionalism, we have big task of giving one concrete and specifically directed explanation. In the modern Europe it is not accepted that constitutionalism should be limited to government obedience to the Act. It is requested far more. In that light, this term should be defined in objective and subjective way at the same time.

Objective one should be consisted of existence of highlighted norms or principles no matter if constitution is written or not. That norms or principles should be obeyed by government and citizens. Furthermore, the main focus of modern constitutionalism is oriented towards citizens and their catalogue of rights.

Subjective aspect of this term should be found in awareness of government, bureaucracy members and citizens about that highest Act and its strength. Without this acknowledgement, constitutionalism in a state stays on façade level and it is not really “consumed” no matter how well described the objective part is. This brings us to conclusion about the huge role of subjective part of this term, especially for modern legal researchers.

Another issue we should deal with, which often misleads scholars is that we accept the fact which has been already pointed out by Cass Sunstein: limited government is just one of many principles associated with constitutionalism¹. That means we should not limit our perspective to just one form of constitutionalism in reality that we look for deeper connection. Now, we will try to present the evolution of the term in very short sketch.

Historical development of constitutionalism

Constitutionalism has changed during the epochs, as well as the definition of the term. This concept historically appeared in ancient times²,

¹ Cass R. Sunstein, “Constitutionalism after the New Deal”, *Harvard Law Review*, 101 (1987), 421, pp. 434-436.

² More about ancient constitutionalism: Francis D. Wormuth, *The Origins of Modern Constitutionalism*, Harper & Brothers, New York, 1949, pp. 3-18.

but it has totally developed during the late middle ages and Enlightenment period.

Opposite of these historical phases is the modern concept of constitutionalism which is established as complex term and rarely seen individually.

In the ancient times constitutionalism was established through “constitution” and the purpose was only general regulation³. It can be simply explained as textbook of rules which were “given” to the free folk. In the Roman Empire it was technical term for acts of legislation by the emperor, and later on church has used it as a technical form as well⁴.

During the Middle Ages the term has been used in two opposite directions. In its secular meaning it was used as the synonym for “charter” and in its religious form it has kept the initial, ancient, meaning. This explanation is valid for early middle ages, and for late period it cannot be used only in this simplified form.

Late Middle Ages has brought the basements of modern meaning of constitution, no matter how rudiment they stayed. Bracton, writing a several years after the Merton Statute of 1236, calls one of its provisions a “new constitution” in very modern meaning⁵.

Still, for completely different understanding of term it was needed the renaissance to come. Pierre Grégoire used term more in modern sense than medieval one in his work *De Republica* written in late 16th century, but he was very wide and he used it in many political and societal meanings. Still, it has shown us that term constitution is gradually changing.

Real transient period to completely modern understanding of the term came after the period of Enlightenment. At that time modern constitutions developed and emerged from charters to crown legal acts. Furthermore, something far more important for the topic of this paper developed with constitutional law science. That was not so tint difference between Act and general condition of constitutional state.

³ Charles Howard McIlwain, *Constitutionalism: Ancient and Modern*, Cornell University Press-Great Seal Books, 1947, pp. 23-41

⁴ Ibid, pp. 41-67.

⁵ Ibid, pp. 79-81.

In that meaning constitution and constitutionalism detached as terms and latter became more complex and very important⁶. At this point, constitutionalism should be connected with the rule of law, because both terms go hand in hand with each other. The rule of law, especially in its continental form as the *Rechtsstaat* has not always been the essential part of constitutionalism and democracy. As the police state, it was even in hard clash.

What is the role of the rule of law within constitutionalism is vague as well. Furthermore, the dim stays around the scope of it. The rule of law can serve as the main motto of constitutionalism or as fertile addition to it. The third option is additional one and consists of the role of the rule of law into the maintenance of constitutional framework and living under it. The fact is that there is no consensus about what the rule of law stands for, no matter how many definitions and explanations were already given. Still, it has to be defended that it is very clear what the rule of law is not, as well as what is façade constitutionalism. The rule of law is a term which is quite clear in legal area, but can be very foggy in the political arena. That are the reasons it can have two different meanings and that can affect its role into the constitutionalism.

The Rule of Law as a precondition of Constitutionalism

‘Democracy’, ‘constitutionalism’, and ‘rule of law’—all these are words in themselves, that is, indications for a culture incorporated by historical answers, born locally at given particular place and time⁷.

There is no legal government without rule of law, no matter in which form – continental or Anglo Saxon. The label rule of law is used with rather different contents according to the legal and cultural tradition of the different languages⁸. There is no Constitutionalism, nor façade one,

⁶ Waldron has pointed at some trivial usage of this term. See more at: Jeremy Waldron, “Constitutionalism: A Skeptical View”, 2010, *Georgetown University Law Center*, <http://scholarship.law.georgetown.edu/hartlecture/4/> 8/08/2016, pp. 1-3.

⁷ Csaba Varga, *Transition? To the Rule of Law?*, Krater, Pomaz, 2008, p.25.

⁸ Lidija Basta Fleiner, Thomas Fleiner, *Constitutional Democracy in Multicultural and Globalized World*, Springer Verlag, NY, Heidelberg, 2009, p. 227.

without the rule of law. Modern times have built up the expectations and these terms are deeply connected these days.

The Rule of law definition could be formulated as the principle that all people are accountable to law that is fairly applied and enforced, the idea of government by law and under law. Institutions are subject to law as well.

No matter if we are examining different concepts which are close to each other in modern times and mean nearly the same but in different paths, we will highlight basic differences between ideas of the *Rechtsstaat*⁹, the Rule of law and *Etat de droit*. United Europe is giving all these ideas enough room and different areas to grow.

Before that individual sketching of these concepts, we have to argue and gain result what should we conceive as basic and general meaning of the rule of law. In that sense, we have to start from rudiment cognizance to modern ones.

The rule of law is opposite concept of the “rule of men” at the beginning of this journey. In that sense, the rule of law concept is the thing to stop arbitrary and unfair decisions of someone’s will, no matter of importance of that person. This is the cornerstone of the rule of law, even in modern times. There is no rule of law/laws if someone’s will can overshadow them.

Later on, the rule of law transcended, in most basic sense, to system that attempts to protect citizens. That protection is located towards both unfair “laws” and arbitrary decisions. American legal scholar Lon Fuller gave the idea of basic elements of law for a society aiming to the rule of law. Fuller identified the following¹⁰:

1. Laws must exist and those laws should be obeyed by all, including government officials.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed.

⁹ Martin Krygier, Rule of Law (and *Rechtsstaat*), *UNSW Law Research Paper* No. 52-2013, August 2013, Available at SSRN: <http://ssrn.com/abstract=2311874>, 02/08/2016.

¹⁰ Lon L. Fuller, *The Morality of Law*, Yale University Press, New Haven, 1964, p. 74.

4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.
7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule.

The issue with Lon Fuller list of elements is that there are big differences between idealistic theoretical framework and realistic apply. Legal system should serve reality. That means it cannot be too rigid or detailed, because real life development is always faster than legal changes.

Rosenfeld is quite right when he assumes that the rule of law is dependent on the prescriptive meaning one ascribes to it¹¹. Because of this characteristic, the rule of law has got so many different meanings and the whole mess was resolved with some minimum conditions for it. Still, there is no consensus about what those minimum conditions are in the case of rule of law.

Differences between concepts – historical and modern

Both ideas, the rule of law and the *Rechtsstaat* have completely different roots. While *Rechtsstaat* was connected with strong police state in Germany, the rule of law was much wider concept developed in Anglo Saxon tradition. The *Rechtsstaat* was strongly based to written laws and hard doctrines, while the rule of law was consumed through principles.

However, there are few basic elements that connect these ideas together. Basically, that is the wish that governmental power is based on law and withheld. The second point where they are similar is their purpose and background of idea. The main area of cleavage between concepts is in terms of their understanding of the relationship between law and state. The *Rechtsstaat* understands the relationship as very close one, while law is the only channel for state to canalize its power. Anglo

¹¹ Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy", *Southern California Law Review*, Vol. 74:1307, pp. 1310-1315.

Saxon conception of the rule of law put things together in very different way. In the initial rule of law upland there is antagonistic relation between the state and whole concept. Law is something higher, more relevant, than state where it is transcended.

The third conception is French *État de droit* and it is far more close to the *Rechtsstaat* than Anglo Saxon concept. Furthermore, the French name is literal translation of German idea. Logically, *État de droit* is far recent conception than two others. No matter it derives from German idea, it developed completely in different direction. Huge differences between French and German legal theory have shown in this field as well. Founding father of this concept was Raymond Carré de Malberg in his works after the First World War.

The basis of French *Etat de Droit* concept is consumed in democratic principles as people's will transform into law through work of Parliament. That means *Etat de Droit* concept is firmly fixed with parliamentary system and parliamentary democracy. The French see *Etat de Droit* concept as legal guarantee of all fundamental rights, it can be assumed.

The Rule of Law and economical development

In modern period, the rule of law is precondition of economical development and successful business climate. The main aspects of economical growth in 21st century are connected with position of state in international arena. It is not accepted anymore (or it is rarely accepted) that state is full member of international community without the necessary and, at least, basic elements of one legally well organized state.

Perspectives of youth are highly dependable of general law and economic climate in every country so in both constitutionalism and rule of law are numerous answers to the situation of youth.

It is easily seen that there is no market economy and economical development without the rule of law. Law is the basis of economy because it alines the regulations on which trade parties make agreements. The rule of law gives far more credentials in dispute part. If parties decide to go on court to clear the dispute, it is of vital importance that the rule of law exists. Fair and efficient resolution of disputes is one of the basic requests of developing economy. The rule of law consists of fairness and predictability,

which is of great importance to players on the market. Another economical feature of the rule of law can be seen in non private sector, as well as in the mixed sector. The rule of law guaranties that state and other actors are even at the free market and that the crucial elements of economy are free from arbitrary state actions. Some states have passed through this rule of law factor in 19th century while some other are still into transition times. No matter at which level of “economical evolution” state is, the rule of law is evenly strong factor and the real steam of changes.

Limits of the Rule of Law

The Rule of Law is not magical power definitely. It has strong limits and it should be understood like very important element of modern societies but not all mighty one. Strictly speaking, the *Rechtsstaat* concept can stay only on façade level, but the rule of law cannot, due it subjective element. Still, it can be implemented in lower or higher degree. Other than more important political limitations there are technical limitations as well.

Laws have clear limits. First of all, language is very ambiguous and it cannot hold all the meanings in just a few words. Also, there is unpredictable application of the law. Judges are mouths of the law, but not rigid or mechanical ones¹². Moreover, indeterminacy is one of the characteristics of the rules. Fairness and justice are not always at the same side as the exact law is. Other than that, every state is at different level of build-up and there is not same level of pre-conditions for one developed society. The general limits to the rule of law could be segmented into few bigger branches: 1. technical (terminal limitations) 2. substantive (prescriptive meaning) 3. political (readiness of governmental structures to apply the rule of law in full scale) and 4. conceptual (which form of the rule of law is dominant one).

Rule of Law as the cornerstone of blooming society

All written above, in connection with other special aspects of this term, build one prosperous society with equal chances and very diverse opportunities.

¹² Judicial activism is criticized in this sense as well.

The Rule of Law as a concept depends of many aspects. One of them is definitely the legal system. It was argued that Common Law system is far more adaptable, so it was the system which accepted principles of the rule of law far easier than Continental Law system. Historical differences added to this factual ones made that Continental Law countries developed far different than Anglo Saxon ones.

Every principle of the common law was constantly developed and contested before the courts and that have build very flexible system which adopted new ideas with greater ease. That allowed the rule of law evolution since late middle ages, in step by step movement which was not possible in continental Europe.

Still, all paths connected themselves and made living in modern countries impossible without these concepts. Maybe the main qualities of this could be formulated in equity and predictability, both of supreme importance for every business step taken. That allowed faster development, better human rights conditions, easier movability and big number of perspectives for young people. It adopted system where knowledge and education became accessible for all and it changed destiny of many youth in united Europe.

Despite these remarkable pluses, concepts demanded climate where they can green and grow. Nowadays, the situation is still the same. Necessary preconditions for the rule of law have just complexed and this situation could be analyzed from many different angles. We have decided to highlight two the most important features and we will try to give answer about those pre-conditions as essential for further existence of the rule of law concept.

*Separation of Powers and Decentralization as necessary
pre-conditions for the implementation of the Rule of Law*

The history of separation of powers is long and it began in antiquity. Despite many attempts to divide governmental branches, it was not successful till more modern times. The new breath of separation of powers was given through Montesquieu's tripartite system which was taken as basis for modern development of the idea.

In *The Spirit of the Laws*, Montesquieu based the separation of power among a legislature, an executive, and a judiciary. At a same time, it is typical division of powers nowadays. Montesquieu's idea was to present a form of government which cannot be centralized and end in hands of only one person. This clear intent was adopted through division of responsibilities and stronger limitations between branches¹³.

In that sense, the policy of checks and balances is necessary precondition for implementation the rule of law system. That does not mean that there is no rule of law in parliamentary system, on the contrary it means that there is the rule of law wherever there are principles of democratic government and the rule of institutions and laws instead of people.

In that sense, limitation of powers of each governmental branch adds many value to the legality of whole system, because there is no way one can generate unlimited power.

In modern states, big centralism is not the sign of the rule of law being implemented. Additionally, modern concepts demand both horizontal and vertical division of powers. That is the reason why both of them are pillars of the society which can groom the rule of law as the main concept and highest principle.

The role of the state is important for the rule of law as well. Proactive state can help this concept to live and gain strength, but that state actions should have its limits. Non-active state could be also the state where concept lives, but there is no chance that activity will stay at such low level in modern times. Furthermore, non-active state cannot stay inactive completely, while it constructs the area and boundaries for market activities.

One of the very last important features of constitutional framework is rarely debated subject of non-revolutionary constitutions. We do not want to enter into deeper explanations, because it is clear that the governments in 21st century should be elected at free and democratic elections. In that sense we can analyze the situation of revolutionary constitutions as very problematic ones. Cottier and Hertig state, in accordance: Revolutionary constitution making, however, rises difficult questions of procedure and

¹³ M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Liberty Fund, Indianapolis, 1998, p. 56.

agency, etc...¹⁴ Modern international arena does not accept revolution as the possible solution of intra state problems. All issues should be resolved at democratic polls and elections. In that sense, this limitation is easy to accept.

Constitutionalism and the Rule of Law between realism and idealism

The boundary between idealism and realism is sometimes very harsh. In many legal terms, it is like a hole which need big leap to bear down. Very similar is with the rule of law as the concept and with constitutionalism in lower sense.

Since 1990s the rule of law has become main fancy of all of the ex-communist states which were not ready to implement all the necessary aspects of the concept at the very beginning. That has strongly devastated continence of the rule of law in real surroundings. It has become the “cheap and ordinary” word in many states, used for everyday political battles between forces of old regimes and new ones. It was mostly used in hard early transition times, while people have fought though battles of new period.

Most ex-communist states reacted very soon with new constitutions, but constitutionalism in its rudiment form was not enough in this case. The principles of constitutionalism, its subjective feeling, lacked and there was no “American dream” for people in that states. In that sense, some of the strongest words of western world were used easily. Human rights, the rule of law, peace and security, neoliberal and liberal economy were the terms which build the new surroundings in Europe which was not fully united yet, but they have lost clarity and pure legal meanings.

Gap between idealism and realism in connection with these terms has just become wider and wider. Many explanations were given about what are the cores of these terms, but we have analyzed them while we were discussing necessary preconditions. Athwart, we will point out at means which are building and improving these concepts in realistic legal/state

¹⁴ Thomas Cottier, Maya Hertig, “The prospects of 21st Century Constitutionalism“, in A. von Bogdandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Volume 7, 2003, p. 293.

life. First of all, we will point at judiciary and after that we will concentrate at bureaucracy.

Judiciary as the main instrument of the Rule of Law

While constitutions as written or ideological acts are main instruments of constitutionalism, judiciary is the main force of the Rule of Law. This statement is not accurate nor it pretends to be, it just gives us the smallest picture of something which was/is strongly debated.

Constitutions are not enough for constitutionalism, especially in modern meaning which was already discussed. Judiciary is in the same position as well. Still, both are cornerstones of something which pretends to be constitutionalism in full modern meaning and the rule of law as such.

Constitutions are written and made to last long and to “live”. That means constitutions should be customizable to a lot of changes in society and international community. Most countries avoid complete constitution change as far as it can run the steam, but some tend to commute them while minor changes as well. No matter which constitutional policy is taken, living breath of constitution is given by interpretation and constant annotation of the text or principles in case of non-written constitution. In many countries, constitutional court has vital role in that field.

Constitutional court saves norms of declining and gives them new meanings in every different situation. The guardian of the constitution serves as gardener of it as well. Court “waters” the constitution and contrives staying “green”. Long-lasting of constitution is society with constant or gradual changes is enabled by active and brave role of Constitutional court, as well as all other courts in the country.

The same situation is connected with “ordinary” laws as well. Living to the norms is given through judicial activity and constant interpretations. Modern society need it more than older forms. World and surroundings are changing far more and much faster than before, and norms are easily out-dated without very active approach. No matter which system is applied, the role of judiciary is creative one: judges are constrained by precedent, in the sense that they must build on principles

already embedded or implicit in previous law; but the interpretative process is also intellectually creative¹⁵.

In that sense, we insist that judiciary is of vital importance. Furthermore, perspectives of youth in fair society cannot be built with “ordinary” judiciary activities. It is necessary that there is judicial activism present, to comment and explain norms in different angles and to back innovations.

Every generation is bearer of new “rules” and new typical order, but in legal sense it is of no value. Positive new things could be valued only if there are some solid backgrounds behind them. In that sense, judicial activism, if it is pointed at justice aims should serve as great supplement to the general state of the society and its development.

The main problem in the judicial activism¹⁶ concept is living here as well. What is justice in certain case and what direction is the right one? Who will be the judge of the judges? Who will decide which is right or wrong aim?

All these questions emerge still and are broadly highlighted in these cases. Youth perspective in every country is strongly connected to making right decisions in political, economical and legal field. That brings us to great importance of judicial activism in the right way, but history of this phenomena has taught us that it develops society very fast, especially in Anglo-Saxon countries.

Someone can argue that judicial activism is simple clash between politics and judiciary¹⁷, but it is of no importance in this field. If it is a clash between those two branches, it is important to notice that judicial activism can be in clash only with conservative and out-dated politics, not with modern one. Why is it like that?

¹⁵ Trevor Allan, Politics, “Constitutionalism, and the Rule of Law“, *The World Financial Review*, online edition, March 2014, <http://www.worldfinancialreview.com/?p=187> 11/8/2016.

¹⁶ Term “judicial activist” was first coined by Arthur Schlesinger, Jr. in a *Fortune* magazine in January 1947.

¹⁷ Keenan D. Kmiec, “The Origin and Current Meanings of Judicial Activism”, *California Law Review*, Vol. 92:1441, No. 5, October 2004, pp. 1447-1450.

The answer is kind of simple, but very demanding at the same time. Judicial activism is activism into the arena with strong boundaries and politics is the social activity into much wider space with much more freedom and room for a lot of different choices and premises.

It is not disputable that judicial activism can go both sides: into more conservative role and more liberal role¹⁸. Judges are highly educated and it caused many arguments towards their conservative role in the society¹⁹. Despite those arguments of anti-activism flow, some of the most famous activist decisions were twenty or even thirty years more liberal than society itself. Segregation in USA was the right example of it²⁰. Nobody is denying that judicial activism can go either way, but the only one valuable in the case of youth perspectives is liberal. It allows that society goes with marching steps forward.

Judicial activism is not term that is easy to define. Activism could be defined in many different ways by focusing on different things such as court's willingness to depart from the exact text of the norm, history of the rule or strike down of the law²¹. Each of these actions could be done by "active" judges and there is no consensus about which of these can be more activism than others. Despite it numerous meanings term judicial activism is not as gloomy as it seems. It has very strong boundaries and it is easily recognized what is not activism at least.

Negative definition does not help us much, but it is very useful to abandon some of the arguments of non-activist side and it was widely used in Anglo-Saxon tradition in hard times for activist movement.

¹⁸ Michael Kirby, "Judicial Activism", *Western Australian Law Review*, Vol. 27, July 1997, p.5.

¹⁹ Thomas Sowell, *Judicial Activism Reconsidered*, Hoover Institution Stanford University, 1989, pp. 1-19.

²⁰ Robert M. Cover, "The Origins of Judicial Activism in the Protection of Minorities", *The Yale Law Journal*, Vol. 91, No. 7, June 1982, pp. 1295-1297.

²¹ Ernest A. Young, "Judicial Activism and Conservative Politics", *University of Colorado Law Review*, Volume 73, No. 4, 2002, p. 1141.

Bureaucracy as the second element

State is dependable of its people, as well as politics is of bureaucracy. No matter how some politics is good or bad, it can be even better or worse because of state clerks. Laws and regulations cannot speak for themselves. They are speaking through mouth of state clerks.

Youth perspectives and general healthiness of state are highly dependable of bureaucracy which is good enough and flexible. The old story about bureaucracy as the pest is live again at many street protests these years in EU, not in that harsh form though. Many questions have arisen about EU Brussels clerks, its number and its highly normative work. The Marxist paradigm is in question again.

Still, it undoubtedly seems that Max Weber opinion about bureaucracy is far more accurate as the concept. State cannot live and last without it, but there are many other preconditions about clerks that should be accomplished before we celebrate them as cast.

As the result, we have to accept that bureaucracy is tailing our future and status in the sense that politics should be very wise while choosing highly educated people as the state clerks, because many differences between idealism and realism in living of the regulations and laws are dependable on them. Peters discussed that on the one hand public bureaucracies are typically conceptualized as necessary for the effective administration of public programs, but as being legalistic and largely indifferent to the wishes and demands of individual citizens, and called it typical stereotype²². The fact is that this stereotype contains many right aspects, because public administration, especially in transition times, stays out of ordinary living conditions scope, and tries to find its place under the new political “sun”. Another aspect of discussion goes to the relationship between bureaucracy and democracy. It is frequently asserted that bureaucratic management is incompatible with democratic government and institutions. This is a fallacy. Democracy implies the supremacy of the law²³.

²² B. Guy Peters, “Bureaucracy and Democracy”, *Public Organization Review*, Vol. 10, Issue 3, September 2010, p. 209.

²³ Ludwig von Mises, *Bureaucracy*, Yale University Press, New Haven, 1944, p. 41.

Why constitutionalism and the rule of law are so dependable of state clerks is a question which emerges in every pure theoretic dispute. Court is not primary place where constitutionalism and the rule of law should be built, nor is it only high politics with ministers and head of states. The rule of law is paradigm in every citizen-state and *vice versa* relationship. It has to live at bottom at the same level, as in proclamations of highest state politicians. As we have discussed both terms are highly complex and they demand preconditions fulfilled.

Weber has explained his ideal type of bureaucracy in full detail, but the main issue is ability of the clerk and education. Weber preferred both than clerk's personal or political connections²⁴. Still, transition period in many countries and modern EU has shown us that Weber statement in that case is not accurate at most. The conclusion about it could be that bureaucracy has sit on the place which Weber gave, but the preconditions which he prescribed are not respected in full scale.

The reality of huge number of bureaucratic servants and their not brilliant abilities have caused many public disputes in modern times. Many good political ideas have suffered because of sloppy clerks and their inability to convert ideas into something fix and clear. Though, bureaucracy is just growing and gaining power, in many cases in bad direction. That affects regular development of institutional surrounding and perspectives of young educated people. Peters noted it as well as the public bureaucracy is rarely mentioned in constitutions, and generally does not figure in the design of political regimes, yet it has become central in government decision making, and is still increasing its influence within government²⁵.

As it is stated Weber stayed on rational/formal aspects of bureaucracy. Still, informal ones stayed untouched and it caused many differences between his ideal type and realistic public administration. Huge gaps are connected with progression in service based on ability and knowledge and realistic ways of advancement. Other than that informal connections are

²⁴ Michael A. Lutzker, "Max Weber and the Analysis of Modern Bureaucratic Organization: Notes Toward a Theory of Appraisal", *American Archivist*, Vol. 45, No. 2, Spring 1982, pp. 121-126.

²⁵ B. Guy Peters, *The Politics of Bureaucracy*, Routledge, Taylor & Francis Group, London and New York, 2010, p. 15.

prime way of modern bureaucratic advancement and that gained huge power, even more than during 20th century.

United Europe and public administration reform

During its development EU pushed hard to reforms of public administration because of huge gaps in efficiency between southern states and northern ones. Portugal, Spain, Greece and Italy were frontrunners of reforms, mostly under pressure²⁶. Reforms are vivid since 1980s, especially after NPM²⁷. NPM succeeded in Anglo Saxon countries, but continental ones gave hard effort as well. Last economical crises caused harsh reforms (under pressure) in many EU countries. Main requests were (and still are): leaner public administration, regionalization, decentralization of authorities, shift from non-result based culture to the opposite and link between productivity and salary.

Digitalization has brought productivity on upper level. Countries which gave numerous digital opportunities to its citizens made huge breakthroughs in public services. Still, some other struggled a lot.

Reasons that affected youth position and perspectives in very negative way were/are: patronage criteria, extensive politicization, traditional exchange of votes for public sector jobs and administration hugely expanded in size.

All this should be analyzed in connection with multiculturalism movement which have arisen during second half of 20th century and helped a lot in unification of Europe. Still, leading EU politicians of modern times have delineated this concept as fallen one. If we discuss it in the highest spirits, that remarks are quite true. The expectations of this concept as all-European-problem-solution have fallen harshly to the ground, but this idea has left many positives as well. Europe is multicultural, in some parts the policy gave better results than in some

²⁶ Dimitri A. Sotiropoulos, Southern European Governments and public bureaucracies in the context of economic crisis, *European Journal of Social Security*, Vol. 17, No. 2, 2015, pp. 227-236.

²⁷ NPM – the new public management. This system acknowledges the bureaucratic formations from private sector and find it applicable to public sector.

other, but the fact is that this idea was very influential for more than 30 years. In that sense, we will try to present its effects to youth perspectives and all other preconditions.

Multiculturalism as the united Europe trademark

Multiculturalism is often acknowledged as the societal situation in which more than one culture live and coexist in one society. One of the additional requests of multiculturalism is that cultures influence each others and that there is no strict separation or ghettoisation between them.

History of this idea is very vivid and under constant change. Since 1945, the question of multiculturalism has been one of central to the political concerns of western European countries²⁸. It was started with immigrants after WW2 and then emerged through *gast arbeiters* in Western Europe. After those initial steps it evolved to intra state issues of decentralization in ex-Communist states and the late phase is connected with growing problem of asylum seekers and refugees. While we analyze this term, we can divide it into soft and hard meaning, but more useful is a discussion about success or failure of this concept in last 50 years.

European countries have always had different approach to this matter and paths could be divided into the following: 1. assimilation policy (France)²⁹; 2. *gast arbeiter* system (Germany); 3. welfare state (Sweden); 4. pillarisation (Netherlands); 5. integration (U.K.). Additionally to these different approaches, every state has chosen different priorities, so multiculturalism has ended like state policy, social policy or only as theoretical policy. The state and its laws, society and its normative orders and religion and world views, are expected to work together to achieve a

²⁸ Jon Rex, Gurharpal Singh, "Multiculturalism and Political Integration in Modern Nation-States – Thematic Introduction", *International Journal on Multicultural Societies (IJMS)*, Vol. 5, No. 1, 2003, p. 3.

²⁹ It has gradually evolved towards soft model. More about the whole issue in France in: Artan Fuga, "Multiculturalism in France: Evolutions and Challenges", *EUROSPHERE Working Paper Series*, Online WP No.12, 2008. http://euro-spheres.org/files/2010/08/Eurosphere_Working_Paper_12_Fuga.pdf, 17/07/2016.

balanced and sustainable legal order³⁰, and that is the reason for multicultural clashes which emerged later. Constant tension between concepts of all cultures coexisting together and dominant centralist culture was avoided with this new idea, but not deleted as such.

If we discuss about social definition of multiculturalism we have to keep in mind two main pillars of it – behaviors and beliefs³¹ of all diverse groups as well as acknowledgement of all differences and huge encouragement of staying together but on different notes.

Kymlicka has divided multiculturalism flux into two periods: one was from 1970-90 and other was in 1990s³². While first one was period of multiculturalism grow, the second one has shown the decline and fall.

Multiculturalism was one of the valuable ideas for making Europe as we know it today. United Europe was made, among others, at this idea. Furthermore, whole concept made it far easier for the Old Continent to unite. As Kymlicka noted, the things have changed during mid-1990s. Problematic features of multiculturalism have fallen at serious exam of changed world situation.

Despite the end of succesfull story of the idea, it has implemented a lot of positives and built many advantages for easy fluctuations of the people. One of the main pluses of the concept is the knowledge how to accept best of movability.

What are the reasons why has multiculturalism failed is a very complex issue, but it is quite true to say that it happened no matter many scholars deny it. The united Europe has been multicultural and stayed as such, but multiculturalism as the doctrine has failed. Possible explanation could be that multiculturalism was seen as doctrine which can resolve every European problem which was definitely not correct approach.

³⁰ Esin Örüci, "Diverse cultures and official laws: multiculturalism and Euro-scepticism?", *Utrecht Law Review*, Vol. 6, Issue 3, November 2010,. http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1581228, 27.07/2016, p.78.

³¹ Similar in: Caleb Rosado, "Towards a Definition of Multiculturalism", 1996, http://rosado.net/pdf/Def_of_Multiculturalism.pdf, 19/08/2016, p. 2.

³² Will Kymlicka, *Multiculturalism: Success, Failure, and the Future*, Migration Policy Institute, 2012, p. 3.

Critics about this doctrine were very harsh, but multiculturalism has left both positives and negatives in European legal culture and politics. From the beginning it was idea directed towards better understanding and living conditions, especially for generations to come.

Quite possibly, the realization of the concept was problematic and as such left Europe in immigration problems and bad integration. Europe has become united fast, but problems started growing and finally overshadowed this concept.

Furthermore, Europe stayed multicultural, but the doctrine lost its sharpness. Most of events which affected it happened during 1990s, and there was not adequate practical answer to the new realm.

The subject of multiculturalism in political philosophy was established in wrong direction from the start, and it was later used for many criticism. It was built as critical theory of homogeneous and monocultural nation-states, and as such it has not developed enough basis for further development into stable concept. That was done through law and law theorists gave a lot of possible explanations what are the paths for growing of this theory. Despite the efforts, political reality strucked it, and law was too weak to resist to many events since beginning of 21st century.

Conclusion

This paper have pointed out at few constitutional law questions which are deeply connected with establishment of the democratic society. At the same time, the issues are connected with position of youth in united Europe as the main pillars of building that perspectives.

One of the most written and argued concept of constitutionalism is pictured in this paper as the cornerstone of building future, as well as the rule of law. Both concepts go together hand in hand, building the prosperous democratic atmosphere.

Constitutionalism and the rule of law were presented both as theoretical and practical concepts. The rule of law was analyzed in different versions. The first one was Anglo Saxon, and then Continental ones were discussed. The German concept of the *Rechtsstaat* and the French one *Etat de Droit* have changed approaches to the same issues, but

still developed and pointed at few very important directions in evolution of the ideas.

Theoretical concepts are in these cases not enough. We have decided to present two very important means of making these ideas live and fulfil in realistic surrounding. The first mean which was pointed out was the judiciary, especially the movement of judicial activism.

Judicial activism, if understood in right manner, is the specific note of every democratic regime and it is one of the principles which allows society to change and follow modern steps. Different roles of judges in Anglo Saxon and continental tradition have big impact on this, but in both systems activism can mean difference between closed and progressive society. The truth is that judicial activism can be very sensitive area, capable of producing many disputes in the society and regards that fact it should be approached carefully.

Second important mean which was presented is bureaucratic activism and public administration as such. The realisation of many legal frameworks and “big” ideas depend highly of bureaucracy and system of clerks should be modernized and improved every few years.

Some of the main reasons for many failures of “big” political resolutions could be found in sloppy bureaucracy and its decisions. Still, as Weber stated at the beginning of 20th century the bureaucracy is the best system invented for state mechanism and that there is no other solution better than this. Things have changed a bit with digitalization process but people in public administration remained pillars of rule implementation.

The final aspect of the analyzes is the current status of multiculturalism as the living and theoretical concept. It was argued that concept as such is still living, but that theoretical background has failed. The facts that Europe is multicultural and diverse cannot be overshadowed by this failure of the concept. In that light, we assumed the position as “multiculturality” (not multiethnicity) has built the united Europe we know today. For a long time, it was the concept which allowed Europe to change and make a lot of perspectives both for natives and newcomers. Still, the fact is that it has hit the road block, and as such cannot be considered like all-easy-answers theoretical concept as it was before.

References

- Artan Fuga, "Multiculturalism in France: Evolutions and Challenges", *EUROSPHERE Working Paper Series*, Online WP, No. 12, 2008. (http://eurospheres.org/files/2010/08/Eurosphere_Working_Paper_12_Fuga.pdf)
- B. Guy Peters, "Bureaucracy and Democracy", *Public Organization Review*, Vol. 10, Issue 3, September 2010.
- B. Guy Peters, *The Politics of Bureaucracy*, Routledge, Taylor & Francis Group, London and New York, 2010.
- Caleb Rosado, "Towards a Definition of Multiculturalism", 1996. (http://rosado.net/pdf/Def_of_Multiculturalism.pdf)
- Cass R. Sunstein, "Constitutionalism after the New Deal", *Harvard Law Review*, 101 (1987).
- Charles Howard McIlwain, *Constitutionalism: Ancient and Modern*, Cornell University Press-Great Seal Books, 1947
- Csaba Varga, *Transition? To the Rule of Law?*, Krater, Pomaz, 2008.
- Dimitri A. Sotiropoulos, "Southern European Governments and public bureaucracies in the context of economic crisis", *European Journal of Social Security*, Vol. 17, No. 2, 2015.
- Ernest A. Young, "Judicial Activism and Conservative Politics", *University of Colorado Law Review*, Volume 73, No. 4, 2002.
- Esin Örüçü, "Diverse cultures and official laws: multiculturalism and Euroscepticism?", *Utrecht Law Review*, Vol. 6, Issue 3, November 2010. (http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1581228)
- Francis D. Wormuth, *The Origins of Modern Constitutionalism*, Harper & Brothers, New York, 1949.
- Jeremy Waldron, "Constitutionalism: A Skeptical View", *Georgetown University Law Center*, 2010. (<http://scholarship.law.georgetown.edu/hartlecture/4/>)
- Jon Rex, Gurharpal Singh, "Multiculturalism and Political Integration in Modern Nation-States – Thematic Introduction", *International Journal on Multicultural Societies (IJMS)*, Vol. 5, No. 1, 2003.

- Keenan D. Kmiec, "The Origin and Current Meanings of Judicial Activism", *California Law Review*, Vol.92:1441, No.5, October 2004.
- Lidija Basta Fleiner, Thomas Fleiner, *Constitutional Democracy in Multicultural and Globalized World*, Springer Verlag, NY, Heidelberg, 2009.
- Lon L. Fuller, *The Morality of Law*, Yale University Press, New Haven, 1964.
- Ludwig von Mises, *Bureaucracy*, Yale University Press, New Haven, 1944.
- Martin Krygier, "Rule of Law (and Rechtsstaat)", *UNSW Law Research Paper*, No. 52-2013, August 2013. (<http://ssrn.com/abstract=2311874>)
- Michael A. Lutzker, "Max Weber and the Analysis of Modern Bureaucratic Organization: Notes Toward a Theory of Appraisal", *American Archivist*, Vol. 45, No. 2, Spring 1982.
- Michael Kirby, "Judicial Activism", *Western Australian Law Review*, Vol. 27, July 1997.
- Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy", *Southern California Law Review*, Vol. 74:1307.
- M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Liberty Fund, Indianapolis, 1998.
- Robert M. Cover, "The Origins of Judicial Activism in the Protection of Minorities", *The Yale Law Journal*, Vol. 91, No. 7, June 1982.
- Thomas Cottier, Maya Hertig, "The prospects of 21st Century Constitutionalism", in A. von Bogdandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Volume 7, 2003.
- Thomas Sowell, *Judicial Activism Reconsidered*, Hoover Institution Stanford University, 1989.
- Trevor Allan, Politics, "Constitutionalism, and the Rule of Law", *The World Financial Review*, online edition, March 2014. (<http://www.worldfinancialreview.com/?p=187>)
- Will Kymlicka, *Multiculturalism: Success, Failure, and the Future*, Migration Policy Institute, 2012.

Youth Participation In Solving Environmental Issues And Creating Environmental Policy In Europe

Darjana Macanović

LL.M candidate, University of Belgrade

Abstract: There are different possibilities for youth engagement in solving current global issues. However, their participation and awareness is essential in order to different environmental policies have a future. This significance is being recognised especially on international level by the United Nations and also on the European level. The European Union has largely developed environmental policy with opportunities for young people to get involved through public participation, which is endorsed by the Aarhus Convention, and through incentives for young farmers and the usage of agro-environmental methods of farming. Moreover, a branched network of youth organisations aimed at preservation of the environment, protection of biodiversity and combating climate change acts all over Europe, and is supported by the European Union and the Council of Europe. The Council of Europe has done valuable work with aim to promote youth engagement in policymaking on institutional level.

The paper's aim is to provide different aspects of youth participation in solving environmental issues and in environmental decision-making process across Europe. Also, where adequate, possibilities for improvement are highlighted.

Introduction

Youth participation in solving current local and global issues can be present on many different levels. When talking about engaging in the area of protection of the environment, youth actions can range from developing basic environmentally friendly habits at home, through green activism or eventually participating in policy making process on local, regional, or even European level. There are different factors nowadays that can influence and encourage youth engagement related to environment preservation, climate change, global warming, recycling and sustainability. All these topics are high on the agenda of all relevant international organisations. Countries themselves or under influence of these organisations create their own policies in order to reach sustainability. United Nations adopted in 2015 a set of 17 sustainable development goals (SDGs), among them being: clean water and sanitation,

affordable and clean energy, and climate action.¹ Youth engagement in environmental protections crucial since educating young and new generations about the importance of sustainability is the only guarantee that any strategy or action plan will be conducted on the long run and that something similar will continue to be created in the future. Long-term solutions are essential in this field, and only through passing the knowledge and the awareness on future generations will ensure that they are applied.

The first step is raising awareness at an early age and afterward through education, media and informal education, e.g. training camps organised by different NGOs. The path continues through gaining expertise in the field or engaging in policy making. Policy-making on environmental issues needs to be developed on local, regional, state, continental and global level in order to achieve desired results. The role of youth can be institutionalized in policy-making through advisory bodies such as youth councils. Many national Governments have ministries or departments with “youth affairs” as part of their portfolio, though such offices tend to view youth as a population to be addressed by public policy (often “youth affairs” is part of the education ministry), rather than a resource to be tapped for participation in policy-making in a variety of areas, including the environment.² The problem is that youth participation in policy-making is not enough supported by the governments and therefore underdeveloped. However, it was rather encouraged on international level. For instance, in the United Nations system, the United Nations Environment Programme (UNEP) develops since 1985 cooperation with young people. It is a perfect example how an agency specialised in environmental matters collaborates with national, regional and international young people’s organizations by organising conferences, and promotes environmental awareness among them and working with them.³

¹ “Sustainable Development Goals, United Nations website, <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>, 21/08/2016

² “Youth and the Environment”, United Nations Department of Economic and Social Affairs, World Youth Report, 2003, <http://www.un.org/esa/socdev/unyin/documents/ch05.pdf>, p. 135

³ “UNEP and Youth”, <http://www.un.org/youthenvoy/2013/08/unep-and-youth/>, 26/08/2016

Moreover, in 2003, the Governing Council of UNEP adopted a long-term strategy called the Tunza Youth Strategy for engaging young people in environmental activities and in the work of UNEP. There is also the Tunza Youth Advisory Council (TYAC) that was established in order to advise UNEP on better ways of engaging young people in its work.⁴ Finally, UNEP also developed an education program in order to train young people to participate in the development of an ecologically sustainable society.

Many possibilities of youth participation and engagement in different activities regarding environmental education, rising awareness, public participation and policy making also exist on European level. The following chapters will show different areas where youth participation in terms of environmental protection is enabled in the European Union and the council of Europe. Furthermore, special attention will be dedicated the role of non-governmental organisations in this field, especially in education and raising awareness about sustainability and solving environmental issues.

1. Environmental policy making in the EU

The European Union began the creation of its environmental policy in the 1970s. Previously established on several principles, one of them being economic integration, soon the awareness rose about the importance of the environmental protection. This awareness appeared also on the global level at that time with the first United Nations Conference on the Environment in Stockholm in 1972. As a consequence of this domino effect, a year later, in 1973 the first Environmental Action Programme (EAP) was designed. This programme already established the argument that economic development, prosperity and the protection of the environment are mutually interdependent.⁵ Together with development of environmental policy, united Europe thrived to a greater economic integration. The Single European Act (SEA) adopted in 1986 that

⁴ *Ibid.*

⁵ "EU Environmental Policies: A short history of the policy strategies", Dr. Christian Hey, EU Environmental Policy Handbook, European Environmental Bureau, <http://www.eeb.org/publication/chapter-3.pdf>, 03/08/2016

established the European Community made significant and formal changes in the field of legislative procedure and environmental policy-making. Moreover, the SEA actually dedicated a whole chapter to the environment in which it stipulated the following: “Environmental protection requirements shall be a component of the Community’s other policies.”⁶ This chapter sets polluter pays principle as well as the principle of preventive action and subsidiarity. However, even before the adoption of the SEA, in the European Community existed environmental legislation. This was done under pretext that “(...) economic development could not be achieved without appropriate regulation of corresponding environmental pollution and nuisances”.⁷ Furthermore, The Court of Justice of the European Union through its case law also developed a legal basis for the same purpose. Besides defining the preservation, protection and improvement as one of the Community’s main goals, it laid down certain changes in terms of legislative procedure. It introduced the possibility of qualified majority voting when deciding in the Council, and also the “co-operation procedure” between the Council and the Parliament. After this and further changes in the subsequent treaties, expanded to almost all environmental issues to be the subject of majority voting in the Council and the Lisbon Treaty identified the EU and member states to have shared competence when creating environmental policy.⁸ The rule of majority voting in the Council opened a possibility for states that had strongly developed environmental policy to make a significant influence on the EU level. Moreover, the role of the European Parliament increased over the years up to the “co-decision legislative procedure”, which meant that in the environmental policy making the space was

⁶ “Single European Act”, Article 130r, Official Journal of the European Communities, No L 169 / 12, 1987, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1987:169:FULL&from=cs>, 10/07/2016

⁷ Christian Zacker, “Environmental Law of the European Economic Community: New Powers Under the Single European Act”, *Boston College International and Comparative Law Review*, Vol. 14, January 1991, p. 261.

⁸ Henrik Selin, Stacy D. VanDeveer, “EU Environmental Policy Making and Implementation: Changing Processes and Mixed Outcomes”, Paper presented at the 14th Biennial Conference of the European Union Studies Association, Boston, Massachusetts, March 2015, <https://eustudies.org/conference/papers/download/79>, 15/08/2016

opened for the different interest groups represented by political parties to pass laws designed according to their ideas. This is a doorway to a greater participation of citizens of the European Union in an indirect way in environmental policy making. In current parliamentary term the political group of the Greens/European Free Alliance counts 50 MEP's out of 751. Aside from EU institutions and member states there are various interest groups such as environmental organisations, large corporations and other major private sector actors that participate through lobbying in the process of environmental policy making. This process needs to be more accessible to common citizens. On contrary, the creation of EU policy is often considered to be burdened with too much bureaucracy and distant from the EU citizens and policy goals on local or a state level, for that matter. However, efforts were made in 2011 by European citizens' initiative law and with the Charter of Fundamental Rights of the European Union that stipulates the rights of individuals to petition the Parliament to address environmental and other topics.⁹

Environmental Action Programmes do not represent a legal basis for environmental legislation, but they do, however, nowadays pass through a legislative procedure when decided upon. This means that based on a proposal by the Commission, it has to be approved both by the Council and the Parliament. The EAPs are policy guidelines for the Commission according to which it has to operate in the future. This documents set main priorities for EU in terms of environmental policy and direction in which main issues are ought to be tackled. In the past they played a significant role and very beginning of placing the environment on the Community agenda marked the first Environmental Action Programme. Currently the seventh Environmental Action Programme is in force and will be until 2020. In this period of time, member states and EU institutions have to pursue its implementation.

Participation of civil society and accordingly younger population is rather limited in the process of environmental policy making on the EU level. Over the years environment became one of the areas where the EU has shared competence and this created a possibility that common environmental goals are defined on intergovernmental, or rather

⁹ *Ibid.*

supranational level. Moreover, this allows overcoming at times rigid national policies and forcing them to adapt according to the EU guidelines. On the other hand, member states have enough space to create their national environmental policies in accordance with their own preferences. Nevertheless, raising environmental policy making on EU level and making environmental protection as one of the main goals, gave great importance to this area. The question that remains is whether there is space for the participation of civil society and youth in this policy-making. The legislative procedure in the EU is often criticised to be distant from the citizens even though the Parliament has nowadays a significant role. In fact, it is claimed that the European Parliament itself also suffers from democratic deficit. The EU Regulation on the citizens' initiative that allows influence of the citizens of the EU in democratic procedure and power to initiate legislation opened a possibility for more direct involvement. That procedure affords citizens the possibility of directly approaching the Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties similar to the right conferred on the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU) and on the Council under Article 241 TFEU.¹⁰ Certain rules have to be followed such as the minimum age of the signatories and the organizers of the citizens' initiative and that is the age to be entitled to vote in elections to the European Parliament. Furthermore, the organisers of the initiative have to form a citizens' committee of at least seven persons who are residents of at least seven different Member States.¹¹ And regarding the number of signatories, Article 7 of the Regulation stipulates the following:

“1. The signatories of a citizens' initiative shall come from at least one quarter of Member States.

2. In at least one quarter of Member States, signatories shall comprise at least the minimum number of citizens set out, at the time of registration

¹⁰ “Regulation (EU) no 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative”, Official Journal of the EU, OJ L 65, 11.3.2011, p. 2.

¹¹ *Ibid.*, Art. 3.

of the proposed citizens' initiative, in Annex I. Those minimum numbers shall correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750.”¹² These conditions suggest that such action has to be widespread across EU countries, which requires share of information and coordination among civil society representatives on international level. In order to articulate citizens' aims in terms of environmental protection, role of NGOs is rather beneficial. Next chapter will analyse their work in this field.

2. The role of non-governmental organisations

The number of non-governmental organisations across Europe dealing with various aspects of environmental protection, nature preservation, and solving climate change challenges is quite large. They all are founded in member states and focus their work mainly on solving issues on local and/or national level. However, since environmental protection and climate change are a global issue, these NGOs also connect on an international level forming large associations and networks. This is beneficial since it enables better coordination of their actions and makes them more coherent. Such network that gathers large number of non-governmental organisations worldwide and that operates in Europe with great influence is “Climate Action Network International (CAN)”. Its branch is located in Europe and with over 130 member organisations in more than 30 European countries - representing over 44 million citizens - CAN Europe works to prevent dangerous climate change and promote sustainable climate and energy policy in Europe.¹³ This organisation can be a useful channel for local NGO's to articulate their positions and communicate on international level with other similar NGOs and EU institutions. That being said, quite recently the example of a letter to policy makers was issued by this organisation. CAN Europe sent the letter to European Commission President Jean-Claude Juncker and European Council President Donald Tusk regarding goals they consider ought to be

¹² *Ibid.*, Art. 7.1, 7.2.

¹³ “Climate Action Network Europe-European NGO coalition on climate and energy”, About CAN Europe, <http://www.caneurope.org/about-us>, 10/08/2016

deliberated in G20 Summit that is soon to be held.¹⁴ Usually most powerful NGOs do attend global gatherings on the topic of environment. Their role is at times very powerful as they represent the voice of civil society independent of governmental and state constraints. Moreover, they usually organise protests with many young participants. For example, at a preparatory meeting for the World Summit in Johannesburg, youth delegates organized a backward march through a conference session to dramatize the fact that no progress was being made on key sustainable development issues, and that matters indeed seemed to be moving backward. At the Summit itself, around 100 youth representatives staged a “round in circles” march up and down the escalators in the conference centre (though demonstrations inside the centre were banned, the protesters were not removed).¹⁵

In the field of youth participation, the environmental NGOs have the opportunity to encourage and promote it by raising awareness, organising events and including young people in their own decision-making process and policy creation. The aforementioned CAN Network developed “The Leadership Development Program” in order to strengthen leadership skills of their members that come from developing countries. “The LDP recruits fellows that have the potential to become leading climate change activists and invests in developing their skills through trainings, mentoring and other capacity building activities.”¹⁶

Similar pattern of building an international network aiming at tackling environmental issues was built in Europe among youth organizations. This is a platform called “Youth and Environment Europe (YEE)” that gathers organizations from 26 European countries that study nature or are active in environmental protection and whose members are under 30 years of

¹⁴ “Letter to Juncker and Tusk on the 2016 G20 Summit”, published on 31 August 2016, <http://www.caneurope.org/publications/letters-to-policy-makers/1206-letter-to-junker-and-tusk-on-the-2016-g20-summit>, 31/08/2016

¹⁵ “Youth and the Environment”, United Nations Department of Economic and Social Affairs, World Youth Report, 2003, <http://www.un.org/esa/socdev/unyin/documents/ch05.pdf>, p. 136

¹⁶ “Leadership Development Program”, Climate Action Network International, <http://www.climatenetwork.org/campaign/leadership-development-program>, 15/08/2016

age. “Youth and Environment Europe” was founded as the European regional branch of the International Youth Federation for Environmental Studies and Conservation (IYF) on the 3rd of August 1983 in Stockholm.¹⁷ Field of work of this organisation concentrates on organising training courses for young people in sustainable development, landscape management, ecology and economy, sustainable tourism, energy, climate change. They are aimed at encouraging much needed exchange of information among youth member organisations and reaching to non-members, by promoting direct cooperation between individuals on topics of mutual interest through European working groups and by organising joint actions and campaigns on environmental issues of European importance.¹⁸ YEE is financially supported by the European Commission (Youth in Action Programme, Lifelong Learning Programme, and Europe for Citizens Programme) and Council of Europe, European Youth Foundation. YEE organises and promotes all activities that can increase the knowledge, understanding and appreciation of nature and the awareness of environmental problems among young people in Europe in order to implement its ideas in local groups and in joint activities. Within international actions, this organisation intends to raise public awareness and to put pressure on enterprises and politicians. They represent a well organised and widespread network of their member organisations across Europe and it is significant to point out that their projects are available not only for the young people from the EU countries but also from non members such as for example Albania, Macedonia, Armenia, Moldova, Georgia, but also Serbia. The examples of the newest projects organised by the YEE are mostly training courses focused on promoting green entrepreneurship and creating green start-ups among young people and also raising awareness on sustainability and youth participation, volunteering and leadership in protection of the environment.

Many environmental NGOs focus their work on education of children from the youngest age by organizing lectures and workshops. In Serbia, for instance there's an NGO called the Green Initiative that does this kind

¹⁷ “Youth and Environment Europe”, What is YEE, basic info, <http://yeenet.eu/index.php/about-yeet/basic-info>, 20/07/2016

¹⁸ *Ibid.*

of work which field of work is mainly related to stimulating primary selection of waste and recycling. It is estimated that in Serbia more than 40% of generated communal waste is thrown away on illegal landfills, usually located near rivers, city squares and parks creating not only a significant ecological problem, but also a serious health threat.¹⁹ Besides, landfills are the most expensive waste management treatment, a great investment, and also local citizens are against it. Recycling and waste management is one of the biggest issues but also a great possibility for reducing pollution and has a great economic potential. It is estimated that global recycling industry generates 160 billion dollars annually, and employs over 1.5 million people.²⁰ So where is the role of young people regarding waste management? This is one of the activities that are environmentally beneficial, the first step in recycling is where everyone can participate and contribute, even young people. In order for that to be possible, the education of children and young people is the key condition. They should be thought from a young age about the obligation of recycling and its benefits. That of course can be done by the NGOs and the civil sector, but with the support of state institutions.

2.1. Education, media and training camps

In order to give incentive for the youth participation in solving environmental issues and later on environmental policy making it is necessary to start from the youngest age and to carry out education, as aforementioned. The notion of education has to be taken in wider sense with participation of large number of actors. This responsibility is to be borne by educational institutions, namely schools, but media and rest of the public. Nowadays, young people are surrounded by the different types of social media and have access to many kinds of information, which they filter themselves depending on their interests. However, key players in this educational process are in fact, public schools and the state that creates program and content of education schemes. Only through organised

¹⁹ "Zelena Inicijativa", Mission and vision, published on September 2011, <http://zelena.inicijativa.rs/en/o-nama/misija-i-vizija>, 15/06/2016

²⁰ *Ibid.*

educational system with relevant experts involved it is possible to encourage critical thinking among young population regarding most important issues i.e. environment preservation and climate change. Teachers and professors have the responsibility to shape students' interests and to provide them with different options and solutions to a problem. Only when such basis is formed, young people will approach differently to relevant information they come across through the media and they themselves will have the initiative to solve some of the environmental issues. The role of media and the public is not to be underestimated as well, but it is a follow-up, a supplement to the basic education. However, it often claimed that good-quality environmental journalism is sometimes found in newspapers and magazines and that this field has become increasingly professionalized.²¹ The downside of the environmental journalism is the fact that it is often subject to sensationalism and exaggerations when reporting about, for example, natural catastrophes.²² In case of reporting on environmental issues it is necessary to inform the public in such way that rather encourages their critical thinking. Even media coverage of gatherings such as the World Summit on Sustainable Development tends to concentrate on the event itself and what happens there, with little nuanced coverage of the issues being debated.²³ On the other hand, how certain information will be received and accepted depends also on the public. However, the role media is a powerful tool for shaping public opinion, especially among youth when they are already presented through formal/informal education and upbringing about basic environmental hazards and challenges.

Nonetheless, the method of such education needs to be carefully planned with space for innovative methods. "The changed geography of childhood means that environmental education programs must provide a continuum of experiences from online to hands-on. (...) This approach does not denigrate the newer sources of information; it merely ensures that they are part of a continuum that incorporates learning in nature as a

²¹ "Youth and the Environment", United Nations Department of Economic and Social Affairs, World Youth Report, 2003, <http://www.un.org/esa/socdev/unyin/documents/ch05.pdf>, p. 142.

²² *Ibid.*, p. 143.

²³ *Ibid.*, op. cit., p. 143.

necessary way of learning about nature.”²⁴ The environmental education has to be much more than providing mere information, it has to strengthen individuals’ problem-solving and decision-making skills. In order for the creation of environmental protection policy to have a future, young generation need to be properly educated and steered in the direction of participating in environmental decision-making processes. The importance of environmental education is recognised worldwide and even in developing countries, with the example is the efforts of the Environmental Education Association of Southern Africa.²⁵

The Development of environmental studies on higher academic level are needed just as much as on the basic, elementary level of education. “Departments, institutes, programmes and courses devoted to environmental studies in science, social science, humanities, law and engineering have multiplied and flourished in colleges and universities in many countries.”²⁶

As a powerful tool for such education proved to be workshops organised mainly by environmental organisations. Their influence can often be limited because of not so large number of participants and geographically limited field of action. However, their aim to train young leaders of tomorrow to advocate for solving different environmental issues, can be rather beneficial, even more so, if they succeed to gather participants from a wider region. This was the case with the “Balkan Youth Climate Movement Camp” that took place in the Solar academy on the Island of Šolta, organised by Croatian environmental NGO called “Zelena Akcija”. Young people aged 18-30 from Western Balkans and Turkey participated in this project with the goal to educate and build the capacity of young leaders in the region to be able to understand the results of COP21 and to advocate for climate justice.²⁷ It was financially supported

²⁴ Steward J. Hudson, “Challenges for Environmental Education; Issues and Ideas for the 21st Century”, *Bioscience*, Vol. 41, No. 4, April 2001, p. 285.

²⁵ “Youth and the Environment”, United Nations Department of Economic and Social Affairs, World Youth Report, 2003, <http://www.un.org/esa/socdev/unyin/documents/ch05.pdf>, op.cit. p. 139

²⁶ *Ibid.*

²⁷ “Applications closed: Balkan Youth Climate Movement camp (25-31 July 2016)”, Zelena Akcija-Friends of the Earth Croatia, announcement, 10 May 2016, <http://zelena->

by the European Union and included educational workshops on energy, climate change and climate justice; and trainings lead by experienced campaigners. A good example of youth activism related to environmental protection was set by this NGO. It gathered certain number of activists who went to participate in the civil society mobilisations at the end of COP21, in order to put pressure on governments.

3. Public participation under Aarhus Convention

Public participation allows different interest groups that have the goal to protect environment from pollution and to preserve natural resources, to participate in the creation of different projects that may have environmental impact and decisions related to different environmental issues. That is why the UN Economic Commission for Europe adopted the “Aarhus Convention on Access to Information, Public Participation in Decisionmaking and Access to Justice in Environmental Matters” in 1998. The Aarhus Convention set three pillars of environmental protection: Access to information, Participation of the public, and Access to justice. This Convention was ratified by the EU and thus it is a part of the EU law. In 2005, European Council adopted Decision 2005/370/EC and on that occasion the European Community became a Party to the Aarhus Convention. Before that, in 2003, Directive 2003/35/EC was adopted providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.²⁸ According to this Directive, “the public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. Member States are obliged to ensure that the public is given early and effective opportunities to participate in the preparation and modification

akcija.hr/en/programmes/energy_and_climate_change/applications_closed_balkan_youth_climate_movement_camp_25_31_july_2016, 15/08/2016

²⁸ “The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies”, European Commission, Environment, June 2016, <http://ec.europa.eu/environment/aarhus/legislation.htm>, 10/08/2016

or review of the plans or programmes required to be drawn up. Furthermore, public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made, and in making those decisions, due account ought to be taken of the results of the public participation.²⁹

Another Directive 2003/4/EC adopted at that time guarantees the right of access to environmental information which is held by public authorities to any natural or legal person, that doesn't even have to prove the interest in the information or state the reason why he or she wishes to obtain this information. The notion of environmental information includes the state of human health and safety, including the contamination of food chain, and nuclear energy. Also, when talking about the second pillar, in accordance with the Aarhus Convention, Directive 2001/42 that became enforced in 2004 requires an environment impact assessment for plans and programmes that are likely to have significant environmental effects.

Public participation stipulated as such by these different Directives, always implies right to access to information, also guarantees by the Directives. These are two sides of the same coin.

Public participation in environmental decision-making is a right guaranteed by the Aarhus Convention and the EU regulation both on national level of the member states and on the European level, with however certain flaws. Administrative practice in member states shows little result of improved citizens participation. Even though, existing regulation needs to be amended in certain ways, raising of the awareness of public participation namely among youth.

4. Common Agricultural Policy (CAP) and incentives for young farmers

Common Agricultural Policy (CAP) is one of the oldest projects in the European Union, and until today investing in agriculture remains to be one of the most important goals of the European Union. It is a policy that

²⁹ "Directive 2003/35/EC of the European Parliament and of the Council", Official Journal L 156, 25/06/2003, Articles 2.1, 2.1(b)-(c), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0035>, 15/07/2016

is solely funded by the EU budget. Over the decades since it was first created in 1962, the CAP went through series of changes. After the reform the newest Common Agricultural Policy came into force on 1 January 2015. Current policy has two pillars, one based on direct payments and the second on the support programme for the rural development. In the first pillar the CPA introduced an new policy instrument, called “Green Direct Payment” This accounts for 30% of the national direct payment envelope and rewards farmers for respecting three obligatory agricultural practices, namely maintenance of permanent grassland, ecological focus areas and crop diversification.³⁰ This solution was a consequence of the need to improve sustainability also in the field of agriculture. Such development would be beneficial for farmers since the goal is to adapt them to natural disasters and accordingly to climate change. On the other hand, the goal is to promote sustainable methods of farming and oblige farmers to respect standards for preservation and protection of the environment, as a consequence of “Green Direct Payment” being compulsory. Moreover, the second pillar also has certain environmental dimension since it is decided that at least 30% of the budget for each Rural Development program must be reserved for voluntary measures that are beneficial for the environment and climate change. These include agri-environmental-climate measures, organic farming, Areas of Natural Constraints (ANC), Natura 2000 areas, forestry measures and investments which are beneficial for the environment or climate.³¹ These new rules show how the CAP has evolved in terms of including environmental protection, which was done gradually since 1992. Nowadays we are talking about greening of the CAP that is based on the “polluter pays principle” and “provider gets principle”. The first principle basically means that the responsibility to repair for the environmental damage it was caused should bear the polluter, as well as the cost for avoiding damage. That means that in the case of farmers, they have to ensure compliance with mandatory national and European environmental standards and respect the basic mandatory standards forming part of the cross-

³⁰ “Agricultural Brief on CAP”, http://ec.europa.eu/agriculture/policy-perspectives/policy-briefs/05_en.pdf, p. 7.

³¹ *Ibid.*

compliance regime at their own costs.³² This is an obligatory part that is reflected to this principle. However, there is also another principle that represents involving environmentally beneficial activities by the farmers on a voluntarily basis, and that is “provider gets principle”. This means that farmers are being remunerated for taking up environmental measures, more of what they are initially obliged to do. For such contributions to the environmental protection, their compensation comes from agri-environment payment that are dedicated for this purpose, and as aforementioned represent 30% budget for each rural development program.

The integration of environmental concerns into the Common Agricultural Policy is based on a distinction between: ensuring a sustainable way of farming by avoiding environmentally harmful agricultural activity and□ providing incentives for environmentally beneficial public goods and services.³³ By implementing these various types of measures that all have the effect of directly or indirectly contributing to the environmental protection, the consequence is that this practise will potentially achieve that across the EU more or less uniformly environmentally beneficial actions are being carried out. The Regulation (EU) No 1307/2013 stipulates the following:

“In order to ensure the that ecological focus areas are established in an efficient and coherent way, while taking into account Member States’ specific characteristics, the power to adopt certain acts should be delegated to the Commission in respect of laying down further criteria for the qualification of areas as ecological focus areas; recognising other types of ecological focus areas; establishing conversion and weighting factors for certain types of ecological focus area; establishing rules for the implementation, by Member States, of a part of the ecological focus area at regional level; laying down rules for collective implementation of the obligation to keep ecological focus areas by holdings in close proximity; (...)When adding other types of ecological focus area, the Commission should ensure that they aim to improve the general environmental performance of the holding, in particular as regards biodiversity, the

³² “Integrating environmental concerns into the CAP”, European Commission, 7 June 2016, http://ec.europa.eu/agriculture/envir/cap/index_en.htm#polluter, 10/08/2016

³³ *Ibid.*

improvement of soil and water quality, the preservation of landscape and meeting the climate change mitigation and adaptation objectives.”³⁴

Common Agricultural Policy remained over the years high on the EU's priority list for two main reasons and both of them existed initially when the CAP was established. These are: making sure that the European farmers have steady source of income, and the other being ensuring sufficient food supply that has good quality for the European consumers. Moreover, the agricultural area represents a rather large share of total land area in Europe and the greening of the CAP is more so significant if the agro-environmental methods will be applied in a proper way. According to the statistical data, in 2013 the utilised agricultural area (UAA) in the EU-28 was almost 175 million hectares (some 40.0% of the total land area).³⁵ Utilised agricultural area abbreviated is the area used for farming, and it includes four land categories: arable land, permanent grassland, permanent crops and other agricultural land such as kitchen gardens. However, unused agricultural land, woodland and land occupied by buildings, farmyards, tracks, and ponds are not part of UAA.³⁶ It is important to mention that based on statistics in 2013, France and Spain had the largest share of the EU-28's agricultural land, with 15.9 % and 13.3% shares respectively. In terms of number of agricultural holdings, the largest number was in Romania (3.6 million), where one third (33.5%) of all the holdings in the EU-28 were located. Poland had the second highest share of agricultural holdings (13.2%), some way ahead of Italy (9.3%) and Spain (8.9%).³⁷

The space for young people to make a contribution in the context of the reformed CAP is even greater having in mind the envisaged measures

³⁴ “Regulation (EU) No 1307/2013”, Official Journal of the European Union, 20.12.2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>, 12/08/2016

³⁵ “Farm structure statistics”, Eurostat Statistics Explained, Data from December 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_statistics, 17/08/2016

³⁶ “Glossary: Agricultural Area (AA)”, Eurostat Statistics Explained, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Agricultural_area_\(AA\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Agricultural_area_(AA)), 15/08/2016

³⁷ “Farm structure statistics”, Eurostat Statistics Explained, Data from December 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_statistics, 17/08/2016, op. cit.

of this new CAP regarding financial support for the young farmers. The aging of the population that does agriculture for a living is a serious problem across all EU member states. This is why giving incentives for young farmers are one of the main strategies set by the newest reform. According to the Eurostat Farm Structure survey conducted in 2010, only 7,5% of all farmers were under 35 years of age. To this data it should be added that the percentage is similar in states that are aforementioned as having the largest share of total European agricultural land, i.e. Spain with 5,3% and France with 8,7% of young farmers under 35. In Romania, state with biggest number of agricultural holdings there is 7,3% young farmers out of total agricultural population.³⁸ One of the reasons that helping farmers is considered to be a priority is environmentally relevant and that is preventing land abandonment that potentially has adverse effects on the environment in the future. Both first and second pillar envisage certain support measures for young farmers. They were introduced by the Regulation (EU) No 1307/2013 of 17 December 2013, that has whole chapter 5 dedicated to young farmers. According to this Regulation, young farmers are considered to be: who are setting up for the first time an agricultural holding as head of the holding, or who have already set up such a holding during the five years preceding the first submission of an application under the basic payment scheme or the single area payment scheme; and who are no more than 40 years of age in the year of submission of the application.³⁹ One of the envisaged measures is business start-up aid for young farmers, which belongs to rural development programmes scheme. And for the first time in the 50-year history of the CAP, the first pillar that consists of direct payments has a specific instrument to support young farmers.⁴⁰

³⁸ "Young farmers and the CAP", Publications Office of the European Union, Luxembourg 2015, <http://bookshop.europa.eu/en/young-farmers-and-the-cap-pbKF0214706/>, 10/08/2016, pp. 6-7.

³⁹ "Regulation (EU) No 1307/2013", Official Journal of the European Union, 20.12.2013, Art. 50.2(a)-(b), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>, 12/08/2016, *op.cit.*

⁴⁰ "Young farmers and the CAP", Publications Office of the European Union, Luxembourg 2015, <http://bookshop.europa.eu/en/young-farmers-and-the-cap-pbKF0214706/>, 10/08/2016, *op. cit.*, pp. 11, 13.

5. Council of Europe

When analysing opportunities youth in Europe has in terms of participating in the field of environment solving environmental issues, the role and influence Council of Europe has in encouraging youth engagement in solving current issues on global and European level, should not in any case be disregarded. In that sense, Council of Europe has youth department that works through system of co-management. This basically means that priorities for the youth department and recommendations for future budgets and programmes are decided jointly by youth non-governmental organisations' representatives and government officials in committees. This only proves that Council of Europe considers youth participation to be extremely important. Furthermore, this represents an efficient mechanism of including young people in the highest levels of decision-making process. In 2008 the Committee of Ministers adopted Resolution CM/Res(2008)23 on the youth policy. It was stated that promoting awareness education and action among young people on environment and sustainable development is regarded as one of the priorities Council of Europe youth policy and action for the years to come.⁴¹ Readiness for creating space for youth to participate in all types of decision-making processes was expressed by the Council of Europe's Youth Sector. In 2015 Joint Council of Youth, which is the central co-managed political body of the youth sector, defined three strategic priorities for the period 2016-2017, and one of them is supporting young people and member States in increasing the participation of young people in democratic processes. Moreover, in the same document three expected results and programme orientations for the mentioned period are formulated. Connected with the first expected result being that young people and youth organisations have developed their competences and knowledge to influence decisions in democratic processes is the programme orientation to promote real influence of young people in decision-making processes, particularly participation at the local and

⁴¹ "Resolution CM/Res(2008)23 on the youth policy of the Council of Europe", adopted by the Committee of Ministers on 25 November 2008, Art. 1.a., http://www.coe.int/t/dg4/youth/Source/IG_Coop/Documents/CM_Res_08_youth_policy_en.pdf, 17/08/2016

regional level.⁴² It was further stated that: “Youth work, volunteering and non-formal education will be recognised as models of youth participation that contribute to young people’s self-development and citizenship”.⁴³ This objective of Council of Europe’s youth sector can be applied in strengthening youth participation in environmental decision-making process, and also in non-formal education and training process regarding environmental protection. In this document raising awareness regarding preservation of natural resources or sustainability is not listed among priorities. Nevertheless, this certainly can be included in youth organisations activities, and at the very core of all Council of Europe’s youth department is the aim to strengthen youth participation and activism in all kinds of decision-making and policy creation processes. Furthermore, environmental education and action promoting sustainable development are listed among priorities in Youth department’s brochure “Young people building Europe.”⁴⁴ This proves that this area is also among their key objectives.

It needs to be pointed out that although declaratively environmental protection is put highly on the scale of priorities, more carefully and thoroughly projects from the Council of Europe’s youth department ought to be made. Initial framework for them already exists. The best way to encourage youth participation in policy creation is to give them space to do so. This can be achieved by involving them in institutions that are key players on decision-making processes. Council of Europe gives a unique opportunity for youth representatives to bring decisions on youth policies, priorities and programmes alongside with government officials of all member States.⁴⁵ This is an excellent platform for youth participation in solving environmental issues, as well.

⁴² “2016-2017 Priorities of the council of Europe’s Youth Sector”, Council of Europe, Strasbourg, 3 September 2015, http://www.coe.int/t/dg4/youth/Source/Coe_youth/Youth_sector_priorities_2016-2017_en.pdf, 17/08/2016

⁴³ *Ibid.*

⁴⁴ “Young People building Europe”, Youth policy development, Council of Europe, http://www.coe.int/t/dg4/youth/Source/Resources/PR_material/2015_Young_people_building_Europe_eng_web.pdf, 19/08/2016

⁴⁵ *Ibid.*

The Council of Europe is an organisation with high authority in the whole European continent. It is perfectly natural that this organisation also puts one of the biggest issues today, recognised by all major international organisations, i.e. climate change and sustainable development, among other priorities on its agenda. According to it, main assets of humanity go hand in hand with economic progress, and those are: the quality of the environment and landscapes, human rights and social equity, cultural diversity and democracy. It is worth mentioning what actions the Council of Europe has taken and which documents adopted concerning protection of biodiversity, preserving natural habitats, etc. For a long time the Council of Europe has been active in this area. The first environment programme was launched in 1961, and since then the Council of Europe has adopted the European Landscape Convention, Convention on the Conservation of European Wildlife and Natural Habitats, and the Framework Convention on the value of Cultural Heritage for Society.⁴⁶

Conclusion

It should be noted that there are various opportunities for youth participation in preservation of environment, natural resources and biodiversity. There is an institutional support for this, and certain legal basis. Most of all, youth involvement in creating policies in different fields and participation in democratic processes on institutional level is widely endorsed by the Council of Europe. Its Youth Department is functioning on the basis of co-decision process between youth organisations and states' representatives. Such institutional framework for youth actions is a powerful tool for young people to make their voice heard at an international level. The activities of youth NGOs concerned on environmental measures have support by the most important international organisation in Europe, i.e. the European Union and the Council of Europe. They are well organised, and well connected which causes them to have a significant influence in international arena, especially on politicians and on corporations, even. In the European Union

⁴⁶ "Environment"-The role of Council of Europe, Council of Europe, Human Rights Themes, <http://www.coe.int/en/web/compass/environment>, 29/08/2016

institutional involvement of youth and their NGOs is quite limited compared to aforementioned Council of Europe. It is problematic, since policies created on EU level and its legislation consequently has greater impact on member states and their legislation. There is a room for improvement, but on the other hand institutional participation in policymaking process has to be encouraged on national level as well, by the governments. They are quite often reluctant to do so. Nevertheless, the EU has quite developed environmental policy. It also has a Common Agricultural Policy, which is reformed in a way that endorses the need for the environmental protection. This in combination with support the CAP gives to young farmers opens the space for youth participation in this field as well. There's a chance for young people to get involved through public participation in respect of the drawing up of certain plans and programmes relating to the environment, and there is also right of access to environmental information which is held by public authorities to any natural or legal person, that doesn't even have to prove the interest in the information or state the reason for obtaining the information.

Hand in hand with different encouragements for taking part in decision-making goes education and raising awareness about the protection of the environment. Education is essential in this field. Certain progress was made, but there is a need for a clear strategy and carefully planned systematic approach. Moreover, the role of media in the process of education needs to be strengthened. The environmental education has to be much more than providing mere information, it has to strengthen individuals' problem-solving and decision-making skills. It has to be a worthy supplement to formal education. So far, what should definitely be commended is the work of NGOs in terms of teaching people from a young age about preservation of the environment and also training them for future leaders of tomorrow that will put environmental issues at the top of their agenda. By organising workshops and camps they present young people with different aspects of sustainability and provide them space for finding solutions themselves. Only by including young people in the process of decision-making on environmental issues, this process has a chance of surviving in the long run.

So far, sufficient basis for youth participation in this matter was created, especially at international level. However, it should be further developed and supported by governments in the national framework as well.

Literature

- “Agricultural Brief on CAP”, http://ec.europa.eu/agriculture/policy-perspectives/policy-briefs/05_en.pdf, 10/08/2016
- “Applications closed: Balkan Youth Climate Movement camp (25-31 July 2016)”, Zelena Akcija-Friends of the Earth Croatia, announcement, 10 May 2016, http://zelena-akcija.hr/en/programmes/energy_and_climate_change/applications_closed_balkan_youth_climate_movement_camp_25_31_july_2016, 15/08/2016
- Steward J. Hudson, “Challenges for Environmental Education; Issues and Ideas for the 21st Century”, *Bioscience*, Vol. 41, No. 4, April 2001
- “Climate Action Network Europe-European NGO coalition on climate and energy”, About CAN Europe, <http://www.caneurope.org/about-us>, 10/08/2016
- “Directive 2003/35/EC of the European Parliament and of the Council”, Official Journal L 156, 25/06/2003, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0035>, 15/07/2016
- “Environment”-The role of Council of Europe, Council of Europe, Human Rights Themes, <http://www.coe.int/en/web/compass/environment>, 29/08/2016
- Christian Zacker, “Environmental Law of the European Economic Community: New Powers Under the Single European Act”, *Boston College International and Comparative Law Review*, Vol. 14, January 1991
- “EU Environmental Policies: A short history of the policy strategies”, Dr. Christian Hey, EU Environmental Policy Handbook, European Environmental Bureau, <http://www.eeb.org/publication/chapter-3.pdf>, 03/08/2016
- Henrik Selin, Stacy D. VanDeveer, “EU Environmental Policy Making and Implementation: Changing Processes and Mixed Outcomes”, Paper presented at the 14th Biennial Conference of the European

- Union Studies Association, Boston, Massachusetts, March 2015, <https://eustudies.org/conference/papers/download/79>, 15/08/2016
- “The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies”, European Commission, Environment, June 2016, <http://ec.europa.eu/environment/aarhus/legislation.htm>, 10/08/2016
- “Farm structure statistics”, Eurostat Statistics Explained, Data from December 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_statistics, 17/08/2016
- “Farm structure statistics”, Eurostat Statistics Explained, Data from December 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_statistics, 17/08/2016
- “Glossary: Agricultural Area (AA)”, Eurostat Statistics Explained, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Agricultural_area_\(AA\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Agricultural_area_(AA)), 15/08/2016
- “Integrating environmental concerns into the CAP”, European Commission, 7 June 2016, http://ec.europa.eu/agriculture/envir/cap/index_en.htm#polluter, 10/08/2016
- “Leadership Development Program”, Climate Action Network International, <http://www.climatenetwork.org/campaign/leadership-development-program>, 15/08/2016
- “Letter to Juncker and Tusk on the 2016 G20 Summit”, published on 31 August 2016, <http://www.caneurope.org/publications/letters-to-policy-makers/1206-letter-to-junker-and-tusk-on-the-2016-g20-summit>, 31/08/2016
- “Regulation (EU) No 1307/2013”, Official Journal of the European Union, 20.12.2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>, 12/08/2016
- “Regulation (EU) no 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative”, Official Journal of the EU, OJ L 65, 11.3.2011
- “Regulation (EU) No 1307/2013”, Official Journal of the European Union, 20.12.2013, Art. 50.2(a)-(b), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>, 12/08/2016

- . “Resolution CM/Res(2008)23 on the youth policy of the Council of Europe”, adopted by the Committee of Ministers on 25 November 2008, Art. 1.a., http://www.coe.int/t/dg4/youth/Source/IG_Coop/Documents/CM_Res_08_youth_policy_en.pdf, 17/08/2016
- “Single European Act”, Article 130r, Official Journal of the European Communities, No L 169 / 12, 1987, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1987:169:FULL&from=cs>, 10/07/2016
- “Sustainable Development Goals, United Nations website, <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>, 21/08/2016
- “UNEP and Youth”, <http://www.un.org/youthenvoy/2013/08/unep-and-youth/>, 26/08/2016
- “Young farmers and the CAP”, Publications Office of the European Union, Luxembourg 2015, <http://bookshop.europa.eu/en/young-farmers-and-the-cap-pbKF0214706/>, 10/08/2016,
- “Young People building Europe”, Youth policy development, Council of Europe, http://www.coe.int/t/dg4/youth/Source/Resources/PR_material/2015_Young_people_building_Europe_eng_web.pdf, 19/08/2016
- “Youth and the Environment”, United Nations Department of Economic and Social Affairs, World Youth Report, 2003, <http://www.un.org/esa/socdev/unyin/documents/ch05.pdf>
- “Youth and Environment Europe”, What is YEE, basic info, <http://yeenet.eu/index.php/about-yeet/basic-info>, 20/07/2016
- “Zelena Inicijativa”, Mission and vision, published on September 2011, <http://zelenainicijativa.rs/en/o-nama/misija-i-vizija>, 15/06/2016
- “2016-2017 Priorities of the council of Europe’s Youth Sector”, Council of Europe, Strasbourg, 3 September 2015, http://www.coe.int/t/dg4/youth/Source/Coe_youth/Youth_sector_priorities_2016-2017_en.pdf, 17/08/2016

Misuse of Social Networks for Radicalization of Youth

Nikola Paunović

Ph.D candidate, University of Belgrade

Abstract: The paper discusses the impact of social networks on the radicalization of young people from the recruitment process through post recruitment ideological radicalization. The reason for the selection of topic is increasingly common misuse of social networks for radicalization of young people. The article is divided in five parts. In the first part, author analyzes factors which affect radicalization of youth. In the second part, paper deals with the role of social media in radicalization of youth. In the third part, author challenges the established view that women are exclusively victims and points out that they can also be carriers of online radicalization through the misuse of the content intended for potential female companions. In the fourth part, author considers online hate speech in context of social media policy. The last part of the paper is dedicated to the model of counter-radicalization of young people. The main goal of this article is to demonstrate causal link between the misuse of social media and radicalization of young people. In conclusion it is stressed out that in the area of prevention of radicalization of youth key role should be promoting intercultural understanding because in this way it would be possible to achieve the strengthening of values of mutual respect.

Key words: radicalization, youth, social networks, hate speech, online propaganda.

Introduction

The paper starts from the idea that the role of the Internet and social networks for the radicalization of young people is not exhausted exclusively in the recruitment of foreign terrorist fighters or incitement to commit terrorist acts, but it is used as a platform for the expansion of online hate speech against opponents through violent xenophobic campaigns. For that reason, special attention is paid to trends in the process of radicalization, as well as developing existing practices. Anyway, it is emphasized that although these factors may be caused by reasons situational nature such as poverty, discrimination and social segregation, the main driver of violence are ideological radicalized ideas transmitted to an unspecified group of persons via the Internet. In this way, extremist groups create their own Internet platform for online propaganda in order

to attract young people looking for engaging content that reflects their interests, using primarily platforms popular among youth. Through cyberspace extremists elicit young people to support their ideology which encourages the development process of self radicalization and therefore the paper argues that every young person with an internet connection is at risk to access web sites which promote terrorist groups or provide video images of their activities in which terrorists are usually portrayed as heroes. Consequently, the basic idea of this paper is that every young person through the Internet and social networks can be exposed to radicalization.

In this respect, it is pointed out that by using social media platforms such as Facebook, Twitter and YouTube, as well as many other online sites, extremists convey negative feelings toward the enemies, incite violence, slave prisoners, create virtual community with like-minded people, find religious justifications for their activities and communicate with potential recruits. In particular, author pays attention about the role of each social network in the process of radicalization of young people, and indicates that terrorist groups could use Facebook to share private messages and information in connection with realization of the attack, which individuals can support via “like”, Twitter to spread propaganda and announcements releases, and YouTube to upload a video on how to make an explosive device or handle a weapon, successfully conduct the attack, lecture on the spread of radical ideas, etc. It is also stressed out to specific forms of abuse of Internet for interaction with young people, such as blog posts, messages, forums, chat rooms and dating sites as a support and encouragement for the realization of violence.

Radicalization of youth

Firstly, in the context of radicalization of youth it is necessary to understand that the recruitment process requires tackling the following aspects, the various motives that lead individuals to seek, accept, or refuse certain roles, the recruitment areas in which potential members are approached, the criteria by which they are selected, the characteristics and aims of those selecting them. From an organizational perspective, recruitment is never a static process and as in logs of regular

employment, is driven by identified needs and expectations such as development strategies, hiring committed and reliable individuals are part of any forms of recruitment process. Transnational networks constitute another serious matter of concern because of the multiplication of cases of young European citizens joining conflict zones alongside Muslim activists, especially in regards to Syria since 2011.¹ Finally, worth of concern is issues of self-radicalization, associated with the development of new communication technologies refers to category of individuals who, alone in front of their computers, decide to take action after surfing on jihadist websites or forums. Therefore, the extension of the powers of the police and intelligence services in the name of a rather questionable precautionary principle that involves early detection online of individuals at risk and allows for more intrusive control of the Internet.² For some authors, self-radicalisation and radicalisation via the internet is one and the same thing. For others, the processes are different. What distinguishes self-radicalisation from radicalisation via the internet is that it takes place in isolation, and implies a process whereby no contact is made with other terrorists or extremists, whether in person or virtually. While the internet may present fewer hurdles to interaction than physical meetings, the argument that radicalisation requires human interaction and physical proximity fails to accept that we live in a digital era where our 'online' activities are an extension of our 'offline' lives.³ Therefore, face-to-face interaction with terrorist operatives is no longer a requirement for radicalization. Individuextremists, or lone wolves, are increasingly self-radicalizing online with no physical interactions with established terrorist groups or cells.⁴

¹ Didier Bigo *et alia*, *Preventing and countering youth radicalisation in the EU*, Directorate general for internal policies, policy department: citizens' rights and constitutional affairs, Brussels, 2014, pp. 13-14.

² *Ibid.*, p. 16.

³ Ines Von Behr *et alia*, *Radicalisation in the digital era*, RAND Corporation, Brussels, 2013, p. 20.

⁴ Anti- defamation league, „The Perils of Online Recruitment & Self-Radicalization“, New York, 2014, p. 1 <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/homegrown-islamic-extremism-in-2013-online-recruitment-and-self-radicalization.pdf>, 1.5.2017.

Radicalization is thought to occur during adolescence or shortly afterwards among young adults who are impressionable and seek to resolve personal negotiations of identity. Typically adolescence is a period of maturation in which young people experiment with their identity, group relationships, political ideologies and their place in the world. Becoming involved in visible and distinct counter-cultures is a part of maturation so understanding the pathways to violent radicalization must take account of this maturational context and requires a distinct analysis.⁵ The United Nations, for statistical purposes, defines ‘youth’, as those persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States. The Secretary-General first referred to the current definition of youth in 1981 in his report to the General Assembly on International Youth Year (A/36/215, para. 8 of the annex) and endorsed it in ensuing reports (A/40/256, para. 19 of the annex). However, in both reports, the Secretary-General also recognized that, apart from that statistical definition, the meaning of the term ‘youth’ varies in different societies around the world.⁶

Terrorist radicalization is a process whereby an individual comes to accept terrorist violence as a possible, perhaps even legitimate, course of action. This may eventually, but not necessarily, lead this person to advocate, act in support of, or engage in terrorism. It may occur in a great variety of circumstances in different ways and at different speeds, but each case of terrorist radicalization and recruitment depends on intersection of an enabling environment with the personal circumstances and psychology of a given man or woman.⁷ However, radicalization which means the process of developing extremist ideologies and beliefs needs to be distinguished from action pathways which is the process of engaging in terrorism or violent extremist actions. Ideology and action are sometimes

⁵ Bhui Kamaldeep, Dinos Sokratis, Jones Edgar, Psychological Process and Pathways to Radicalization, *Bioterrorism & Biodefense*, No. 5, 2012, p. 1.

⁶ United nations youth, “Definition of youth“, <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>, 30.4.2017.

⁷ OSCE, *Preventing terrorism and countering violent extremism and radicalization that lead to terrorism, a community-policing approach*, Organization for Security and Co-operation in Europe, Vienna, 2014, p. 35.

connected, but not always.⁸ Most people who harbor radical ideas and violent justifications do not engage in terrorism, just as many known terrorists—even many of those who carry a militant jihadi banner are not especially pious and have only a cursory understanding of the radical religious ideology they claim to represent.⁹

Some authors propose that three factors comprise the radicalization process that leads to intense commitment to radical means. The first factor exists at the individual level, and represents the radical individual's motivation. This factor identifies the goal the individual is trying to achieve through radical means. The second factor is group ideology, and approaches radicalization from the cultural level. This factor acknowledges that an individual's choices are determined by the cultural milieu in which he or she is embedded. And finally, the third factor approaches radicalization from the social level, and understands it as a process steeped in group dynamics.¹⁰ Ideology is relevant to radicalization because it identifies radical activity (such as violence and terrorism) as the means of choice to the goal of personal significance. This function of means suggestion, appears central to any terrorism justifying ideology regardless of its specific content, whether it be ethno-nationalist ideology, socialist ideology, or religious ideology. Most terrorism justifying ideologies identify three essential ingredients: a grievance, a culprit, and a method. The first step is the identification of a grievance, that is, an injustice or harm that has been suffered by the group. Once the grievance has been identified, the ideology blames an outgroup as responsible for perpetrating the aforementioned grievance. And finally, the ideology must provide a solution to this problem; it must identify a morally warranted and effective method for cleansing one's group from this dishonor. The terrorism justifying "ideology" need not be more complicated, and these three ingredients are sufficient in

⁸ Randy Borum, „Radicalization into Violent Extremism I: A Review of Social Science Theories“, *Journal of Strategic Security*, Vol. 4, No. 4, 2011, p. 9.

⁹ Ibid., p. 30.

¹⁰ Arie W. Kruglanski, David Webber, „The Psychology of Radicalization“, *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 8, 2014, p. 380.

convincing entire societies to rally around the flag of their culture and mercilessly annihilate other human beings.¹¹

The radicalisation mechanisms are a product of interplay between push and pull factors within individuals. The push factors involve: social, political and economic grievances; a sense of injustice and discrimination; personal crisis and tragedies; frustration; alienation; a fascination with violence; searching for answers to the meaning of life; an identity crisis; social exclusion; alienation; marginalisation; disappointment with democratic processes; polarisation, etc. On the other side the pull factors are a personal quest, a sense of belonging to a cause, ideology or social network; power and control; a sense of loyalty and commitment; a sense of excitement and adventure; a romanticised view of ideology and cause; the possibility of heroism, personal redemption, etc.¹² The actual radicalisation process happens gradually and can run from a few months to years. The typical pattern has four overlapping phases: 1) pre-radicalisation, 2) conversion, 3) indoctrination and 4) actual terrorism. The process is unique to every person and there seems not to be a common profile of home grown terrorists. However, entering the process of radicalisation does not necessarily mean that an individual progresses through all four stages and become a terrorist. There is no determinism in the process and people may exit at any given phase. In phase of pre-radicalisation there is no specific signs of radicalisation. Second phase is characterized by changed appearance, gradual rejection Western lifestyle a change of personality (a gradual isolation from former life), a change in religiosity, affiliation with like-minded individuals etc. the Internet provides easy access to material about radical Islam and Jihad literature. Phase of indoctrination means travel to a Muslim country and preferably an area of conflict, training camp attendance, strengthening of collective identity etc. Last phase implies an action for example purchase of bomb making material or other means of terror, test run, reconnaissance.¹³

¹¹ Ibid., p. 382.

¹² Magnus Ranstorp, "The Root Causes of Violent Extremism" RAN Centre, *European Commission*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, 1.5.2017.

¹³ Tomas Precht, *Home grown terrorism and Islamist radicalisation in Europe*, 2007, pp. 83-85.

To sum up, radicalization is multi-determined; it is driven and sustained by multiple causes, rather than a single cause. Causal factors often include broad grievances that “push” individuals toward a radical ideology and narrower, more specific “pull” factors that attract them. But, different pathways can lead to radicalization (sometimes called the principle of equifinality); conversely, different persons on a shared pathway or trajectory may have different outcomes (sometimes called the principle of multifinality). For some persons, religion leverages their attachment to a grievance. For others, a grievance leverages their attachment to religion. For some, ideological commitment leads to group affiliation. For others, social or group affiliations lead to ideological commitments. For some, the strength of personal conviction and commitment to the cause precedes their willingness to take subversive action. For others, engaging in subversive actions strengthens their personal conviction and commitment to the cause.¹⁴

The role of social media in radicalization of youth

Social networks were developed not so long ago as online news and social networking service where users post and interact with messages, connect with friends, family and other people they know and share photos and videos. YouTube, Facebook, Twitter, and other social media sites now interact with one another because users posting a status update or message to one site automatically updates the other social networking sites. In this manner, social media heightens user awareness, connects a multitude of users at a global level, and distributes information to those users quickly and efficiently.¹⁵ However, rapid development of such social media led to misuses by influencing the attitudes and behaviors of populations worldwide with one user’s tweet or social media status update, which forwards the information to all the other major social media applications

¹⁴ Randy Borum, “Radicalization into violent extremism II: A review of conceptual models and empirical research” *Journal of Strategic Security*, No. 4 Vol. 4, 2011, pp. 57-58.

¹⁵ Robin L. Thompson, “Radicalization and the use of social media”, *Journal of Strategic Security*, Vol. 4, No. 4, 2011, p. 171.

causing radicalization of people. The formula which explains how this happens is simple. Bloggers discuss the event and provide their opinions, Twitter hashtags record the tweets relating to the event with a video or photo, Facebook's users share information back and forth via their accounts with links to YouTube videos in order to give a chance people to see the event for themselves.¹⁶ Terrorist groups understand that if they want to reach out to the younger generation, this is an excellent vehicle. Facebook and YouTube evolve, seemingly infinite avenues for promoting jihadist messages by sending, sharing online radical content and creating group pages and linking them. Twitter is another Internet social network that terrorist groups are using for sharing their propaganda out in almost real time. Terrorist groups use Twitter to put out fake news stories, lure followers, and win sympathy. Despite Twitter has suspended many accounts in order to prevent itself from becoming a platform of choice for illicit goals and objectives, the terrorists have generate an almost immediate response as soon as they appear. For example, when the Syrian extremist organization al-Nusra Front's Twitter accounts were shut down, the group had opened up a new account that had more than 20,000 followers within 24 hours.¹⁷

The Internet plays a vital role in creating social bonds that are necessary for radicalization and recruitment, as well as providing a venue for perpetuating radicalization among groups of recruits. If youth have begun to explore these areas and have formed bonds with other like-minded individuals, (whether they are peers in similar situations or recruiters, online or offline), their radicalization may then progress inside these groups.¹⁸ Videos distributed over the Internet are a versatile and effective means of reaching audiences. While well-structured groups may have the capacity to create and host videos on their own websites,

¹⁶ Ibid., p.175.

¹⁷ Maeghin Alarid, "Recruitment and Radicalization: The Role of Social Media and New Technology", in: Michelle Hughes and Michael Miklaucic (eds.), *Impunity: Countering Illicit Power in War and Transition*, Center for Complex Operations and the Peacekeeping and Stability Operations Institute, Washington, DC, pp. 317-318.

¹⁸ Catherine Bott, *et alia*, *Recruitment and Radicalization of School-Aged Youth*, The Homeland Security Institute, Arlington, 2009, p. 56.

YouTube enables anyone with Internet access the ability to upload videos, watch them, and pass them on to others. Many of the online videos appear to be designed to either directly target youth audiences or to be attractive to young persons. Web forums and chat rooms are places where curious youth may go to explore and ask questions about political or religious issues, and where more opinionated forum members express volatile views, redistribute content, and provoke each other. Private online forums and e-mails are used by terrorist recruiters to vet potential members. Social networking websites are an emerging medium where terrorist groups are attempting to gain a foothold in order to disseminate their messages and connect with potential sympathizers and recruits. In a single online location, they can connect with millions of users in pre-existing networks and user interest groups, use these networks to disseminate text, photo, and video propaganda, search and view user information, cull potential recruits, and contact potential recruits through private messages.¹⁹

Anyway, online radicalization to violence is the process by which an individual is introduced to an ideological message and belief system that encourages movement from mainstream beliefs toward extreme views, primarily through the use of online media, including social networks such as Facebook, Twitter, and YouTube. It does not occur after viewing one video or reading one online post but happens gradually. The factors that influence a specific individual can change for him or her depending on the time or circumstance. Consumers of online extremist content can also develop or increase feelings of superiority, moral outrage, desensitization to violence and willingness to commit acts of violence in furtherance of a particular cause.²⁰ Even we speak about radicalization it is necessary to make difference between cognitive and violent radicalization. On the one hand, cognitive radicalization is the process through which an individual adopts ideas that are severely at odds with those of the mainstream, denies the legitimacy of the existing social order, and seeks to replace it with a new structure based on a completely different belief system. On the other

¹⁹ Ibid., pp. 58-59.

²⁰ International Association of Chiefs of Police, Office of Community Oriented Policing Services, "Online Radicalization to Violent Extremism", awareness brief, Washington, DC, 2014, p. 1.

hand violent radicalization occurs when an individual takes the additional step of employing violence to further the views derived from cognitive radicalism.²¹ Terrorists have good reasons to use social media. First, these channels are by far the most popular with their intended audience, which allows terrorist organizations to be part of the mainstream. Second, social media channels are user-friendly, reliable, and free. Finally, social networking allows terrorists to reach out to their target audiences and virtually “knock on their doors”—in contrast to older models of websites in which terrorists had to wait for visitors to come to them. New communication technologies, such as comparatively inexpensive and accessible mobile and web-based networks, create highly interactive platforms through which individuals and communities share, co-create, discuss, and modify content. With social media, information consumers also act as communicators, vastly expanding the number of information transmitters in the communication market. This two-way communication promotes creation of small, diffused sets of communicators and groups. Virtual communities using social media are increasingly popular all over the world, especially among younger demographics. Terrorists’ most important purposes online are propaganda, radicalization, and recruitment. Social networking sites allow terrorists to use a targeting strategy known as narrowcasting. Narrowcasting aims messages at specific segments of the public defined by values, preferences, demographic attributes, or subscription. An online page, video, or chat’s name, images, appeals, and information are tailored to match the profile of a particular social group. These methods enable terrorists to target youth especially.²²

Facebook is especially important for letting terrorists find mainstream Islamic youth who may be occasional viewers of jihadist content and link them to the more conspiratorial jihadist forums that primarily attract already hard-core jihad sympathizers. Generally, two types of Facebook pages with terrorist content can be identified: official and unofficial.

²¹ Lorenzo Vidino, James Brandon, *Countering Radicalization in Europe*, The International Centre for the Study of Radicalisation and Political Violence, London, 2012, p. 9.

²² Gabriel Weimann, “New Terrorism and New Media“, Commons Lab of the Woodrow Wilson International Center for Scholars, publications, Vol. 2, 2014, pp. 2-3.

Official pages are often introduced with a statement by the sponsoring group, which also has other internet forums and media. An example is the “Al-Thabaat” page, emerging on Facebook on May 5, 2013, and describing itself in the “About” section straightforwardly as “Jihadi page for the group, ‘Ansar al-Islam.” Not surprisingly, the page offers links to the official forum, and also the Twitter account, of Ansar al-Islam. Unofficial pages, by contrast, are mostly maintained by sympathizers who disseminate propaganda or instruction material. For example, jihadists allegedly supporting the Islamic State in Iraq and the Levant launched a website-based encryption program called “Asrar al-Ghurabaa,” (Secrets of the Strangers), which users can utilize to securely communicate.²³

Twitter has recently emerged as terrorists’ favorite Internet service, even more popular than self-designed websites or Facebook, to disseminate propaganda and enable internal communication. A prime example is the fake “breaking news” of a bomb attack inside the White House, which the Syrian Electronic Army tweeted via a hacked news agency’s account on April 23, 2013. Terrorists mainly use Twitter to communicate with sympathizers. The tweets also included updates from various theaters of operations and propaganda releases. Twitter has become the main hub for the active dissemination of links directing users to digital content hosted on a range of other platforms. Twitter may also be used for practical communication. When US airstrikes against Syria seemed imminent in August 2013, several jihadi and Hezbollah groups in Syria used Twitter’s real-time function to exchange urgent communications, preparing for attacks that they thought were aimed at themselves. Some experts believe that Twitter also could be used to help terrorists coordinate actual attacks.²⁴

YouTube as the gigantic video-sharing service has become a significant platform for jihadist groups and supporters, fostering a thriving subculture which uses it to communicate, share propaganda, and recruit new individuals. Its massive global audience ensures that jihadists can simultaneously aim at both potential recruits and targets for terrorism. Many YouTube pages have posted terrorist clips, some correlated with

²³ Ibid., pp. 6-7.

²⁴ Ibid., pp. 8-9.

major terrorist events around the world. On April 30, 2010, the Tehreek-e-Taliban Pakistan group created its official YouTube Page. One day later, the terrorist organization posted its first video, a claim of responsibility for the attempted 2008 Times Square attack. YouTube, like the other leading social media sites, forbids any content that would be regarded as an incitement to violence, and has also responded to numerous government requests to remove videos of radical groups. Despite their efforts, many videos remain available and even more terrorist propaganda is constantly being posted.²⁵

Important factor to consider in the process of radicalization is the role of social networks. Group phenomenon is a strong factor in creating such network, because the potential jihadists were close friends or relatives when joining terrorist network and have done so not individually but as a group. Many youth enter the circles of radicals after the society rejected them by finding virtual networks online, or in youth clubs and places of worship.²⁶ The messaging on these sites seeks to create a consistent voice to block out any alternative views. This is done in many ways such as having commentary on recent events, newsletters, editorials that fit with the aims of the group, multimedia files, and in some cases, even a section with jokes and cartoons. Garnering the support of individuals is further encouraged by alluding that the mainstream views are contributing to the demise of the cause and only the radical perspectives put forth will attain the end state. This “with us or them” attitude seeks to divide as there is only one proper course of action. This is most prevalent in the content of Wahhabi and Salafi Jihadist groups purporting the “Saved Sect” view. The “Saved Sect” refers to only one interpretation of Islam is true and only followers of it will be saved. In extreme cases where the group condones suicide bombings, the final wills of young attackers have been posted online after their attack is carried out. Developed specifically to disseminate online, these documents and videos glorify violence and seek to encourage others to violence on the name of the cause. Message boards serve as a conduit to pass operational knowledge on to newly inspired

²⁵ Ibid., pp. 10-12.

²⁶ Margarita Bizina, David H. Gray, “Radicalization of Youth as a Growing Concern for Counter-Terrorism Policy”, *Global Security Studies*, Vol. 5, No. 1, 2014, p. 75.

youth. Online message boards are also used to spread less hateful but equally supportive messages.²⁷

Interactive chat rooms and bulletin boards are just the beginning for how extremist organizations are attracting young people. A number of larger groups have created violent online games with inappropriate plots that seek to glorify violence. Extremist groups have long used the internet as a means to disseminate music or lectures that encourage violence or support of radical ideas. For example, despite steps taken by authorities and YouTube, speeches by radical clerics such as Anwar al-Awlaki are widely available. In his speeches, interviews, and blog postings, Awlaki has called civilian aircraft legitimate targets and praised the actions of those who have carried out terror attacks. In some cases, the images would be considered graphic for a person of any age. For example, a site geared toward children included a graphic picture of a young female suicide bomber after an attack that killed two and wounded 17 in Jerusalem. The image, taken at the bombsite, showed the severed body of the young girl and was accompanied by a caption commending the attack and praising her actions. Continuing with the interactive theme, other sites with equally graphic images have included comment boards to share thoughts on the images and to rate them out of five stars. In many cases, the videos that are uploaded for viewing on extremist sites are just as graphic as the images and incorporate text or music related to the cause. Video from areas of conflict showing attacks using improvised explosive devices and beheadings can be found.²⁸

Examples show that there are two main ways to get in touch with online radicalization content which led to notions of self-radicalization.

On the one hand is accidental discovery while surfing through Internet. Exactly that happened to Roshonara Choudhry, young girl and granted student who told police she had wanted to die as a martyr after watching more than 100 hours of video sermons from the extremist cleric Anwar al-Awlaki which she had come upon on YouTube, because she had been

²⁷ National security criminal investigation program "Youth online and at risk: radicalization facilitated by the internet", Royal Canadian Mounted Police, Canada, 2011, pp. 11-13.

²⁸ Ibid., pp. 14-16.

learning more about her faith.²⁹ She has been jailed for life for trying to assassinate MP Stephen Timms and during the interview she confessed attempt to murder Timms as punishment for his support for the Iraq war. Finally, she said Awlaki's sermons made her believe that "we shouldn't allow the people who oppress us to get away with it". The lesson learnt from this case is that despite of the fact she was the top student and wanted to be a teacher, the use of Internet and social media make her an evil person. In addition, this is good example of how terrorist online propaganda can persuade any young person, even well-educated, to believe in anything. She did nothing wrong, she just wanted to learn more about her faith and even more, she believed that extremist who shared his sermons was an Islamic scholar. This case considers how gender limitations in the physical world were a possible factor in precluding Choudhry from exploration of both Islam and Islamism offline, and driving her online. In this case, lack of religious knowledge made her particularly vulnerable to extremist ideology, and this susceptibility was increased through Internet socialization and the perceived group. Choudhry appears a lone wolf: but paradoxically, her radicalization, both in its early stages through her real world milieu and then later, online, can be regarded as a social phenomenon.³⁰ This is an example how impact of social networks on the radicalization of young people passes from the recruitment process through post recruitment ideological radicalization.

Another great example of post recruitment radicalization of youth is 18-year-old Chesser who, after converted to Islam, quickly became radicalized, solely on the Internet. Thus, since the summer of 2008 he began posting views that supported Islamist terrorist groups, watching sermons by Anwar al Awlaki, and exchanging e-mails with the cleric about joining Al Shabab. By 2009, Chesser committed himself solely to using his computer and graphics skills to contribute to and promote violent extremist messages. Finally, in 2010, he uploaded a YouTube video

²⁹ Vikram Dodd, „Roshonara Choudhry: I wanted to die ... I wanted to be a martyr“, 4 November 2010, *The guardian*, <https://www.theguardian.com/uk/2010/nov/04/stephen-timms-attack-roshonara-choudhry>, 29.4.2017

³⁰ Elizabeth Pearson, "The Case of Roshonara Choudhry: Implications for Theory on Online Radicalization, ISIS Women, and the Gendered Jihad", *Policy & Internet*, Vol. 8, No. 1, 2016, p. 23.

in which he threatened the creators of the television show *South Park* after an episode depicted the Prophet Muhammad dressed in a bear costume.³¹ However, Some Twitter postings may seem at first glance to be nonthreatening and perhaps could even be considered constructive. For example, one Twitter posting announced the opening of schools in the city of Raqqa, Syria (considered the capital of the Islamic State) for English speaking children; these schools promised education for both boys and girls. Opportunities for full and part-time teachers were available at the schools as well. The ISIS flag prominently pictured on the announcement along with the heading “attention english speaking muhajiroon!” however, make the message far more ominous. The ISIS propaganda wing, al-hayat, continues to mass produce slick videos that mimic Hollywood action films and music videos and are obviously targeted to young Westerners. The videos often include music with lyrics translated into English and a number of European languages. More recent videos feature English speaking jihadists.³²

On the other side is deliberately way to get in touch with online radicalization content by surfing extremist websites and distributing material as part of a ‘conspiracy to wipe out’ non-Muslims. This was a case with Hammaad Munshi, 18, who set up a website giving advices on how to make bombs, detonators and use machine guns.³³ A guide to death and explosives was found in his home and inside his wallet were the handwritten dimensions of a sub-machine gun taken from a book on homemade firearms. Munshi used an online Arabic profile *fidadee*, which means a person ready to sacrifice themselves for a particular cause. He ran a website selling hunting knives and Islamic flags. On his PC were al-Qaeda propaganda videos and recordings promoting ‘murder and destruction. This case shows how Internet and created web sites can serve

³¹ International Association of Chiefs of Police, Office of Community Oriented Policing Services, “Online Radicalization to Violent Extremism“, op. cit., p. 2-3.

³² Lisa Blaker, “The Islamic state use of online social media, *Military syber affairs*, Vol. 1, No. 1, 2015, p. 3.

³³ Chris Brooke, Colin Fernandez, “Guilty: Britain’s youngest ever terrorist, 16, who had guide to death and explosives in his home“, *Daily mail*, 19 August 2008, <http://www.dailymail.co.uk/news/article-1046472/Guilty-Britains-youngest-terrorist-16-guide-death-explosives-home.html>, 29.4.2017

for multiple purposes such as incitement others for terrorist purposes, sharing negative feelings about someone etc.

The role of women in radicalization of youth

Women living in Europe and countries outside the Middle East are among the least likely people to be suspected of Islamist extremism, which makes them prime targets for recruitment. Also, women are not often seen as posing an imminent threat and may be able to travel more freely than men without arousing suspicion. Therefore, the ISIL campaign to recruit females was carried out primarily by European women who left their home countries, joined ISIL, and relocated to Syria.³⁴ As violent extremism and terrorist radicalization are still often considered a male issue, the question of women terrorist radicalization is characterized by bias and misconceptions. In situations of conflict and violence, women are often seen as passive, victims, helpless, subordinate and maternal. Such assumptions reinforce gender stereotypes. As a result, women are neither considered to be potential terrorists, nor perceived to be as dangerous as their male counterparts if they were to be involved in terrorism. In fact, the very image of the peaceful woman has been used by terrorist groups to recruit women and to claim an innocent and non-violent character by highlighting the involvement of women in their organizations. As we talk about cases of women radicalization violations of human rights –such as rights to life and physical integrity, right to liberty and security, freedom of expression, freedom of association and the right of peaceful assembly, freedom of thought, conscience, religion or belief, right to the protection of private and family life, can deepen alienation, isolation and exclusion and lead women on the path to violent radicalization. These violations are often used by terrorist groups to establish a victimization discourse, justify their acts and recruit new members, including women.³⁵

³⁴ Maeghin Alarid, „Recruitment and Radicalization: The Role of Social Media and New Technology“, op. cit., p. 322.

³⁵ OSCE, *Women and Terrorist Radicalization*, Organization for Security and Co-operation in Europe, Vienna, 2013, p. 3.

On the other side, women belonging to a diaspora community are able to actively participate in violent jihadi action for an array of reasons that may stem from their position in their host society, their familial role, or the diasporic connections they maintain to their homeland. In the caliphate women participate in peer to peer radicalization of youth through social media accounts, including Twitter and Instagram.³⁶ A carefully planned and conducted media campaign in a variety of languages and on various platforms such as Twitter, Facebook and Instagram focused on female supporters who had already joined the group with the aim of demonstrating that living conditions of ISIS women, both material and intangible, were better than in the West. Social media posts also give a variety of practical and motivational tips and guidance to would-be migrants. They advise them how to travel, what and what not to pack, how to communicate with families back home, and how to adopt different roles in the land of jihad, covering the competencies of housewives and facilitators. Women are taught not only how to cook meals from an ISIS recipe book, but also how to use weapons, administer first aid, and work with computers to design and edit programs to spread ISIS propaganda.³⁷

Online hate speech in context of social media policy

Online hate speech is another hot research area related to youth radicalization. UNESCO has published a study *Countering Online Hate Speech* in 2015 which goes beyond a protection paradigm and proposes a comprehensive social response including monitoring online hate speech, creating civil society coalitions, fostering Internet companies' role in countering online hate speech, promoting media and information literacy and mobilizing news media to counter online hate speech. The study also noted the "fear speech" and "dangerous speech" concepts, which have different resonances in terms of understanding whether offensive expressions of hate can transition to illegal expression of advocacy of

³⁶ Kelsey Ann Comeau, *Imagined Communities and the Radicalization of Second Generation Muslim Women in the United Kingdom*, University of Ottawa, Ottawa, 2016, pp. 60-61.

³⁷ Anita Peresin, "Terror with a Female Face", *per Concordiam*, Vol. 6, No. 4, 2015, p. 32.

incitement to violence, hostility and discrimination.³⁸ In theory, ideal type of dangerous speech, would be one for which all five variables are maximized: a powerful speaker with a high degree of influence over the audience, the audience has grievances and fear that the speaker can cultivate, a speech act that is clearly understood as a call to violence, a social or historical context that is propitious for violence, for any of a variety of reasons, including longstanding competition between groups for resources, lack of efforts to solve grievances, or previous episodes of violence, a means of dissemination that is influential in itself, for example because it is the sole or primary source of news for the relevant audience.³⁹ On the other side Antoine Buyse introduced the term fear speech. These are statements that can incite the fear in one group that ‘the other group’ plans to use violence or even to completely destroy them in the very near future. Sowing hate can be a breeding ground for violence, but extreme fear speech is the figurative detonator in the bomb.⁴⁰

Illegal hate speech, as defined by the Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and national laws transposing it, means all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.⁴¹ The IT Companies and the European Commission also stress the need to defend the right to freedom of expression, which, as the

³⁸ UNESCO, Background note, “Social media and youth radicalization in digital age“, http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/news/background_social_media_radicalization.pdf, 29.4.2017

³⁹ Susan Benesch, “Dangerous Speech: A Proposal to Prevent Group Violence“, World Policy Institute, 2012, <http://www.worldpolicy.org/sites/default/files/Dangerous%20Speech%20Guidelines%20Benesch%20January%202012.pdf>, 2.5.2017.

⁴⁰ Antoine Buyse, “Fear Speech or How Violent Conflict Escalation Relates to the Freedom of Expression“ Human Rights Quarterly, Vol. 36, No. 4, 2014. Cited by: The Netherlands Organisation for Scientific Research, “Fear speech can be more dangerous than hate speech“, <https://www.nwo.nl/en/news-and-events/news/2014/magw/fear-speech-can-be-more-dangerous-than-hate-speech.htm>, 2.5.2017.

⁴¹ Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33178>, 29.4.2017.

European Court of Human Rights (ECHR) has stated, “is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”.⁴² Freedom of expression is a universal human right, a cornerstone of peace and sustainable development, and a key societal value. Digital technologies have opened new avenues for freedom of expression, offering new opportunities to produce, consume and share content. They have also, however, facilitated the spread of online hate speech, extremist propaganda and recruitment for terrorism and radicalization, leading some to argue for tough legal and regulatory responses. But combatting these ills should not be at the expense of freedom of expression.⁴³

When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches which are provided for by the European Convention on Human Rights. Firstly, the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights), where the comments in question amount to hate speech and negate the fundamental values of the Convention. Secondly, the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).⁴⁴

The International Covenant on Civil and Political Rights (ICCPR) is the most important and comprehensive when addressing hate speech and contains the right to freedom of expression in Article 19 and the prohibition of advocacy to hatred that constitutes incitement to discrimination, hostility or violence in Article 20. Article 19 (2) of the ICCPR states that “(e)veryone shall have the right to freedom of

⁴² ECHR case *Handyside v. the United Kingdom* judgment of 7 December 1976, § 49 hudoc.echr.coe.int/web/services/content/pdf/001-57499?..., 25.2.2017.

⁴³ UNESCO, Media services, Combatting Online Hate Speech and Youth Radicalization, http://www.unesco.org/new/en/media-services/single-view/news/combating_online_hate_speech_and_youth_radicalization/, 24.4.2017.

⁴⁴ ECHR, Hate speech, factsheet, http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf, 25.5.2017.

expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The reference to "any other media of his choice" allows extending freedom of expression to new forms of technology, including the Internet. Between Article 19 (3) and Article 20, there is a distinction between optional and obligatory limitations to the right to freedom of expression. Article 19 (3) states that limitations on freedom of expression "may therefore be subject to certain restrictions", as long as they are provided by law and necessary to certain legitimate purposes: for respect of the rights or reputations of others, for the protection of national security or of public order (*ordre public*), or of public health or morals. Article 20 states that any advocacy of (certain kinds of) hatred that constitutes incitement to discrimination, hostility or violence "shall be prohibited by law". In particular there is a grey area in conceptualising clear distinctions between expressions of hatred, expression that advocate hatred, and hateful speech that specifically constitutes incitement to the practical harms of discrimination, hostility or violence.⁴⁵ Anyway, it is important to stressed out the difference between hate speech and crime, although both have a common element because violations are bias-motivated and committed because of perceived characteristics of the victim that may associate him or her with a certain social group, whom he selected intentionally because of the victim's race, color, religion, national origin, disability, ethnicity, sexual orientation, or gender. However, when speaking of a hate crime, the violation concerns a crime, the act committed (violence, destruction of property, interference with other rights) must constitute a criminal offence under criminal law to be considered a hate crime. Hate speech is based on speech against a victim with the same protected characteristics as hate crime, but it lacks the criminal content. If the bias motive was removed, there would be no criminal offence.⁴⁶

⁴⁵ Iginio Gagliardone, et alia, *Countering online hate speech*, UNESCO, Paris, 2015, pp. 19-20.

⁴⁶ Jo Roels, "The Battle against Hate Speech and Freedom of Expression Online", Research Paper No. 2017/I/4, Charles University in Prague Faculty of Law, Prague, 2017. <https://ssrn.com/abstract=2954422>, p. 2.

In the context of online hate speech it is important to observe policy of social networks. Twitter does not mention explicitly a prohibition of hate speech, but alerts its users that they “may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabelled or are otherwise deceptive”. As its terms of service continue, “Under no circumstances will Twitter be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Services or broadcast elsewhere.” On the other side, YouTube and Facebook make explicit reference to hate speech. YouTube’s terms of service, for example, seek to balance freedom of expression and limitations to some forms of content. As they read, “We encourage free speech and defend everyone’s right to express unpopular points of view. But we do not permit hate speech: speech which attacks or demeans a group based on race or ethnic origin, religion, disability gender, age, veteran status and sexual orientation/gender identity.” This definition is thus wider than the ICCPR’s call for limitation only of speech that constitutes intentional advocacy of hatred that incites discrimination, hostility or violence. It is an example of how private companies can be more restrictive than international law. Facebook’s terms forbid content that is harmful, threatening or which has potential to stir hatred and incite violence. In its community standards, Facebook elaborates that “Facebook removes hate speech, which includes content that directly attacks people based on their: race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender or gender identity, or serious disabilities or diseases”. It further states that “We allow humour, satire or social commentary related to these topics, and we believe that when people use their authentic identity, they are more responsible when they share this kind of commentary. For that reason, we ask that Page owners associate their name and Facebook Profile with any content that is insensitive, even if that content does not violate our policies. As always, we urge people to be conscious of their audience when sharing this type of content”.⁴⁷ The European Union was not blind to the importance of cooperation with private actors to combat hate speech

⁴⁷ Ibid., pp. 29-30.

and announced on 31 May 2016 a code of conduct between the Commission, Facebook, Twitter, YouTube and Microsoft. In this code of conduct, the companies committed themselves to combat the spread of (illegal) online hate speech and committed themselves to review the majority of valid notifications for illegal hate speech in less than 24 hours and, where needed, to disable or remove that content. It is stated that these companies (together with all other platforms and social media companies bear a collective responsibility in promoting and facilitating freedom of expression throughout the online world.⁴⁸

Models of counter-radicalization of youth

The term counter-radicalization should be clarified as a sort of catch-all term that includes three types of initiatives, each with a distinctive objective: de-radicalization, disengagement, and radicalization prevention. De-radicalization measures seek to lead an already radicalized individual to abandon his or her militant views. Disengagement entails a less dramatic shift whereby an individual abandons involvement in a terrorist group or activities while perhaps retaining a radical worldview. Radicalization prevention measures seek to prevent the radicalization process from taking hold in the first place and generally target a segment of society rather than a specific individual.⁴⁹ In context of counter radicalization policy, there are few models that were developed to prevent radicalization and violent extremism, such as The Aarhus model, which developed an effective mentoring program, German project that offers extremists a perspective to reintegrate into society, and finally, UK prevent strategy, which is a part of a broader framework on countering violent extremism (CVE), known as CONTEST. UK prevent strategy prevention is focused on responding to the ideological challenge posed by terrorism and extremism, and the promotion of extremist beliefs. Through engaging with different sectors, it aims to offer practical help to those most vulnerable to extremist ideologies and provide them with advice and

⁴⁸ Jo Roels, „The Battle against Hate Speech and Freedom of Expression Online“, op. cit., p. 13.

⁴⁹ Lorenzo Vidino, James Brandon, *Countering Radicalization in Europe*, op. cit., p. 9.

support. This can involve supporting community based campaigns, mentorship program, capacity building, supporting local authorities, and more.⁵⁰ However, the following models are the most important.

The Aarhus model, offers specific counselling and mentoring services for those who have been radicalized, as well as exit program for those who support or are prepared to carry out violent acts. It is also known for its focus on rehabilitation of fighters that have returned from Syria. Here, rehabilitation involves parents, family networks, social workers and teachers, who all provide support for young people at risk. The *AARHUS MODEL IS COMPOSED BY FOUR ELEMENTS: THE INFO HOUSE, MENTORING PROCESS, WORKSHOPS AND EXIT PROGRAM*. The first piece of information about an individual stepping onto the path of violent extremism often comes from parents, teachers, youth club workers, outreach workers, social workers, and/or the police. On the other hand, specific anti-radicalization measures will be taken in cases where risk factors of violent radicalization are identified. In the mentoring process, mentor has a key role. First, the mentor plays a significant role in the specific de-radicalization process by pointing to the pitfalls, the personal and societal dangers, the illegality as well as the mis-directedness of the particular activism. Second, the mentor helps to find paths of inclusion regarding the activities and tasks in the daily life of the mentee (family, work, education, leisure time). Third, the role of the mentor is to be a well-informed, interested and empathic sparring partner, with whom the mentee can discuss questions and challenges of daily life as well as the ultimate concerns of existential, political and religious questions of life. Furthermore, an important initiative with regard to early prevention is a series of two-hour work-shops held in primary schools as well as high schools. The basic aim is to help pupils and teachers recognize risk factors and markers of possible radicalization processes among their peers in order to be able to spot lurking radicalizing influence from recruiting groups. The workshops aim to develop the young pupils' and students' awareness of digital behaviour, prejudice, exclusion, citizenship and participation in social life, community and society – and subsequently to develop resilience

⁵⁰ The European Institute of peace, news, "How to prevent violent extremism and radicalisation?" <http://www.eip.org/en/news-events/how-prevent-violent-extremism-and-radicalisation>, 30.4.2017.

to the risk factors of violent radicalization by way of acknowledgement of good alternatives regarding political and religious interests and activism. Finally, the exit programme is established for those who are genuinely motivated to successfully complete an exit process, and strong measures are taken to prevent the exit programme from being used as some sort of hiding place for people intending to commit terrorist acts. The purpose of the exit programme is to help men and women who wish to abandon the violent trajectories and find their way back into society and be included in daily social life.⁵¹

German model Violence Prevention Network offers ideas how to gradually address the underlying factors that allow extremist groups to develop. Participants of the program can find a way to leave extremist groups and they can (re)discover the option of a 'normal' life outside extremism. The goal of this model since 2001 is to help radicalized individuals or those who have committed ideologically motivated crimes break away from their faulty ideology and leave the radicalization process. The clients of Violence Prevention Network include right-wing extremists, people with an Islamist ideology, and radicalized Islamists at different stages of radicalization such as: (1) ideologized people with a grievance, (2) ideologized people with an inclination toward violent behavior, (3) ideologized radicals and (4) radicalized people with a high potential for violence. Preventive measures serve to strengthen ambiguity tolerance, help break up an ideologized interpretation framework, recognize early warning signs and facilitate the prevention of radicalization processes. Intervention measures at the beginning of the radicalization process and targeted deradicalization work are used to make people doubt an ideology-driven way of life, their views on society and their goals and actions based on inhumane ideologies. Clients trying to find a way out are offered an opportunity to turn their backs on extremist ideologies. Effective prevention and deradicalization depend on the dialogue between extremists and deradicalization practitioners. The dialogue and the long-term working relationship open the way for self-reflection and questions. Law enforcement measures that are not combined with deradicalization

⁵¹ Preben Bertelsen, Danish Preventive Measures and De-radicalization Strategies: The Aarhus Model, in: Wilhelm Hofmeister (ed), *From the desert to world cities the new terrorism*, Konrad-Adenauer-Stiftung, Singapore, 2015, pp. 243-245.

and rehabilitation approaches won't be successful once offenders are released from prison. This is because in juvenile detention centers, radicals target young people who justify their acts of violence with their ideological motivations, although their worldviews are often inconsistent and unstable.⁵² On the other side, next Germany model of counseling service, established in 2011, identifies few different levels in a deradicalization process. At the pragmatic level, emphasis must be placed on assistance to help the returnee gain a new perspective, for example, in finding a job, education or housing. At the ideological level, any deradicalization process must emphasize the delegitimization and invalidation of extremist group narratives. Returnees need not only refrain from violence, but also adjust their former worldviews. The effective level addresses the need of individuals for emotional support and alternative reference groups. Family, friends and mentors need to take a stance in opposition to the radical group. A disillusioned returnee's social surroundings need to reinforce stability and optimism.⁵³

To sum up local communities and dialogue play essential roles in counter-radicalisation measures. It can better than anyone else spot and maybe prevent young people from entering extremism. Furthermore, the Internet should be used to counter extremism by sitting up web pages to discuss identity/religion. In addition, counter-ideology measures could include non-Islamic ideas and Western values including equality and freedom of speech (in order to create a collective identity and community feeling within society). Finally, public diplomacy should to a larger extent focus on the domestic audience and seek to challenge myths and misperceptions about foreign policy within the Muslim population.⁵⁴

⁵² Judy Korn, Alexander Brammann, "Violence Prevention Network", *per Concordiam*, Vol. 6, No. 4, 2015, p. 29.

⁵³ Julia Berczyk, "Returning from the Islamic State", *per Concordiam*, Vol. 6, No. 4, 2015, p. 17.

⁵⁴ Tomas Precht, Home grown terrorism and Islamist radicalisation in Europe, *op. cit.*, pp. 81-82.

Conclusion

With the massive use of social networks by young people, the number of their abuse in order to radicalization is growing. Since social networks are a place for online dissemination of propaganda and hate speech online, every young person with access to the Internet may be exposed to content from radical ideas, whether they occur through accidental or deliberate findings. In this sense, although it is pointed out that factors which influence the radicalization of young people are poverty, discrimination and social segregation, the main driver of violence are ideological radicalized ideas. They are transmitted through social networks, leading to self radicalization which is understood as a process in which young people, under the influence of radical ideas, independently reviews the earlier attitudes, convert them, indoctrinate themselves, which all leads towards the risk of manifestation of violence. At the same time, this confirms the hypothesis of the article, that there is a causal link between the abuse of social networks and radicalization of young people.

In addition to online radicalization of young people, the other side of activities of extremist organizations which violate the social network is the expansion of online hate speech. Although freedom of expression is a fundamental human right, social networks are often used as a means of abuse in the form of hate speech. However, when establishing the boundaries between what is permissible and impermissible, the freedom of expression and hate speech, distinction should be made between the speech of fear, dangerous speech and hate speech. Not everything that is written with the aim of calling for violence against someone should be considered as hate speech. In this respect, the European Court of Human Rights in its case-law, although it does not distinguish between hate speech, fear speech and dangerous speech, is suggesting that there is hate speech that violates basic human rights guaranteed by the Convention and the speech that, despite hate speech, is not suitable to undermine the basic values of the Convention.

On the other hand, in the process of radicalization, women are more often seen as victims of extremists. However, the practice of radical organizations shows that, in the context of radicalization of young people, the role of women is that through social networks that use young people talk about perfect living conditions in the territories controlled by radical

organizations, in order to attract other women and foreign fighters to join them. In this sense, misuse of social networks by women for radicalization of youth consists primarily in online propaganda in order to gain new supporters.

In the context of the counter radicalization of young people through social networks, different models showed that preventive measures should have the key role with the main objective to continually work on developing a relationship of tolerance on grounds of nationality, ethnicity and religion. In this sense, it is extremely important, with the help of teachers, parents, governmental and non-governmental organizations, to respond at early warning signs in order to facilitate the prevention of radicalization. In case of indoctrination of youth, it is necessary to provide support to eliminate the causes of radicalization in establishing a dialogue with experts, creating living and working conditions that will allow them to refrain from radical ideas. Finally, bearing in mind that social media most often serve as a means of radicalization of youth, de-radicalization process should include creating websites, social groups, tweets and video clips that promote the values of mutual respect.

References

- Alarid Maeghin, "Recruitment and Radicalization: The Role of Social Media and New Technology", in: Michelle Hughes and Michael Miklaucic (eds.), *Impunity: Countering Illicit Power in War and Transition*, Center for Complex Operations and the Peacekeeping and Stability Operations Institute, Washington, DC, pp. 313-330.
- Anti- defamation league, "The Perils of Online Recruitment & Self-Radicalization", New York, 2014, p. 1. <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/homegrown-islamic-extremism-in-2013-online-recruitment-and-self-radicalization.pdf>, 1.5.2017.
- Behr Von Ines *et alia*, *Radicalisation in the digital era*, RAND Corporation, Brussels, 2013, p. 20.
- Susan Benesch, "Dangerous Speech: A Proposal to Prevent Group Violence", World Policy Institute, 2012, <http://www.worldpolicy.org>.

org/sites/default/files/Dangerous%20Speech%20Guidelines%20Benesh%20January%202012.pdf, 2.5.2017

Berczyk Julia, "Returning from the Islamic State", *per Concordiam*, Vol. 6, No. 4, 2015, pp. 13-17.

Bertelsen Preben, Danish Preventive Measures and De-radicalization Strategies: The Aarhus Model, in: Wilhelm Hofmeister (ed), *From the desert to world cities the new terrorism*, Konrad-Adenauer-Stiftung, Singapore, 2015, pp. 243-245.

Bigo Didier *et alia*, *Preventing and countering youth radicalisation in the EU*, Directorate general for internal policies, policy department: citizens' rights and constitutional affairs, Brussels, 2014.

Bizina Margarita, Gray H. David, „Radicalization of Youth as a Growing Concern for Counter-Terrorism Policy“, *Global Security Studies*, Vol. 5, No. 1, 2014, pp.72-79.

Blaker Lisa, „The Ismamic's state use of online social media, *Military syber affairs*, Vol. 1, No. 1, 2015, pp. 1-9.

Borum Randy, "Radicalization into Violent Extremism I: A Review of Social Science Theories“, *Journal of Strategic Security*, Vol. 4, No. 4, 2011, pp. 5-36.

Borum Randy, "Radicalization into violent extremism II: A review of conceptual models and empirical research“ *Journal of Strategic Security*, No. 4 Vol. 4, 2011, pp. 37-61.

Bott Catherine, *et alia*, *Recruitment and Radicalization of School-Aged Youth*, The Homeland Security Institute, Arlington, 2009, p. 56.

Brooke Chris, Fernandez Colin, "Guilty: Britain's youngest ever terrorist, 16, who had guide to death and explosives in his home“, *Daily mail*, 19 August 2008, <http://www.dailymail.co.uk/news/article-1046472/Guilty-Britains-youngest-terrorist-16-guide-death-explosives-home.html>, 29.4.2017

Buyse Antoine, "Fear Speech or How Violent Conflict Escalation Relates to the Freedom of Expression“ *Human Rights Quarterly*, Vol. 36, No. 4, 2014, 779-797. Cited by: The Netherlands Organisation for Scientific Research, „Fear speech can be more dangerous than hate speech“, <https://www.nwo.nl/en/news-and-events/news/2014/magw/fear-speech-can-be-more-dangerous-than-hate-speech.htm>, 2.5.2017.

- Comeau Ann Kelsey, *Imagined Communities and the Radicalization of Second Generation Muslim Women in the United Kingdom*, University of Ottawa, Ottawa, 2016.
- Dodd Vikram, „Roshonara Choudhry: I wanted to die ... I wanted to be a martyr“, 4 November 2010, *The guardian*, <https://www.theguardian.com/uk/2010/nov/04/stephen-timms-attack-roshonara-choudhry>, 29.4.2017
- ECHR, Hate speech, factsheet, http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf, 25.5.2017
- ECHR case Handyside v. the United Kingdom judgment of 7 December 1976, § 49 hudoc.echr.coe.int/web/services/content/pdf/001-57499?..., 2.5.2017.
- Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33178>, 29.4.2017.
- Gagliardone Iginio, *et alia*, *Countering online hate speech*, UNESCO, Paris, 2015.
- International Association of Chiefs of Police, Office of Community Oriented Policing Services, “Online Radicalization to Violent Extremism“, awareness brief, Washington, DC, 2014.
- Kamaldeep Bhui, Sokratis Dinos, Edgar Jones, Psychological Process and Pathways to Radicalization, *Bioterrorism & Biodefense*, No. 5, 2012, pp. 1-5.
- Korn Judy, Brammann Alexander, “Violence Prevention Network“, *per Concordiam*, Vol. 6, No. 4, 2015, pp. 27-29.
- Kruglanski W. Arie, Webber David, „The Psychology of Radicalization“, *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 8, 2014, pp. 379-389.
- National security criminal investigation program „Youth online and at risk: radicalization facilitated by the internet“, Royal Canadian Mounted Police, Canada, 2011, pp. 11-13.
- OSCE, *Women and Terrorist Radicalization*, Organization for Security and Co-operation in Europe, Vienna, 2013, p. 3.

- OSCE, *Preventing terrorism and countering violent extremism and radicalization that lead to terrorism, a community-policing approach*, Organization for Security and Co-operation in Europe, Vienna, 2014, p. 35.
- Pearson Elizabeth, „The Case of Roshonara Choudhry: Implications for Theory on Online Radicalization, ISIS Women, and the Gendered Jihad“, *Policy & Internet*, Vol. 8, No. 1, 2016, pp. 5-33.
- Peresin Anita, „Terror with a Female Face“, *per Concordiam*, Vol. 6, No. 4, 2015, pp. 30-39.
- Precht Tomas, *Home grown terrorism and Islamist radicalisation in Europe*, 2007, pp. 83-85.
- Ranstorpe Magnus, „The Root Causes of Violent Extremism“ RAN Centre, European Commission, 2016. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, 1.5.2017
- Roels Jo, *The Battle against Hate Speech and Freedom of Expression Online*, Research Paper No. 2017/I/4, Charles University in Prague Faculty of Law, Prague, 2017. <https://ssrn.com/abstract=2954422>, p. 13.
- The European Institute of peace, news, „How to prevent violent extremism and radicalisation?“ <http://www.eip.org/en/news-events/how-prevent-violent-extremism-and-radicalisation>, 30.4.2017.
- Thompson L. Robin, „Radicalization and the use of social media“, *Journal of Strategic Security*, Vol. 4, No. 4, 2011, pp. 167-190.
- UNESCO, Media services, *Combatting Online Hate Speech and Youth Radicalization*, http://www.unesco.org/new/en/media-services/single-view/news/combating_online_hate_speech_and_youth_radicalization/, 24.4.2017.
- UNESCO, Background note, „Social media and youth radicalization in digital age“, http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/news/background_social_media_radicalization.pdf, 29.4.2017.
- United nations youth, „Definition of youth“, <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>, 30.4.2017.

Vidino Lorenzo, Brandon James, *Countering Radicalization in Europe*, The International Centre for the Study of Radicalisation and Political Violence, London, 2012.

Weimann Gabriel, "New Terrorism and New Media", Commons Lab of the Woodrow Wilson International Center for Scholars, publications, Vol. 2, 2014, pp. 2-3.

The International Role of The European Union, As Reflected by The Eu Global Strategy¹

Bogdan Mureşan

research associate, Institute for European Studies, Bucharest

Introduction

Regardless of the various contesting views over the definition of the European Union and its international role, it is fair to say that the European space is one of genuine political pluralism and multiculturalism, the history of which goes to prove that between its boundaries had taken shape and concretized most of humanity's greatest discoveries and scientific progress, but also some of humanity's darkest hours, marked by the unprecedented horrors of two World Wars that had left the "Old Continent" mourning. Against the backdrop of Europe's tumultuous past and heavy conscience, for more than 60 years now, there has been a constant talk and struggle aimed at ultimately achieving a sort of "United States of Europe" – a term coined by Winston Churchill in speech in Zurich in 1946. At first an economic union based on pragmatic functionalism followed by a political union anchored in normative idealism. The latter noble aspiration is fairly well captured by the simple yet catchy official motto of the EU: *Unity in diversity*.

Since the Treaty of Rome, which formally established the European Economic Community in 1957, several theories and analytical frameworks have attempted to conceptualize the role of the European construct as a regional and international actor, looking at what the EU is, what it may be and, most importantly, what it *ought* to be. Right

¹ A preliminary version of this paper was presented at the *Youth Perspectives in the United Europe* Conference at the Institute for International Politics and Economics, Belgrade, Serbia, 10 May 2016. On 28 June 2016, the High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, Federica Mogherini, officially presented the text of the "EU Global Strategy for Foreign and Security Policy". The views presented in the article express the author's opinion and not that of the European Institute of Romania.

from the start, it is worth mentioning that the relationship between European Union studies and the broader field of International Relations remains a rather problematic and strained one. It goes without saying that both fields could largely benefit from each other's theoretical and empirical insights and expertise, but they nevertheless tend to be oblivious to one another. On their end, EU scholars often consider their subject so unique that new, sometimes hybrid, theories and frameworks need to be invented and adapted each time they want to understand or explain an empirical phenomenon. At the opposite spectrum, proud IR scholars are often too disinterested in European Union studies and disregard or omit empirical evidence relevant for different IR questions, such as those concerning global governance, theories of integration or New Regionalism. In a nutshell, fuelled by a false academic dichotomy, EU studies face the risk of becoming self-referential and kind of ignored by IR and the broader field of Political Science.²

As an intellectual and political project that blossomed in the aftermath of the Second World War in order to try and ensure a lasting climate of peace and prosperity on the continent, having at core the principle of supranationalism, the European Union, officially born in 1992 at Maastricht, is today a unique political entity, a union of nation-states associated on a federal model. Inside the EU, which is going through a constant and dynamic process of internal transformation and redefinition, the integration process impinges on state sovereignty with impunity. Or, some would argue, at least it used to do so until the historical decision of the United Kingdom to leave the EU – the so-called *Brexit*. According to the official result of the referendum organized on 23 June 2016, 51.9% of the Brits voted in favour of leaving the EU, making their country the first

² For a more detailed and nuanced discussion on this topic, see Alex Warleigh-Lack, "Obsolete if Obstinate? Transforming European Union Studies in the Transnational Era", in: Jens-Uwe Wunderlich and David J. Bailey (eds), *The European Union and Global Governance*, Routledge, Abingdon, 2011, pp. 13–18; Alex Warleigh-Lack and Ben Rosamond, "Across the EU Studies–New Regionalism Frontier: Invitation to a Dialogue", *Journal of Common Market Studies*, vol. 48, no. 4, 2010, pp. 993–1013; Ben Rosamond, "The Future of European Studies: Integration Theory, EU Studies and Social Science", in: Mette Eilstrup-Sangiovanni (ed.), *Debates on European Integration*, Palgrave Macmillan, Basingstoke, 2006, pp. 448–460.

ever to access Article 50 of the Treaty of Lisbon. As a consequence, one British commentator argued that “from now on, the dominant narrative will be one of disintegration, not integration”.³ Nevertheless, for most Euro-enthusiasts, who believe that the UK leaving the EU may actually make the latter stronger, it may just be the best example of a smart, although far from flawless, regional answer in the face of the ambivalent forces that drive the process of globalization.

The present paper generally aims to present, in a non-exhaustive and space constrained manner, the way in which the international role of the European Union is reflected by the new Global Strategy, a substantial document, with many complex dimensions of the EU’s role as a global actor. The first section of the article explores some of the more influential theoretical approaches of the European integration and the EU as an international actor, with an emphasis on the normative power Europe concept developed by Ian Mannes. The second part of the paper will present a brief history of the European strategic thinking that led to the development of the 53 page long programmatic text dedicated to consolidating the international role of the European Union in a connected, contested and increasingly complex world. The third part will highlight the main principles and actions envisioned in the Global Strategy and their relation to the international role of the EU. After a careful read of the document, it becomes obvious that the favourite themes of the Global Strategy, in terms of shared principles and values, are mostly related to democracy, human rights and rule of law, all of which are core norms of the European Union along with the primacy of peace and the promotion of common prosperity.

The International Role of the EU

Conceptual framework

Arguably, one of the most influential definitions for the European Union as an international actor is that of a “civilian power” that utilizes non-military means to project its influence and uphold civilian goals such

³ Charles Grant, “How Brexit is Changing the EU”, *Centre for European Reform*, July 2016, https://www.cer.org.uk/sites/default/files/bulletin_109_cg_article1.pdf, 12/05/2017.

as the defence of human rights, liberty and the support for the consolidation of democratic societies and an open global economy.⁴ But the relationship between European Union studies and the broader field of International Relations remains a rather problematic and sometimes conflictual one. As such, there is no broad consensus between academics on the definition of the EU, in general, and its international role, in particular. Maybe one thing on which we can all agree upon is that the EU is not a traditional actor on the world stage and in the realm of international relations. But that is about it when trying to build consensus on the matter.

Attempts to define the EU in classical, realist terms usually fail because realists are in general sceptical about the prospects of international cooperation, given the constraints of anarchy and the competitive nature of state behaviour, caught between the desire for survival and the lust for power.⁵ More specifically, realist theories assume that “the most basic motive driving states is survival. States want to maintain their sovereignty”.⁶ The Peace of Westphalia from 1648 that ended the Thirty Years War marked the moment when Europe opted for a new system of international relations characterized by the coexistence of a multiplicity of states, each sovereign within its territory, equal to one another and free from any external intervention. In the name of sovereignty, Europe has fought countless wars which led to immense death and devastation. Because of this mindset, “realism is not well designed to explain the political integration of Western Europe”.⁷

⁴ For example, see François Duchêne, “Europe’s Role in World Peace”, in: Richard J. Mayne (ed.), *Europe Tomorrow: Sixteen European Looks Ahead*, Fontana, London, 1972, pp. 32–47; Hedley Bull, “Civilian Power Europe: A Contradiction in Terms?”, *Journal of Common Market Studies*, vol. 21, no. 2, 1982, pp. 149–164; Christopher Hill, (1990), “European Foreign Policy: Power Bloc, Civilian Model – or Flop?”, in: R. Rummel (ed.), *The Evolution of an International Actor: Western Europe’s New Assertiveness*, Westview Press, 1990, pp. 31–55.

⁵ See, for example, Jack Donnelly, “Realism”, in: Scott Burchill et al., *Theories of International Relations* (4th ed.), Palgrave Macmillan, Basingstoke and New York, 2009, pp 31–56.

⁶ John Mearsheimer, “The False Promise of International Institutions”, *International Security*, vol. 19, no. 3, 1994–5, pp. 5–49.

⁷ Frank Wayman and Paul F. Diehl (eds), *Reconstructing Realpolitik*, University of Michigan Press, Ann Arbor, 1994, p. 17.

The founder of structural realism (or neorealism) and one of the most influential contemporary voices in the field of IR, Kenneth Waltz, suggests that Europe will not become a great power “in the absence of a radical change”, through which he essentially means Europe becoming a full-fledged federal state.⁸

One of the main guilty pleasures of the realist theorists is to link the first four decades of European integration to the Cold War international system in arguing that, with the end of bipolarity, the structural conditions for the emergence of European cooperation was altered, with ambivalent effects on the European cohesion and the stability of the continent. According to John Mearsheimer, who grabs on to his trademark pessimistic world view evoking Westphalia, “without the Soviet threat or an American night watchman, Western Europe states will do what they did for centuries before the onset of the Cold War (...) Cooperation in this new order will be more difficult than it was during the Cold War. Conflict will be more likely”.⁹

With that being said, liberals are able to better explain the European integration and the emergence of several European common policies for two reasons. On the one hand, liberals have a more flexible approach than realists when it comes to identifying the actors in international politics, recognizing the role of international, or supranational, organizations. On the other hand, liberals and neoliberals are generally more optimistic on the prospects of interstate cooperation and do not believe that anarchy will inevitably lead to conflict. Therefore, they are more willing to acknowledge the success of the European Community and the European Union.¹⁰

Unsurprisingly, a number of critiques have been developed over the years against the mainstream debate between realists and liberals, which

⁸ Kenneth Waltz, “Structural Realism after the Cold War”, *International Security*, vol. 25, no. 1, 2000, pp. 5-41.

⁹ John Mearsheimer, “Back to the Future: Instability in Europe after the Cold War”, *International Security*, vol. 15, no. 1, 1990, pp. 5-56.

¹⁰ Filippo Andreatta, “The European Union’s International Relations: A Theoretical View”, in: Christopher Hill and Michael Smith (eds), *International Relations and the European Union*, Oxford University Press, New York, 2011, pp. 31-32.

has been deemed by some as too narrow and rigid to really capture the essence and dynamics of international politics. One such approach, rooted in constructivism, emphasizes that states do not seek only material objectives, but are also inspired by ideological motivations. European institutions are therefore to be considered in this light as a normative entity or a normative power.¹¹ “At a minimum, the fact that the EU exists creates pressures to preserve its unity and develops a consistent bias toward common, rather than national, positions. At a maximum, the existence of the EU as an institution that embodies certain principles – democracy, the rule of law, human rights, free markets – creates an incentive for states to sustain those objectives and constitute a ‘European’ identity”.¹²

According to Thomas Risse, in trying to better define the concept of “European identity” and the very meaning of the “social construction of Europe”, social constructivism contributes to a more comprehensive understanding of the EU in at least three ways. First, accepting the mutual constitutiveness of agency and structure allows for a much deeper understanding of the Europeanization process and its impact on statehood in Europe. Secondly, emphasizing the constitutive effects of European law, rules, and policies enables us to study how European integration shapes social identities and interests of actors. And finally, by focusing on communicative practices we can examine more closely how Europe and the EU are constructed discursively and how actors try to accommodate the meaning of European integration.¹³ Nevertheless, Risse warns against the (still) contested nature of the European identity and the wicked temptation of discussing the relationship between European and national identities in zero-sum games.¹⁴ Against the

¹¹ For EU as *normative entity*, see Craig Parsons, “Showing Ideas as Causes: The Origins of the European Union”, *International Organization*, vol. 56, no. 1, 2002, pp. 47-84; for the EU as *normative power*, see Ian Manners, “Normative Power Europe: A Contradiction in Terms?”, *Journal of Common Market Studies*, vol. 40, no. 2, 2002, pp. 235-258.

¹² Filippo Andreatta, “The European Union’s International Relations: A Theoretical View”, *op. cit.*, pp. 36-37.

¹³ Thomas Risse, “Social Constructivism”, in: Antje Wiener and Thomas Diez (eds), *European Integration Theory*, Oxford University Press, New York, 2004, pp. 165-166.

¹⁴ *Ibidem*, pp. 166-167.

backdrop of the ongoing economic malaise and the migration crisis on the “Old Continent”, the anti-EU rhetoric and the inward looking tendency displayed by some Member States, fuelled by various degrees of Euroscepticism and a surging toxic nationalism, had been most preeminent in the discursive practices surrounding *Brexit*. However, other countries like Hungary and Poland do not trail far behind when it comes to publically shaming Brussels for national shortcomings.

From Civilian to Normative Power

The previous sub-section featured examples of the many understandings attributed to the European Union anchored in some of the more influential International Relations theories. Another proposition comes from the field of European Union studies, where some scholars tend to portray the EU as a *sui generis* international actor with a unique international identity. But how did this unique international identity and its qualifying adjective evolve from civilian to normative?

As a key adviser to Jean Monnet, one of the founding fathers of the European Coal and Steel Community in 1952, François Duchêne was present at the laying of the foundation stone of what we have come to know today as the European Union. And, for nearly six decades, through his sustained efforts, he produced a steady stream of ideas about how to build a Europe in which war would never again be possible. Duchêne was convinced that the international role of the European Community should be that of a “civilian power” as the means to exert influence on the world stage and escape the vicissitudes of power politics.¹⁵ According to Kenneth Twitchett and Hans Maull, a civilian power can be defined in the sense that it holds three main features: it upholds the primacy of diplomatic cooperation to solve international problems, it assumes the centrality of economic power to achieve national goals, and it emphasizes the use of legally-binding supranational institutions to achieve international progress.¹⁶

¹⁵ François Duchêne, “Europe’s Role in World Peace”, op. cit.

¹⁶ The concept of *civilian power* is put forth by editor Kenneth Twitchett and followed throughout the book by the other authors. The term suggests that the ECC exercises

By contrast, authors like Hedley Bull, the most influential writer of the *English School*, argued that the ability to become a powerful actor in international affairs requires self-sufficiency and involves the exercise of military power and pleaded for the transfer from North American to European hands of a greater share of the European defence.¹⁷

Building upon these two visions and others, Ian Manners introduced the idea of *normative power Europe* as a framework of analysis for the role of a united Europe in the post-Cold War era.¹⁸ Manners talks about five *core* norms: the centrality of peace, the idea of liberty, democracy, the rule of law and respect for human rights, which make for the normative basis of the European Union and a sort of common guide of foreign policy. To these he adds four “minor” norms – social solidarity, anti-discrimination, sustainable development and good governance. Manners argues that these norms differentiate the European community from other political entities and give it the natural tendency to act in a normative way, in trying to escape great power mentality.¹⁹ As a result of this unique international identity of the EU, it can be expected that the international foreign and security objectives of this organisation will reflect a certain set of norms that are different from the norms of other powers. In Manner’s own words, Europe’s role would not be shaped by “what it does or what it says, but by what it is”.²⁰ In an article from 2006, Ian Manners warns against the risks of militarizing the EU beyond the crossroads provided by the European Security Strategy adopted in 2003, if such a process would take place without critical reflection and in pursuit of “great power” status.²¹

influence by “commerce and diplomacy, not traditional military strength” (p. 2). Kenneth Twitchett (ed.), *Europe and the World: The External Relations of the Common Market*, St. Martin’s Press, New York, 1976; for the same discussion, see also Hans Maull, “Germany and Japan: The New Civilian Powers”, *Foreign Affairs*, vol. 69, no. 5, 1990, pp. 91-106.

¹⁷ Hedley Bull, “Civilian Power Europe: A Contradiction in Terms?”, op.cit.

¹⁸ Ian Manners, “Normative Power Europe: A Contradiction in Terms?”, op. cit.

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ Ian Manners, “Normative Power Europe reconsidered: beyond the crossroads”, *Journal of European Public Policy*, vol. 32, no. 2, 2006, pp. 182-199.

Manner's approach rests upon the perception that the EU created a rather unusual context in which nationalism was seen as a failure, and in which the Union stood as a *sui generis* polity, characterized by co-integration, possessing elements of both intergovernmental and supranational decision-making. Manners noted that the notion of civilian power had become constrained in assumptions about the fixed nature of the nation state, the importance of direct physical power, and the notion of national interest, thus being unfit to reflect the EU's status and role in world politics.²² He adds that the EU diffuses norms in six ways: *contagion*, *informational diffusion*, *procedural diffusion*, *transference*, *overt diffusion* and *cultural filters*. The two main ways of diffusion may be considered contagion and transference, each representative for two different approaches: *power by example* (symbolic normative power) and *power by relations* (substantial normative power). Contagion, representative for the former, is a process through which the "diffusion of norms results from the unintentional diffusion of ideas from the EU to other political actors".²³ Confronted with the policies and the general nature of the EU, other actors of world politics will tend to replicate its behaviour and take it as an example. Transference, representative for the power by relations approach, is more intentional and more materialistic, and is the process in which "diffusion takes place when the EU exchanges goods, trade, aid or technical assistance with third parties through largely substantive or financial means".²⁴

At last, given the EU's quite noticeable limited reach in terms of military power, which, in spite of a Common Security and Defence Policy (CSDP), have so far not allowed the development of common capabilities on par with those of assertive revisionist powers like the Russian Federation, a useful distinction should be made, between the "hard" military power of coercion and the "soft" power of persuasion. The latter rests more on political and economic instruments, empowered by attraction and seduction, and is obviously more compatible with the

²² Ian Manners, "Normative Power Europe: A Contradiction in Terms?", op. cit.

²³ Ibidem.

²⁴ Ibidem.

concept of normative power Europe. Since the European Union's comparative advantage is less military and more economic and value based, being in this category almost as potent as the United States of America, we may conclude that the ability of influencing events by "soft" power is crucial for Europe's role in the world.²⁵

European Strategic Thinking

Since the defeat of the European Defence Community by the French National Assembly in 1954 (in spite of it being a French proposal), the question of the EU assuming a military dimension had remained a closed topic until the signing of the Treaty on the European Union (TEU) in the Dutch city Maastricht in 1992, which signalled the intent of the Member States to move beyond a civilian power Europe after the end of the Cold War and the old bipolar world.²⁶ Like the defence components of the TEU, the 2003 European Security Strategy (ESS) stood as a symbolic signpost at the crossroads of the militarization of the EU.²⁷ The birth of the Common Foreign and Security Policy (CFSP) as the second pillar of the newly founded European Union was marked by the failure to avoid the violent break-up of the Former Yugoslav Republic and the incapacity of the EU to play an important role in ending the bloodshed right in its "backyard", in Bosnia and Kosovo. Both conflicts were eventually solved as a result of the decisive intervention of the United States of America, with very mixed feelings surrounding their outcomes.

With the notable exception of 9/11, in 2003 the international liberal order seemed unchallenged and EU soft power was reaching its peak

²⁵ The term *soft power* was coined by political scientist Joseph Nye. For a detailed discussion on the term, see Joseph Nye, *Bound to Lead: The Changing Nature of American Power*, Basic Books, New York, 1990, Joseph Nye, *Soft Power: The Means to Success in World Politics*, Public Affairs Press, New York, 2004.

²⁶ European Council, *Treaty on the European Union*, February 1992, http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf, 13/05/2017.

²⁷ EU High Representative, *A Secure Europe in a Better World*, December 2003, <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>, 13/05/2017.

with the eastern enlargement approaching the finishing line and the European Neighbourhood about to be launched.²⁸ In 2015, when the reflection process behind the European Union's Global Strategy (EUGS) was advancing full throttle, that world was but a sweet memory, deeply unsettled by the surge of hybrid and asymmetric threats and the return of geopolitics.

For a brief moment in the early 21st century, the apparent successes of the Single Market, the launch of the Euro zone, the assertion of a common foreign policy, the emergence of a security and defence policy, and the blurring of borders within the Schengen zone led some analysts to predict that Europe was becoming a superpower.²⁹

This transformation was driven, among others, by the successive waves of enlargement, the entry into force of the much anticipated Lisbon Treaty in 2009 (signed in 2007) and the exponential development of the Common Security and Defence Policy. The Lisbon Treaty sets out the main coordinates of the European Union's role on the global stage: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law".³⁰

The Treaty of Lisbon amended and modified two pre-existing treaties: the Treaty on European Union and the Treaty of the European Community (TEC), now the Treaty on the Functioning of European Union (TFEU).³¹ The Treaty also contains a number of important new

²⁸ On 1 May 2004, ten new Member States joined the EU: Hungary, Poland, Slovakia, Latvia, Estonia, Lithuania, the Czech Republic, Slovenia (former Communist states from Central and Easter Europe), together with Malta and the Republic of Cyprus; the European Neighbourhood Policy was launched in 2003 and developed throughout 2004.

²⁹ Mark Leonard, *Why Europe will run the 21st Century*, Fourth Estate, London, 2005.

³⁰ European Council, *Treaty of Lisbon*, December 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12007L/TXT>, 15/05/2017.

³¹ Ibidem.

provisions related to the CSDP, including solidarity and mutual assistance clauses. The former states that “the Union and its Member States shall act jointly in a spirit of solidarity if an EU Member State is the object of a terrorist attack or the victim of a natural or man-made disaster”.³² The mutual assistance clause states that “if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 (the right to self-defence) of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States”.³³ However, there is a clause to a clause here, according to which “commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation”.³⁴ The two organisations share a total of 22 members.

The European Union has gradually developed as an actor of foreign policy and security towards the end of the ‘90s, when a series of domestic and external factors have gone to show that there is a need for a new approach for the political integration in Europe and the concerted action for handling the EU’s international relations. “The ESS provided the Union with its first strategic vision, which helped mend the intra-European and transatlantic rift over the 2003 war in Iraq. It did not, however, indicate the means to achieve this vision”.³⁵

The EU Global Strategy

By comparison to 2003, as acknowledged by the new strategy, the world has become more connected, with greater connectivity bringing together a mix of challenges and opportunities. The world has also become

³² Ibidem.

³³ Ibidem.

³⁴ Ibidem.

³⁵ Nathalie Tocci, “The making of the EU Global Strategy”, *Contemporary Security Policy*, vol. 37, no. 3, 2016, pp. 461-472.

more contested and conflictual, notably within the EU and its surrounding regions, on its eastern and southern flanks. And, last but not least, the world has become more complex, with power shifting from west to east but also diffusing beyond state boundaries to non-state actors.³⁶

Back in September 2014, during her hearing at the European Parliament, Federica Mogherini signalled her intention, if she was to be elected by the European Council as the next High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission (HRVP), to engage in a process of strategic reflection.³⁷ On 28 June 2016, in keeping with that promise, Federica Mogherini delivered the text of the “EU Global Strategy for Foreign and Security Policy” to the Heads of State or Government.³⁸ The preparative work to write the EU Global Strategy (EUGS) explicitly sought to craft a common narrative that a wide range of actors – universities, think tanks, Member States, and EU institutions, among others – could share, in an effort to add legitimacy to legality and to avoid the “democratic deficit”.

In sum, the EUGS represents the final and hard-won result of a two year-long reflection, prompted by the European Council Conclusions in December 2013, and coordinated by Mogherini’s Cabinet and the European External Action Service (EEAS), the EU’s diplomatic corps. The extensive “uphill” consultation with the most relevant stakeholders, including third countries representatives, produced the first EU “grand strategy” under the form of a foreign policy and collective security guide whose global nature relates both to its geographical dimension and its inter-sectoral scope.

Some observers have indicated that 2015-2016 was probably not the best time to elaborate a vision that assumes that all Europeans are united by common interests, given the many divisions between Member States

³⁶ Jolyon Howorth, “EU Global Strategy in a Changing World: Brussels’ Approach to the Emerging Powers”, *Contemporary Security Policy*, vol. 37, no. 3, pp. 389-401.

³⁷ Hearing at the European Parliament, Federica Mogherini, 6 October 2014, <http://www.europarl.europa.eu/hearings-2014/en/schedule/06-10-2014/federica-mogherini>, 13/05/2017.

³⁸ EU HR/VP, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the EU’s Foreign and Security Policy*, June 2016, http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf, 15/05/2017.

fuelled by the economic crisis and the disputes over migration. But, as the strategy clearly points out, cooperation is no longer a matter of principle, but has become rather an existential imperative in order to get the EU out of its “existential crisis”.³⁹ According to former EU High Representative for Foreign and Security Policy Javier Solana, “the Global Strategy defines clear objectives, considers the mistakes of the past, and is deeply anchored in the EU’s present-day reality”.⁴⁰ Another interesting signal came from a Pew Research Center study in ten European countries (including supposed bastions of Euroscepticism like the UK, Poland, and Hungary), which found that an average of 74% of those polled supported more decisive action by the EU abroad.⁴¹ This was a clear case of “European identity” prevailing over toxic nationalism.

The need for an analytically solid and meaningfully prescriptive analysis of the regional and global strategic landscape surrounding Europe was, in fact, badly needed. A deteriorating geopolitical landscape on the Southern and Eastern flanks of the EU, politico-security turbulence in regions within “strategic distance” such as Sub-Saharan Africa, Central Asia and the Far East, the threatening spectre of increasingly transnational challenges like terrorism, organized crime, cyber-attacks and climate change all painted a grim picture in terms of European security and stability. And, last but not least, the very crisis of the European project itself, with the “variable geometry” deeply embedded in its metabolism, all seemed to dismiss the comforting incipit of the 2003 European Security Strategy: “Europe has never been so prosperous, so secure, nor so free”.⁴² According to Sven Biscop and Jan Andersson, the ESS seemed more like a foreign policy strategy and a declaration of intent in this field rather than a security strategy in the

³⁹ Jennifer Rankin, “EU is facing existential crisis, says Jean-Claude Juncker”, *The Guardian*, 14 September 2016, <https://www.theguardian.com/world/2016/sep/13/jean-claude-juncker-eu-is-facing-existential-crisis>, 14/05/2017.

⁴⁰ Javier Solana, “The EU’s Bold New Strategy”, *Project Syndicate*, July 2016, <https://www.project-syndicate.org/commentary/european-global-strategy-foreign-security-policy-by-javier-solana-2016-07>, 14/05/2017.

⁴¹ Pew Research Center, *Europeans Face the World Divided*, June 2016, <http://www.pewglobal.org/2016/06/13/europeans-face-the-world-divided/>, 15/05/2017.

⁴² EU High Representative, *A Secure Europe in a Better World*.

conventional terms. The two authors explain that “rather than including all challenges under the label of security, issues must not be dealt with as security threats unless they pose an effective threat of violence”.⁴³

Coming back to the 50-page long EUGS, the text kicks-off by enumerating what it considers EU’s sometimes overlapping values and interests, namely peace and security, prosperity, democracy and a rules-based international order, which the EU aims to promote both within Europe and in its “global abroad”, as a normative power. This normative power is understood as the ability to shape or change what passes for normal in international relations. And indeed, in line with the common interests of the Member States, the EU’s objectives clearly state its commitment to norms diffusion in world politics, especially in its near neighbourhood. The EU promotes these principles through its actions and policies in world politics through persuasion and attraction rather than military or coercive means.⁴⁴ “Our interests and values go hand in hand. We have an interest in promoting our values in the world. At the same time, our fundamental values are embedded in our interests. Peace and security, prosperity, democracy and a rules-based global order are the vital interest underpinning our external action”.⁴⁵

In this context, by acknowledging the inherent difficulty of balancing between *realpolitik* and idealism in its foreign policy conduct and the fact that peace and security depend a great deal on the economic and social progress of the European nations, the EUGS defines “principled pragmatism” as the cornerstone of its external action, based on the principles of unity, engagement, responsibility and partnership. “Principled pragmatism will guide our external action in the years ahead”.⁴⁶ It is true that even though the EUGS, as compared to the EES, does say much about the means of achieving the EU’s foreign policy goals, it does not quite go

⁴³ Sven Biscop and Jan J. Andersson, “Introduction”, in: Sven Biscop and Jan J. Andersson (eds), *The EU and the European Security Strategy*, Routledge, London and New York, 2008, p. 12.

⁴⁴ Ian Manners, “The Normative Ethics of the European Union”, *International Affairs*, vol. 83, no. 1, 2008, pp. 65-80.

⁴⁵ EU HR/VP, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the EU’s Foreign and Security Policy*, p. 13.

⁴⁶ *Ibidem*, p. 8.

far enough in defining what this would entail concretely. Nevertheless, the strategy unmistakably puts an emphasis on the importance of “smart power”, understood as the strategic and simultaneous use of both coercion (hard power) and co-option (soft power).⁴⁷

Priorities of the EU's foreign and security policy

In trying to rekindle the spark of common purpose and shared ambition, the EUGS defines five priorities of the EU's foreign and security policy. First, there is the talk about the European Union's own security, focusing on multifaceted security and defence policies, counter-terrorism, cyber and energy security, and strategic communications. “The EU Global Strategy starts at home. To preserve and develop what we achieved so far, a step change is essential. We must translate our commitments to mutual assistance and solidarity into action”.⁴⁸

Second, state and societal resilience in the Eastern and the Southern neighbourhood of the Union, covering a geographic perimeter bounded by the Western Balkans, Sub-Saharan Africa and Central Asia and involving a more effective migration policy focussing on origin and transit countries of migrants and refugees, with human security as corollary. The Enlargement Policy would seem to play an important part in order to enhance resilience within the countries concerned, by ensuring that modernisation and democratisation proceed in line with the accession criteria. The EU's Enlargement Policy is a prime example of the transformative and normative nature of the European Union. And more precisely the Copenhagen criteria, which have to be fulfilled by an aspiring country in order to become a Member State, make for concrete examples that illustrate how the EU promotes norms through its accession process, thus confirming itself as a normative power, at least on a regional level. Human security was first mentioned in the strategic documents of the EU in 2008, in recognition of the strong link

⁴⁷ For a more detailed discussion on the concept of *smart power*, see Joseph Nye, “Get Smart: Combining Hard and Soft Power”, *Foreign Affairs*, vol. 88, no. 4, July-August 2009, pp. 160-163, and Joseph Nye, “Smart Power”, *New Perspective Quarterly*, vol. 26, no. 2, March 2009, pp. 7-9.

⁴⁸ *Ibidem*, pp. 18-19.

between security and development.⁴⁹ The concept is reasserted several times in the new text, including in a paragraph dedicated to migration: “We will significantly step up our humanitarian efforts in these countries, focusing on education, women and children. Together with countries of origin and transit, we will develop common and tailor-made approaches to migration featuring development, diplomacy, mobility, legal migration, border management, readmission and return”.⁵⁰ According to the same source, “the EU will foster human security through an integrated approach”.⁵¹

Third, there is another mention of an integrated EU approach, this time around referring to conflicts and crises, by “implementing a multi-dimensional approach thorough the use of all available policies and instruments aimed at conflict prevention, management and resolution”.⁵² In juggling between cautious self-refrain and smart interventionism, the EUGS underlines the perks of pre-emptive peace, security and stabilisation, conflict settlement and addressing the “political economy” of insecurity. The Europeans seem to have finally learned that early warning counts for little if it is not followed by early action.

Fourth, a flexible and contingency-led support to cooperative regional orders in Europe, weighing opposition to Russia’s actions in Ukraine with selective engagement on other global and regional dossiers, the Mediterranean, Middle East and Africa, the Northern and Southern Atlantic, Asia and the Arctic. The strategy does warn about “Russia’s violation of international law and the destabilisation of Ukraine, on top of protracted conflicts in the wider Black Sea region,

⁴⁹ The first explicit mention of “human security” is included in the Report on the Implementation of the European Security Strategy, a document adopted in 2008, meant to complement the ESS and not to replace it; European Council, *Report on the Implementation of the European Security Strategy*, December 2008, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf, 15/05/2017.

⁵⁰ EU HR/VP, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the EU’s Foreign and Security Policy*, p. 27.

⁵¹ *Ibidem*, p. 28.

⁵² *Ibidem*.

have challenged the European security order at its core”.⁵³ As such, “managing relations with Russia represents a key strategic challenge”.⁵⁴

Fifth, a renewed commitment to a multilateral, rules-based system of global governance for the 21st century, guided by transformation rather than preservation of existing forums such as the UN and “Bretton Woods” institutions. Acknowledging the fact that resisting change risks triggering the erosion of such institutions and the emergence of alternative groupings to the detriment of all EU Member States, the EU will stand up for the principles of accountability, representativeness, responsibility, effectiveness and transparency.⁵⁵

In order to translate such vision into action, the EUGS finally calls for a collective investment in the EU’s credibility, notably but not solely via increased defence and security capabilities, responsiveness, via more reactive diplomatic, security and development tools, as well as a joined-up approach based on institutional and policy innovations, including the role of the EEAS and EU’s “comprehensive approach” to conflicts and crises, and through better links between EU’s internal and external policies, as required by the migration and terrorism phenomena. “We will pursue our priorities by mobilising our unparalleled networks, our economic weight and all the tools at our disposal in a coherent and coordinated way. To fulfil our goals, however, we must collectively invest in a credible, responsive and joined-up Union”.⁵⁶

According to the EUGS, “without global norms and the means to enforce them, peace and security, prosperity and democracy – our vital interests – are at risk. Guided by the values on which it is founded, the EU is committed to a global order based on international law”.⁵⁷ However, “currently, the EU rhetoric on the rule of law and human rights does not hold any strategic move while Russia plays *realpolitik* and the US expresses frustration towards the EU for the lack of

⁵³ Ibidem, p. 33.

⁵⁴ Ibidem.

⁵⁵ Ibidem, p. 39.

⁵⁶ Ibidem, p. 44.

⁵⁷ Ibidem, p. 39.

coherence and direction in solving political turmoil in the EU neighbourhood”.⁵⁸

The EUGS is clear about the EU’s foreign policy priorities. The need to augment security and defence, tackle the ongoing terrorist threat, pursue cyber-security protections, achieve energy security, and engage in strategic communications. At the same time, the strategy stipulates that the EU will continue with the enlargement of its membership, partner with its neighbours, build regional resilience and adopt a better approach to migration. In terms of the CSDP, the EU’s goals, as stated in the strategy, are to continue to encourage peace before the conflicts arise, help stabilize other countries, and engage in conflict settlement. “The EU remains at the cutting edge of almost all global efforts at consensus building and multilateral cooperation”.⁵⁹ According to the text, CSDP must become more rapid and effective. Europeans must be ready to rapidly respond to crises in full compliance with the UN Charter. This requires Member States to enhance the deployability and interoperability of their forces through training and exercises. We must develop the capacity for rapid response also by tackling the procedural, financial and political obstacles which prevent the deployment of the Battlegroups, hamper force generation and reduce the effectiveness of CSDP military operations.⁶⁰

In this fragile world, soft power is not enough: we must enhance our credibility in security and defence. Crucially, EU funding for defence research and technology, reflected first in the mid-term review of the Multiannual Financial Framework, and then in a fully-fledged programme in the next budget cycle, will prove instrumental in developing the defence capabilities Europe needs.⁶¹

⁵⁸ Florin Pășătoiu, “From Obsolete Normative to Realpolitik in the EU and Russia Foreign Policy Relations”, *Romanian Journal of European Affairs*, vol. 14, no. 4, 2014, pp. 5-25.

⁵⁹ Mai’a K. Davis Cross, “The EU Global Strategy and diplomacy”, *Contemporary Security Policy*, vol. 37, no. 3, pp. 402-413.

⁶⁰ EU HR/VP, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the EU’s Foreign and Security Policy*, p. 47.

⁶¹ *Ibidem*, p. 44.

Concluding remarks

As an intellectual and political project that took shape in the aftermath of the Second World War in order to ensure a lasting climate of peace and prosperity on the continent, having at core the principle of supranationalism, the European Union remains today a unique political entity, going through a constant and dynamic process of internal transformation and redefinition, not easily conceptualized by EU studies or International Relations.

The unexpected negative consequences of the Arab Spring, the war in Georgia as well as the ongoing hybrid war in Ukraine highlighted the necessity of good governance and institutional stability in international relations. And, in time, it became obvious that a process of strategic reflection for the EU in 2015-2016 could look nothing like what it did back in 2003.

As the outcome of almost two years of EU-wide strategic reflection, the EUGS takes its well deserved place as part of a long line of aspirational and practical milestones that define the EU, its international role and the nature of its historical development. The substance and calibre of the strategy deserve their fair share of appreciation given the difficult times under which the document was conceived and launched. As the first “grand strategy” of the EU, it seeks to face fears and challenges head-on while strengthening its resolve to move past them as a confident actor. It brings hard power visibly into its soft-power diplomacy and it sets more tangible goals while explicitly engaging in a balancing act between realism and idealism through principled pragmatism. The strategy ends up by putting an emphasis on the importance of “smart power”, as an instrument to exercise its normative vocation.

Throughout this paper, I have tried to present, in a non-exhaustive and space constrained manner, the way in which the international role of the European Union is reflected by the new Global Strategy. The first section of the article went on to explore some of the more influential theoretical approaches of the European integration and the EU as an international actor, with an emphasis on the normative power Europe concept developed by Ian Manners. The second part of the paper presented a brief history of the European strategic thinking that led to

the development of the 53 page long programmatic text. The third part highlighted the main principles and actions envisioned in the Global Strategy and their relation to the international role of the EU. The favourite themes of the Global Strategy, in terms of shared principles and values, are related to peace, common prosperity, democracy, human rights and rule of law, all of which are reflections of the core norms of the European Union as defined by Manners.

The EU's objectives clearly state its commitment to norms diffusion in world politics, especially in its near neighbourhood. The EU promotes these principles through its actions and policies in world politics through persuasion and attraction rather than military or coercive means, confirming its commitment to the normative nature of its power. But the Global Strategy's implicit recognition that the EU is not making the best use of its potential as a collective entity is both a warning sign and a reminder that none of the remaining 27 Member States has the strength nor the resources to address these threats and seize the opportunities of our time alone.

Right-Wing Extremism Among The Youth of Former Warsaw Pact States

Vladimir Lužnjanić

law graduate University of Belgrade

Milos Dimić

senior at the Faculty of Law, University of Belgrade

Nemanja Vojinović

senior at the Faculty of Law, University of Belgrade

Abstract: This work analyzes right-wing extremism among the youth of former Warsaw Pact states, primarily focusing on states located in Eastern, Central and Southeastern Europe such as: The Ukraine, The Russian Federation, Latvia, Lithuania, Estonia, Poland, Czech Republic, Slovakia, Hungary, Romania and Bulgaria.

In order to understand the right-wing extremism among the youth of these regions, the authors first present a definition of youth and right-wing extremism, then, lastly, an historic account of its roots and elaborate the phenomenon of neo-fascism and neo-Nazism developing within the borders of former Warsaw Pact states. Primary focus was given to the development of the extreme right within the territories of the former USSR. Namely, at the end of the Cold War and the dissolution of the so-called Eastern Bloc lead by the USSR, right-wing movements emerged or, more aptly, re-established themselves on former bases, with the goal of revising history and to more favorably depict former pro-Nazi and pro-fascist movements within those territories during World War II. Naturally, a fertile soil for the emergence of such ideas was found in the countries of the former agreement in Warsaw. With the fall of socialist, left-orientated, regimes and with the disintegration of the pivotal USSR, right-wing extremism began gaining momentum primarily among the Baltic States and what is now the Ukraine. The spread of neo-fascism and neo-Nazism in these countries occurred with the abandonment of communist ideology, once dominant and premier within the countries of the Warsaw Pact. This occurrence is particularly present in countries of the so-called Eastern Bloc that have been transitioning since the fall of the Berlin Wall and that were once part of other great states or empires. Countries and peoples that suffered greatly due to fascist and Nazi aggression during World War II are, today, paradoxically or not, experiencing a re-emergence of fascist and Nazi traditions of the former occupiers of their countries. This has also greatly to do with the Russophobia in those states, which, today, is even more present than it was in previous historic instances. The main characteristic of these extreme views is expressed in anti-communist teachings and, interestingly enough, in the aforementioned

anti-Russian attitudes, which had been most grimly demonstrated in the Ukraine, in which a civil war with a much deeper background is taking place. This case also highlighted the racist-religious component of extremism.

The authors devoted the greater part of their attention towards the younger population in these states, since the youth comprise the largest percentage within right-wing movements. These all point towards existing problems with the socialization and education of youths in these societies. What further complicates the study of right-wing extremism is its destructive component, to which consideration was also given within the work.

Key terms: extremism, right-wing, the youth, the Warsaw Pact, Europe, chauvinism, the Eastern Bloc, neo-fascism, neo-Nazism, revisionism, right-wing extremism.

Introduction and theoretical considerations

We live in an age where every historical fact is questioned, in which revisionism, although *a priori* not necessarily a negative practice, but for this specific instance, gains greater momentum and is becoming a threat not only to the world of today, but also to the future of mankind. Now is an age in which new romanticized histories, especially of the Middle Ages and World War II, proliferate like fungi. This occurrence is particularly present in countries of the so-called Eastern Bloc that have been transitioning since the fall of the Berlin Wall and that were once part of other great states or empires. Prime examples of this are, in fact, the former Warsaw Pact states.

It is particularly alarming that these tendencies seem evident among the younger population, which is, taking into account various factors further noted in the work, becoming increasingly extreme and intolerant. In the majority of these countries during World War II there existed factions or lesser parts of the population which collaborated with the fascists during the war and which committed horrendous atrocities; With unsated appetites and of insufficient nationally strong or independent states, with less territories than desired, young, but also dissatisfied, and often with extreme leanings of the far right.¹ Today, when, although now

¹ Faye, G., *Wofür wir kämpfen. Manifest des Europäischen Widerstandes*, Das metapolitische Hand- und Wörterbuch der kulturellen Revolution zur Neugeburt Europas, Ahnenrad der Moderne, 2006, p. 88-89.

absurdly, Francis Fukuyama declared the end of history, we are witnessing a renewed fascination among the youth with the evil that threatened to destroy the whole of mankind as we know it and the consequences of which we still feel to this very day. Now, more than ever, the notion – ‘Thy neighbor is thy enemy. The neighbor of thy enemy is thy friend, is being advocated by the extreme right.’²

One of the more commonly cited definitions of the extreme right states: ‘The policies of the extreme right often include supremacy, the belief that superiority and inferiority are an inherent reality among individuals and groups, as well as a complete denial of the concept of social equality as the norm’.³ The far right usually supports the policy of segregation, that is, the separation of groups it deems superior from groups it deems inferior. The policies of the far right often include authoritarianism, nativism, racism and xenophobia.⁴ The ways in which the extreme right commonly expresses its views are via demands for separation, annexation or irredentism.⁵ Ideologies most often associated with the far right are fascism, Nazism and other ultranationalist, extreme religious or reactionary ideologies.⁶ Their activities and impact on the youth will be meticulously analyzed within this work.

Basic considerations on the notions of the youth and the extreme right

After the introduction, in this segment of the work we provide basic theoretical considerations on notions such as: the youth, extremism, the right and their distinctions from similar yet completely different concepts.

² Holzer, J., *Polen und Europa*, Land, Geschichte, Identität, Bonn, Bundeszentrale für Politische Bildung, 2007, p. 8.

³ Merkl, Peter H.; Weinberg, Leonard, *Right-wing Extremism in the Twenty-first Century*. London, England, UK; Portland, Oregon, USA: M. E. Sharpe Inc, 1999, p. 127.

⁴ Hilliard, Robert L.; Keith, Michael C., *Waves of Rancor: Tuning in the Radical Right*, New York: M. E. Sharpe Inc, 1999, p. 357.

⁵ Ambrosio, T., *Irredentism: Ethnic Conflicts and International Politics*, Westport, Praeger Publisher, 2001, p. 23.

⁶ Griffin, Roger, *Fascism, Totalitarianism and Political Religion (Totalitarian Movements and Political Religions)*, Routledge, 2005, p. 34.

Defining the youth

Conceptually defining the term ‘youth’, i.e. ‘young people’ is at a glance seemingly simple, before concluding that, depending on what part of the world is given, definitions vary; The principal distinction being, above all, in determining the upper age limit for youth. The limit varies, from those that cap at around 24 to 25 years of age up to those that place it at 30, even so far as 35 years. The Youth may be defined as persons being of the vital stage between childhood and adulthood, that is, it represents an individual’s biological and psychological maturing process alongside their integration in society.⁷ The process of socialization, itself, and integrating with society lasts until a certain degree of independence and responsibility is achieved. Thus, it is rather difficult to define the concept of youth and why we have varied definitions by institutions such as the UN, the EU, the African Union or by national institutions.

According to the UN, ‘for statistical purposes, by Youth we may consider those persons between the ages of 15 and 24, without desiring to adjudicate the other definitions of member states’.⁸ From the aforementioned, it may be concluded that apart from their own definition most often used for statistical purposes, the UN acknowledges the right of member states to determine for themselves the age span by which one is considered a youth.

It should be noted that several UN bodies and regional organizations have slightly varying definitions of the youth, which the UN Secretariat naturally accepts.⁹ As already mentioned, the UN Secretariat and UNESCO consider the youth to be persons of 15 to 24 years of age, while another body of the same organization, UN Habitat (Youth Fund), is of the notion that the upper age limit for being a youth is 32 years of age. A significant view is also provided by the organization of the African Union, which considers the youth to be persons between the ages of 15 and 35.¹⁰ This discrepancy may be somewhat explained by the differences between regions in the

⁷ http://www.uosi-beograd.org.rs/strategije/nacionalna_strategija_zamlade.pdf, 10.05.2017.

⁸ Secretary-General’s Report to the General Assembly, A/36/215, 1981.

⁹ <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>, 10.05.2017.

¹⁰ *Ibid.*

world. Various parts of the globe have, through the ages, had different civilizational advancement and, thus, their rises and falls. Regardless whether we divide the world on East and West, North or South, there existed differences then as they do now, especially concerning the economic power of various states and regions.

It is the authors' opinion that that had had, in a great way, an influence on the different setting of age limits for the youth, from case to case. That is why we may accept the upper limit as being 24 years of age for the regions of Western Europe and North America. Primarily, given that they, despite the economic crisis that affected the world less than a decade ago, are still of the strongest regions of the world, especially in the economic and financial sense. Young people, even despite the crisis, had still a greater chance to find employment and, with that, to become independent of their family. While, on the other hand, we need bear in mind the economic situations in other regions of the world, as with the previously mentioned Africa, being a continent of a large boom in demographics, but of weak economic strength. This leads to the conclusion that it is justified by the standards of the African Union that the youth be considered persons up the age of 35.

As for the regions of Central and Eastern Europe, it may be considered that the situation is by far better than in Africa and some other parts of the world, but, alternatively, is not the same as it is in more developed countries, e.g., the European Union. Thus, the authors, themselves originating from a state that occupies a position in both Central and Southeastern Europe, have adopted the National Strategy for the Youth of the Republic of Serbia from 2008 as the document by which to define young people. According to the aforementioned strategy, the Youth are considered persons between the ages of 15 and 30.¹¹ This basis was, chiefly, adopted given the historic period of the last 25 years and the important events of crucial significance for both the regions of Central and Southeastern Europe, Europe as a whole and the world. Let us but mention the end of the Cold War and the dissolution of several states and one large alliance. The states no longer in existence, but whose territories we will be analyzing are the USSR and the CSSR and, of course, the military alliance known as the Pact in Warsaw. The

¹¹ http://www.uosi-beograd.org.rs/strategije/nacionalna_strategija_zamlade.pdf, 10.05. 2017.

disintegration of these states and the alliance and, more importantly, the fall of communist regimes in these countries, marked a new age for the territories of the former Eastern Bloc. Once monolithic and unique in its political and economic model, it fell apart at the seams. The toppling of socialist regimes and planned industry had opened the gates for various, both good and bad, influences from the territories of states we call the West, primarily, the, then, EEC/EU and the USA. Former socialist states had, almost over night, carried out the processes of privatization of once social and state property. Many states and their populaces had not managed themselves skillfully in the process of implementing capitalism and the concept of private property. Namely, it paved the way for various forms of corruption and abuse of power in those states, whether old or newly-formed. Naturally, the aftermath is felt even two decades after the fact. And one of the groups certainly affected were the youth, which we may even go so far as to state were the most afflicted.

Thus, a poor economic situation in those countries and a re-emergence of slumbering ideologies that had brought nothing but evil and destruction to the world have found fertile grounds within a part of the younger population. That part has, under influence of various factors, not just economic, turned towards extreme right-wing ideologies, personified in neo-fascism and neo-Nazism.

Definition of the extreme right

Before we are to explain the concept of the extreme right, we shall define the concept of extremism, concepts similar to it and the concept of the right. After which, we shall define right-wing extremism and its possible ideological basis.

The concept of extremism

Were we to commence from the etymological point; extremism is a word from Latin (lat. extremus) and may be translated as limit, an inflexibility of certain ideas, stances, values and actions.¹² Therefore, we

¹² Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, Udruženje Nauka i društvo Srbije, Beograd, 2014., p. 21.

may designate extremism as a type of behavior at the very limits of what is allowed with the possibility of crossing that line. Those limits, or rather, that red line may be understood as a set of norms, whether they be of a legal, customary, moral, religious or social character. Thus, any overstepping of those limits represents extremism, which is undesirable within a certain society, because it disturbs its balance. Given that it manifests within various spheres of everyday life, extremism is difficult to define. Still, under the term 'extremism' in modern western European societies is considered the negation of the western model of democracy.¹³

Therefore, the designation of extremism varies on several points such as cultural-religious factors, territorial factors and temporal requirements.¹⁴ What is in some parts considered extreme behavior in some countries is deemed acceptable, a prime example being the act of stoning as a consequence to certain crimes, which in some Muslim countries is sanctioned, whereas in Europe it is a completely unacceptable form of punishment and behavior. Of note, of course, is the temporal requirement, previously mentioned, for many acts considered acceptable in the past, modern man considers unacceptable.

Aside from these factors in determining the concept of extremism, it should be considered the distinctions of that concept from similar ones, which may spawn added difficulties and confusion. It bears mentioning terms such as terrorism, radicalism, fundamentalism, fanaticism and populism.¹⁵

Given that this work will delve in the matter of right-wing extremism, distinctions between extremism and the aforementioned, related terms will be briefly mentioned. Concerning the relation of terrorism and extremism, it should be noted that every act of terrorism is, itself, also an act of extremism, though not vice versa. The best example being that terrorism is a confirmed act of extremism, for Bin Laden and his followers were both terrorists and extremists, whereas for skinheads as extremists we cannot make the same claim.¹⁶

¹³ *Ibid.*, p. 23.

¹⁴ *Ibid.*, p. 23-24.

¹⁵ Đorić, Marija, *Teorijsko određenje ekstremizma*, Kultura polisa, 2012, br. 17., p. 49.

¹⁶ *Ibid.*, p. 49.

Problems, also, exist with the concept of radicalism, often considered even in scientific literature synonymous with extremism. This state is certainly unacceptable. If we were to examine both these terms etymologically, the distinction would be immediately apparent, since radicalism may be connected with momentous social upheavals.¹⁷ From this, it may be concluded that not all radical reforms are negative; to the contrary, they may have a progressive impact, whereas the same cannot be said of extremism.

Were we to compare extremism with fundamentalism, it may safely be said that they often go hand in hand, yet still we cannot consider them synonymous. Fundamentalism is, first and foremost, linked to religion, today mostly with Islam, even though it originated within the protestant faith at the onset of the twentieth century.¹⁸ The basic difference being that fundamentalism is tied to religion, whereas extremism is present in religion as well as in other spheres of society. Therefore, fundamentalism need not always be a negative phenomenon, whereas extremism always is.

Concerning fanaticism, it is also a phenomenon often equated to extremism. Fanaticism, like fundamentalism, is originally linked to religion.¹⁹ Fanaticism represents an excessive devotion towards a religion, as well as an ideology, policy, etc.²⁰ Much like an extremist, a fanatic is convinced that their truth and outlook are valid, observing all through a prism lens of black and white measures. Because of this, it is difficult to draw the line between these two terms, yet, as previously mentioned, fanaticism has more to do with religion and religious fervor. It is certainly worth noting that both of these concepts are negative and undesirable in society.

With regard to populism, we may state that one of the greatest fallacies of modern science is that it equates the term with extremism, which only hinders the conceptual determining and analysis of modern extremism. In fact, populism has the weakest links to extremism, given that some consider it 'rabble-rousing', others tie it to demagoguery, while in other cases populism is directly correlated to authoritarianism.

¹⁷ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 43.

¹⁸ *Ibid.*, p. 45.

¹⁹ Đorić, Marija, *Teorijsko određenje ekstremizma*, p. 50.

²⁰ *Ibid.*, p. 50.

While on the subject of right-wing extremism, the difference between it and populism is that it always of an elitist character, while populism is uniquely anti-elite.²¹ Populism as a term need not carry any negative connotations unlike extremism, which is not necessarily a political phenomenon, while populism is primarily tied to politics.

Regarding extremism and similar terms, we note extremism to be a phenomenon not easily pried away from its likened terms, because of the previously stated different culturological and religious values, territories and temporal requirements, meaning the distance from which it may be observed.

The main focus of this work will be centered on extremism in politics, given that it may have grave consequences for society itself. For extremism to be given a political note, two prerequisites need be met: It need have political motive and political consequence.²²

Apart from the given prerequisites, we shall present three types of extremism in politics, according to Dragan Simeulović:

1. When non-extreme goals are achieved by extreme means
2. When extreme goals are achieved by non-extreme means
3. When extreme goals are achieved by extreme means²³

The first form of the extremism mentioned, which leads towards the realization of moderate goals, we may observe in the example of a nation vying for the establishment of statehood, but with the use of extreme means such as war or political assassination. The second form may best be presented by Hitler's commonly famous rise to power in Germany with aid of parliamentary elections. It should be noted that his goals were ultimately extreme, manifesting in the form of Nazism. The third example of extremism may best be given in the actions of the Independent State of Croatia during World War II which, using extreme methods in the form of violence (ethnic cleansing), achieved extreme goals ('an ethnically pure and independent Croatia').²⁴

²¹ *Ibid.*, p. 53.

²² *Ibid.*, p. 48.

²³ Simeunović, Dragan, *Terorizam*, drugo izdanje, Pravni fakultet, Beograd, 2009.

²⁴ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 26.

Regarding extremism, we need mention the existence of left-wing and right-wing extremism depending on ideology. And though we will be analyzing right-wing extremism in this work, it would do to point out the common threads of both extremes, which are: violence as a means of action, intolerance, exclusivity in stance, non-parliamentarism, negation of democracy and viewing the world around one's self in black and white absolutes.²⁵

From all hitherto presented for the term of political extremism, we shall cite the view of Marija Đorić, who states that it is *'a behavior and opinion in the sphere of politics, located on the border of what is acceptable, with a tendency to cross that border, which is contrary to the legal, customary and culturological norms of a society. Given that as such, political extremism is always an undesirable occurrence, for the reason that it does not coincide with the system of values of modern day democracy (such as tolerance, parliamentarism, compromise, dialogue), since it directly undermines the state of law and rule of law. Its crucial characteristic is the use of violence or rather its propensity towards violence (which needs always be realized).'*²⁶

The concept of the right

By explaining and defining the concept of extremism, we may now advance toward explaining another pertinent concept within this work, that of the concept of the right. Naturally, to better define today's right, especially within the confines of Central and Eastern Europe, we need precisely determine the time of origin of this term and its formation through history.

As we had started with the phenomenon of extremism, here we may as well begin with the etymological definition of the term 'Right'. Were we to start by analyzing the relationship of the left and right sides, we arrive at the understanding that, throughout human history, the right side had been of greater significance, chiefly by being the side most employed in daily activities. Many cultures had linked the right side to the male as

²⁵ Đorić, Marija, *Teorijsko određenje ekstremizma*, p. 54.

²⁶ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 37.

the more industrious and dominant, whereas the left, as 'inferior' had been designated female.²⁷ Resuming back to etymology, the term for right in both the German and English languages matches the word – *right* (legal). The English *right* and the German *die Rechte* are at the same time the terms for the right side, the political right, but as well as right in the sense of legality (*das Recht*). With this etymological explanation we may determine the political right's intent to enable order, discipline and respect toward state authority and legality.²⁸

Thus, we shall present some general designations of the right as a movement, regardless of whether it is an extreme or moderate one. These characteristics are: an elitist concept of society, traditionalism, an organicistic concept of society, a prominent hierarchy, family values, and the significance of institutions, anthropological pessimism, private property and piety.

Due to the limitations to the scope of this work, we shall provide a deeper analysis of these concepts, though deserving of further elaboration and explanation. Therefore, we shall move on toward classification of the right and the obstacles present on such a course. One of the basic differentiations of the right is that of two types:

1. Conservative (the traditionally-conservative, civic-conservative and modern-conservative right) and
2. National-fascist, i.e. the extremist right.²⁹

Certainly the most significant type of the right is the one in the image of the extreme right, which had its heyday during the period of the Second World War in the forms of Nazism, fascism, ustasheism, etc. This extreme right was characterized by mass culture and populism, while the middle class constituted its base. The key elements of the then extreme right were Nazism and racism, while political life ran in the form of totalitarianism.³⁰

²⁷ *Ibid.*, p. 68.

²⁸ *Ibid.*

²⁹ Milardović, Anđelko, *Nova desnica*, Kulturno-prosvjetni sabor Hrvatske, Zagreb, 1990, p. 14-22.

³⁰ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 73.

The main features of that extreme right were anti-liberalism, anti-Semitism, anti-communism, while the hierarchical system of government was personified in the form of the leader as a charismatic personality.

Still, this distinction needs some added criteria requiring special attention and which Marija Đorić had presented in her book 'Ekstremna desnica: Međunarodni aspekti desničarskog ekstremizma'. One of the first criteria by which we may characterize the right is whether or not they are willing to use force. By which, we may be able to differentiate the moderate (non-violent) from the extreme (violent) right. The next criteria which needs noting is the attitude towards religion. Based upon this, we may classify the right either as religious or atheist. Certainly the most important classification is the one according to the agenda-goal orientation of right-wing movements and organizations. Thus we may present the following forms of the right:

1. National fascist right (this form of the right gravitates toward accomplishing goals characteristic of Nazi and fascist ideology)
2. Nationalist right
3. 'Moral right' (the need to establish and maintain moral within a society is one of the key goals of the right)

From the hitherto mentioned, we may observe there to be many typologies of the right, thus the hitherto classifications may be regarded as relevant for further analysis in this work.

The concept of the extreme right

Having explained the concepts of extremism and the right, we may more easily define right-wing extremism and its basic characteristics. It should be noted that the concept of right-wing extremism may be designated by other terms such as right-wing populism or radicalism, neo-Nazism, neo-fascism, ultra-radicalism, and so forth. That is the reason why the structure of this phenomenon is eclectic and amorphous, since it includes elements of varying ideologies and connects the disconnected, thus the link modern right-wing extremist ideological provenance establishes with former forms like fascism and Nazism is of a perfidious nature, and, thus, modern right-wing extremists make use of old Nazi

ideology, which is masked under the notions of freedom, equality and defending from 'the enemy'.³¹

Observing from a temporal distance, the most impactful forms of right-wing extremism were manifest in Nazism and fascism, although, it bears mentioning that the Ku Klux Klan of the USA preceded them, whose ideology was based on Christian fundamentalism and racial segregation. Still, the defeat of us ideologies in the Second World War, unfortunately, has not lead to their discontinued existence. It has been considered that, on the territories of the USSR and the Eastern Bloc, Nazism and fascism had been dealt a coup de grace and that they had been condemned to the fringes of society. However, Nazi-fascism is a phoenix-phenomenon, continually reforming itself and thriving on social, economic and political crises within society.³²

Although the extreme right had been defeated and, after World War II, considerably compromised, a new or, rather, modern extreme right has seen its new expansion in Europe at the end of the Cold War. The fall of the USSR, a bastion of communism and a bulwark against fascist ideas, marked the end to the Cold War, giving new opportunity and possibility for the restoration of extreme right-wing movements.³³ We may freely assert that the introduction of political pluralism somewhat helped the development of these movements, especially in the states of Central and Eastern Europe. On the political stage of these countries, apart from the moderate right and other options, emerged both pro-Nazi and pro-fascist organizations, movements and parties. Defining this new, modern right-wing extremism is no easy task, but we may point out that it is a reaction to modernization and that it is opposed to democratic, post-materialist processes.³⁴ The basic requirements for the existence of right-wing extremism are certainly: ethnocentrism, a romanticized longing for traditional values, chauvinist tendencies, an animosity towards other groups and xenophobic attitudes.

³¹ *Ibid.*, p. 123.

³² *Ibid.*, p. 124.

³³ *Ibid.*

³⁴ Đorić, Marija, *Desni ekstremizam na Balkanu posle Hladnog rata i mlada populacija*, Vojno delo, br. 1., 2009. Beograd, p. 35.

Thus, we may posit that in Europe, especially in territories of the former Warsaw Pact, certain frustrated social groups, spawned by globalization and the new world order, found the only way by which to protect their identity in extremist views. Evaluating the hitherto presented views and claims, the authors are of a mind that one of the best definitions of right-wing extremism has been made in the aforementioned book by Marija Đorić. Thus, we shall consider it relevant in further detailing of this work.

*Right-wing extremism is a behavior and opinion in the sphere of politics, located on the border of what is acceptable, with a tendency to cross that border. As a political phenomenon, extremism of the right is unique to movements, groups and organizations (rarely individuals) which employ Nazi-fascist means and methods in realizing "great" goals. Depending on the type of collective they belong to, members of the right struggle for supremacy of a group, nation, race or religion, while demeaning all that differs from their system of values.*³⁵

Presenting this definition and to further discuss modern right-wing extremism, we need briefly mention its basic characteristics. Recognizable traits of right-wing extremism are certainly: pronounced nationalism, racism, xenophobia, hatred towards the enemy and a tendency that it be destroyed, anti-communism, predilection towards a religion (one of the problems of this characteristic is that right-wing extremism is usually linked to Christianity even though the actions of Islamic extremist may be considered a version of clerical fascism, given their hatred and intolerance toward other faiths, nations, races, etc.)³⁶, paganism, an existence of a conspiracy against the group they belong to, keeping with tradition, 'deification' of the leader and hierarchy, and militarism.

Before we begin elaborating why young people feel drawn to this sort of behavior, we shall briefly point out the ideological bases of modern right-wing extremism. The modern extreme right draws its strength from the ideologies of conservatism, fascism, Nazism, racism, nationalism and

³⁵ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 135.

³⁶ *Ibid.*, p. 140.

religious fundamentalism. These ideological bases we consider fundamental and of crucial impact upon members of these organizations and parties.

Why does right-wing extremism appeal to the youth, primarily of the male sex, which are dominant within these structures?

One of the primary reasons why organizations of the extreme right are mostly 'men's' organizations is because one of the basic ideological features of the right is that it views male-female relations through a patriarchal prism, by which a man is head of the family and superior to the woman.³⁷ Of course, this does not necessarily exclude women from extreme right organizations. Still, they value women primarily on two life roles, the role of the mother and that of the wife. A prime example of inequality among these two genders can be seen in the ideology and actions of the Islamic extreme right.

Therefore, extreme right power structures number a young male population among their ranks; as previously noted, between the ages of 15 and 30 years of age. We may freely assert that to be a developing period for an individual and a transition from childhood to the world of adult and responsible persons. As with all people, the youth seek to discover themselves through establishment of a certain identity. Problems arise if the youth associate and join extreme right-wing organizations. As previously stated, the basic trait of any extremism is a desire for violence and the exhibiting of the same. Violence may often signify for the youth a sort of rebelliousness, through which they may make a statement on certain matters in society. Man, as a committer of violence, may make the object of that violence an individual, a natural entity or an inorganic matter.³⁸

Certainly one of the main reasons the youth, apart from historical legacy, turn toward right-wing extremism is a lack of perspective. Namely, a lack of perspective and the economic standard for the youth, which is by no means good, unfortunately finds a fertile ground among them. The regions of Central and Eastern Europe have been for the last three decades going

³⁷ *Ibid.*, p. 146.

³⁸ Simeunović, Dragan, *Političko nasilje*, Radnička štampa, Beograd, 1989., p. 20-21.

through a time of great tumult and turbulence. As we had mentioned, the toppling of one system and disintegration of states and federations has contributed to the awakening of old, violent ideologies in the following years. Namely, while today's right-wing extremism in the EU is a consequence of opening borders and letting in a significant number of migrants, in territories of the former Warsaw Pact, a grim historic legacy, the fall of the USSR, the CSSR, a poor state of the economy and transition have reopened old wounds from the Second World War and made them worse. One of the more recent examples is the civil war in the Ukraine, which in itself carries a national and, we may go so far as to say, a religious conflict among its peoples and groups. Therefore, it was not difficult, in the territories of the former Eastern Bloc, for extreme right-wing groups to find themselves an opponent. In the territories of the former USSR, excluding Russia, we may state that one of the more cohesive factors to be a pronounced Russophobia, especially in the Ukraine and the Baltic States.

That is why young people are a demographic that is already discriminated in a sense, firstly, by being financially dependent and, lastly, as individuals that have yet to form an identity.³⁹ This presented statement illustrates the problem of violence among the youth – The need to form an identity. The desire or struggle to form an identity starts within the family which is a basis of any society.⁴⁰ That struggles moves away from the family and into the scope of the whole of society, where each individual strives toward establishment and socialization. It is only natural that each young person desires to establish themselves in the best possible way, but problems occur in societies experiencing in no way minor difficulties in functioning. The societies of Central and Eastern Europe have historic legacies, diverse ethnic and religious structures, economies, a history of wars and conflicts, which, expectedly, in the youth initiates identification with their nation, religious group, etc. This sort of identification is completely normal, even very desirable, but problems start when these forms take on extreme views and application, and when the youth start identifying and projecting themselves via these extreme ideologies and

³⁹ Đorić, Marija, *Desni ekstremizam na Balkanu posle Hladnog rata i mlada populacija*, p. 36.

⁴⁰ View more: Kont, Ogist, *Kurs pozitivne filozofije*, Univerzitetska reč, Nikšić, 1989.

leanings. That is why we shall, for the remainder of the work, analyze the states of the former Warsaw Pact, depicting the historical development of former right-wing extremism and its current state.

The Ukraine

The Ukraine is one the youngest states in Europe, still divided between east and west, a division evident in its language, culture, religion and historic memory.⁴¹ It bears mentioning that a tradition of right-wing extremism is very strong in the west of modern-day Ukraine.

We may assert that the roots of today's crisis in the Ukraine stem from the year 2004 and the so-called 'Orange Revolution', when Victor Yushchenko came to power. Namely, during his presidency, Yushchenko made several moves that lead to the popularization of right-wing extremism in the Ukraine. The coalition 'Our Ukraine', headed by Yushchenko himself, had close ties with fascist groups in the west of the country, which lead to him rehabilitating via edict the forces of Ukraine's Insurgent Army which, during World War II, had fought on the side of Nazi Germany within the SS division 'Galicia'.⁴² Not only did he have them rehabilitated, but he also had, while president, promoted Stepan Bandera, the leader of the Organization of Ukraine Nationalist (an organization of Ukrainian fascists during World War II) as a hero of the Ukraine. Such an act from a Ukrainian president had international consequences for the reputation of the country, namely, neighboring Poland had to react, given that the Organization of Ukrainian Nationalists (OUN) lead by Stepan Bandera had committed ethnic cleansing of 100.000 Poles in the western parts of the Ukraine.⁴³

⁴¹ Rudling, Anders, *The Return of the Ukrainian Far Right: The Case of VO Svoboda*, p. 228., obtained via: http://www.academia.edu/2481420/_The_Return_of_the_Ukrainian_Far_Right_The_Case_of_VO_Svoboda_in_Ruth_Wodak_and_John_E._Richardson_ed._Analyzing_Fascist_Discourse_European_Fascism_in_Talk_and_Text_London_and_New_York_Routledge_2013_228-255, 10.05.2017.

⁴² Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, obtained via: <http://www.csi-platforma.org/sites/csi-platforma.org/files/tekstovi/Otvaranje%20Pandorine%20kutije.pdf>, 10.05.2017.

⁴³ <http://www.economist.com/blogs/easternapproaches/2013/07/polish-ukrainian-relations>, 10.05.2017.

Certainly the next major step in spreading extreme right-wing ideas in the Ukraine were the 2010 elections, which president Victor Yushchenko had lost and his opponent, Victor Yanukovych, came to power. Yushchenko's party 'Our Ukraine' all but disappeared from the political scene, while the party 'Homeland', with Yulia Tymoshenko in front, was charged with corruption, which led to her, ultimately, receiving a prison sentence.⁴⁴

These series of events were favorable to some extreme right parties and movements to better organize themselves and receive a bigger slice of the Ukraine's political cake. The authors principally meaning the extreme right-wing, fascist party of the All-Ukrainian Union Svoboda (VO Svoboda). The seat of this party is located in Lviv in western Ukraine. The party was formed in 1991 under the name of the Socialist National Party of the Ukraine, while not being registered until October 1996, by which time it had yet to participate in the elections.⁴⁵ Still, members of this party gained four seats in the city council of Lviv in 1994 and several others in Western Ukraine.

The leader of this party is Oleh Tyahnybok, who as a member in 1998 entered Ukrainian parliament, Verkhovna Rada, upon which he gave support to Yushchenko's party, 'Our Ukraine', prior to the 'Orange Revolution'.⁴⁶ A certainly momentous event in the history of this party transpired in February 2004 when the ninth congress of the Socialist National Party of the Ukraine decided to rename the party Svoboda.⁴⁷

As mentioned, with the defeat of Victor Yushchenko at the presidential elections and the shattering of the coalition of which Svoboda was a part, the order of political power in the Ukraine alters. Svoboda uses this to great effect in strengthening its positions. Namely, this extreme right-wing, fascist party was playing, from the beginning, on the

⁴⁴ Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, 10.05.2017.

⁴⁵ Ghosh, Mridula, *The Extreme Right in Ukraine's Political Mainstream: What Lies Ahead?*, Right-wing exsterism in Europe, p. 203., obtained via: <http://library.fes.de/pdf-files/dialog/10031.pdf>, 10.05.2017.

⁴⁶ Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, 10.05.2017.

⁴⁷ Ghosh, Mridula, "The Extreme Right in Ukraine's Political Mainstream: What Lies Ahead?", p. 203.

nationalist sentiment present in Lviv region of Western Ukraine. Not only that, it also evoked the people's memory of the fascist Organization of Ukrainian Nationalists and its leader Stepan Bandera. Since 2005, this party alongside with 'OUN-UIA Brotherhood' (Organization of Ukrainian Nationalists – Ukrainian Insurgent Army), every 14th of October, has been organizing marches in Kiev, commemorating the founding of the Ukrainian Insurgent Army in 1942.⁴⁸ As already stated, this military formation was part of the Nazi SS division 'Galicia', which had committed crimes against Polish, Jewish and Russian peoples. Still, despite all negative connotations associated with this party, it reached its peak in 2012. That year, 10.000 people within the organization Svoboda organized yet another march in Kiev in honoring the collaborationist from the Second World War, Stepan Bandera. More interestingly is that they managed to secure 10,44% of votes in the parliamentary elections in 2012. The most important fact being that in the Western Ukraine they won between 30% and 40% of votes, in Lviv itself they had over 50%, while in Eastern Ukraine they had less than 1% of votes, which further speaks of the divisiveness of the Ukraine as a country.⁴⁹ By this example alone we may observe how much the Ukraine as a country and her society as well are divided on a regional, culturological, lingual and even religious scale.

Certainly the deciding moment for the future of the Ukraine as a state took place by the end of November 2013 when protests in Kiev against the government entitled 'Euromaidan' began.⁵⁰ The main cause for protest was claimed to be the government's refusal to sign the Stabilization and Association Agreement with the EU. Also, the then Ukrainian government turned towards closer relations with Russia which offered financial aid of 15 billion dollars for the failing economy.⁵¹ This development was added factor in causing protest in Kiev's Independence Square. The agreement with the Russian Federation was labeled as a betrayal of national interests by 'pro-European' citizens. Logically, at the

⁴⁸ Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, 10.05.2017.

⁴⁹ *Ibid.*

⁵⁰ Likhachev, Vyacheslav, *The Far Right in the Conflict between Russia and Ukraine*, *Russie. Nei. Visions*, No.95., Ifri, July 2016., p. 9.

⁵¹ <http://www.businessinsider.com/ukraine-russia-gas-deal-2013-12>, 10.05.2017.

forefront of the protests were leading opposition parties in Verkhovna Rada. Svoboda was one of three opposition parties with, as previously stated, 10% of votes in the 2012 elections. Beside Svoboda party members at the protests were members of another extreme right movement, Right Sector.⁵² This paramilitary fascist organization numbers around 5.000 to 10000 members.⁵³ Right Sector, shortly after the protests in Kiev, transformed itself into a political party in spring 2014, which drew great attention in the Ukraine, as well as Russia.⁵⁴

After three months of intense protesting and violence on the streets of Kiev, the president of the Ukraine, Victor Yanukovych, resigned from office and fled to Russia. With the opposition's victory at Maidan, Svoboda played its part in forming the first government alongside other opposition parties after the fall of the old government.⁵⁵ Svoboda received the seats of prime minister and minister of defense in the transitional government.⁵⁶ This event caused great concern in the Ukraine itself, especially among Russians and Russolingual Ukrainians who felt that such important government position should not have been granted to members of an extreme right-wing party, which fosters the fascist legacy of Stepan Bandera. We would be remiss for failing to note that both Svoboda and Right Sector are both keenly Russophobic groups, which would be made evident in the civil war on Ukraine's soil that, unfortunately, is still being waged to this day. One of the prime examples is a statement from party president Oleh Tyahnybok who called for the deputinization of the Ukraine and repeated that the Kremlin was trying to tear the country.⁵⁷ Svoboda in its program points out

⁵² Likhachev, Vyacheslav, *Right Sector and Others: Behaviours and Role of Radical Nationalist in the Ukrainian Political Crisis of Late 2013-Early 2014*, Communist and Post-Communist Studies, vol. 48., No. 2-3, June-September 2015., p. 271.

⁵³ Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, 10.05.2017

⁵⁴ Likhachev, Vyacheslav, "The Far Right in the Conflict between Russia and Ukraine", p. 10.

⁵⁵ *Ibid.*, p. 9.

⁵⁶ Stanojević, Ivan, *Bezbednosna dilema u Ukrajini– Drugo čitanje Berija Posena*, Politeia, br. 8., Banja Luka, decembar 2014., p. 63.

⁵⁷ <http://www.rts.rs/page/stories/sr/story/10/Svet/1512120/Ukrajina,+dani+raspleta%3F>, 10.05.2017.

the need for the abolishment of Crimean autonomy and the hospitality granted to the Russian Black Sea fleet in Sevastopol.⁵⁸

Still, the most radical move of the new Ukrainian government was the announcement for the repression of language rights in Russian speaking regions of the country, which corresponds perfectly with the part program of Svoboda.⁵⁹ Such an unreasonable act during the first days of constituting a new government gave cause to Russians and Russolingual groups in the Ukraine to be concerned over their basic rights, given that they were in danger of becoming second class citizens within their own country.

With crisis and the country being divided on various, foremost, ethnic and language issues, it became evident and inevitable that there would be conflict within the Ukraine itself. Thus, at the very onset of hostilities, paramilitary formations of the extreme right were formed. Therefore, we shall make mention of the two most characteristic paramilitary formations fighting in the civil war in Ukraine in the region of Donbas. They are Right Sector's Irregular battalion and the Azov Battalion. It may be said of both of these paramilitary formations to be extremely right-wing, which is made plain by their fascist and Nazi emblems.

Having discussed Svoboda and Right Sector, we shall analyze the formation and actions of the Azov Battalion. The Azov Battalion is a Battalion of the National Guard of the Ukraine under jurisdiction of the Ministry of Internal Affairs.⁶⁰ This corps is certainly an example of how ultranationalists became 'legal' in the Ukraine's public eye.⁶¹ Still, a majority of this corps personnel was initially made up of extreme right-wing nationalists and neo-Nazis, members of the Social-National Assembly whose leader, Andriy Biletsky, is also commander of the battalion.⁶² Not only is the Azov Battalion part the regular forces of the Ukraine, but members of Right Sector were also given the possibility of joining the National Armed Forces of the Ukraine, which enables them

⁵⁸ Stanojević, Ivan, *Bezbednosna dilema u Ukrajini– Drugo čitanje Berija Posena*, p. 63.

⁵⁹ Perović, Miloš, *Ukrajina: Otvaranje Pandorine kutije*, 10.05.2017

⁶⁰ Likhachev, Vyacheslav, *The Far Right in the Conflict between Russia and Ukraine*, p. 14.

⁶¹ *Ibid.*

⁶² *Ibid.*

the possibility of becoming legitimate, a right to legally carry arms, be given a salary and to always be on the front lines of the civil war.⁶³

We may conclude that the extreme right parties and movements and their military wings, which were made legal and incorporated within the regular armed forces of the Ukraine to fight in the civil war, primarily in the region of Donbas, despite not having major support among the populace, have a disproportionately higher influence on the current situation in the Ukraine. It is generally troubling that members of such organizations that venerate the idea of Stepan Bandera in the form of fascism, Nazism, racism, anti-Semitism, Russophobia, etc. can find a place within governing institutions of the Ukraine.

Russia

Throughout its history, the largest country in the world has faced many trials. The greatest of these was the Second World War or, as it is known in Russia, the Great Patriotic War. The rise of fascism and Nazism raised red flags for the USSR. Fears were justified when Nazi Germany invaded the Soviet Union.⁶⁴ Initially, Nazi forces were advancing with great pace. During their onslaught and while claiming *lebensraum* – living space, the Nazis were committing great crimes against the populace, especially against those of Russian nationality. Beside the Nazis, horrible crimes were being committed by collaborationists, especially those from Western Ukraine. During 1943, the situation changed in favor of the Allies, until, finally, on May 9th 1945 came a decisive victory and the capture of Berlin. Russia was part of the Soviet Union, which was the leader state of the Eastern Bloc. Shortly after the Second World War came to a close, there arose a new conflict, the Cold War, over the rivalry of the USA and the USSR. This period was marked by mistrust between the two superpowers and by a string of their indirect and, sometimes, direct confrontations. The USSR had a tight grip and suppressed any anti-revolutionary movement or rebellion on its own soil and within the

⁶³ <https://rs-lat.sputniknews.com/svet/201508204044544/>, 10.05.2017.

⁶⁴ Napad na SSSR: tajna 22. juna 1941., https://ruskarec.ru/articles/2012/07/01/napad_na_sssr_tajna_22_juna_1941_15678.html, 10.05.2017.

territories of other member states of the Warsaw Pact. The Warsaw Pact was a rival military agreement to the NATO pact. Members of the Warsaw Pact were: The USSR, Czechoslovakia, Bulgaria, Romania, Poland, Hungary, East Germany and Albania until 1962. They monitored and controlled all social aspects that could endanger the ruling far-left communist order. Any instances of right leanings were mercilessly crushed. The USSR had an array of means which it employed to intimidate its enemies and dissidents, from prisons to labor camps (gulags). In time, the economic system of controlled and planned industry to lag behind the western market economy and the USSR weakened. As the system grew weaker, all the flaws of the controlled society began to emerge. The crisis during the '80s took greater momentum and deepened. Several reforms and the democratization of state and society were begun. However, that wasn't enough, the inevitable came to pass and the whole socialist system came crashing down. The Eastern Bloc fell and 1990 sees the peaceful disintegration of the USSR into 15 new states.⁶⁵ Russia, as the successor of the Soviet Union, went through great changes.⁶⁶ Transition was begun, the conversion to a market economy, and large privatizations. These great changes for a single state and society would leave great scars. As time went on, an unmonitored crooked privatization lead to even greater social divides. Practically the whole of the middle class ceased to exist. In such a social environment, after the fall of the system, arose a tidal wave of deviant practices. The family as a basic unit came under heavy pressure. Young people were left to fend for themselves. A part of the younger population came under the influence of various extremist groups, whether of a religious, political or of some other nature. More often than not, they were cults, sports hooligan groups or some extreme right-wing organizations. Within this work we discuss right-wing extremism so it should be noted that these organizations are of a predominantly neo-fascist or neo-Nazis nature. One would be justified in asking how it became possible for there to be a rise of neo-Nazi movements in Russia, a country that in the Second World War suffered the greatest casualties, a country

⁶⁵ Violence 'in the Name of the Nation', <http://abcnews.go.com/Nightline/story?id=3718255&page=1>, 10.05.2017.

⁶⁶ Raspad SSSR-a je najveca geopoliticka katastrofa, <http://www.pecat.co.rs/2011/08/mihail-leontjev-raspad-sssr-a-najveca-geopoliticka-katastrofa/>, 10.05.2017.

that lost over 20 million people and, according to some sources, even more. We may state that there are certainly multiple factors that lead to the rise of extremism in general and especially right-wing extremism. First, we need point to the fall of the USSR, the fall of not only a great state, but the second superpower. Of course, the fall of the state was not accepted in the same by all, some felt humiliated. With the fall of the communist system, there came an increase in crime, the disappearance of the middle class and an even greater impoverishment of the lower classes, while the rich became even richer. A large part in criminal activity was due to groups from the Caucasus and Central Asia. The bolstering of the extreme right was influenced by large illegal migration again from the Caucasus and from Central Asia. Another relevant cause was foreign pressure exerted upon Russia by other countries, which intensified after sanctions were imposed over the crisis in the Ukraine. In regard to foreign factors, it is worth noting that, during the Cold War, it was believed that empowering nationalist movements would lead to the weakening of the USSR.⁶⁷ Although Russian authorities promote anti-fascist, patriotic values are unable to stem the extreme right, that is, the neo-Nazi movements, above all. Some western analysts believe that the Russian government is misusing nationalism and that it is somehow strengthening the extreme right in Russia, itself, as well as in Europe.⁶⁸ What is particularly troubling is that by some estimates the Russian Federation has around 60.000 neo-Nazis, which is almost half of the total number of neo-Nazis worldwide. Poverty and unemployment have pushed Russia's youth straight into the hands of extremist groups. During the nineties, right-wing organizations managed to easily attract a part of the youth, especially those less educated, unemployed or marginalized. It has been proven yet again that serious social crises have the greatest impact upon the younger population and that such crises are a fertile ground for the development of extremism. In 1990 was formed a self-described all-Russian civil patriotic movement, Russian National Unity. This movement evolved from the former nationalist movement Pamyat. The leader of Russian National Unity is

⁶⁷ Tuminez, Astrid, *Western perceptions of Russian nationalism*, American International group Inc. and Council for Foreign relations, March 2001., p. 2.

⁶⁸ Russian Ultra-nationalism: A Monster of Moscow's making, <https://www.stratfor.com/analysis/russian-ultra-nationalism-monster-moscow-s-making>, 10.05.2017.

Aleksandr Barkashov.⁶⁹ Being a man thrown out of school, he fits the right movement's model of attracting the uneducated and the marginalized. He joined the organization Pamyat in 1985 and by 1989 advanced to the position of leader, after which, along with a few likeminded associates and followers, he founded the movement Russian National Unity. In 1993, during the Constitutional Crisis, Barkashov lead took his followers to the street to defend Russia from Yeltsin's forces.⁷⁰ In 1994, he published a book entitled 'The ABC of a Russian Nationalist' and the book became the movement's main program. The Nazi swastika was the symbol of the movement, while, at the core, there was neo-Nazi ideology, even though, officially, the movement favored the so-called Third Option and their slogan was 'Russia for Russians'. In 2005, Barkashov was arrested for assaulting a police officer. Ever since the start of hostilities in the Ukraine, the movement sent volunteers to the battlefield. According to their program, they view themselves as guardians of the coming national revolution. The Peoples National Party is, at its core, a party of Nazi ideology; however, they merge Nazism with monarchism and to that already unusual mix they add neo-paganism.⁷¹ This mixture contributes to the party having part of its membership consisting of skinheads. Their leader, Aleksandr Ivanov-Sukharevsky was arrested on multiple occasions for spreading racial and religious hatred. Among the other groups we mention: Format18, the National-Socialist Society, the Russian National-Socialist Party, the National Rescue Front, Pamyat, the Russian National Union, the Slavic Union, as well as a string of skinheads organizations. Some analysts number the party 'Motherland' ('Rodina') and the Liberal Democratic Party of Russia among the extreme right.⁷² However, that is

⁶⁹ SAD: uspon grupa mržnje, <http://www.politika.rs/scc/clanak/174603/SAD-uspon-grupa-mrznje>, 10.05.2017.

⁷⁰ Wales, Oscar, *Skinheads and Nashi: What are the reasons for the rise of nationalism among Russian youth in post-soviet period?*, University college of London School of Slavonic and East European Studies, London, 2016., p. 6.

⁷¹ Slovenski neopaganizam traži u Rusiji status tradicionalne religije, <http://fakti.org/rossiya/medija-menju/slovenski-neopaganizam-trazi-u-rusiji-status-tradicionalne-religije>, 10.05.2017.

⁷² The authors of this study believe that the Liberal Democratic Party of Russia, not the extreme right, although sometimes has such rhetoric.

incorrect; these two parties are right-leaning, with a conservative approach, even though their sharp rhetoric may lead one to think otherwise. The conflict in the Ukraine has strengthened the extreme right-wing organizations. This conflict is viewed as historic and thus a number of members of these organizations is sent to Donbas and Lugansk to fight. While on the subject of Russia, we need mention the extremism in Dagestan, Chechnya and Ingushetia. In these parts of Russia, which are located in the Caucasus region, have seen an increase of Islamic fundamentalism. According to theorists, Islamic extremism is a form of fascistic right-wing extremism with a serious violent component, often exhibited in the form of terrorist activity. Islamic extremists garner hate and intolerance toward other religions, nations, races and social groups (gay population) different from themselves and strive toward their destruction.⁷³ Their assault on a school in Beslan in 2004, their assault on a theatre in Moscow in 2002 and their attempted assault on the Domodedovo airport are infamous.⁷⁴ The surge of Islamic fundamentalism in these region of the Russian Federation is no coincidence.⁷⁵ Given that these Russian regions are primarily inhabited by a non-Russian populace of Muslim faith, there exists a certain separatist tendency. In the geopolitical struggle between the West and Russia in the nineties, separatism and Islamic fundamentalism were encouraged in these regions. Due to this kind of policy, two wars in Chechnya broke out. Russia only managed to regain control after the Second Chechnya War of 1999, in a time when Vladimir Putin was Russia's prime minister in his first term in office. Ever since then, there have been measures for the state to act, weaken and control right-wing extremism.

⁷³ Đorić, Marija, *Desni ekstremizam na Balkanu posle Hladnog rata i mlada populacija*, p. 140.

⁷⁴ Chechnya, a hotbed of Islamic extremism, producing separatists with increasingly jihadist tone, <http://www.washingtontimes.com/news/2013/apr/19/chechnya-hotbed-islamic-extremism-producing-separa/>, 10.05.2017.

⁷⁵ A field guide to Jihadi Dagestan and Chechnya, http://www.huffingtonpost.com/amb-marc-ginsberg/a-field-guide-to-jihadi-d_b_3134852.html, 10.05.2017.

The Baltic States – Estonia, Latvia and Lithuania

Estonia, Latvia and Lithuania are states that reclaimed their independence in 1991 with the fall of the Soviet Union. These three countries have had, throughout their history, strained relations with both Russia and Germany. Worth mentioning, since declaring their independence in 1918, there existed a conflict with the newly-formed USSR. The Soviet Union refused to accept the loss of these territories that were once part of the Russian Empire, but in the end did recognize these states. Germany and the USSR, as part of their pact of non-aggression, made a deal on dividing Finland, Estonia, Latvia, Lithuania, Poland and Romania. However, Germany invaded the Soviet Union. When the Third Reich went on the offensive, a northern army group crossed these three countries too swiftly and easily on their way to Leningrad. In all three Baltic States, the forces of the Wehrmacht were greeted as liberators. In part due to this reception, Estonians, Latvians and Lithuanians were often picked for prison warden and concentration camp commander duties. A high percentage of the youth enlisted to fight for Germany against communists or for Nazi ideals, even though they were disappointed when Germany annexed the whole Baltic Region.⁷⁶ Following the Soviet counter-offensive, in 1944, Estonia, Latvia and Lithuania were liberated. In 1945, the Soviet Union assumed these countries under its purview and they became soviet republics, i.e. part of the Soviet Union. When the war was over, conflicts still raged, since the remnants of the collaborationists refused to surrender, a prime example being the Forest Brothers in Estonia. The Soviets resolved these issues under Stalin's orders to have undesirables forcefully move somewhere east. It wasn't until Khrushchev came to power in 1953 that the forceful displacements stopped and that some were allowed to return home. It was during the eighties, when crisis struck the USSR, that nationalist, right-wing movements started to grow in power within these states. As with all right-wing movements in the Eastern Bloc, they were opposed to communism and the entire system. What is unique about the Baltic States is that there was another motive influencing the development of neo-fascism and that was Russophobia. Russophobia is an irrational fear

⁷⁶ Varljivo istorijsko pamćenje, <http://www.vreme.co.rs/cms/view.php?id=1234137>, 10.05.2017.

and, often, a hatred toward Russia, the Russian people, Russian culture, language and Russian politics in general.⁷⁷ The roots of Russophobia date back to the 16th century, during Russian expansion to the east of Asia. It was later that Russophobia acquired new form, during Russian expansion over Eastern Europe. This provoked reactions in these three countries, as well as Poland.⁷⁸ In 1991, the Baltic States leave the USSR and they were the first new states, thus setting an example for other soviet republics, initiated what would become inevitable. The first to leave was Lithuania, then Estonia and, a day later, Latvia. During the nineties, these countries adopted market economy. During the transition, the youth were the most afflicted, wild capitalism taking its toll. In such unstable societies, the youth are susceptible to various influences. The spread of neo-Nazi organizations occurred during the nineties. In 2004, Estonia, Latvia and Lithuania joined the European Union. It was then believed that, by joining the EU, neo-Nazi movements would kept under control and reduced to a minimum. Every year, pro-Nazi marches are organized in Vilnius, the capital of Lithuania.⁷⁹ In 2016, during such a march, of note was that it was attended by neo-Nazi parties from the Ukraine, Lithuania, Estonia, Latvia and other European neo-Nazi parties and organizations. Nothing similar had ever been seen. What had occurred before were gatherings of some SS veterans from Lithuania, Estonia and Latvia, and their marches were even supported by their respective Ministries of Defense.⁸⁰ Therefore, the support did not come merely from local authorities of some regions or cities that had a habit of allowing anything. They invite their colleagues from Europe to form a sort of neo-Nazi International.⁸¹ They are attempting to form an

⁷⁷ Russophobia: The Discreet Charm of Cultural Racism and the Legacy of Hate, <https://russianuniverse.org/2014/01/28/russophobia-cultural-racism/>, 10.05.2017.

⁷⁸ Ряды жертв репрессий в Латвии множатс, <http://izvestia.ru/news/352881>, 10.5.2017.

⁷⁹ 500 Lithuanian Fascists March Near WWII-era Execution Site of 10,000 Jews, <http://russia-insider.com/en/society/2015/02/19/3630>, 10.05.2017.

⁸⁰ Sramotno slavljenje nacizma u baltičkim državama, <https://rs.sputniknews.com/vesti/20150316695797/>, 10.05.2017.

⁸¹ Nacizam u srcu Evrope, <http://www.politika.rs/scc/clanak/128268/%D0%A1%D0%B2%D0%B5%D1%82%D0%9D%D0%B0%D1%86%D0%B8%D0%B7%D0%B0%D0%BC-%D1%83-%D1%81%D1%80%D1%86%D1%83-%D0%95%D0%B2%D1%80%D0D0%BF%D0%B5>, 10.05.2017.

international infrastructure that would enable them to be more influential and efficient, states Avigdor Eskin, Israeli publicist and analyst. As if this rise of the right within these countries is in part orchestrated by government institutions and, therefore, systemic. The authors of this work consider this extremely dangerous for Europe and the world. In Riga, as well, SS veteran-legionnaire marches are held annually. Similar marches are organized in Tallinn, the capital of Estonia, although such open gestures of support to Nazi ideology represent an affront to the millions of people that had fought and died in the struggle against Nazi Germany.⁸² Mateusz Piskorski, a Polish analyst, considers such marches part of a wider attempt in revising the history of the Baltic States, and is, probably, correct. It is part of an attempt to legitimize those that collaborated with the occupiers. The legitimization is being carried out in several ways; one of which being through Russophobia, that is, by equating the soviet and communists in general with Nazis and, today, by equating Russia with Nazi Germany or, if one would prefer, equating Hitler with Stalin, or, rather, today's demonizing of Putin. By placing such a mark of equality and proclaiming Russia and Putin as enemy number one, the revision of history absolves collaborationists and makes of them false heroes. Persons and organizations meaning to protest such marches, as a rule of thumb, were not granted permission in Latvia and Estonia at the time. Such an act of protest is, it would seem, forbidden, which plays in favor of the systemic development of right-wing extremism. Even an informal border control is being carried out. In the past years, members of the European Parliament from Germany, which wanted to protest regarding these events, the summits and marches of the neo-Nazis, have been detained several times. It is worth noting that anti-Semitism and Russophobia go hand in hand. Each of the organizations in the march has anti-Semitism, as one of its principal tenets within their program. It is generally known that the scale of the Holocaust in these three countries was very large; one has to merely recall the massacre in the forts at Kaunas.⁸³ This is all *prima facie* evidence that history is being rewritten to bring to the forefront those associated with the collaborationist history

⁸² Estonija: „Desni sektor“ lovi „kremaljske slavuje“, <https://rs.sputniknews.com/evropa/201602121103202761-estonija-desni-sektor/>, 10.05.2017.

⁸³ Kaunas massacre of 29 October 1941 The largest mass murder of Lithuanian Jews, <http://vilnews.com/2012-12-18261>, 10.05.2017.

of the Baltic States. A similar affair, although on a much larger scale, is in the Ukraine. It is quite interesting that the European Union and the West, in general, have no means of reining in these right-wing organizations. This plague is probably but a piece on the chess board, with which the West is playing out its great geopolitical war against Russia. Thus are right-wing organizations, predominantly of a neo-fascist or neo-Nazi disposition, being used to spread hate towards Russia and to paint a picture of an aggressor from the east that endangers the whole of Europe.⁸⁴

Poland

Poland is a state located in Eastern Europe, between Germany and Russia. By the end of the 18th century, the Polish Realm was weakened and its territories were divided by Prussia, Austria and Russia. It was not 1918 that Poland reclaimed its independence. However, it was not meant to last. In 1939, via secret agreement as part of a non-aggression pact, Poland, along with some other European states, was divided between Germany and the USSR. So it was that, on numerous occasions throughout its history, this land has had to experience the same fate of being divided between foreign powers. It is worth stating that, prior to the war, the second largest Jewish community in the world, of over 3 million Jews, had been living in Poland. During the war, the Nazis and their collaborators had committed a great number of crimes; Poland stands out by having had some of most notorious death camps on its soil, such as: Chelmno, Belzec, Majdanek, Sobibor, Treblinka and Auschwitz. And whenever there is talk about the Holocaust, it is mostly to do with those death camps, which does not in any way diminish the significance of other grisly death camps throughout Europe. Following the Soviet counter-offensive, the Polish resistance, *Armia Krajowa* or the Home Army, had been subjugated to the Red Army. Parts of the Home Army did not agree with this and began a struggle against the Soviet lasting even after the war. They could not make peace, for the memories of the division of Poland in 1939 and the Katyn massacre, where a lot of Polish citizens were killed,

⁸⁴ The Political Uses of Russophobia, <http://www.globalresearch.ca/the-political-uses-of-russophobia/5569541>, 10.05.2017.

were still fresh.⁸⁵ After the war, in accordance with the agreement made between the Allies, Poland fell completely under the Soviet sphere of influence and became a communist state. Polish emigration played an important role. The repressive regime maintained strict control, so nationalist movements, backed by the emigration and the West, could not gain prominence. During the eighties, when the USSR experienced crisis, nationalist options strengthened in Poland. At the same, the movement Solidarity, which would free Poland of communism even before the fall of the Berlin Wall, grew in power. After the parliamentary elections in 1989, this great country began its transition. Major changes caused a number of tremors in society, and so even in Poland there was booming wild capitalism. Naturally, all these changes could not pass without trace. The youth experienced, first-hand, the burden of great change. All this paved the way for right-wing organizations. Thus, during this time, some right-wing movements such as Radical Camp, All-Polish Youth, and Patriotic Army were gaining strength.⁸⁶ All these predominantly extreme right-wing organizations in Poland were defined primarily by Euroscepticism, Russophobia, while some even had a neo-Nazi element. A part of these organizations was infiltrated among sports fan groups. By accepting this state into the European Union, hopes were raised that the issues with the extreme right would be resolved or managed.⁸⁷ Still, even in this instance, nothing had transpired. In time, Poland would become one the more prominent states of the European Union. Many consider Warsaw the capital of the so-called New Europe.⁸⁸ The increased significance of this country's activity became evident and felt by other member states of the EU and Europe as a whole. In the 2016 election in

⁸⁵ Objavljena poverljiva dokumenta o masakru u Katinskoj šumi, <http://www.novosti.rs/vesti/planeta.299.html:396465-Objavljena-poverljiva-dokumenta-o-masakru-u-Katinskoj-sumi>, 10.05.2017.

⁸⁶ Poljska: Haos na ulicama Varšave, desničari pokrenuli nered, <http://www.in4s.net/poljska-haos-na-ulicama-varsave-desnicari-pokrenuli-nerede-sukob-sa-policijom-video/>, 10.05.2017.

⁸⁷ EU i udarac zdesna: Imaju li evropske vlade rešenje?, <http://rs.n1info.com/a134561/Svet/Svet/Ekonomska-i-pre-svega-izbeglicka-kriza-daju-vetar-u-ledja-desnici.html>, 10.05.2017

⁸⁸ What "New Europe"?, <https://web.archive.org/web/20040816193453/http://slate.msn.com/id/2078876>, 10.05.2017.

Poland, the Law and Justice party of Jaroslaw Kaczynsky, a party of a right-leaning ideology and which considers its main goal the protection of Poland's unique values from internal and external foes, came to power.⁸⁹ Their rise to power demonstrated that the right, itself, was on the rise, and that gave renewed vigor to Poland's extreme right. This was certainly a consequence of the migrant crisis that has been deeply impacting Europe. Poland, as part of the Visegrad Four, has spoken openly and often against the migrant policy employed by Germany. A particular case, where Poland is concerned, is that of Russophobia. Just how much an influence right-wing extremism has may be observed in the fact that the Polish Ministry of External Affairs has added to its program the protection from Russian aggression and the protection of the friendly Ukraine. Bronislaw Lagowsky, Polish philosopher and author, is of a mind that Russophobia has become a state ideology in Poland.⁹⁰ The Polish right, its immigrants and elite have the same geopolitical goal, a Poland from sea to sea. He further states that the right geopolitical moment is anticipated for realizing those goals, because the right-wing elite believe Poland to be a key player. That is why attempts at revising history may be observed.⁹¹

The existing cooperation with the Ukraine is meant to serve the Russophobia; as though the crimes committed by Ukrainian collaborators on Polish citizens during World War II had been forgotten. Though, it may also be a case of inept historic interpretation. Russophobia, as one of the key features of the Polish extreme right, need also serve in far greater plays than the Polish government could possibly imagine. Within the whole geopolitical game, Poland is part of the protective barrier against Russia. The goal is to isolate and block Russian advancement toward Europe, the whole strategy consisting of blocking energy projects and having a NATO presence near the Russian border. The development,

⁸⁹ Kako je EU postala bojno polje vlasti i opozicije u Poljskoj, <http://www.nedeljnik.rs/nedeljnik/portalnews/kako-je-eu-postala-bojno-polje-vlasti-i-opozicije-u-poljskoj/>, 10.05.2017.

⁹⁰ Zaboravili lekcije iz Drugog svetskog rata: Poljska od Nemačke trazi da napadne Rusiju, <http://www.intermagazin.rs/zaboravili-lekcije-iz-drugog-svetskog-rata-poljska-trazi-od-nemacke-da-napadne-rusiju/>, 10.05.2017.

⁹¹ Komunizam i nacizam se ne smeju poistovetiti, http://www.vostok.rs/index.php?option=btg_novosti&idnovost=4880, 10.05.2017.

sanction and tolerance of the extreme right, even in neo-Nazi form, is simply a means in this grave struggle. This policy is, in some way, a continuation of the Anglo-Saxon policy carried out against Russia in this region centuries ago.⁹² The globalist influence includes propaganda and lobbying, forcing the destruction of forces within Eastern Europe, as well as ensuring the presence of pro-globalist elites within governments and the media of those states. Poland, having suffered a particularly brutal Nazi occupation during World War II, at which time 6 million Polish citizen had lost their lives and the second largest Jewish community in the world had been destroyed, today has extremely strong right-wing neo-Nazi movements. It is unclear as to why that is so, yet one thing is certain – As long as the right-wing extremist impulse is aimed towards Moscow, it is allowed or, to make matters worse, even desirable.

The former Czechoslovakia

A historic retrospect and current context of the extreme right in the former Czechoslovakia

When discussing the former CSSR or what are today the independent Czech Republic and Slovakia, it would be best, before evaluating the current right-wing extremism among the youth of these two countries, to form a historic retrospect. The processes now present within the scene of the extreme right and its concentration in the Czech Republic and Slovakia almost mirror the situation from the 1940s. The roots and tendencies of extreme right ideologies are very similar on a macroscopic scale, but each state and each people have their own unique features on a microscopic-scale. The roots of the extreme right and the historic events that favored them in the Czech Republic and Slovakia resemble, though to a lesser extent, events in Serbia and Croatia. During the 1848-1849 revolution, the Czechs and Slovaks, the peoples that most prominently championed Pan-Slavic ideas in the Habsburg Monarchy, were fighting for their rights through revolutionary

⁹² Biće velikih pritisaka da se revidira istorija ne samo od Nemačke i Austrije već i iz anglosakonskih zemalja, <http://www.naslovi.net/2014-01-22/pravda/dragan-petrovic-bice-velikih-pritisaka-da-se-revidira-istorija-ne-samo-od-nemacke-i-austrije-vec-i-iz-a-nglosakonskih-zemalja/8680238>, 10.05.2017.

activities. After an unsuccessful struggle in achieving greater political rights, whether solely nationalist or whether for all the Slavic peoples, one fact became glaringly apparent – The far greater foe to Czech and Slovak interests than the Habsburg Crown were the German and Hungarian nationalists.

The Spring of Nations from 1848-1849 and the Austro-Hungarian Compromise of 1867 were clear indicators that Austria-Hungary was the 'Sick man on the Danube' and that the Slavic peoples needed to strive towards their national states through their own national movements. Today, the extreme right romanticizes this part of history and extracts from it motifs for its own views and actions. After the Great War and the fall of Austria-Hungary, the Czechs and Slovaks together formed a state, the Czechoslovak Republic. The joint state proved to be a successful project that functioned up until it was faced by an extreme variant of German nationalism – National Socialism. With the Treaty of Munich from 1939, the annexation of the *Sudetenland* and the final fall of Czechoslovakia in 1939, the joint state was shattered. Slovakia, in that same year, for the first time in history, became an independent, formalistically independent under the leadership of Josef Tiso.⁹³ It was a puppet state, further divided by Poland and fascist Hungary. Slovakia had the status of *client state* which allowed it to attain ethnic monolithic ethnicity, like the ISC or other Central European and Eastern European states, which led to incredible outpourings of hate, of which we are hostage even to this day.^{94,95} Although the puppet regime did not enforce a strict form of National Socialism like that of the Third Reich, during the period of 1939-1945, it assisted in the persecution and deportation of its citizens of Jewish ethnicity. It was not until 1944, when it became clear that Germany would lose the war, that an armed Slovak rebellion took place, which was swiftly quelled. Unlike Slovakia, the Czech Republic was completely occupied and its citizens offered a far greater resistance to their occupiers, which resulted in bloody reprisals towards the civilian population.

⁹³ Ďurica, M. S., *Vznik a trvanie prvého slovenského štátu (Slovenská republika v rokoch 1939–1945)*, 2000., p. 28.

⁹⁴ Batt, J., *Introduction: Defining Central and Eastern Europe*, in: S. White – J. Batt – P. G. Lewis (eds): *Developments in Central and East European Politics 3*, New York, 2003., Palgrave Macmillan, p. 12.

⁹⁵ Krejčí, J., *Introduction: Concepts of Left and Right*, in: L. Cheles – R. Ferguson – M. Vaughan (eds): *Neo-Fascism in Europe*, New York, 1991., Longman Publishing, p. 11.

The most famous case of Czech resistance during World War II being the assassination of Reinhard Heydrich, creator of the Holocaust, the protector of Bohemia and Moravia, whose nicknames were 'The Hangman of Prague' and 'Young Evil God of Death'. Unlike Slovakia whose independence was recognized, Czech lands were annexed by the German Reich and administratively divided: the outer regions settled by Sudeten Germans were placed under direct German control, while the central regions settled by Czechs were turned into a state protectorate. Thus, today, we may observe from whence the extreme right-wing organizations draw motifs for their political activities and ideology. Therefore, it is vitally important to make a conspectus of past events and historic motifs that would lead to the renewed strengthening of the right. The Czech Republic has no existing tradition of extreme right-wing groups.

Since the so-called 'Spring of Nations' until the Second World War, what we now call Czech nationalism was always a moderate right whose goal was national liberation. Slovakia, like the ICS, claimed independence, although the word in this instance warrants thorough inspection, during national socialist aggression on almost the whole of the European continent. Slovakia is an example of how modern extreme right-wing groups become neo-ideological movements based on axioms of quisling governments during the Second World War. That is why modern-day members of the extreme right in countries of the former Warsaw Pact are mostly proponents of quisling personalities and their ideologies, and are: in the Ukraine – Bandera supporters; in Hungary – Horthy supporters; in Romania – Antonescu supporters; and in Slovakia – Tiso supporters. Therefore, in all these countries in which existed such personalities which represented the system, there are those that, today, draw ideologies from their political activities. In the Czech Republic, such a personality never existed and so, today, members of the extreme right are a marginal occurrence, unlike in Slovakia, where the parliamentary extreme right-wing party Kotleba – The People's Party – Our Slovakia promotes ideas of the quisling Josef Tiso.

In both the modern Czech Republic and Slovakia right-wing extremism primarily stems from youth organizations and their subcultures, as well as from interested parties and formal political parties.⁹⁶ Even if there are

⁹⁶ Bastl, Martin, Mareš, Miroslav, Smolík, Josef, Vejvodová, Petra. *Krajní pravice a krajní levice v ČR*, Praha: Grada Publishing, 2001., p. 139–143.

differences between these organizations, a single thread connects them – They are all opposed to legal constitutional and democratic principles.⁹⁷

The Czech Republic

Today's far right of the Czech political spectrum began to form after the fall of the Berlin Wall in 1989. An extreme right group was formed mostly by the youth which drew its ideology from Czech nationalism during the time of the Spring of Nations, when a homogenous state was considered a generally-accepted state, but which proved to be devastating and unfeasible.⁹⁸ In order for a worthy discussion on Czech politics, it is vitally important to note the differences between Czech National Socialism and that of the corrupt Nazism implemented by the Third Reich.⁹⁹

The term nationalist signified those representing ethnic nationalism.¹⁰⁰ Together, they formed the Coalition for Republic – Republican Party of Czechoslovakia, lead by Miroslav Sládek. It was the only party of the far right which, during the mid nineties, managed twice to win seats in parliament. This party, as well as Sládek personally, supported nationalist, anti-elitist, anti-globalist, anti-Roma, Germanophobic views and were the only party on the Czech political map that propagated the view that Carpathian Ruthenia should be ceded back to the Czech Republic.^{101, 102}

⁹⁷ Backes, Uwe, Meaning and Forms of Political Extremism, Central European Political Science Review, Vol. IX, No. 4., 2007., p. 242–262.

⁹⁸ Kirschbaum, S. J., Introduction, in: S. J. Kirschbaum (ed.): Central European History and the European Union, New York, Palgrave Maxmillan, 2007., p. 4.

⁹⁹ Mareš, M., Territorial Claims in the Extreme Right Politics in Eastern Europe, Conference Paper, Conference on „The Radical Right in Post-1989 Central and Eastern Europe – the Role of Legacies“, 2008.

¹⁰⁰ Zariski, R. (1989): Ethnic Extremism among Ethnoterritorial Minorities in Western Europe. Dimensions, Causes, and Institutional Responses, Comparative Politics, Vol. XXI, No. 3, p. 253-272.

¹⁰¹ Mareš, M. (2003b): Pravicový extremismus a radikalismus, Brno, Barrister&Principal, Centrum pro studium demokracie a kultury, p. 209.

¹⁰² Kopeček, L., *The Far Right in Europe. A Summary of Attempts to Define the Concept, Analyze Its Identity, and Compare the Western European and Central European Far Right*, Central European Political Studies Review, Vol. IX, No. 4, 2007., p. 288.

However, the party was disbanded over ideological differences and bankruptcy and all that was left were a string of factions on the extreme right political pole, as well as a string of youth movements and associations, representing similar views, some of which being primarily nationalist while others neo-Nazi.

While in today's Czech Republic the extreme right is seeing a decline, it is troubling that the youth is more extreme than the middle generation. Republican Youth, which formed from Sládek's party was a neo-Nazi organization. The Ministry of Internal Affairs prohibited their activity.¹⁰³ From the great coalition party which, as was previously stated, formed a set of parties and movements: The Republicans of Miroslav Sládek (former leader of the Coalition), Minor Republican Party of Bohemia, Moravia and Silesia¹⁰⁴, National Socialist Bloc, which presents a mix of neo-Hussite and neo-Nazi movements, Neo-Hussite National Party and National Unity.

The most significant party on this political pole was, until recently, the Labor Party, whose support varied between 1%-1,5%. The party collaborated with neo-Nazi formations such as National Resistance – Free Resistance, and Autonomous Nationalists.¹⁰⁵ As may be seen throughout this work, these groups create their whole organizations primarily with youth associations and paramilitary guards and units. That is why, in 2008, the party founded Labor Youth and the Protection Corps of the Labor Party, resembling the former SA units. With their storm troopers and youth association, they took part in anti-Roma protests in Litvinov-Janov.¹⁰⁶ Party activity was banned for spreading xenophobia and for participating in violent assaults against Roma people and Vietnamese immigrants. As though in accordance to some unwritten law, like in other countries, shortly after being legally banned, the party's membership

¹⁰³ Mareš, M., *Etnický extremismus a pravicový extremismus*, in: V. Dvořáková – A. Heroutová (eds): II. Kongres českých politologů, Praha, Česká společnost pro politické vědy, 2003., p. 215-218.

¹⁰⁴ Bastl, Martin, Mareš, Miroslav, Smolík, Josef, Vejvodová, Petra, *Krajní pravice a krajní levice v ČR*, Praha: Grada Publishing, 2011., p. 240.

¹⁰⁵ Mareš, M. (sept. 2012), "Right-Wing Extremism in Czech Republic", p. 5.

¹⁰⁶ Bastl, Martin, Mareš, Miroslav, Smolík, Josef, Vejvodová, Petra, *Krajní pravice a krajní levice v ČR*, p. 164.

joined a new, similarly-named Labor Party for Social Justice. That party existed earlier and represented almost left-wing ideas, but with mass membership, the former members of the Labor Party took control of it. Following defined practices, Labor Youth was reformed.¹⁰⁷

There exists also a strong neo-Nazi scene connected to German organizations, which are the previously mentioned NR – FR and Autonomous Nationalists and the very prominent Free Youth, made up, predominantly, of young people promoting xenophobia and racial supremacy, similarly to Free Resistance and Autonomous Nationalists which are, in fact, a section of Bohemian Division Blood and Honor.

The authors conclude that there is potential in the Czech Republic for right-wing extremism, especially among the youth, which are organized in a good number of organizations, but who are not able to found a single large political organization. The Czech far right is divided into nationalist, that may be more aptly titled the far right, and into neo-Nazis, which are better fit the term extreme right; while the younger population frequently joins the latter, although the more moderate youths find the nationalist right more popular.¹⁰⁸ Following the disbanding and prohibition of extreme right parties from the political life of the Czech Republic, youth organizations were weakened and paramilitary units vanished as well. Currently, the far right survives more as a form of subculture rather than a political power. The greatest danger is the Czech center right, of whom one of the members is president of the Republic, Milos Zeman, who, using populist rhetoric has been leaning closer towards extreme right-wing view, which lessened the boundaries between them. Therefore, caution should be taken, for right-wing extremism could, which has become a trend in many countries, insert itself in the mainstream.

¹⁰⁷ Mareš, M., *Right-Wing Extremism in Czech Republic*, p. 7.

¹⁰⁸ Segert, D., „Zur Lage des Rechten Extremismus in Osteuropa und zu den Bedingungen Seines Zukünftigen Erfolgs. Ein Überblick“, in: M. Minkenberg – D. Sucker – A. Wenninger (eds): *Radikale Rechte und Fremdeindlichkeit in Deutschland und Polen. Nationale und europäische Perspektiven*, Bonn, Informationszentrum Sozialwissenschaften, 2006., p. 60.

Slovakia

Right-wing extremism in Slovakia bears a lot of resemblance with the same political pole in the Czech Republic. After the fall of the Berlin Wall, right wing extremism began to grow, initially having classical characteristics of the skinheads subculture. There are two types of right-wing extremism in Slovakia – Those that draw their ideology from foreign movements and those that are autochthonic. The former are connected to neo-Nazism, while the latter are Nationalist, though these distinctions are less apart from each in contrast to their counterparts in the Czech Republic. The youth in Slovakia, although now noting the extended term, of ages 18-39, show that Kotleba and his party enjoy the majority of their support out of all other Slovak parties. According to research prior and after the last election in which the party won a seat in parliament with 8% of overall votes, Kotleba has the support of 30% of the youth, while Kotleba's party enjoys around 23.5%, which ranks them number one among the youth. Kotleba's NP – OS calls for Slovakia to leave the EU and NATO, a 'cleansing of social parasites', protecting the people from Roma terror. The party may be declared extreme right, since it supports xenophobic, anti-Semitic, anti-Hungarian, anti-Roma, neo-Nazi views, which they have proven by frequent marches and individual assaults on Roma families; as well as nationalist and irredentist, given that they, although not so publicly, consider the populace of Moravia in the Czech Republic a Slovak ethnic group.^{109, 110, 111}

Czech nationalists believe the contrary, but this matter is not emphasized as much, since the peoples are so close.¹¹² Apart from the Bulgarian Attack, they are the only extreme right force that expresses Russophilia.¹¹³ Also, the

¹⁰⁹ Nociar, Tomáš, *Right-Wing Extremism in Slovakia*, Friedrich-Ebert-Stiftung International Policy Analysis., December 2012., p. 5–6.

¹¹⁰ Mareš, Miroslav; Stojar, Richard, *Extreme right perpetrators. Understanding Lone Actor Terrorism: Past experience, future outlook, and response strategies.*, Routledge., 2006., p. 80.

¹¹¹ Bednář, P., *Moravská identita v krajní pravici po roce 1989*, bachelor thesis, Brno, Faculty of Social Studies, Masaryk University, 2006., p. 29-30.

¹¹² *Ibid*, p. 22-23.

¹¹³ Antonis Klapsis, *An Unholy Alliance: The European Far Right and Putin's Russia*, Wilfried Martens Centre for European Studies, 2015., p. 14.

party itself professed that it is ideologically close to the policies of Slovakia's war leader, Josef Tiso, which they demonstrated publicly when a group of young men, mostly between the ages of 18 and 25, marched in the uniforms of Hlinka's Guard.¹¹⁴

The Slovak extreme right, alongside the Hungarian extreme right, is the most well-organized in the whole of the territories of the former Warsaw Pact. However, what is alarming is a ceaseless tendency of this party's growth. Even now, analysts are estimating them to be around 10-11%. The majority of the party's members are between the ages of 18 and 39.

*The historic context of right-wing extremism
in the Sub-Danubian States*

In many of the Warsaw Pact states, extreme right ideologies were controlled, more often than not, banned and anathema. The USSR, as the herald of communist ideology, made sure to eradicate all right-leaning elements, even moderate ones, while Nazi-fascist elements could never have even hoped to infiltrate any social aspects. Still, with the fall of the Iron Curtain, the leftist monolith had cracked and a new phase had begun; one of intense participation for right within social and political life. The most inflexible communist regimes outside the USSR, excluding at this time Albania, were those in, what the authors in this work will name, the Sub-Danubian States: Hungary, Romania and Bulgaria.

Each of these three states has had, in its political life, parties belonging to the extreme right. All of those parties drew their ideologies from the past, but add to those all the views and ideas which are often the results of national motifs and contemporary circumstance. In the past, Hungary has had a strong extreme right, abundantly attested by its arrow crosses, pro-Nazi party, clerical Catholicism and a strong anti-Semitic sentiment.¹¹⁵ The ideology of Hungary's extreme right glorifies the name and deeds of Nazi Miklós Horthy, who was Hitler's ally and who was responsible for

¹¹⁴ Further reading: Jelinek, Yeschayahu, *Storm-Troopers in Slovakia: The Rodobrana and the Hlinka Guard*, *Journal of Contemporary History*, 1971., p. 97–119.

¹¹⁵ Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, p. 296.

the deportation of 400.000 Jews from Hungary to Auschwitz, where they were put to death.¹¹⁶ His political successors are exemplified in the Jobbik party and other minor movements, but more on that will be discussed in following chapters.¹¹⁷ Romania had also been on the side of Hitler's coalition during the Second World War, governed by marshal Ion Antonescu, supported by the extremely right-wing Iron Guard. The movement was founded by Corneliu Zelea Codreanu in 1927, under the name of the Legion of the Archangel Michael.¹¹⁸ Historian Stanley Payne points out how the Iron Guard was one of the more unusual fascist movements of the interwar period, since its leader Corneliu Zelea Codreanu believed in the spiritual resurrection of the nation.¹¹⁹ They gave support to marshal Antonescu and even declared Romania – a National Legionary State. However, they encouraged pogroms against Jews and had been committing terrible crimes, and so were disbanded as early as 1941. Today, the Greater Romania Party venerates the cult of marshal Antonescu, while the lesser the New Right considers itself the heir apparent of the Iron Guard. In Bulgaria during the Second World War, there existed an extreme right, but not on the same level as in Hungary or Romania. Bulgaria had been, until 1941, a neutral state, only to become part of Hitler's coalition until 1944, when it joined the Allied Forces. Today's strongest extreme right power in Bulgaria is Attack, which has stated that it is neither the right nor the left, even though most authors define it as an extreme right party. It is, first and foremost, a party of hardline Bulgarian nationalists.^{120, 121, 122}

¹¹⁶ *Ibid*, p. 299.

¹¹⁷ *Ibid*, p. 297.

¹¹⁸ Ioanid, Radu, *The Sacralised Politics of the Romanian Iron Guard*, (Eds.): Griffin, Roger. Fascism, Totalitarianism and Political Religion. Routledge, 2013., p. 125.

¹¹⁹ Payne, Stanley G., *A History of Fascism, 1914-1945.*, Univ of Wisconsin Press, 1995., p. 277-289.

¹²⁰ Magone, José M., *Comparative European Politics: An Introduction*, 2011., p. 386.

¹²¹ Katsikas, Stefanos, *Negotiating Diplomacy in the New Europe: Foreign Policy in Post-Communist Bulgaria*, I.B. Tauris, 2011., p. 6.

¹²² Hopkins, James L., *The Evolution of Nationalism Within the Bulgarian Orthodox Church*, World Christianity in Local Context: Essays in Memory of David A. Kerr. Continuum. 1, 2009., p. 149.

They do not draw their ideology from the Second World War, nor are they successors to Ohrana or Ratniks, both collaborationist organizations. It should be understood that the sub-Danubian states do not deviate from the common European trend of having the largest percentage of voters being part of the younger population.

Hungary

Today, whenever the European extreme right is mentioned, one of its synonyms is Jobbik. Their activities are in every way extremist; from organizing the game 'We shall topple Trianon' on Facebook to going public on their stances of reviving Greater Hungary. They desire for Hungary to be great again and that the former 64 counties find their way within its borders.¹²³ Jobbik describes itself as a 'lawful, conservative and radical-patriotic Christian party', whose 'main purpose' is the protection of 'Hungarian values and interests'. They had won 20.23% of votes in the parliamentary election and 15% in the elections for European Parliament.

More dangerous than Jobbik's Euroscepticism are paramilitary formations with party backing, such as the 'Hungarian Guard'.¹²⁴ It had been founded in 2007, only to be banned by Hungary's Supreme Court in 2009 for spreading hate and xenophobia. They have stated that their main concern is 'preparing young Hungarians for the defense of Hungarian values and moral reawakening'. They are active to this day, organizing marches in black uniforms, but under the name of the Foundation of the Hungarian Guard.¹²⁵ Of the same circle of people was formed the most extremist group, the *Civil Guard Association for a Better Future*, known for armed racist attacks on Roma settlements. Both of these formations resemble SA formations and arrow crosses from the Second World War.¹²⁶ The extreme right in Hungary

¹²³ Bernáth, G. – Miklósi, G. – Mudde, C.: Hungary, in: C. Mudde (ed.): *Racist Extremism in Central and Eastern Europe*, London, New York, Routledge, 2005., p. 87-88.

¹²⁴ Charles Asher Small, *Global Antisemitism: A Crisis of Modernity*, Martinus Nijhoff Publishers. 2013. p. 226

¹²⁵ William M. Downs, *Political Extremism in Democracies: Combating Intolerance*, Palgrave Macmillan. 2012. p. 191.

¹²⁶ Fábíán, Katalin, *Contemporary women's movements in Hungary: globalization, democracy, and gender equality*, Woodrow Wilson Center Press, 2009., pp. 331.

is the strongest and the most well-organized in Europe. In Central and Eastern Europe, only the Slovak Kotleba party and the Ukrainian extreme right can be compared to it. In Eastern Hungary especially, where a large number of Roma is living, extremists organize themselves in paramilitary formations akin to the American Militia and threaten to establish order. In 2011, the *Civil Guard Association for a Better Future*, numbering about 2000 members, was banned. According to the report of the Human Rights Watch for 2012, Hungary is a state in which Roma rights are endangered the most. The same year, the Red Cross evacuated 227 Roma prior to a neo-Nazi lynch. Amnesty International records that racial segregation was introduced in many schools. In Szentendre and Budapest appeared graffiti offering 10 Serbs for each Hungarian in Southern Krajina. Roma had organized in Pécs and formed a Roma guard for self-protection with 400 members and with a potential 8000. This organization is also threatening to become extremist, since it is arming itself with the goal of protecting Roma and other minorities. Its leader is Ferenc Bagó. There exist also a number of pro-fascist extremist groups in Hungary, which for the moment have been united under Jobbik as the personification of all their aspirations, which are: anti-globalism, neo-Nazism, anti-Roma policies, anti-Semitism, and irredentism. The party leader, Gábor Vona, had on many occasions stated that they are the successors to Miklós Horthy's policies. The movement which was a precursor to Jobbik, still existing today, but because of Jobbik's superiority had been removed from the stage, is the Sixty-Four Counties Youth Movement, which is also extremist and advocates the revision of the Treaty of Trianon.

In conclusion, the problem is not acute, it is chronic; there are 30% extreme right-wing members in Hungary and during the last election they won over a million votes. They are of the ages between 16 and 20, while 75% of voters are of the ages between 20 and 35, while the least are those over the age of 51. Among the total number of voters, 53% of people between the ages of 20 and 35 support Jobbik, which organizes annual for the youth, under the patronage of Gábor Vona. It is a sobering fact that Jobbik has a future.

Romania

The roots of Romanian extremism have already been identified as originating from the interwar period and the Second World War. Following the fall of communism, the Romanian extreme right began its activities,

which were not unlike those in other former Warsaw Pact states. The Romanian extreme right political spectrum may be divided into two parts. The first is that of the nationalist right, represented by the Greater Romania Party, while the second is that of the pro-fascist right, personified in the New Right, a successor to Iron Guard policies. During the 1990s, the Greater Romania Party – GRP had been achieving good results and had been winning up to 20% of votes, while in the 21st century it has greatly diminished and became insignificant in parliamentary life. However, the extreme right political rhetoric remained, so even today one could hear offensive remarks directed towards Roma, Hungarians, Jews and sexual groups. The GRP had been founded by in 1991 by Corneliu Vadim Tudor and writer Eugen Barbu, who had been, prior to this, publishing the magazine Greater Romania (România Mare). The ideology represented by the GRP is Romanian nationalism and traditionalism.¹²⁷ The GRP advocates for the re-establishment of the Kingdom of Romania. In its ultra-nationalist political struggle, the GRP sometimes acted with great intolerance towards the Hungarian population, which they would accuse of seditious intent.¹²⁸ The GRP had been involved in government from 1993-1995. They advocate for nationalism, irredentism and Euroscepticism. The party supported anti-Semitic views, similarly to other European parties of the extreme right, but Tudor changed his mind and publicly stated that he had become a philo-Semite. The party follows in the steps of marshal Ion Antonescu, who is thought a hero and even a saint by some, and those of communist dictator Nicolae Ceausescu, who very much respected.^{129, 130, 131, 132} Romania is unique

¹²⁷ Janusz Bugajski, *Ethnic Politics in Eastern Europe: A Guide to Nationality Policies, Organizations and Parties*. M.E. Sharpe, 1995., p. 466.

¹²⁸ Cinpoș, Radu, *The Extreme Right in Contemporary Romania*, October 2002, p. 5.

¹²⁹ Gruber, Ruth Ellen, *East-Central Europe*, American Jewish Year Book 2002, American Jewish Committee, 2002., p. 471

¹³⁰ Shafir, Michael, *Denying the Shoah in Post-Communist Eastern Europe*, Holocaust Denial: The Politics of Perfidy, de Gruyter, 2012., p. 33.

¹³¹ Verbeeck, Georgi; Hausleitner, Mariana, *Cultural Memory and Legal Responses: Holocaust Denial in Belgium and Romania*, Facing the Catastrophe: Jews and Non-Jews in Europe During World War II, Berg, 2011., p. 238

¹³² Bugajski, Janusz, *Nationalist Majority Parties: The Anatomy of Ethnic Domination in Central and Eastern Europe*, The Politics of National Minority Participation in Post-Communist Europe, EastWest Institute, 2000., p. 75.

in that regard, because its communist government was very nationalist.¹³³ It could be stated that Romania, during the Ceausescu era, was a nationalist-communist state.¹³⁴ They consider the accusation of Ceausescu being a dictator a false one.¹³⁵

The New Right, on the other hand, is certainly anti-communist and pro-fascist. They advocate Romanian orthodoxy, irredentism, anti-globalism and are opposed to all national minorities and sexual groups.¹³⁶ They are against both Marxism and capitalism. It is believed that there are up to 2000 members, with almost all belonging to the younger population. Apart from minor incidents, there were no significant extreme developments on the far right spectrum of Romania's political scene. Usually, there would only be public remarks against Hungarians, Roma and sometimes even Serbs, because the irredentists consider Timok belonging to Romania and the Vlachs as Romanians. Still, the right, though having a strong tradition in Romania, became fairly moderate and Romania is one of the rare countries whose joining the EU enabled to decrease the activities of extreme right political groups.

Bulgaria

As in other states of the former Warsaw Pact, the growth of the extreme right began after the fall of communism. However, the first movements were not as distant from communist ideology as was the case among other extreme right parties. What brought extreme right parties

¹³³ Fischer-Galati, S., *Smokescreen and Iron Curtain: A Reassessment of Territorial Revisionism vis-à-vis Romania since World War I*, *East European Quarterly*, Vol. XXII, No. 1, 1988., p. 50-51.

¹³⁴ Shafir, Michael, *Memories, Memorials and Membership: Romanian Utilitarian Anti-Semitism and Marshal Antonescu*, *Romania Since 1989: Politics, Economics, and Society*, Lexington Books, 2004., p. 71.

¹³⁵ Hoge, Alina, *Coming to Terms with the Communist Past in Romania: An Analysis of the Political and Media Discourse Concerning the Tismăneanu Report*, *Studies of Transition States and Societies*, p. 22-23

¹³⁶ Shafir, M., "The Mind of Romania's Radical Right", in: S. P. Ramet (ed.): *The Radical Right in Central and Eastern Europe*, University Park Pennsylvania, Pennsylvania University Press, 1999., p. 218-219.

together upon adopting the multi-party system were anti-Turk sentiments and the advocating for a San-Stefano Bulgaria. Although there were organizations such as the Bulgarian Democratic Forum which continued the work of the Bulgarian National Legion from the 1940s. Still, one party, formed from several parties, became prominent on Bulgaria's extreme right political scene, and that was Attack (Ataka) with leader Volen Siderov. Attack is a party of the extreme right which advocates ultra-nationalist, irredentist, anti-globalist, populist, anti-Roma, anti-Semitic, anti-Islamic, anti-Turk and anti-migrant policies.^{137, 138, 139} They advocate for the making of orthodoxy as the state religion. Volen Siderov claims that they are founders of Bulgarism, a mixture of nationalism and the defense of traditional values through the activities of the youth.¹⁴⁰ They also believe themselves to not belong either to the left nor the right sides of the political spectrum, but to be a party for all.¹⁴¹ Like Jobbik in Hungary, they have the same irredentist goals, although in this case the cancelling of the Treaty of Neuilly-sur-Seine and the reacquiring of these co-called Western Outlands, but organize the youth in the same way, which, just like in Hungary, presents the majority of Attack's voters. There is also the National Youth Organization Attack (NYOA). Many members of Attack are part of the hooligan sub-culture, as is usual for other former Warsaw Pact states. They are, currently, a political party and have 11 seats in parliament. Organizationally, they are very similar to Jobbik, thus, in their youth camps can be heard these theses:

A) Bulgaria/Hungary is a slave to supranational organizations and global capitalism;

¹³⁷ Engström, Jenny, *Democratisation and the Prevention of Violent Conflict: Lessons Learned from Bulgaria and Macedonia*, Ashgate, 2009, p. 159.

¹³⁸ Meznik, Michael; Thieme, Tom, *Against all Expectations: Right-Wing Extremism in Romania and Bulgaria*, *The Extreme Right in Europe: Current Trends and Perspectives*. Vandenhoeck & Ruprecht, 2012., p. 205–207.

¹³⁹ Ghodsee, Kristen, *Muslim Lives in Eastern Europe: Gender, Ethnicity, and the Transformation of Islam in Postsocialist Bulgaria*, Princeton University Press, 2009, p. 111.

¹⁴⁰ Siderov, Volen, *Foundations of Bulgarism, The Attack Political Party*, 2011.

¹⁴¹ Ghodsee, Kristen, *Left-Wing, Right-wing, Everything: Xenophobia, Neo-Totalitarianism, and Populist Politics in Bulgaria*, *Problems of Post-Communism* 55 (3), 2008, p. 26–39.

- B) The corrupt and traitorous elite needs to be confronted by more determined and worthy numbers;
- C) The support of violence as a political practice when necessary;
- D) Latent anti-Semitism and the spread of conspiracy theories.

Conclusion

Fascism and right extremism, as evident today, have not been defeated, rather they have, after World War II, become a crumbling fort left to its inevitable fall. After the Great War, veterans and people that were literally marginalized, i.e. the losers in the new post-imperial world hurled towards fascism; they being mostly people of the middle generation joined by the youth without perspective in the shattered post-war economies. Given that back then there were more rural populations, which had always a microcosm of their own and lands upon which to fall to, while rapid industrialization has today lead to a greater prosperity of the people in cities in comparison to those in the country.

In bad economies, where crooked privatization took place and where a greater portion of the younger population was without perspective, brought about greater resentment and a search for a better way through romanticized interpretation of history.¹⁴² The bulk of the city-dwelling populous of the industrialization in communist times, as well as their offspring, due to matters previously mentioned, is left without employment and without perspective. The youth are left feeling powerless and to channel their rage towards bureaucracy or some other group, whether racial, national, religious or sexual that represents for them the cause of their troubles.¹⁴³ Today, these are the advocates of anti-immigration policies, Islamophobic, hard Eurosceptic, anti-globalist and extreme nationalist views.

Now, the banner-bearers of neo-fascism are the youth, and those joining them are mostly people of the middle or third generation. This is

¹⁴² Oswald, I., *Nationalitätenkonflikte in Östlichen Teil Europas*, Berlin, Landeszentrale für politische Bildung, 1993, p. 104.

¹⁴³ Gurr, T. R., *Peoples versus States, Minorities at Risk in the New Century*, Washington, United States Institute of Peace Press, 2000, p. 13.

particularly dangerous, for the youth are always the ones that change the world and that represent its future. The generational change of ideology bearers seems to have caused a shift in the geographic poles of the states in which those ideas are ever more present. Today, the spark of neo-fascism is stronger in the East than in the West, although the Western is not to be underestimated. In the countries of the former Warsaw Pact, after the fall of communism, transition, a new global financial crisis and great geopolitical changes, fascism stops being that crumbling fort from the beginning of this concluding hypothesis.

Since the fall of the Berlin Wall, the evil genie of fascism was slowly being released from its bottle and a unique restoration of the 'fascist fort' has been carried out. We are now witness to the restoration and rebuilding of the former fort. Every added repair, no matter how similar to the old one, brings with it new elements. Today, neo-fascism is potentially more dangerous than the former fascism. That is why it is stronger and the spark coming from the former member states of the Warsaw Pact more visible. In nations living under the iron fist of communism, all things anti-communist, and by logical extension Russophobic, have become even socially acceptable. This has led to its presence in the 'mainstream' and unimpeded activity via media and social networks, whose main users are the youth.

Although factors that have caused this phenomenon are numerous and difficult to surmise, the authors of this work consider, foremost, the geopolitical chess board one of the main causes for the spread of neo-fascism among the youth in countries of the former Warsaw Pact. The encouragement of propaganda on 'the Russian threat' and it being responsible for the support and growth of the far right sector in the whole of European regions, but chiefly in the regions which are the subject of this work, is merely a façade and the responsibility of the West, while simultaneously not excluding the impact of the Russian Federation on the growth of some right-wing movements. The West has, since the arrival of president Putin as head of the Russian Federation and its greater involvement on the geopolitical front, begun a new Cold War policy of a renewed Russian aggression, representing modern Russia as the former USSR and president Putin as the new Stalin. Many of these movements are, for the sake of Western interests, tolerated, like the heroes of the Euromaidan – the Ukraine's Svoboda, the openly Horthy Jobbik, to the

fascist phalanx in the Baltic States, that legally organize annual marches in honor of quisling regimes.

The extreme right represents the anti-communist political spectrum, made up of mostly new ideologists of former quisling regimes in these territories, many of whom, like Svoboda and the Baltic organizations, harbor a great Russophobia, while others like the Slovak Kotleba party and the Bulgarian Attack express Russophilia. Thus, not even this political is one-sided and can't be described as being united under the patronage of a single great power. Although the more extreme neo-Nazi organizations advocate for the founding of a 'New World Order', they are still insufficiently strong and too politically marginalized to ever achieve this goal.¹⁴⁴ The far right options are ultra-nationalist and, usually, strive for better relations with countries against whom their state has no outstanding political conflict and for whom they believe would support their irredentist goals for strong, great homogenous ethnic states that alone have access to their own resources.^{145, 146} Almost all parties of extreme right ideologies have been Russophobic, due to the aforementioned anti-communism which is the so-called *conditio sine qua non* of this ideology. However, in recent time, as a direct consequences of the West's cold war policy of 'Good cop – bad cop', coupled with growing Euroscepticism advocated by this political spectrum, the Russian Federation and president Putin have become the personification of anti-globalism, among who's chief opponents is the European Union. This lead in some countries to the wane of Russophobia and even for it to turn into Russophilia.

Therefore, the authors conclude that the normalization of relations between the West and the Russian Federation and the encouragement of economic growth and better opportunities for the youth would weaken the increasing grip of neo-fascism. The geopolitical conflict of great

¹⁴⁴ Kestler, S., *Nationalsozialistische Europakonzeptionen im Zweiten Weltkrieg. Darstellung Ausgewählter Beispiele*, in: A. Pfahl-Traugher – M. Rose-Stahl (eds): Festschrift zum 25-jährigen Bestehen der Schule für Verfassungsschutz und für Andreas Hübsch, Brühl, Schule für Verfassungsschutz, 2007, pp. 221-244.

¹⁴⁵ Borejsza, J. W., *Schulen des Hasses, Faschistische Systeme in Europa*, Frankfurt am Main, Fischer Taschenbuch, 1999, p. 271.

¹⁴⁶ Blamires, C., *Expansionism*, in: C. Blamires (ed.): *World Fascism. A Historical Encyclopedia*, Vol. 1, A-K, Santa Barbara, ABC-CLIO, 2006, p. 217-218.

nations coupled with the desires of the minor ones inevitably leads to such events, where the struggle for geographic expansion becomes a catalyst for war.¹⁴⁷

An end to the aggressive struggle of NATO and Russia over dominance of Eastern Europe, like an eternal struggle over the Heartland according to Mackinder's theory, would lead to decreased tension, weakening of extreme right movements and, ultimately, and more importantly, to stronger economy which is the basic requirement of peace.

Bibliography

Books and articles

- Ambrosio, T., *Irredentism: Ethnic Conflicts and International Politics*, Westport, Praeger Publisher, 2001.
- Antonis Klapsis, *An Unholy Alliance: The European Far Right and Putin's Russia*, Wilfried Martens Centre for European Studies, 2015.
- Backes, Uwe, *Meaning and Forms of Political Extremism*, Central European Political Science Review, Vol. IX, No. 4., 2007.
- Bastl, Martin, Mareš, Miroslav, Smolík, Josef, Vejvodová, Petra. *Krajní pravice a krajní levice v ČR*, Praha: Grada Publishing, 2001.
- Batt, J., *Introduction: Defining Central and Eastern Europe*, in: S. White – J. Batt – P. G. Lewis (eds): *Developments in Central and East European Politics 3*, New York, Palgrave Macmillan, 2003.
- Bednář, P., *Moravská identita v krajní pravici po roce 1989*, bachelor thesis, Brno, Faculty of Social Studies, Masaryk University, 2006.
- Bernáth, G. – Miklósi, G. – Mudde, C.: Hungary, in: C. Mudde (ed.): *Racist Extremism in Central and Eastern Europe*, London, New York, Routledge, 2005.
- Blamires, C., *Expansionism*, in: C. Blamires (ed.): *World Fascism. A Historical Encyclopedia*, Vol. 1, A-K, Santa Barbara, ABC-CLIO, 2006.

¹⁴⁷ Evans, G. – Newnham, J., *The Penguin Dictionary of International Relations*, London, Penguin Books, 1998, p. 197.

- Borejsza, J. W., *Schulen des Hasses, Faschistische Systeme in Europa*, Frankfurt am Main, Fischer Taschenbuch, 1999.
- Bugajski, Janusz, *Ethnic Politics in Eastern Europe: A Guide to Nationality Policies, Organizations and Parties*. M.E. Sharpe, 1995.
- Bugajski, Janusz, *Nationalist Majority Parties: The Anatomy of Ethnic Domination in Central and Eastern Europe*, The Politics of National Minority Participation in Post-Communist Europe, EastWest Institute, 2000.
- Charles Asher Small, *Global Antisemitism: A Crisis of Modernity*, Martinus Nijhoff Publishers. 2013.
- Cinpoș, Radu, *The Extreme Right in Contemporary Romania*, October 2002.
- Đurica, M. S., *Vznik a trvanie prvého slovenského štátu (Slovenská republika v rokoch 1939–1945)*, 2000.
- Đorić, Marija, *Ekstremna desnica: međunarodni aspekti desničarskog ekstremizma*, Udruženje Nauka i društvo Srbije, Beograd, 2014.
- Đorić, Marija, *Teorijsko određenje ekstremizma*, Kultura polisa, br. 17, 2012.
- Đorić, Marija, *Desni ekstremizam na Balkanu posle Hladnog rata i mlada populacija*, Vojno delo, br.1., Beograd, 2009.
- Engström, Jenny, *Democratisation and the Prevention of Violent Conflict: Lessons Learned from Bulgaria and Macedonia*, Ashgate, 2009.
- Evans, G. – Newnham, J., *The Penguin Dictionary of International Relations*, London, Penguin Books, 1998.
- Fábián, Katalin, *Contemporary women's movements in Hungary: globalization, democracy, and gender equality*, Woodrow Wilson Center Press, 2009.
- Faye, G., *Wofür wir kämpfen. Manifest des Europäischen Widerstandes*, Das metapolitische Hand- und Wörterbuch der kulturellen Revolution zur Neugeburt Europas, Ahnenra d der Moderne, 2006.
- Fiala, P. – Mareš, M. – Sokol, P., *Eurostrany – politické strany na evropské úrovni*, Brno, Barrister&Principal, 2007.
- Fischer-Galati, S., *Smokescreen and Iron Curtain: A Reassessment of Territorial Revisionism vis-à-vis Romania since World War I*, East European Quarterly, Vol. XXII, No. 1, 1988.

- Ghodsee, Kristen, *Muslim Lives in Eastern Europe: Gender, Ethnicity, and the Transformation of Islam in Postsocialist Bulgaria*, Princeton University Press, 2009.
- Ghodsee, Kristen, *Left-Wing, Right-wing, Everything: Xenophobia, Neo-Totalitarianism, and Populist Politics in Bulgaria*, *Problems of Post-Communism* 55 (3), 2008.
- Gruber, Ruth Ellen, *East-Central Europe*, American Jewish Year Book 2002, American Jewish Committee, 2002.
- Griffin, Roger, *Fascism, Totalitarianism and Political Religion (Totalitarian Movements and Political Religions)*, 2005.
- Gurr, T. R., *Peoples versus States, Minorities at Risk in the New Century*, Washington, United States Institute of Peace Press, 2000.
- Hilliard, Robert L.; Keith, Michael C., *Waves of Rancor: Tuning in the Radical Right*. New York: M. E. Sharpe Inc., 1999.
- Hogea, Alina, *Coming to Terms with the Communist Past in Romania: An Analysis of the Political and Media Discourse Concerning the Tismăneanu Report*, *Studies of Transition States and Societies*.
- Hopkins, James L., *The Evolution of Nationalism Within the Bulgarian Orthodox Church*, *World Christianity in Local Context: Essays in Memory of David A. Kerr*. Continuum. 1, 2009.
- Holzer, J., *Polen und Europa. Land, Geschichte, Identität*, Bonn, Bundeszentrale für Politische Bildung, 2007.
- Ioanid, Radu, *The Sacralised Politics of the Romanian Iron Guard*. (Eds.): Griffin, Roger. *Fascism, Totalitarianism and Political Religion*. Routledge.
- Jelinek, Yeshayahu, *Storm-Troopers in Slovakia: The Rodobrana and the Hlinka Guard*, *Journal of Contemporary History*, 1971.
- Katsikas, Stefanos., *Negotiating Diplomacy in the New Europe: Foreign Policy in Post-Communist Bulgaria*, I.B. Tauris, 2011.
- Kestler, S., *Nationalsozialistische Europakonzeptionen im Zweiten Weltkrieg. Darstellung Ausgewählter Beispiele*, in: A. Pfahl-Traughber – M. Rose-Stahl (eds): *Festschrift zum 25-jährigen Bestehen der Schule für Verfassungsschutz und für Andreas Hübsch*, Brühl, Schule für Verfassungsschutz, 2007.

- Kirschbaum, S. J., Introduction, in: S. J. Kirschbaum (ed.): *Central European History and the European Union*, New York, Palgrave Maxmillan, 2007.
- Kont, Ogist, „*Kurs pozitivne filozofije*”, Univerzitetska reč, Nikšić, 1989.
- Kopeček, L., *The Far Right in Europe. A Summary of Attempts to Define the Concept, Analyze Its Identity, and Compare the Western European and Central European Far Right*, Central European Political Studies Review, Vol. IX, No. 4., 2007.
- Krejčí, J., *Introduction: Concepts of Left and Right*, in: L. Cheles – R. Ferguson – M. Vaughan (eds): *Neo-Fascism in Europe*, New York, Longman Publishing, 1991.
- Likhachev, Vyacheslav, *The Far Right in the Conflict between Russia and Ukraine*, Russie. Nei. Visions, No.95., Ifri, July 2016.
- Likhachev, Vyacheslav, *Right Sector and Others: Behaviours and Role of Radical Nationalist in the Ukrainian Political Crisis of Late 2013-Early 2014*, Communist end Post-Communist Studies, vol. 48., No. 2-3, June-September 2015.
- Magone, José M., *Comparative European Politics: An Introduction*, 2011.
- Mareš, M., *Territorial Claims in the Extreme Right Politics in Eastern Europe*, Conference Paper, Conference on „The Radical Right in Post-1989 Central and Eastern Europe – the Role of Legacies“, 2008.
- Mareš, M., *Terorismus v ČR*, Brno, Centrum strategických studií, 2005.
- Merkel, Peter H.; Weinberg, Leonard, *Right-wing Extremism in the Twenty-first Century*, London, England, UK; Portland, Oregon, USA: M. E. Sharpe Inc., 1999.
- Mareš, M., *Pravicový extremismus a radikalismus*, Brno, Barrister &Principal, Centrum pro studium demokracie a kultury, 2003.
- Mareš, M., *Etnický extremismus a pravicový extremismus*, in: V. Dvořáková – A. Heroutová (eds): *II. Kongres českých politologů*, Praha, Česká společnost pro politické vědy, 2003.
- Mareš, M., *Right-Wing Extremism in Czech Republic*, 2012.
- Mareš, Miroslav; Stojar, Richard, *Extreme right perpetrators. Understanding Lone Actor Terrorism: Past experience, future outlook, and response strategies*, Routledge., 2006.

- Meznik, Michael; Thieme, Tom, *Against all Expectations: Right-Wing Extremism in Romania and Bulgaria*, The Extreme Right in Europe: Current Trends and Perspectives. Vandenhoeck & Ruprecht, 2012.
- Milardović, Anđelko, *Nova desnica*, Kulturno-prosvjetni sabor Hrvatske, Zagreb, 1990.
- Nociar, Tomáš, *Right-Wing Extremism in Slovakia*, Friedrich-Ebert-Stiftung International Policy Analysis., December 2012.
- Oswald, I., *Nationalitätenkonflikte in Östlichen Teil Europas*, Berlin, Landeszentrale für politische Bildung, 1993.
- Payne, Stanley G., *A History of Fascism, 1914-1945*, Univ of Wisconsin Press, 1995.
- Secretary-General's Report to the General Assembly, A/36/215, 1981.
- Segert, D., *Zur Lage des Rechten Extremismus in Osteuropa und zu den Bedingungen Seines Zukünftigen Erfolgs. Ein Überblick*, in: M. Minkenberg – D. Sucker – A. Wenninger (eds): *Radikale Rechte und Fremdfeindlichkeit in Deutschland und Polen. Nationale und europäische Perspektiven*, Bonn, Informationszentrum Sozialwissenschaften, 2006.
- Shafir, Michael, *Denying the Shoah in Post-Communist Eastern Europe*, Holocaust Denial: The Politics of Perfidy, de Gruyter, 2012.
- Shafir, Michael, *Memories, Memorials and Membership: Romanian Utilitarian Anti-Semitism and Marshal Antonescu, Romania Since 1989: Politics, Economics, and Society*, Lexington Books, 2004.
- Shafir, M., *The Mind of Romania's Radical Right*, in: S. P. Ramet (ed.): *The Radical Right in Central and Eastern Europe*, University Park Pennsylvania, Pennsylvania University Press, 1999.
- Siderov, Volen, *Foundations of Bulgarism, The Attack Political Party*, 2011.
- Simeunović, Dragan, *Terorizam*, drugo izdanje, Pravni fakultet, Beograd, 2009.
- Simeunović, Dragan, *Političko nasilje*, Radnička štampa, Beograd, 1989.
- Stanojević, Ivan, *Bezbednosna dilema u Ukrajini – Drugo čitanje Berija Posena*, Politeia, br. 8., Banja Luka, decembar 2014.
- Tuminez, Astrid, *Western perceptions of Russian nationalism*, American International group Inc. and Council for Foreign relations, march 2001.

- Verbeeck, Georgi; Hausleitner, Mariana, *Cultural Memory and Legal Responses: Holocaust Denial in Belgium and Romania*, Facing the Catastrophe: Jews and Non-Jews in Europe During World War II, Berg, 2011.
- Wales, Oscar, *Skinheads and Nashi: What are the reasons for the rise of nationalism among Russian youth in post-soviet period?*, University college of London School of Slavonic and East European Studies, London, 2016.
- William M. Downs, *Political Extremism in Democracies: Combating Intolerance*, Palgrave Macmillan. 2012.
- Zariski, R., *Ethnic Extremism among Ethnoterritorial Minorities in Western Europe. Dimensions, Causes, and Institutional Responses*, Comparative Politics, Vol. XXI, No. 3., 1989.

Internet sources

- Ghosh, Mridula, "The Extreme Right in Ukraine's Political Mainstream: What Lies Ahead?", Right-wing exsterism in Europe, <http://library.fes.de/pdf-files/dialog/10031.pdf>
- Perović, Miloš, „Ukrajina: Otvaranje Pandorine kutije“, <http://www.csi-platforma.org/sites/csi-platforma.org/files/tekstovi/Otvaranje%20Pandorine%20kutije.pdf>
- Rudling, Anders, "The Return of the Ukrainian Far Right: The Case of VO Svoboda“, http://www.academia.edu/2481420/_The_Return_of_the_Ukrainian_Far_Right_The_Case_of_VO_Svoboda_in_Ruth_Wodak_and_John_E._Richardson_eds._Analyzing_Fascist_Discourse_European_Fascism_in_Talk_and_Text_London_and_New_York_Routledge_2013_228-255
- <http://www.economist.com/blogs/easternapproaches/2013/07/polish-ukrainian-relations>
- <http://www.stratfor.com/analysis/russian-ultra-nationalism-monster-moscow-s-making>
- <http://www.businessinsider.com/ukraine-russia-gas-deal-2013-12>
- <http://www.rts.rs/page/stories/sr/story/10/Svet/1512120/Ukrajina,+dani+raspleta%3F>

<https://rs-lat.sputniknews.com/svet/201508204044544/>
https://ruskarec.ru/articles/2012/07/01/napad_na_sssr_tajna_22_juna_1941_15678.html
<http://abcnews.go.com/Nightline/story?id=3718255&page=1>
<http://www.pecat.co.rs/2011/08/mihail-leontjev-raspad-sssr-a-najveca-geopoliticka-katastrofa/>
<http://www.politika.rs/scc/clanak/174603/SAD-uspon-grupa-mrznje>
<http://fakti.org/rossiya/medija-menju/slovenski-neopaganizam-trazi-u-rusiji-status-tradicionalne-religije>
<http://www.washingtontimes.com/news/2013/apr/19/chechnya-hotbed-islamic-extremism-producing-separa/>
http://www.huffingtonpost.com/amb-marc-ginsberg/a-field-guide-to-jihadi-d_b_3134852.html
<http://www.vreme.co.rs/cms/view.php?id=1234137>
<https://russianuniverse.org/2014/01/28/russophobia-cultural-racism/>
<http://izvestia.ru/news/352881>
<http://russia-insider.com/en/society/2015/02/19/3630>
<https://rs.sputniknews.com/vesti/20150316695797/>
<http://www.politika.rs/scc/clanak/128268/%D0%A1%D0%B2%D0%B5%D1%82/%D0%9D%D0%B0%D1%86%D0%B8%D0%B7%D0%B0%D0%BC-%D1%83-%D1%81%D1%80%D1%86%D1%83-%D0%95%D0%B2%D1%80%D0D0%BF%D0%B5>
<https://rs.sputniknews.com/evropa/201602121103202761-estonija-desni-sektor/>
<http://vilnews.com/2012-12-18261>
<http://www.globalresearch.ca/the-political-uses-of-russophobia/5569541>
<http://www.novosti.rs/vesti/planeta.299.html:396465-Objavljena-poverljiva-dokumenta-o-masakru-u-Katinskoj-sumi>
<http://www.in4s.net/poljska-haos-na-ulicama-varsave-desnicari-pokrenuli-nerede-sukob-sa-policijom-video/>
<http://rs.n1info.com/a134561/Svet/Svet/Ekonomska-i-pre-svega-izbeglicka-kriza-daju-vetar-u-ledja-desnici.html>

<https://web.archive.org/web/20040816193453/http://slate.msn.com/id/2078876>
<http://www.nedeljnik.rs/nedeljnik/portalnews/kako-je-eu-postala-bojno-polje-vlasti-i-opozicije-u-poljskoj/>
<http://www.intermagazin.rs/zaboravili-lekcije-iz-drugog-svetskog-rata-poljska-trazi-od-nemacke-da-napadne-rusiju/>
http://www.vostok.rs/index.php?option=btg_novosti&idnovost=4880
<http://www.naslovi.net/2014-01-22/pravda/dragan-petrovic-bice-velikih-pritisaka-da-se-revidira-istorija-ne-samo-od-nemacke-i-austrije-vec-i-iz-anglosakonskih-zemalja/8680238>
http://www.uosi-beograd.org.rs/strategije/nacionalna_strategija_za_mlade.pdf
<http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>

CIP - Каталогизација у публикацији
- Народна библиотека Србије, Београд

316.66-053.6(4)(082)

ROUND Table Conference Youth Perspectives in the
United Europe (2017 ; Beograd)

Youth Perspectives in the United Europe : [proceedings
of Round Table Conference, Belgrade, May 9, 2016] / edited
by Mihajlo Vučić, Marko Novaković. - Belgrade : Institute
of International Politics and Economics, 2017 (Beograd :
Donat Graf). - 321 str. : graf. prikazi, tabele ; 25 cm

Tiraž 300. - Str. 9-10: Foreword / Mihajlo Vučić, Marko
Novaković. - Napomene i bibliografske reference uz tekst.
- Bibliografija uz svaki rad.

ISBN 978-86-7067-241-3

а) Млади - Друштвени положај - Европа - Зборници
COBISS.SR-ID 237546764