03

СРПСКА ПОЛИТИЧКА МИСАО

SERBIAN POLITICAL THOUGHT

ISSN 0354-5989 UDC 32 year XXXIII vol. 97 No. 3/2026.

СРПСКА ПОЛИТИЧКА МИСАО
SERBIAN POLITICAL THOUGHT

ISSN 0354-5989
UDC 32
No. 3/2026.

СРПСКА ПОЛИТИЧКА МИСАО
SERBIAN POLITICAL THOUGHT
Publisher: Institute for Political Studies, Belgrade. Tel: +381 11 3349-204
E-mail: ips@ips.ac.rs; spm@ips.ac.rs
https://www.ips.ac.rswww.ips.ac.rs/rs/magazines/srpska-politicka-misao
ISSN 0354-5989 UDC 32 No 3/2026, XXXIII vol. 97

JOURNAL IS PUBLISHED SIX TIMES A YEAR.
Articles SPT are available in electronic databases: SCIndeks, C.E.E.O.L.
(Central and Eastern European Online Library),
ERIH PLUS (European Reference Index for the Humanities and Social Sciences),
and Russian Science Citation Index (RSCI).

Printing:
Komazec, Inđija
Circulation: 50

SERBIAN POLITICAL THOUGHT

CONTENTS

ESSAYS AND STUDIES

THIS ISSUE'S THEME

LAW AND POLITICS: CONCEPTUALIZATIONS, RELEVANCE AND IMPLICATIONS

UDC 321.01+929 Strauss L.
DOI: 10.5937/spm97-64754
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 1-19

Aleksandar Gajić[*]
Institute of European Studies, Belgrade
Ljubiša Despotović[**]
Institute for Political Studies, Belgrade

LEO STRAUSS'S CRITIC OF MODERN NATURAL RIGHT CONCEPTS AND ITS CONTEMPORARY RELEVANCE[***]

Abstract

This paper reviews Leo Strauss's critique of modern natural right concepts and their contemporary relevance in the light of the crisis of modernity. The first part of the paper observes Strauss's interpretative approach to classical political thought, whose main purpose was to rediscover classical wisdom for solving many theoretical and practical contemporary issues. *Natural Right and History*, Leo Strauss's best-known work, deals with the topic of the relevance of the idea of natural right in light of the 20th century's main dilemma of political philosophy – the crisis of modern political and normative order. Therefore, the second part of the paper gives a brief insight into Strauss's view on the crisis of modernity that is displayed in his work *The Three Waves of Modernity*. Then the work turns its focus on the field of natural right, where, in the third section of the paper, the opposition between classical and modern natural right concepts is analyzed. The final chapter gives some

[*] E-mail: sasa95gajic@gmail.com; ORCID: 0000-0002-3873-0231
[**] E-mail: despotlj@stcable.net; ORCID: 0000-0002-0473-2829
[***] This paper was written within the research activity of the Institute of European Studies and the Institute for Political Studies, funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

conclusions on the contemporary relevance of Strauss's ideas on natural right and its consequences on both contemporary political philosophy and political life. It shows that some of Strauss's ideas on natural right are more relevant than ever, while others turned out to be problematic, unsuitable, or quite naïve and irrelevant.

Keywords: Leo Strauss, classical natural right, modern natural right, crisis of modernity, virtue, nature, history

Although his *Natural Right and History* is regarded as one of the classic books of political philosophy in the 20th century, Leo Strauss remains a controversial figure. On one side, there are some of his students, like Allan Bloom, which memorialized Strauss by characterizing his teacher's oeuvre as "a unified and continuous, ever deepening, investigation into the meaning and possibility of philosophy" (Holley 2017, 621) or those, like Samuel Moyn, that "has conversely argued that Strauss's thinking underwent a turn "from experience to law" (Holley 2017, 621). On the other side, there are who deny Strauss a significant contribution to political philosophy, claiming that he created a comprehensive critique of liberal democracy based on the thought of both Carl Smith and Martin Heidegger (Drury 2005, 11; Howse 2012, 83).

Those who proclaim that Leo Strauss is only a historian of political thought are half-true: his work consists mostly of interpretations of works of major classical and modern thinkers in such a way that not only sheds new light on them, but also gives new directions from those powerful claims to wisdom that are significant for dealing with many theoretical and practical contemporary problems. One thing is undeniable: Leo Strauss considered classical political philosophy to be a treasury of human wisdom that can be used to resolve some of the problems of today.

Natural Right and History, Leo Strauss's best-known work, deals with the topic of the relevance of the idea of natural right in light of the 20th century's main dilemma of political philosophy – the crisis of modern political and normative order. At the time of the publication of the book, the question of natural right hadn't been in the focus of discussions in political philosophy for more than one century, since the times of German idealism. Strauss approached the natural right question

from a totally different perspective: while Hegel's *Naturrecht* didn't mean the right derived from human nature or nature as a normative standard, but a kind of right derived from the conjunction of rational and historical (as it was the perception of almost all other modern thinkers in 19th century), Leo Strauss took the opposite starting point shared by classical pre-modern philosophers.

Contemporary jurisprudence and philosophy of law reduced natural right to moral experience, intuitive intellect, or reflective thought that is not a clear and abstract concept, but rather some kind of consciousness of implicit ethical conditions in the dispositions and propensities of human nature. There are researchers, like Mac Guigan, who dared to define four universal characteristics of natural law: "(a) natural law usually consists of one or several generalized but nevertheless essentially concrete, moral or legal 'values' or 'value judgments'; (b) these 'value judgments' are, in accordance with their 'absolute source' - 'Nature' Revelation (God) or Reason - universally valid and immutable; (c) they are within the reach of human reason properly employed and therefore, the objects of ratiocination; (d) once perceived in their absoluteness and 'pure rationality' they overrule very form of positive law […] It never ceases to search for a unifying higher point of view which would endow the notion of law with something above its naive 'givenness'" (Mac Guigan 1986, 239–240). Most others scholars just conclude that natural law is a never-ending quest for justice and higher moral achievements, or, as Friedmann said, "This history of natural law is a tale of the search of mankind for absolute justice and its failure. Again and again, in the course of the last 2,500 years, the idea of natural law has appeared, in some form or other, as an expression of the search for an ideal higher than positive law after having been rejected and derided in the interval" (Friedmann 1944, 18).

Leo Strauss saw natural right in a more comprehensive way as a continuous tradition starting with Socrates, Plato, Aristotle, and the Stoics that leads to St. Thomas Aquinas and other medieval scholastics. They all saw natural right as an idea that derived from nature in general and human nature in particular, which gives much-needed instruction for the establishment of the best political regime "according to the nature." Strauss, therefore, intended to face classical and modern approaches to natural right theory and to find, in their differences, signs that will point to some of the characteristics of the crisis of the modern era that can be overcome with the help of classical philosophical thought.

LEO STRAUSS ON THE CRISIS OF MODERNITY

Ideological projects in the 20th century and the moral and political disaster that they brought to civilization provoked strong modern and postmodern reactions to Enlightenment political philosophy, which was perceived (first in the Frankfurt school) as the main source of modern totalitarianism. Leo Strauss went even further, trying to grasp the root of the modern crisis by returning to the origins in the very founding of modern political philosophy, not from modern and postmodern positions but from the position of profound interpretation of classical philosophy. He went back to Locke, Hobbes, and Machiavelli to find the origins of crisis that had erupted in the 20th century. Strauss found that it started with deliberate choice, not just consciously, to reject all previous political philosophy but also to elevate some of the passions to the level of philosophy. Therefore, as Strauss said in his *Three Waves of Modernity*: "To understand the crisis of modernity, we must first understand the character of modernity" (Strauss 1989, 81).

The main characteristic of modern political philosophy is the loss of confidence that man can know or achieve the good as it was proposed in classical philosophy. That loss of confidence was produced by the fact-value split due to the adoption of exact scientific rationalism (of mathematical-mechanical origin) to the whole human thought. On the contrary, Strauss was convinced that this kind of scientific knowledge could not validate value judgments. That kind of positivist scientism is a type of knowledge that thinks of itself as the highest form of human knowledge, based on the presumptions that only empirically proven facts acquired by rigorous scientific method make relevant knowledge, while all other types of knowledge are unreliable and even problematic. According to Strauss, the other modern mistake was the one of historicism. It stands on the position that differences and variability shown during human historical development make all universal claims about the good and true – irrelevant and even impossible. It is grounded in the belief that "principles of evaluation and categories of understanding are all historically variable, changing from epoch to epoch; hence it is impossible to answer the question of right or wrong or of the best social order in a universally valid manner, in a manner valid for all historical epochs" (Strauss 1989, 82). According to Schlueter: "At the same time, Strauss tried to show how a truly rational philosophy emerges from the

value judgments that are inescapably if implicitly involved in the most practical questions of political life. In short, a social science modeled on the physical sciences simply cannot give an adequate account of the phenomenon it seeks to understand" (Schlueter 2013, 25).

Strauss believed that modern nihilism rose from the relativization propagated by historicism. Modern crisis is also shown as a crisis in the thought of political philosophy; a crisis in which faith in reason's ability to recognize its highest aims is lost. While taking all of that into consideration, Strauss prescribed a remedy for all modern relativistic and nihilistic delusions: return of the classical natural right concept as a promising path, which proposes that living in a modern political system can be ordered by higher things than established political praxis. According to Drury, "The first thing to notice is that natural right in Strauss is not really about specific principles for political action. In a letter, he had stated that he purposely named his book Natural Right, rather than Natural Law, in order to convey his opinion that nature does not contain laws of conduct; unless, of course, one believes there exists a divine legislator" (Drury 1987, 309). Strauss thought that natural right has intrinsic principles, such as the Second Table of the Decalogue, that specify certain ways of behavior as forbidden without further explanation. According to Olson, "So the classic natural right teaching is – in Strauss's hands – a theory about the good regime, rather than a theory about specific rules. It is a theory about a rule of the 'wise'" (Olson 2013, 55). While the practical politics rose from the disputes about justice between the members of society, classical political philosophy tried to rise above conflicting perceptions about justice to knowledge what natural right is. It discovers three conclusions. According to Schlueter, "First, there is a universally valid hierarchy of ends, but there are no universally valid rules of action" (Schlueter 2013, 30). Supporting this conclusion, Strauss points to Aristotle's remark in the *Nicomachean Ethics*. Aristotle says that there is something by nature even if everything is transformable, which brings Strauss to the conclusion that it is just, in some emergencies, to step aside from the common principles of natural right. According to Schlueter, "The second thing classic natural right teaches, according to Strauss, is that the hierarchy of ends is ultimately determined by the life of philosophy, or the life of autonomous understanding. On the most basic level, this means seeing with one's own eyes, as distinguished from hearsay; it means observing for oneself" (Schlueter 2013, 30). The philosopher, therefore, refuses assent to anything which is not evident to

him. According to Schlueter, "Strauss's third principle of natural right is prudence. Despite their radical differences, philosophical life and political life are in some sense dependent on one another. Philosophers obviously need the city not only for the leisure it provides but also for the occasions political life offers for philosophical inquiry. The political order requires a kind of wisdom if it is to be just" (Schlueter 2013, 31).

Strauss's *The Three Waves of Modernity* portrays the development of modern political philosophy as a form of exclusion from classical political and philosophical thought. Originator of the first wave of modernity, Strauss points out, is Niccolo Machiavelli. Machiavelli rejected classical political philosophy twice: he rejected reflection on virtue or how humans ought to live in favor of how they live, and he believed that chance can be conquered (that is an open rejection of the classical philosopher's assertion that goals of practical politics will always be inaccessible because of factors that are beyond human control). The result of those two rejections is that "by lowering the standards of political excellence one guarantees the actualization of the only kind of political order that in principle is possible" (Strauss 1958, 300). This early modern approach has reduced political problems to a technical problem in which all chance factors that defy the will of the statesmen can be overcome by the use of force, just as all unstable and unpredictable nature requires the overlay of "civilization as a mere artifact" (Strauss 1989, 89). Other modern philosophers of the "first wave" continued their break with classical thought, making one more problematic assumption – that humans in the natural state are pretty much the same as they are in civilized state and civilized society. Each of them also added some passions as distinctive human qualities in the imagined state of nature. For Hobbes – it is the fear of death, for Locke – the comfort of owning private property.

Rousseau, the first modern philosopher of the "second wave", tried to find an answer to what humans in the state of nature were really like and made a shift from nature to history. He was followed by Hegel, Marx and many other 19th century thinkers. For Rousseau, "Man in the state of nature is subhuman or pre-human; his humanity or rationality has been acquired in a long process. In post-Rousseauan language, man's humanity is due not to nature but to history, to the historical process, a singular or unique process which is not teleological" (Strauss 1989, 90). Rousseau also pointed out the most human characteristic in the celebrated natural state: for him, it is individual human freedom. In other

words, "Rousseau confronts us with the antinomy of nature on one hand and of civil society, reason, morality, history on the other, in such way that the fundamental phenomenon is the beatific sentiment of existence – of union and communion with nature – which belongs altogether on the side of nature as distinguished from reason and society" (Strauss 1989, 94).

The "third wave" of modern political philosophy started with the discovery of the modern crisis in all of its social, psychological and normative aspects. Hence, it represents sentiments of anguish, alienation, and even hatred rather than peace and balance. "Third wave" modern philosophers emphasize tragic individual existence that has been faced with insoluble problems, and that sees no comfort in human nature. Therefore, this nature must be overcome by his will, by "will for power" as the main characteristic of human immanence. The main proponent of the third wave is, of course, Friedrich Nietzsche. He claimed that progressive ateleogical history is absurd and prophesized "eternal return". As humans do not have support either in nature or history, they must become creators of their own meaning and fortune: the main task of the *Ubermensch* is to overcome both nature and history by his "will to power" and become the master of his fate.

The main difference between classical and modern thought, as spotted by Leo Strauss is that in classical, pre-modern philosophy, humans were the measure of all things, while, in its modern variant, humans became masters of all things. In the classical approach, humans are part of the whole by nature; they cannot determine the whole or human position in it, but only pursue ends given by nature as a whole because they are good for humans. On the contrary, modern thought sees man as the master of nature that can position itself in its center, transform it, and give it whatever meaning he wants. The modern "first wave" begins with this notion, and the "third wave" ends with this point. According to Paskewich, "Strauss ultimately finds that the foundations of modern thought are based on a faulty premise: that the humans have a choice to leave behind the particular in pursuit of autonomy" (Paskewich 2009, 40). Straus also clearly distinguishes natural law from the desire of self-preservation, one of the leading desires of the modern individual, and points to the fatal consequences of mixing natural law with a desire for self-preservation.

OPPOSITION BETWEEN CLASSIC AND MODERN NATURAL RIGHT

Natural Right and History further develops Leo Strauss's ideas about the crisis of modernity and the big differences between classical political philosophy and its modern successor, which reflect on the natural right idea and all of the questions that come out of it. Hence, Strauss presents his critique of modern natural right theory as a contrast to the classical natural right approach.

He pictures classical natural right as hierarchical, a-historical (or trans-historical), and teleological. There are always remnants of cosmological thinking in natural right that are trying to point at the objective order in nature, which is the first cause of all things. Classic Greek philosophers have noticed that a multitude of views on law and justice are not contrary to the existence of natural right, but even require it. Strauss claims, "Laws are just to the extent that they are conducive to the common good. But if the just is identical with the common good, the just or right cannot be conventional: the conventions of a city cannot make good for the city what is, in fact, fatal for it and vice versa. The nature of things and not convention then determines in each case what is just" (Strauss 1953, 102). In order to find what is really good and just for any man, we must make a distinction between natural and conventional desires and tendencies, and then distinguish those desires that are in accordance with human nature and bad desires that are working against human nature and his humanity. All of that points out that we must begin with the natural constitution common to all people. Hierarchical order of nature represents the basis of natural right. For instance, the human soul is above his body; his dominance over other living creatures is clearly demonstrated in his innate powers of speech and rational thought, as well as through the activities that help them. Above all human activities stands the power of wise reasoning that leads to the good life, life directed towards perfection.

As man is by nature a social being, he fulfills his quest for good living in political communion with other people. Ancient Greeks believed that political life must be directed by citizen's strife to achieve virtuous living. Hence, reaching virtue, that is, perfection – is the main goal of political activity. Strauss pointed out, "Man is so built that he cannot achieve the perfection of his humanity except by keeping down his lower impulses. He cannot rule his body by persuasion. This fact

alone shows that even despotic rule is not per se against nature. What is true of self-restraint, self-coercion, and power over one's self applies in principle to the restraint and coercion of others and to power over others […] Justice and virtue in general are necessarily a kind of power. To say that power as such is evil or corrupting would therefore amount to saying that virtue is evil or corrupting. While some men are corrupted by wielding power, others are improved by it: 'power will show a man'" (Strauss 1953, 132–133). It is unnatural for what is lower in nature to rule over what is higher in nature; therefore, the body cannot rule over the soul, and pure pleasure cannot be put over human excellence and virtue. Classic thinkers knew that not all men were capable of achieving a virtue or perfection, but just a few of them who have a tendency towards virtue and excellence. Realization of their natural tendencies is in higher domains of political life. According to Strauss: "Freedom and empire are desired as elements or conditions of happiness. But the feelings which are stirred by the very words 'freedom' and 'empire' point to a more adequate understanding of happiness than that which underlies the identification of happiness with the well-being of the body or the gratification of vanity; they point to the view that happiness or the core of happiness consists in human excellence […] Since men are then unequal in regard to human perfection, i.e., in the decisive respect, equal rights for all appeared to the classics as most unjust. They contended that some men are by nature superior to others and therefore, according to natural right, the rulers of others." (Strauss 1953, 134–135). Inclined to reach his highest goal, men incline to live in the best kind of society, the best "politeia" – a political society with true human government and not just a mere administration over things. "Politeia" is not just a legal constitution but also more fundamental than that – it is the fundamental source of all law, both the realistic distribution of power within the political community and "telos," purpose of natural right.

As a contrast to the classical natural right idea, modern concepts of natural right slowly emerged and developed. From the outset of the modern natural rights idea sanctioned an individualism which has proved to be more persistent than the restraints on individuality supplied by all modern doctrines. According to Strauss, "When liberals became impatient of the absolute limits to diversity or individuality that are imposed even by the most liberal version of natural right, they had to make a choice between natural right and the uninhibited cultivation of individuality. They chose the latter" (Strauss 1953, 5). Modern individualism, with

its inner complexities and contradictions, is the most powerful solvent of natural right and the root of quarrels between ancients and moderns. Individual selfhood is not constituted by anything outside itself – by any kind of relationship to the other: other men, or to anything that is permanent or eternal (be it either God or matter of ancient atomistic materialism). The modern main thesis is that the real is (only) individual and that its solitude was seen as bad only because it was insecure. At the same time, the classical tradition of suspension of natural right only in an exceptional state of emergency was left with the justification that the principle of justice must be subjugated to the principle of necessity. In other words, modern politics sought an exceptional state as normal and permanent, while the direction of both the individual and the political community towards virtue and perfection was seen as unrealistic, even impossible, and hence a dangerous intention.

The first modern thinker who abandoned the classical approach in favor of a realistic concept of politics that sees virtue only as a mere strength to use all power in a manner suitable to a (permanent) state of emergency was Niccolo Machiavelli. What was discovered by Machiavelli was that political must be understood without reference to the ideals of perfection and trans-political, mostly spiritual ends. The modern state, with its natural right concept, no longer seeks justice as its natural goal, but only the right to self-preservation that is considered to be "natural." "*Ragione de stato*" (reason of the state) comes to the position of virtue and the best kind of "politeia."

Thomas Hobbes was the first modern who had abandoned the ("metaphysical") quest for the "whole" or the "first things" of Hellenic philosophy. He also abandoned the classical approach to nature as a term of distinction and standard, and, consequently, he was forced to understand (political) philosophy in contradistinction to nature. Hobbes accepted a new "realistic" approach of both human individuality and politics and new mathematical principles of physical science. According to Kennington, "He accepted the public spiritedness of philosophy which follows from the premise that politics is source of great human goods. But he jointed it with the hedonism of materialistic tradition which denied public spiritedness' […] His natural philosophy is both mathematical and materialistic-mechanic" (Kennington 1981, 82). Strauss points out, "His solution is that the end (or the ends) without which no phenomenon can be understood need not be inherent in the phenomena; the end inherent in the concern with knowledge suffices.

Knowledge as the end supplies the indispensable teleological principle. Not the new mechanistic cosmology but what later on came to be called 'epistemology' becomes the substitute for teleological cosmology. But knowledge cannot remain the end if the whole is simply unintelligible: '*Scientia propter potentiam*' ('knowledge is power'). All intelligibility or all meaning has its ultimate root in human needs. The end, or the most compelling end posited by human desire, is the highest principle, the organizing principle" (Strauss 1953, 176–177). Hobbes tried to maintain the idea of natural right but to separate it from the idea of man's perfection, so he found its basis in the most powerful force that actually determines most men most of the time: it is not reason but passion. The most powerful passion, according to Hobbes, was the desire for self-preservation that comes from fear of violent death. The desire for self-preservation preoccupies the political philosophy of the early modern epoch and its views on natural right. According to Strauss, "In other words, the desire for self-preservation is the sole root of all justice and morality, the fundamental moral fact is not a duty but a right; all duties are derivative from the fundamental and inalienable right of self-preservation" (Strauss 1953, 181). The essence of politics lies more in the will and commandment than in the prudence of reason. Competent rule is seen as the total opposite of the best kind of rule, and the notion of good is equated with principles of enjoyment and comfort.

In Locke's teachings, private property becomes a prerequisite for self-preservation and individual happiness. Locke believed that the essence of property or wealth is individual labor and enterprise, so that it – as the most natural desire and, therefore, the basis of natural right – must be liberated from all ethical and political restraints. His natural right theory proclaims that the entire human association is based on the protection of private property and the enlightened egoism of the individual. The passion for self-preservation leads an individual to search for his comfort and happiness in private property and its protection from the state. According to Strauss, "Property is an institution of natural law; natural law defines the manner and the limitations of just appropriation. Men own property prior to civil society; they enter civil society in order to preserve or protect the property which they acquired in the state of nature […] Yet, while civil society is the creator of civil property, it is not its master: civil society must respect civil property; civil society has, as it were, no other function but to serve its own creation […] The natural right to property is a corollary of the fundamental right of

self-preservation; it is not derivative from compact, from any action of society. If everyone has the natural right to preserve himself, he necessarily has the right to everything that is necessary for his self-preservation" (Strauss 1953, 234–235). Locke's approach to natural right proclaims not just mere self-preservation but comfortable self-preservation. He enlarges individual appetites for ownership and elevates them to the rank of "common good," as the epitome of welfare. "Freedom, for Locke, meant precisely the freedom from absolute and arbitrary power. Government therefore needs to be severely limited. However, by way of fundamental contract everyone must submit to the determination of the majority. Both Hobbes and Locke stress the right of the individual to resist the established government whenever self-preservation is endangered. Civil society is, therefore, in one sense put on a fluid and historical foundation in natural rights doctrine, especially if the political order begins to run counter to the natural rights, which it is originally established to guarantee" (Peddle 2012, 9).

The first critic of modernity in modern political philosophy came from Rousseau in the name of two classical ideas: virtue and nature, but seen in quite a different way than the ancients saw them. Rousseau observed that modern man was not truly natural because he was gifted with reason, pride, and many other passions. He was also convinced that men's individuality is good. Because human goodness predates human freedom (seen as independence), natural man must be stripped of all bad influences, all the reason and passions caused by his dependence in civil society. Man's true humanity and freedom are lost in the process of history as a consequence of both accident and necessity. An individual is by nature good but also subhuman because he has no natural and definable constitution, which is function of a convention. Strauss points out, "The modern state presented itself as an artificial body which comes into being through convention and which remedies the deficiencies of the state of nature […] Rousseau suggested the return to the state of nature, the return to nature, from a world of artificiality and conventionality […] There is an obvious tension between the return to the city and the return to the state of nature. This tension is the substance of Rousseau's thought. He presents to his readers the confusing spectacle of a man who perpetually shifts back and forth between two diametrically opposed positions. At one moment he ardently defends the rights of the individual or the rights of the heart against all restraint and authority; at the next moment he demands with equal ardor the complete sub-mission of the

individual to society or the state and favors the most rigorous moral or social discipline" (Strauss 1953, 253–254). For Rousseau, freedom is a higher good than life, freedom seen as independence from all others. Man's freedom to create is the ultimate good, because only in such freedom can life have real purpose. Natural freedom remains as a model for civil freedom. Civil society must be directed not towards human's most important ends but his beginnings, toward his state of nature. In other words, Rousseau wanted to restore human individual goodness and his freedom by adhering to his nature. Therefore, he reformed the modern natural right concept into result-determined historicism. This historicism was later developed in both idealistic philosophy and modern ideologies that combined modern subjectivistic rationalism and the dialectic of classical philosophy. They all believed that if modern man/humanity wants to liberate itself from ignorance, evil, all constraining limitations, and create a society that will allow the realization of his deepest aims and individual capacities, it must be done by itself, by its own free and unlimited will, seen as the main source of his natural rights. That leads modern natural right theory to its "third wave" faced with the crisis of modernity, revealed as disappointment in both rational speculation and the course of history and its achievements.

SOME CONCLUSIONS: ON CONTEMPORARY RELEVANCE OF LEO STRAUSS'S THOUGHT

Unfortunately, today's relevance of Leo Strauss's political philosophy in general and natural right in particular is often viewed through the prism of the influence of his students and followers in contemporary politics and evaluated by their effect. It is such a pity, because some of the insights given by Strauss's thought are very relevant for understanding a series of contemporary processes and phenomena that he saw in the earlier stages of their development and attempted to determine their outcomes. For instance, Strauss's objection to the fact/value distinction in the positivistic scientific approach is today widely accepted in social sciences, regardless of the fact that his interpretative method was not sufficiently developed and partly under suspicion. Some contemporary researchers objected that Strauss's meta-ethical views look untenable. According to Olson: "Neither does he present any real arguments for them, nor does he engage with the critical meta-ethical literature that existed when he was writing (e.g., Hägerström, Ayer,

Stevenson, Hare, Nowell-Smith). And authors who otherwise write appreciatively about Strauss do not really try to defend his cognitivist stance (although they do not seem to reject it either), so we cannot get any guidance from them as to how Strauss would have argued against modern noncognitivists" (Olson 2013, 58).

On the other hand, Strauss's criticism pointed towards historicism's trying to undermine all universalistic normative stances, which are very relevant today. Today's dominant scientific and intellectual approach – constructivism, stands on many identical positions as yesterday's historicism, further developing similar arguments that are pointed against any universalism and attempts to formulate objective value judgments. His warnings about the dangers of relativistic and nihilistic effects of such claims are today even more relevant than they were at the time of the publication of *Natural Right and History*. Leo Strauss's observations that modern individualism is not just starting to prefer immanent will over nature in the phase of deep resignation with reason and historical development are proved not just to be right, but even prophetic: today's orientation of individualism shows tendency to proclaim the entire human nature as a social construct that need to be transformed by the effort of the human will which does not tolerate any of the givenness and limitations (that's the main motto of post-humanism).

Strauss remarks that modern individualistic inclinations in natural right concept that prefer rights over duties and even denying duties toward the community are ugly facts of present day, are clearly not outdated. On the contrary, the metastasis of human rights of newer and more recent generations is obviously directed toward not just improving the status of the individual, but undermining collective traditions and almost all communitarian relations in contemporary societies. All of that shows us that the present imbalance between rights and duties is a consequence of individualistic turning back to all forms of responsibility and higher virtuous demands that are threatening, in the long term, to ruin the social structures and the culture that was created through millennia of human existence.

Some views of classical philosophy that Strauss intended to reaffirm are still problematic, but some of them are getting more support day by day from the perspective of the development of other modern sciences. For instance, contemporary achievements of natural sciences are showing that observed nature really seems to be hierarchical and pointed in its development at some meaningful direction (or, in

other words, that it is teleologically oriented). According to Holloway, "In recent years, a new Darwinian approach to social science has emerged, advocated by, among others, James Q. Wilson, Larry Arnhart, Roger Masters, Francis Fukuyama and Robert Mc Shea. Drawing on contemporary ethology and sociobiology, these scholars point to a wealth of empirical evidence that moral inclinations such as care for kin, sympathy for others and justice and reciprocity arise not solely from variable cultural learning but from universal human biology. Moreover, they contend, the natural status of such moral proclivities makes sense in light of modern evolutionary theory: insofar as humans, like many other animals, require each other's assistance to secure their fundamental biological interests in survival and reproduction, it is·predictable that natural selection would over time favor those with spontaneous inclinations toward cooperation and sociability" (Holloway 2009, 81). In the place of classical philosophy's cosmic teleology, modern natural science is building up a new, immanent teleology very compatible with some of Leo Strauss's main philosophical theses.

Of course, contemporary circumstances proved some of Leo Strauss's ideas and propositions problematic, unsuitable, and even radical, while some of them proved to be quite naïve or irrelevant. For instance, ancient rationalistic logocentrism and cosmological teleology are obviously naïve concepts seen from a contemporary perspective, quite unsuitable to solve contradictions and antinomies of present times, as Leo Strauss, in his aim to reinterpret and revive classical philosophy, deeply believed and even advocated. Some of his positions are even more questionable: his insistence on reviving absolute values – the truth that can be effective only by its connection to reason and nature and all those questions about moral knowledge he seems to understand in a mere cognitivist way. Besides, he confronts such understanding of permanent, absolute values not just with historicism's relativization but with the whole history. Leo Strauss's worldview is completely anti-historical, and his way of dealing with history and all questions related to it indicates that many significant ideas that emerged during the modern era in philosophy are unknown to him or that he finds them totally irrelevant. According to Ryn, "He does not recognize that the philosophy of historical consciousness or the historical sense has far greater range and depth than anything indicated by his term 'historicism.' The latter conception may describe some historicist tendencies but ignores elements of the larger current of historicism that have contributed

greatly to an improved understanding of the age-old question of the relation between universality and particularity […] A choice must be made between universality or history. Strauss never considers a third possibility. *Tertium datur*" (Ryn 2005, 36).

Leo Strauss's advocacy of classical teaching about virtue and best regime is seen as some kind of anti-liberal, anti-egalitarian, and even anti-democratic stance by many contemporary researchers. Some of them even believe that his teaching is a "philosophical conspiracy" to overthrow liberal democracy and transform it into some kind of "aristocratic rule of the wise" (where these wise are, actually, Strauss's followers and disciples). Such claims are indeed overstated. While Strauss really criticized the anti-elitist and nihilistic side in modern liberal democracies, he didn't believe that, in practice, the best possible regime can take the form of any kind of aristocracy. Practical politics demands compromise with reality and given circumstances, and the best compromise, completely in league with the ancient classic philosophers appreciated and interpreted by Strauss, is not a rule by a wise man, but a gentleman. That gentleman is a political imitation and reflection of a wise man in modern, urban conditions, while giving society its character. In other words, Strauss believed in a mixed, republican regime, enhanced by the conclusion of classical thought and redirected toward virtue. He seems to have fully endorsed US-style democracy. What is most problematic in the application of his teaching is clearly shown in early 21st century US politics, where his disciples adopted Strauss's classical concept of virtue and turned it into a mere justification of their own arrogance and zeal to export one existing political regime – so different than their teachers' idealized best regime – as an ideal model to the whole world. And they did it not by virtuous example or philosophical argumentation of classics, but by sheer force.

REFERENCES

Drury, Shadia. 2005. *The Political Ideas of Leo Strauss*. New York: Palgrave Macmillan.

Friedmann, Wolfgang. 1944. *Legal Theory*. London: Stevens.

Holley, Jared. 2017. "Theory, Practice and Modernity: Leo Strauss on Rousseau Epicureanism." *Journal of the History of Ideas* 78 (4): 621–644. DOI: 10.1353/jhi.2017.0034

Holloway, Carson. 2009. "Strauss, Darwinism and Natural Right." In *The Human Person and a Culture of Freedom*, eds. Peter Pagan Aguiar and Terese Auer, 106–122. Washington DC: Catholic University of America Press.

Howse, Robert. 2012. "Misreading Leo Strauss." *Policy Review* 176: 83–94.

Kennington, Richard. 1981. "Strauss's Natural Right and History." *The Review of Metaphysics* 35 (1): 57–86.

Mac Guigan, Mark. 1966. *Jurisprudence: Readings and Cases*. Toronto: University of Toronto Press.

Olson, Mikael. 2013. "The Straussian Paradigm Turned Upside Down: A Model for Studying Political Philosophy." *Minerva - An Internet Journal of Philosophy* 17 (1): 49–73.

Paskewich, Christopher. 2009. "Leo Strauss's Modern Regime Cycle." *Theoria* 56 (118): 40–62. DOI: 10.3167/th.2009.5611804

Peddle, Francis. 2012. *Natural Law and Modern Natural Right*. Ottawa: Dominican University College.

Ryn, Claes. 2005. "Leo Strauss and History: The Philosopher as Conspirator." *Humanitas* 18 (1): 31–58.

Schlueter, Nathan. 2013. "Leo Strauss and Benedict XVI on the Crisis of the West." *Modern Age* 55 (1–2): 22–33.

Strauss, Leo. 1953. *Natural Right and History*. Chicago: University of Chicago Press.

Strauss, Leo. 1958. *Thoughts on Machiavelli*. Chicago: University of Chicago Press.

Strauss, Leo. 1989. "The Three Waves of Modernity." In *An Introduction to Political Philosophy*, ed. Hilail Gildin, 81–98. Detroit, MI: Wayne State University Press.

Александар Гајић[*]
Институт за европске студије, Београд
Љубиша Деспотовић[**]
Институт за политичке студије, Београд

ЛЕО ШТРАУСОВА КРИТИКА МОДЕРНИХ КОНЦЕПТА ПРИРОДНОГ ПРАВА И ЊЕГОВА САВРЕМЕНА РЕЛЕВАНТНОСТ[***]

Резиме

Рад разматра Лео Штраусову критику модерних концепата природног права и њену савремену релевантност у светлу кризе модерности. Први део рада посматра Штраусов интерпретативни приступ класичној политичкој мисли чија је главна сврха била да поново открије класичну мудрост за решавање многих савремених теоријских и практичних питања. *Природно право и историја*, најпознатије дело Леа Штрауса, бави се темом релевантности идеје природног права у светлу главне дилеме политичке филозофије 20. века – кризе модерног политичког и нормативног поретка. Стога, други део рада даје кратак увид у Штраусов поглед на кризу модерности који је приказан у његовом делу *Три таласа модерности*. Затим се рад фокусира на област природног права, где се, у трећем делу рада, анализира супротстављеност између класичних и модерних концепата природног права. Завршно поглавље пружа закључке о савременој релевантности Штраусових идеја о природном праву и њиховим последицама по савремену политичку филозофију и политички живот. Закључује се да су неке од Штраусових идеја о природном праву релевантније него икад, док су се друге показале проблематичним, неприкладним или прилично наивним и ирелевантним.

[*] Имејл: sasa95gajic@gmail.com; ORCID: 0000-0002-3873-0231
[**] Имејл: despotlj@stcable.net; ORCID: 0000-0002-0473-2829
[***] Овај рад је написан у оквиру научноистраживачке делатности Института за европске студије и Института за политичке студије, коју финансира Министарство науке, технолошког развоја и иновација Републике Србије.

Кључне речи: Лео Штраус, класично природно право, модерно природно право, криза модерности, врлина, природа, историја

* This manuscript was submitted on February 8, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

UDC 327:341.645
DOI: 10.5937/spm97-66768
Review article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 21-50

Jelena Jakšić*
Faculty of Law, University of Priština,
with a temporary seat in Kosovska Mitrovica

RECIPROCITY AS A CONDITION FOR THE RECOGNITION OF FOREIGN COURT DECISIONS: POLITICAL-LEGAL ASPECT AND MODERN SIGNIFICANCE IN DOMESTIC AND COMPARATIVE LAW

Abstract

This paper examines the institute of reciprocity as a condition for the recognition of foreign court decisions, with special reference to Serbian law and comparative legal trends, pointing out its political-legal significance in contemporary relations between states. Reciprocity is analyzed as a traditional mechanism for the protection of state sovereignty and the equality of states, but also as an instrument for regulating international legal cooperation. It starts from the distinction between legal, factual, and presumed reciprocity and their role in ensuring reciprocity in cross-border relations, while indicating a gradual transformation from a formal to a functional approach. The analysis of court practice and comparative law decisions shows an evolution from strict formal to material (factual) reciprocity and an increasingly pronounced tendency for reciprocity to be assumed, instead of being formally proven, whereby the center of gravity increasingly moves towards procedural guarantees, public order, and the principle of mutual trust. Special attention is paid to contemporary solutions in the law of the European Union and other legal systems, as well as the impact of

* E-mail: jelena.jaksic@pr.ac.rs; ORCID: 0000-0002-8281-5590

the Hague Convention on the Recognition and Enforcement of Foreign Court Decisions from 2019 (Hague Judgments Convention 2019), which affirms a model based on procedural standards and not on formal reciprocity. Critical analysis shows that formal reciprocity in modern law is gradually losing its role as a general precondition for recognition and is increasingly giving way to functional models, which reflect the need for balancing between the protection of state sovereignty and the strengthening of international cooperation and trust. It is concluded that the domestic legal system already contains elements of this more modern approach, and that further development should be directed towards strengthening convention and supranational mechanisms of recognition, while retaining reciprocity as a subsidiary instrument in the protection of national interests.

Keywords: recognition of foreign judicial decisions, private international law, factual reciprocity, mutual trust, judicial practice

INTRODUCTION

Reciprocity represents one of the oldest institutions in private international law and, at the same time, one of the key conditions for the recognition of foreign judicial decisions and other legal acts in domestic law. Reciprocity also has a legal-technical character; it contains significant political and material elements, which make it a particularly sensitive institution in the field of international cooperation. Essentially, reciprocity implies mutuality in rights and obligations, that is, the willingness of one state to recognize the legal effect of decisions of another state, provided that the latter acts in the same manner. Over time, the conceptual role of reciprocity has evolved: from a classical instrument of formal mutuality and "reciprocation" to a mechanism that primarily ensures equal treatment in international legal relations (Pavić 2013, 85–86). In practice, this principle functions as a guarantee of mutual respect and balance in international legal relations. In this sense, it is not merely an instrument for the protection of national sovereignty, but also a means of promoting interstate cooperation (Marjanović 2019, 102).

In domestic law, the condition of reciprocity is particularly pronounced in the context of recognizing foreign judicial decisions, which is regulated both in the Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries (Zakon o rešavanju sukoba zakona sa propisima drugih zemalja [ZRSZ] 2006), and it the 2014 draft Law on Private International Law (PIL) of 2014 (Ministarstvo pravde Republike Srbije 2014, čl. 87). In both instruments, reciprocity appears as one of the key procedural prerequisites for the recognition of a foreign judicial decision, while simultaneously providing a framework for comparison with other legal systems. The relevance of this topic is especially evident in light of European and global trends that increasingly move away from formal reciprocity and shift toward models based on mutual trust and standards of fair procedure.

In some jurisdictions, such as Germany, Austria, and Italy, reciprocity functions as a discretionary requirement, while in others, including Serbia, it remains a formal prerequisite for the recognition of foreign court decisions (Stojanović 2009, 54–57). The aim of this paper is to analyze the concept, role, and justification of reciprocity as a condition for the recognition of foreign judicial decisions in contemporary law, with particular attention to the Serbian legal order and comparative legal solutions. Special emphasis is placed on the question of whether this institution, in its traditional form, still retains a justified place or whether it is gradually being replaced by functional models based on material reciprocity and mutual trust. The analysis will cover the normative framework of applicable Serbian law, the draft of the new PIL, as well as relevant solutions in European states and international conventions. Particular attention will be paid to assessing the justification for maintaining the condition of reciprocity in modern law and exploring possibilities for its substitution by principles of mutual trust and international judicial cooperation.

The paper is based on normative, comparative-legal, analytical, and historical methods, with a systematic approach to the analysis of domestic legislation and judicial practice. Based on contemporary comparative legal trends and practices favoring material reciprocity and mutual trust, the paper's working hypothesis posits that the development of the law is likely to move away from strict formal reciprocity, and that for Serbia, the most appropriate model is one of limited, subsidiary reciprocity. In this sense, reciprocity cannot be seen exclusively as a legal institute, but also as a mechanism that reflects wider relations

between states and the balance between sovereignty and international cooperation.

CONCEPT AND LEGAL NATURE OF RECIPROCITY

Concept and Types of Reciprocity

In private international law, reciprocity represents a condition of mutuality that a state imposes as a prerequisite for the recognition of legal facts, foreign judicial decisions, or the legal status of natural and legal persons from another state. The concept is based on the idea of legal equality among states, where each state is willing to recognize the effects of foreign legal acts only if the other state grants the same level of recognition. "Reciprocity has traditionally been understood as an instrument for protecting state sovereignty, as it allows a state to recognize foreign decisions only to the extent that the other state recognizes its own. In this way, mutuality functions as a mechanism of balance among sovereign systems" (Singh 2023, 2–3).

According to Marjanović, "reciprocity represents the historically oldest and most widespread condition for the recognition of foreign judicial decisions, grounded in the idea of equality and mutuality among states" (Marjanović 2019, 102–104). It is not a sanction, but a mechanism for protecting sovereignty, aimed at ensuring that domestic decisions are not placed at a disadvantage relative to foreign ones. Modern theory distinguishes between the positive and negative aspects of reciprocity. Positive reciprocity serves as an incentive for interstate cooperation, whereas negative reciprocity arises when a state imposes restrictive conditions and refuses recognition if the other state does not act similarly. This results in significant differences in the application of the reciprocity institution worldwide. In domestic and comparative legal theory, three forms of reciprocity are commonly distinguished (Stanivuković i Živković 2003, 426–429). The first is legislative (*de iure*) reciprocity, which exists when a law or international treaty explicitly provides that the recognition of a foreign decision depends on mutuality, that is, when the provision stipulates that a foreign decision will only be recognized if that state also recognizes the decisions of our courts. The second form is factual (*de facto*) reciprocity, considered to exist when the law does not contain an explicit provision on mutuality, but the practice of the other state demonstrates that it actually recognizes our decisions. The

third form is presumed reciprocity, which assumes that mutuality exists unless proven otherwise (Kitić 2019, 290). In practice, this means that reciprocity is not actively proven but rebuttably presumed. Courts most frequently rely on factual reciprocity in practice, as proving the existence of formal (normative) reciprocity is often difficult, particularly when no bilateral treaty exists.

Functions and Legal Role

Reciprocity fulfills several important functions in private international law. First, it serves a protective role, ensuring the preservation of state sovereignty and equality of its citizens in international relations. Second, it operates as an incentive: it motivates states to cooperate and mutually recognize judicial decisions, as only in this way can they expect equal treatment. Finally, reciprocity contributes to legal certainty, as it increases the predictability of cross-border relations, particularly in areas such as commerce, family law, and the enforcement of foreign judgments. As Béligh Elbalti emphasizes, the historical role of reciprocity is closely linked to the protection of state sovereignty and the maintenance of equality among states. "Reciprocity functioned as an instrument to balance the fact that one state accepts the judicial authority of another state on its territory: the acceptance of the effects of a foreign judgment implied a willingness to provide identical treatment to the decisions of domestic courts in that foreign state. In this way, reciprocity operated as a mechanism protecting the prerogatives of a sovereign state, ensuring that acceptance of foreign judgments does not undermine its international legal position" (Elbalti 2008, 1). As Pavić notes, "reciprocity is a dynamic condition; its existence does not depend on declarations, but on the actual practice of the foreign state" (Pavić 2013, 87–88), which in practice means that the Court must examine not only legal provisions but also specific cases in which domestic decisions have been recognized in that state.

It can be argued that reciprocity continues to occupy a significant place within the system of private international law. Its value lies not only in the formal condition of mutuality but also in the broader framework that ensures balance among states and promotes legal certainty in cross-border relations. For this reason, understanding reciprocity must encompass both its normative aspect and its practical application, as it is only by connecting these dimensions that one can understand

why this institution, though often criticized, still represents one of the fundamental mechanisms of international judicial cooperation.

HISTORICAL DEVELOPMENT OF THE INSTITUTION OF RECIPROCITY

The idea of reciprocity as a legal principle is deeply rooted in the history of international relations and private law connections between states. Its origins can be traced back to Roman law, where, in relations with *peregrini*, the concept of mutual recognition of certain rights for foreigners appeared, provided that their own state offered the same treatment to domestic citizens. This early form of legal mutuality represented the embryo of the later-formulated institution of reciprocity in private international law (Pavić 2013, 47).

In the Middle Ages, with the expansion of trade and the establishment of the first bilateral agreements between city-states, reciprocity acquired a practical function in commercial law. Its primary purpose was to protect merchants and ensure legal certainty in cross-border transactions (Dicey, Humphrey, and Morris 2000, 22). During the 18th and 19th centuries, as modern nation-states were formed and civil codes codified, the institution of reciprocity became a common condition in laws recognizing foreign judicial decisions, as well as in matters of nationality and property rights of foreigners.

In the first half of the 19th century, the condition of reciprocity became one of the fundamental elements of private international law, particularly in continental Europe. Its essence lay in protecting state sovereignty and controlling the legal consequences of foreign decisions within the domestic legal system. Reciprocity represented a condition of mutuality in the legal protection of citizens, as well as a mechanism to defend the national judiciary from potential injustices of foreign courts. In this sense, the institution reflected the classical understanding of state independence and limited trust between states (Pavić 2013, 91).

In the second half of the 20th century, particularly in Europe, the role of international treaties and supranational mechanisms gradually increased, such as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention 1968) and Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention 1988), which signaled a shift from formal reciprocity toward a model based on mutual

trust. Concurrently with the development of international cooperation, trade, and human rights, the strict requirement of reciprocity began to be gradually abandoned. Instead of formal reciprocity, factual or material reciprocity emerged, under which recognition may be granted provided there is no evidence of discriminatory treatment by the foreign state (Bogdan 2012, 89). This process led to the eventual abandonment of reciprocity in some states – such as France, Belgium, and Italy – where the principle of legal certainty and international judicial cooperation took precedence. In practice, reciprocity sometimes appears as a means of retaliation. A striking example is the case of the U.S. Supreme Court, *Hilton v. Guyot* (SCOTUS 159 U.S. 113, 1895), where the Supreme Court refused recognition of a French judgment precisely due to the absence of reciprocity" (Singh 2023, 2–3). In this case, the United States Supreme Court developed the concept of international judicial comity and conditional reciprocity, which remained a reference point in American doctrine for many years.

On the other hand, in states such as Germany and Croatia, the condition of reciprocity still exists, but in practice, it is applied moderately, with the presumption of its existence. This indicates that the institution has not been completely abandoned but has transformed into a mechanism that preserves sovereignty while respecting the principles of the international legal community.

In Serbian law, the institution of reciprocity has continuity from the Yugoslav period to the present.[1] Even in the 1982 Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries, reciprocity was an explicit condition for recognizing foreign judicial decisions. However, in the more recent draft Law on Private International Law (Ministarstvo pravde Republike Srbije 2014), the emphasis has shifted toward a more flexible interpretation – either as presumed or factual reciprocity – while simultaneously strengthening the role of international treaties (Pavić 2013, 84–91).

[1] During the Socialist Federal Republic of Yugoslavia, reciprocity was explicitly prescribed in Article 87 of the *Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries* (ZRSZ 1982, čl. 87). This provision stipulated that a foreign court decision could be recognized if "reciprocity exists" between Yugoslavia and the state whose decision was rendered. Such a solution was in line with the traditional understanding of sovereignty and mutuality in interstate relations, but over time, it revealed its limitations in the context of increasing international integration.

The historical development of the institution of reciprocity thus demonstrates a trajectory from strict formal mutuality toward a system based on trust and harmonization of legal orders. Today, in most states, reciprocity is no longer merely an instrument for protecting sovereignty but rather an indicator of equality and maturity of the legal system in international relations. It can be observed that reciprocity, although originally conceived as an instrument of state sovereignty, has over time evolved into a mechanism for enhancing international legal cooperation, particularly in the context of recognizing foreign judicial decisions.

RECIPROCITY IN DOMESTIC LAW

The institution of reciprocity in Serbian domestic law has a continuity that stretches from the Yugoslav period to contemporary legislation and represents a traditional yet evolving mechanism balancing the preservation of state sovereignty with the advancement of international legal cooperation. From the outset, it has been designed as an instrument of legal mutuality, ensuring equality among states in the recognition and enforcement of foreign judicial decisions, as well as in other legal relations with an international element (Marjanović 2019, 121–123).

After the dissolution of the SFRY, Serbia retained this model but has gradually modified it over time. The Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries prescribes that a foreign judicial decision may be recognized "if reciprocity exists" (ZRSZ 2006, čl. 92). However, judicial practice has developed a more moderate approach – the presumption of reciprocity applies unless proven otherwise (Vrhovni kasacioni sud [VKS] 1695/2019; Stanivuković i Živković 2003, 452–453). This solution aligns with modern trends in private international law, where formal proof of reciprocity is increasingly replaced by the presumption of its existence. In this way, the formal condition gains practical flexibility, allowing courts to avoid refusal of recognition for purely formal reasons, except in cases where evidence indicates a discriminatory regime in the state of origin of the decision.

The Draft Law on Private International Law of 2014 envisaged maintaining the reciprocity requirement but stipulated that its existence need not be proven unless there is a justified doubt regarding its absence (Ministarstvo pravde Republike Srbije 2014, čl. 87). The draft explicitly

provided that the recognition of a foreign judicial decision could not be refused solely due to the absence of established reciprocity if the Court determines that decisions of Serbian courts are recognized in practice in the state of origin of the foreign decision (ZRSZ, čl. 94, st. 3). The draft retained reciprocity as a requirement but limited it to property and contractual disputes, while abolishing it in status-related, family, and inheritance matters. A presumption of reciprocity was established, shifting the burden of proof regarding its absence to the party opposing recognition. Reciprocity was also proposed regarding the jurisdiction of foreign courts. The draft introduced a so-called "mirror system," under which the Court of recognition verifies whether a domestic court would have jurisdiction on the same grounds. This increases predictability of outcomes and aligns with modern European approaches (Stanivuković 2014, 294–297). The draft PIL recognizes only those bases of international jurisdiction that also exist under Serbian law. Thus, for instance, the traditionally accepted exorbitant ground of the location of property (*forum rei sitae*) is retained, which means that decisions based on this criterion will be recognized only if they originate from states where the same basis of jurisdiction exists (e.g., Austria, Czech Republic, Denmark, Lithuania, Estonia, Finland, Germany, and the United Kingdom). In contrast, foreign court decisions based solely on the plaintiff's nationality will not be recognized, as this element is not accepted as an independent criterion of international jurisdiction under Serbian law. This particularly affects judgments from France, Luxembourg, Bulgaria, Czechia, Finland, or Malta, where nationality is the sole or dominant jurisdictional basis of the Court of origin (Stanivuković 2014, 294–297).

In the latter, this principle was further elaborated: reciprocity was defined as an instrument of international cooperation rather than a restriction on recognition of foreign judgments. The Serbian legislator thus accepted the view that reciprocity may be based on the factual conduct of another state, not solely on formal regulations, marking a departure from previous understanding and aligning with contemporary European standards. Literature emphasizes that the system of recognition of foreign judgments in Serbia, despite formally retaining the reciprocity condition, operates in practice as a "relatively liberal" regime, where the focus is on procedural guarantees, public policy, and jurisdiction rather than formal proof of mutuality. This confirms that in contemporary

Serbian law, reciprocity has a subsidiary role primarily, and is waived whenever legal certainty and international judicial.

The principle of reciprocity has gradually evolved in Serbian private international law from a strict formal requirement toward a more flexible instrument of international judicial cooperation. Contemporary Serbian legal doctrine accepts the view that reciprocity may be established not only through formal legal provisions but also through the actual conduct and practice of another state, which represents a departure from earlier understandings and aligns Serbian law with contemporary European standards. Literature further emphasizes that the Serbian system for the recognition of foreign judgments, although formally retaining the reciprocity requirement, functions in practice as a "relatively liberal" regime focused primarily on procedural guarantees, international public policy, and jurisdiction, rather than on strict proof of mutuality. This confirms that reciprocity in modern Serbian law has a subsidiary role predominantly and may be set aside whenever the interests of legal certainty and international judicial cooperation so require (Jovanović i Marjanović 2024, 927).

Judicial Practice

In practice, courts have repeatedly addressed the existence of reciprocity as a condition for recognizing foreign judgments. Such an approach is not new in Serbian legal practice: even the Supreme Court of Serbia, in certain cases (VKS 217/93; VKS 210/99), proceeded from the view that, when assessing the existence of reciprocity, the overall legal regime of the other state is relevant, rather than solely a formal confirmation by the competent authority. In a decision of the Supreme Cassation Court of the Republic of Serbia (VKS 123/2015), it was noted that "reciprocity between Serbia and State X is not formally established, but evidence indicates that the courts of State X recognize decisions of Serbian courts, and the condition is therefore fulfilled." This accepts the notion of factual reciprocity, consistent with contemporary comparative law trends. Similarly, the Appellate Court in Novi Sad (Apelacioni sud u Novom Sadu [ASNS] 3365/2018) concluded that "reciprocity is not necessarily a legal relation, but a real mutual recognition." Such

examples indicate a gradual shift in domestic judicial practice from strict formalism to functional interpretation.[2]

In modern Serbian doctrine, reciprocity is primarily understood as a mechanism of legal equality rather than as an obstacle to recognition of foreign decisions. According to Marjanović, reciprocity "should be understood as an instrument for protecting equality among states in legal dealings, not as a means to restrict recognition"; in this sense, it has more political than legal justification (Marjanović 2019, 212–214). Similarly, Pavić argues that "strict formal reciprocity represents an anachronism inconsistent with the contemporary concept of international cooperation," proposing the adoption of factual reciprocity as the standard criterion (Pavić 2013, 145–148).

Although in the field of recognition of foreign judgments reciprocity is increasingly interpreted as presumed or factual, in certain procedural matters it remains a formal requirement (e.g., security for costs, procedural costs, international legal assistance) (Jovičić i Marjanović 2025, 327–328). For instance, exemption of a foreign national from procedural costs is conditioned on proof that their state similarly protects Serbian citizens, while in international legal assistance, reciprocity is required in the service and obtaining of evidence. The practice of the Commercial Appellate Court (Privredni apelacioni sud [PAS], 1019/2018) also indicates that reciprocity is assessed based on general mutual conduct rather than formal confirmation, in line with the principle of factual reciprocity. These examples demonstrate that reciprocity in procedural law continues to function as an instrument of legal equality.

Under Serbian law, the existence of reciprocity is presumed; however, in cases of doubt the Court relies on evidence presented by the parties and on the opinion of the Ministry of Justice, reflecting the concept of so-called divisible reciprocity – an assessment of mutuality for

[2] A similar trend is observed in the case law of Bosnia and Herzegovina. An analysis of around 800 cases concerning recognition of foreign court decisions showed that approximately 80% of these cases involved family matters (divorce, child and family maintenance), while a smaller portion concerned civil and commercial disputes. In cases where courts explicitly examined whether formal requirements, including reciprocity, were met, practical reciprocity was primarily based on the existence of bilateral agreements on judicial cooperation with the countries of origin of the decisions (Deutsche Gesellschaft für Internationale Zusammenarbeit [GIZ] 2021, 53).

a specific type of decision rather than for all decisions in general (Pavić 2013, 80; Stanivuković i Živković 2003, 431). This position has been consistently confirmed in more recent case law of the Supreme Court of Cassation (VKS 2658/2020; VKS 3410/2020), which has explicitly stated in several cases that reciprocity in Serbian law is presumed and that its absence is established only if the party opposing recognition makes the contrary plausible.

Under the former Act on the Resolution of Conflict of Laws, the absence of reciprocity was not an obstacle to the recognition of decisions relating to marital disputes, disputes concerning paternity or maternity, as well as in cases where recognition was requested by a Serbian national (ZRSZ 2006, čl. 92). These exceptions have also been maintained in later practice, based on the principle of protecting personal and family rights as values of a higher order. As Belović points out, Serbian law presumes the existence of reciprocity, which is assessed as factual and may be "divisible," while in marital and paternity/maternity disputes it is not required at all (Belović 2018, 285). In practice, this principle has been affirmed through numerous decisions of first-instance courts, which in such cases do not require proof of reciprocity but instead proceed from the presumption that recognition does not jeopardize the public policy of the Republic of Serbia.

The practical application of this condition is most clearly reflected in judicial practice, where courts determine the existence of reciprocity based on the content of foreign law and information obtained from competent authorities. For example, in one case the Appellate Court in Belgrade established the existence of reciprocity with North Macedonia based on a report of the Ministry of Justice and an analysis of foreign legislation, concluding that formal, statutory reciprocity existed because the regulations of both states allowed for the same type of acquisition of property rights (Apelacioni sud u Beogradu [ASB] 2611/2021, p. 95). This decision clearly demonstrates that domestic courts combine a formal and a material approach to reciprocity, relying on opinions of the executive branch as an auxiliary means rather than as a crucial prerequisite for the recognition of a foreign decision.

Judicial practice confirms that the application of the institution of reciprocity in Serbia is generally moderate and aimed at preserving legal certainty. Thus, the Appellate Court in Novi Sad states that "reciprocity is presumed unless proven otherwise," emphasizing that "a strict formal application of this requirement would lead to legal uncertainty and

would run counter to the spirit of international cooperation" (ASNS 3565/2017). A similar position was adopted by the Supreme Court of Cassation, stressing that "the existence of reciprocity does not need to be specifically proven when it concerns states with which Serbia maintains developed diplomatic relations and a practice of mutual recognition of decisions" (VKS 1695/2019). In doing so, the Court accepted the principle of "factual reciprocity" as sufficient, thereby practically confirming the more liberal approach adopted in legal doctrine.

In another significant case, the Appellate Court in Belgrade examined the issue of reciprocity in the context of the acquisition of ownership rights over real estate by foreigners. The Court held that "the existence of formal (statutory) reciprocity is sufficient to conclude that the legal condition of reciprocity has been fulfilled," even when there is a lack of data regarding its factual application in the practice of the other state (ASB 1472/19). Such reasoning, supported by the opinion of the Ministry of Justice of the Republic of Serbia, confirms that reciprocity in domestic law is interpreted as presumed and that courts avoid formalistic refusals to recognize foreign judgments.

Judicial practice clearly shows that domestic courts no longer view reciprocity as a strict formal category, but rather as an instrument intended to ensure legal balance rather than to restrict the recognition of foreign judgments. By accepting presumed and factual reciprocity, courts have effectively eliminated the risk of unnecessary formalism and adopted an approach consistent with contemporary comparative law trends. This further confirms that the scope of reciprocity in Serbian law is primarily functional rather than doctrinal.

Evolution from Formal to Material Reciprocity – Judicial and Comparative Perspective

Traditionally, domestic and comparative law relied on a formal (legal) understanding of reciprocity, requiring an explicit legal basis – law, international treaty, or official confirmation by state authorities – establishing that another state recognizes Serbian decisions under the same conditions. This formal approach dominated Yugoslav law and earlier Serbian court practice. Recent practice of the Supreme Cassation Court and appellate courts demonstrates increasingly frequent use of material (factual) reciprocity, "which is not based on formal confirmation of mutuality, but on assessing whether, in the legal practice of the other

state, there is a willingness to recognize Serbian decisions" (Pavić 2013, 79).

In European law, the abandonment of formal reciprocity began with the landmark decision of the French Court of Cassation in *Munzer v. Munzer* (Cour de cassation, 1964, 344) which developed the exequatur model in which proof of reciprocity is no longer required; instead, only jurisdiction, respect for procedural rights, and public policy are examined. This approach was further developed in *Cornelissen* (2007) (Cour de cassation, 2007), where the Court condensed recognition criteria to international jurisdiction, respect for the right of defense, and public policy, definitively relegating reciprocity to the background.

The French Court assessed that compliance with fundamental procedural guarantees and public policy was more important than the question of mutuality. A similar development is observed in German law, where the concept of *Gegenseitigkeit* under §328 ZPO is no longer interpreted as a strict formal category, but as a practical assessment of the existence of mutual legal protection (*Zivilprozessordnung* [ZPO], § 328, and commentary in: Geimer/Schütze 2010, 602–604). The German Federal Court of Justice (BGH) repeatedly stated that "reciprocity exists if foreign judgments essentially enjoy equal treatment," even in the absence of an explicit agreement (Bundesgerichtshof [BGH], IX ZR 74/82, NJW 1983, 1559). This position was confirmed in BGH decisions, e.g., 4 June 1992 (BGH, IX ZR 149/91), where recognition of a U.S. judgment was granted based on substantive mutuality despite the absence of a formal bilateral treaty. Similarly, in BGH 20 June 2018 (BGH, XII ZB 285/17), in proceedings for recognition of a California maintenance judgment, it was explicitly determined that the procedure involved "formal reciprocity" under §64 AUG, with reciprocity deemed satisfied based on a publication by the Federal Ministry of Justice (BGH, XII ZB 285/17).

In European Union law, the concept of formal reciprocity has been almost entirely abandoned. A characteristic example is insolvency practice. In *Eurofood* (Court of Justice of the European Communities [CJEU], C-341/04) Court of Justice of the European Communities, Judgment of 2 May 2006, the Court of Justice assumed that the Court of the state where the debtor's center of main interests (COMI) is located is best positioned to open the main insolvency proceedings, and other member states must recognize its judgments, except in cases of manifest public policy violation. Thus, even in matters of considerable economic

and political sensitivity, the Court favors automatic recognition and narrowly interprets grounds for refusal.

In *Krombach v. Bamberski* (CJEU, C-7/98), the Court emphasized that recognition of foreign judgments within the EU is based on mutual trust rather than on a formal reciprocity requirement. This approach was reaffirmed in *Trade Agency v. Seramico Investments Ltd* (CJEU, C-619/10), where the Court stressed that Member States must presume mutual respect for legal standards except in cases involving serious violations of public policy. The jurisprudence of the Court of Justice thus confirms that automatic recognition constitutes the rule, while refusal remains the exception, with reciprocity no longer functioning as an independent precondition for recognition. Similar tendencies may be observed in the contemporary development of Serbian private international law, where reciprocity is increasingly understood as a flexible instrument of international judicial cooperation rather than as a strict limitation on the recognition of foreign judgments. This solution corresponds to the tendencies promoted within the Council of Europe and the principles developed by the Hague Conference on Private International Law. The transition from formal to material reciprocity, therefore, represents not merely a technical modification in the recognition of foreign judgments but also a broader transformation in the philosophy of international cooperation – from the protection of state sovereignty toward greater trust in foreign legal systems. "Although many states formally retain reciprocity, its application is increasingly mitigated; international judicial comity, treaties, and procedural guarantees prevail, while negative reciprocity is gradually marginalized" (Singh 2023, 2–3).

Overall, the development of the reciprocity institution in domestic law demonstrates a gradual shift from a formalist understanding of mutuality to a more flexible and material interpretation of its purpose. Although reciprocity is retained as a condition, its application is no longer rigid or restrictive, focusing instead on preserving legal certainty, predictability, and cooperation with foreign legal systems. This trend reflects both comparative law influences and the domestic practice's need to establish a functional system for recognizing foreign judicial decisions. It confirms that, in Serbian law today, reciprocity is primarily a subsidiary instrument rather than a barrier to international legal cooperation. The evolution from formal to material reciprocity represents one of the most significant steps in modernizing Serbia's

private international law system. This process mirrors broader European trends while simultaneously demonstrating domestic law's capacity to adopt principles that enhance legal certainty and promote international cooperation. In practice, this evolution signifies that the emphasis has gradually shifted from state interests to the protection of parties' legal rights – an attribute of contemporary and mature legal systems.

CONTEMPORARY SIGNIFICANCE AND FORMS OF RECIPROCITY IN COMPARATIVE LAW

Contemporary comparative law development shows a gradual shift from strict, formal reciprocity to a functional model that emphasizes legal certainty, predictability, and mutual trust between legal systems. Instead of an absolute "reciprocity" condition as a gatekeeping filter, an increasing number of legal systems accept presumed or factual (material) reciprocity, while supranational frameworks (EU) entirely replace this condition within their own sphere with the principle of mutual trust. This chapter systematizes current models and practices in key systems: European Union law (and its member states), Germany, France, Croatia, Italy, as well as in comparison with the Anglo-American approach (USA/UK), and the impact of the 2019 Hague Convention (Hague Judgments Convention 2019). Belović emphasizes that no legal system goes to extremes – neither towards complete international openness nor total sovereignty closure – but each system seeks a compromise that respects both international cooperation and the protection of domestic sovereignty (Belović 2018, 276).

In the mutual relations of EU member states, the reciprocity condition has been abandoned and replaced by the principle of mutual trust. The regime for the recognition and enforcement of judgments in civil and commercial matters is governed by Regulation (EU) No. 1215/2012 ("Brussels I Recast"), which abolished the exequatur and is based on almost automatic recognition, with narrow exceptions for public policy and procedural guarantees (Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels I Recast), Arts. 36–45). The early case law of the Court of Justice of the EU contributed to the consistent application of this model. In *Hoffmann v. Krieg* (CJEU, C-145/86), the Court emphasized that decisions of member states concerning divorce and its property consequences are recognized automatically, and that reliance on public policy can only

be accepted exceptionally, in a narrow interpretation, when recognition would result in an obvious violation of the basic principles of domestic law.

German law still provides in § 328 ZPO for reciprocity (Gegenseitigkeit) as a condition for recognition of foreign judgments outside the EU framework, but the practice of the Federal Court of Justice (BGH) and provincial courts interprets it functionally: reciprocity exists if the foreign legal system essentially provides "equal or comparable" treatment to German judgments, without requiring formal (contractual or statutory) equivalence (ZPO, § 328). A stable de facto pattern of recognition is sufficient, rather than "mirror" identical conditions. Judges start from the presumption of reciprocity, which the foreign party can rebut by proving systemic refusal to recognize German judgments in the country of origin.

In Croatian law, positive legislation does not recognize reciprocity as a condition for the recognition of foreign court decisions. Under the 2017 Law on Private International Law of the Republic of Croatia (ZMPP 2023), recognition of foreign judgments is no longer conditioned on reciprocity but is based on standard negative presumptions (jurisdiction, right to defense, public policy, absence of conflicting judgments). According to the Croatian PIL Act (ZMPP 2023, čl. 65–73), recognition relies on standard negative presumptions, respect for the right of defense, international jurisdiction of the Court of origin, absence of conflicting judgments, and the preservation of public policy. Reciprocity is nowhere mentioned as a condition for recognition, placing the Croatian regime within the liberal European models. Certain forms of reciprocity are prescribed exclusively in the context of securing litigation costs (ZMPP 2023, čl. 61), but this institute does not affect the recognition of foreign judgments.

French doctrine and practice have abandoned the reciprocity requirement since the *Munzer* decision (Cour de cassation, 1964, 341). Recognition is conditioned by the five-part test of the French exequatur theory (international jurisdiction of the Court of origin, proper procedure and right of defense, validity of applicable law, absence of conflict with public policy, and absence of fraud/conflicting judgments). In later practice (e.g.,Cour de cassation, 05-14.082), this test was condensed to key elements: international jurisdiction, respect for the right of defense, and public policy (Cour de cassation, 05-14.082, 473). The French approach shows that reciprocity is not a condition for the recognition

of foreign judgments; rather, primacy is given to procedural guarantees and international public policy. In the well-known *Prieur* decision (Cass. 1re civ., 1981), the Court of Cassation confirmed that French courts primarily examine respect for the right of defense and international public policy, while reciprocity is not mentioned as an independent prerequisite for recognition (Cour de cassation, 1981). This direction was further confirmed in *Simitch* (Cour de cassation, 83-11.241), where the Court of Cassation accepted recognition of a foreign decision provided there was a sufficiently strong real connection with the state of origin, without requiring proof of reciprocity.

The Italian Law (No. 218/1995) sets out criteria for recognition of foreign judgments (jurisdiction of the Court of origin, procedural guarantees, public policy, absence of conflicting judgments, etc.), without requiring reciprocity as an independent condition (Legge n. 218/1995, Art. 64). Italian practice, influenced by France, insists on procedural correctness and international public policy, while reciprocity is of secondary importance.

In the United States, since the classic *Hilton v. Guyot* (1895) decision, reciprocity has not been a mandatory condition for recognition but is considered a criterion within the doctrine of international judicial comity, while contemporary recognition practice relies primarily on the uniform state laws (SCOTUS 159 U.S. 113 1895). Particularly interesting is the new approach to reciprocity developed in the latest U.S. draft laws. As Stanivuković notes, in this model, reciprocity does not appear as a classical prerequisite for recognizing foreign judgments, but as a mechanism to defend against non-reciprocity in international dealings. Despite the liberal recognition regime existing in the U.S. since 1962, U.S. court decisions in many countries still do not enjoy reciprocity regarding recognition and enforcement. Hence, it has been proposed that the reciprocity condition be used to encourage recognition of U.S. judgments abroad and for concluding international treaties. A key feature of this approach is the absence of discrimination: even when a U.S. citizen requests recognition of a foreign judgment, recognition will be denied if the decision originates from a country that does not recognize U.S. judgments. Another significant innovation is that the burden of proving non-reciprocity is shifted to the party invoking it, with detailed guidance on how the Court may determine that reciprocity truly does not exist (Stanivuković 2014, 292).

In the United Kingdom, common law exequatur (with Statutory Instruments in certain areas) also does not insist on formal reciprocity; the focus is on respecting jurisdiction, proper service, and public policy (Briggs 2021, 707–708). These systems influenced European trends of "de-formalizing" reciprocity.

The 2019 Hague Convention (Hague Judgments Convention 2019 Arts. 4–7 (grounds for refusal); Bonomi and Mariottini, 2021, 1–38) introduces a uniform, independent recognition regime globally, without requiring reciprocity as a condition. Priority is given to clearly defined grounds for refusal (public policy, procedural violations, conflicting judgments, jurisdictional limits). Although the rate of ratification is still gradual, this instrument establishes the long-term direction: reciprocity as a consequence of stable cooperation, not as a prerequisite.

A significant number of countries outside the European Convention area still formally maintain reciprocity as a condition for recognition, often in the form of a negative requirement (grounds for refusal). At the same time, certain countries apply a stricter model known as "diplomatic reciprocity," conditioning recognition on the existence of an international treaty (Stanivuković 2014, 291; Stanivuković i Živković 2003, 453). This fact has particular significance in the context of Serbia. As Stanivuković points out, the complete abolition of the reciprocity requirement in such relations would lead to legal inequality: "judgments from those countries could be recognized and enforced in Serbia, while the reverse would be impossible" (Stanivuković 2014, 291).

Serbian law is closer to the German model – it formally recognizes the condition but applies it flexibly in practice (Stanivuković i Živković 2003, 452–453). According to the Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries, the recognition of foreign judgments is conditioned on the existence of reciprocity. However, the 2014 Draft Law on Private International Law introduces a modern formulation: the reciprocity condition is formulated functionally–the foreign judgment is recognized if the Court determines that Serbian court decisions in those matters are recognized in the state of origin; reciprocity is presumed unless proven otherwise (Ministarstvo pravde Republike Srbije 2014, čl. 185, st. 2 i 4).

Based on the comparative law review, three dominant models of reciprocity application can be observed. The first is formal, or normative reciprocity, which is rarely applied and requires the existence of an explicit, written legal basis proving reciprocity; this approach is

characteristic of older doctrine and still exists in some statutes. The second is material, or factual reciprocity, which is dominant in most systems outside the European Union and is based on assessing the practice of the state of origin of the judgment: formal contractual reciprocity is not necessary, as is visible in German and partially Serbian law. The third model, characteristic of the internal legal order of the European Union, is based on the principle of mutual trust, where the classical condition of reciprocity is completely replaced by almost automatic recognition of judgments, with very narrow exceptions concerning public policy and respect for basic procedural guarantees. The elimination of strict reciprocity within the EU and its functional interpretation in leading continental systems reduces cross-border justice costs, increases predictability, and accelerates enforcement. On the other hand, complete abandonment of reciprocity in relations with third states may, in exceptional situations, expose domestic residents to the risk of "non-reciprocity." Therefore, the most successful systems opt for presumed/factual reciprocity, as a safety valve activated only in cases of proven, systemic refusal to recognize our judgments in the state of origin. This balance, emphasizing legal certainty while maintaining a minimal reciprocity safeguard, proves optimal both from a comparative law perspective and in view of implementing the 2019 Hague Convention (Hague Judgments Convention 2019).

CRITICAL REEXAMINATION AND ALTERNATIVE MODELS

Although reciprocity has for centuries been one of the fundamental conditions for the recognition of foreign court judgments, contemporary trends in private international law show that this institution is increasingly losing its original function. Its normative logic, based on mutuality and balance among states, is today being tested in the context of growing interdependence and the globalization of legal relations. Instead of the principle of mutual formalism, modern international cooperation relies on the idea of trust in the legal systems of other states and on the common interest in maintaining legal certainty in cross-border relations (Marković-Bajalović 2022, 492).

Critics of the traditional understanding of reciprocity emphasize several key shortcomings. First, in practice, it often serves as a tool of political rhetoric rather than a legal necessity, as reciprocity is rarely

actually verified in specific cases (Marjanović 2019, 210). Second, the requirement to prove reciprocity can lead to legal uncertainty and procedural delays, especially when there are no official confirmations from ministries or diplomatic representations. Stevens shows that in U.S. practice, reciprocity has been gradually abandoned because it produces unpredictable and unequal outcomes: identical judgments may be recognized or refused solely due to the state of origin. Such an approach has been assessed as contrary to the principle of legal certainty and equality of the parties (Stevens 2002, 130–132). Third, formal reciprocity conflicts with the tendencies of modern private international law, which seeks to simplify procedures for recognition and enforcement of foreign judgments to promote trade and protect parties in cross-border relations (Jovičić i Marjanović 2025).

From the standpoint of contemporary theory, reciprocity has become a "relic of the sovereignist era," as Francesco Parisi calls it, because it presumes distrust among states, while 21st-century international law aims to build a system based on trust and harmonization (Parisi i Ghei 2003, 94). For this reason, in EU law, classical reciprocity has been replaced by the concept of mutual trust, as shown in the previous chapter.

As demonstrated in the comparative law review, some states have completely abandoned the reciprocity requirement, while others have reduced it to a flexible, presumed condition. Particularly interesting is the development of alternative models that gradually replace classical reciprocity in modern law. The first is the mutual trust model, which forms the basis of the European Union system and rests on the presumption that all member states respect fundamental principles of the rule of law and fair procedure. This model allows faster and more efficient recognition of foreign judgments but requires a high level of legal and institutional uniformity. The second is the convention-based model, which relies on international treaties, such as the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments. This instrument promotes a trust-based approach and harmonized rules, instead of bilateral reciprocity conditions (Hague Conference on Private International Law (2019). *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, art. 4–7).

The third model, known as the unilateral approach, is characteristic of legal systems such as Switzerland or Canada, where courts may

recognize foreign judgments even if the other state does not recognize its own, provided this does not conflict with public policy and the interests of justice. This approach is based on the principles of humanity and fairness, emphasizing the protection of parties and stability of legal transactions rather than inter-state balance.

Finally, literature increasingly refers to a hybrid model of reciprocity, which combines elements of mutuality and trust. It implies that recognition of a foreign judgment will not be denied solely due to the absence of formal reciprocity, but only if there is evidence of systemic violation of procedural guarantees in the state of origin. This approach has been adopted in the practice of several European countries, including the Czech Republic and Slovakia, and partially in Serbia through case law and opinions of the Ministry of Justice (Belović 2018, 284–286).

Supporting the view that complete abolition of reciprocity is not always justified is Stanivuković's analysis, which warns that many states apply a "diplomatic reciprocity" model, where recognition of judgments is allowed only if there is an international treaty (Stanivuković 2014, 291–292). Serbia has no concluded treaties with these states, which in practice would lead to legal inequality: foreign judgments would be recognized in Serbia, while Serbian judgments would be unrecognized in those states. Critical reexamination of the reciprocity institution thus shows that its fundamental function has undergone profound changes: from a mechanism for protecting state sovereignty to an instrument for promoting cooperation and trust among states. Instead of serving as a condition, it increasingly becomes a consequence of developed international cooperation and harmonization of legal systems. Hence, in contemporary doctrine and practice, the question is increasingly raised whether reciprocity as a formal condition is even necessary, or whether it is sufficient for a state, guided by the principle of legal certainty and respect for international standards, to approach recognition of foreign judgments as the rule, and refusal as the exception.

CONCLUSION

The institution of reciprocity, although historically regarded as one of the fundamental prerequisites for the recognition of foreign court judgments, today plays a far more complex and developed role in private international law. Its original function – protecting state sovereignty and ensuring balance among states – has gradually given way to the concept of legal certainty, harmonization of standards, and international trust. Modern legal systems, particularly under the influence of European law, increasingly abandon the formal proof of mutuality and turn to functional models in which procedural guarantees, public policy, and fairness of proceedings are primary.

In Serbian law, reciprocity is still normatively present in the Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries, but judicial practice shows that it is increasingly interpreted as factual, material, or presumed. Courts assume reciprocity unless proven otherwise, thus softening the strict formalism of the Yugoslav period. Moreover, numerous exceptions in status, family, and personal matters indicate that domestic law already recognizes the idea that protecting the rights of parties is more important than proving formal reciprocity.

In comparative law, a clear trend of liberalization is evident. French law has completely abandoned reciprocity as a condition, while Germany formally retains mutuality but interprets it functionally, through actual legal protection. Within the European Union, the concept of mutual trust has replaced traditional reciprocity, and mechanisms such as the Brussels I bis regime (Regulation (EU) No. 1215/2012) limit control of recognition to public policy and procedural guarantees. The 2019 Hague Convention on Judgments further reinforces this model, emphasizing procedural standards rather than formal mutuality (Hague Judgments Convention 2019). A similar trust-based approach has developed in family and child-related matters under the Brussels II bis regime (Regulation (EU) No. 2201/2003), where the Court of Justice of the EU insists on rapid and automatic recognition, with narrow public policy exceptions.

Critical analysis shows that reciprocity, in its traditional form, is increasingly misaligned with the dynamics of global legal relations. It can pose an obstacle to faster and more efficient recognition of foreign judgments, especially in an era of growing international mobility and trade. Alternative models, such as presumed reciprocity, material

reciprocity, and the principle of mutual trust, have proven to be more functional and legally effective. These models provide greater flexibility, respect the procedural standards of other states, and foster a climate of legal certainty without abandoning the fundamental idea of preserving sovereignty.

The analysis confirms the initial hypothesis that modern development moves toward abandoning strict formal reciprocity and that the most appropriate model for the Republic of Serbia is limited, subsidiary reciprocity based on material mutuality and mutual trust. Accordingly, the optimal approach for Serbia is a concept of limited, subsidiary reciprocity in combination with convention-based and functional models of recognition. Formal reciprocity should no longer be a general prerequisite, but an exceptional protective mechanism applied exclusively in relations with states that themselves apply strict diplomatic reciprocity or systematically refuse to recognize foreign judgments. In dealings with states that have a more liberal approach or in practice recognize Serbian judgments, priority should be given to material and presumed reciprocity, as well as the mutual trust model.

Such a system would enable Serbia to simultaneously protect its own judgments in asymmetric international relations, strengthen legal certainty and predictability of the recognition process, and gradually align its regime with European standards and mechanisms, such as the 2019 Hague Convention (Hague Judgments Convention 2019). This functional restructuring of the institution of reciprocity represents a natural and necessary step toward modernizing Serbian private international law and integrating it more effectively into contemporary trends in international legal cooperation. This functional reorganization of the institute of reciprocity represents a natural and necessary step towards the modernization of Serbian private international law and its better integration into contemporary international legal cooperation. Viewed in a broader context, this transformation indicates that reciprocity in modern law has a pronounced political-legal significance, as it reflects the balance between the protection of state sovereignty and the need to strengthen international cooperation and mutual trust.

REFERENCES

Apelacioni sud u Beogradu [ASB], Gž. 1472/19, 5. decembra 2019. godine.

Apelacioni sud u Beogradu [ASB], Gž. 2611/2021 od 8. septembra 2021. godine, Bilten 12/2022.

Apelacioni sud u Novom Sadu [ASNS], Gž. 3365/2018 od 12. decembra 2018. godine.

Apelacioni sud u Novom Sadu [ASNS], Gž. 3565/2017 od 14. novembra 2017. godine.

Belović, Jelena. 2018. „Priznanje i izvršenje stranih sudskih odluka." *Zbornik radova Pravnog fakulteta u Nišu* 57 (80): 275–288. DOI:10.5937/zrpfni1880275B

Bogdan, Michael. 2012. *Private International Law as Component of the Law of the Forum*. Leiden: Martinus Nijhoff.

Bonomi, Andrea, and Cristina Mariottini. 2021. *Yearbook of Private International Law*, Lausanne.

Briggs, Adrian. 2021. *Civil Jurisdiction and Judgments.*London: Informa Law from Routledge.

Bundesgerichtshof [BGH], Urteil vom 3. Februar 1983 – IX ZR 74/82, NJW 1983, 1559.

Bundesgerichtshof [BGH], Urteil vom 4. Juni 1992 – IX ZR 149/91.

Bundesgerichtshof [BGH], Urteil vom 3. Juli 2003 – IX ZR 302/00.

Bundesgerichtshof [BGH], Beschluss vom 20.06.2018 – XII ZB 285/17.

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [Brussels Convention], 27 September 1968, Official Journal L 299, 31.12.1972, p. 32–42.

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [Lugano Convention], 16 September 1988, Official Journal L 319, 25.11.1988, p. 9–48.

Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [Hague Judgments Convention], 2 July 2019.

Cour de cassation, *Munzer v. Munzer*, 7 janvier 1964, Rev. crit. DIP 1964.

Cour de cassation, *Société Prieur*, First Civil Chamber, 7 janvier 1981.

Cour de cassation, *Simitch*, 6 février 1985. n° 83-11.241.

Cour de cassation, *Cornelissen*, 20 février 2007, n° 05-14.082, Rev. crit. DIP 2007.

Court of Justice of the European Communities [CJEU], *Dieter Krombach v André Bamberski*, Case C-7/98, Judgment of the Court of 28 March 2000, ECLI:EU:C:2000:164.

Court of Justice of the European Communities [CJEU], *Eurofood IFSC Ltd.*, Case C-341/04, Judgment of the Court (Grand Chamber) of 2 May 2006, ECLI:EU:C:2006:281.

Court of Justice of the European Communities [CJEU], *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, Case 145/86, Judgment of the Court of 4 February 1988, ECLI:EU:C:1988:61.

Court of Justice of the European Communities [CJEU], *Trade Agency Ltd v Seramico Investments Ltd.*, Case C-619/10, Judgment of the Court (First Chamber), 6 September 2012, ECLI:EU:C:2012:531.

Deutsche Gesellschaft für Internationale Zusammenarbeit [GIZ]. 2021. *Prekogranično priznanje i izvršenje stranih sudskih presuda u Jugoistočnoj Evropi i perspektive Haške Konvencije iz 2019. godine*, nacionalni izvještaj. GIZ.

Dicey, Albert Venn, John Humphrey, and Carl Morris. 2000. *The Conflict of Laws*, 13th ed. London: Sweet & Maxwell.

Elbalti, B. 2008. *The role of the reciprocity requirement in the harmonization of standards for the recognition and enforcement of foreign judgments*. Faculté des sciences juridiques, politiques et sociales de Tunis. Retrieved April 29, 2026, from memoireonline.com

Geimer, Reinhold, and Rolf A. Schütze. 2010. *Europäisches Zivilverfahrensrecht* [European Civil Procedure Law]. Munich: C. H. Beck.

Jovanović, Marko, i Sanja Marjanović. 2024. „Uporedna analiza sistema priznanja stranih sudskih odluka prema Zakonu o rešavanju sukoba zakona sa propisima drugih zemalja i prema Haškoj konvenciji iz 2019. godine." *Zbornik radova Pravnog fakulteta u Novom Sadu* 58 (4): 925–955. DOI: 10.5937/zrpfns58-54147

Jovičić, Katarina, i Đorđe Marjanović. 2025. „Specifičnosti građanskih postupaka sa stranim elementom i procesni položaj stranih državljana pred domaćim sudovima." *Strani pravni život* 69 (2): 311–332. DOI: 10.56461/SPZ_25208KJ

Kitić, Dušan. 2019. *Međunarodno privatno pravo*. Beograd: Pravni fakultet Univerziteta Union u Beoradu; Javno preduzeće Službeni glasnik.

Legge 31 maggio 1995, n. 218, "Riforma del sistema italiano di diritto internazionale privato", Gazzetta Ufficiale della Repubblica Italiana, n. 128, 3 giugno 1995.

Marjanović, Sanja. 2019. *Međunarodno privatno pravo haških konvencija u Republici Srbiji*. Niš: Pravni fakultet Univerziteta u Nišu-Centar za publikacije.

Marković-Bajalović, Dijana. 2022. „Sporna pitanja izvršenja stranih sudskih odluka." U *Sudski postupak – Pravda i pravičnost, Zbornik radova 35. Susreta Kopaoničke škole prirodnog prava Slobodan Perović*, ur. Jelena S. Perović Vujačić, 477–495. Beograd: Kopaonička škola prirodnog prava – Slobodan Perović.

Ministarstvo pravde Republike Srbije. 2014. Nacrt Zakona o međunarodnom privatnom pravu. Jun 2014. https://www.mpravde.gov.rs

Parisi, Francesco, and Nita Ghei. 2003. „The Role of Reciprocity in International Law." *Cornell International Law Journal* 36 (1): 93–123.

Pavić, Vladimir. 2013. *Međunarodno privatno pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu.

Privredni apelacioni sud [PAS], Iž. 1019/2018 od 29. marta 2018. godine.

Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Official Journal of the European Union, L 351/1.

Regulation (EU) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, Official Journal of the European Union, L 338, 23.12.2003.

Singh, Utkarsha. 2023. "Recognition, Enforcement and Reciprocity." *International Journal for Multidisciplinary Research (IJFMR)* (5) 6: 1–8.

Stanivuković, Maja, i Mirko Živković. 2003. *Međunarodno privatno pravo – opšti deo*, 3. izmenjeno i dopunjeno izdanje. Beograd: Službeni glasnik.

Stanivuković, Maja. 2014. „Idealizam i realizam u priznavanju stranih sudskih odluka." *Pravni život* 11: 283–298.

Stevens, Susan L. 2002. "Commanding International Judicial Respect: Reciprocity and the Recognition and Enforcement of Foreign

Judgments." *Hastings International and Comparative Law Review* (26) 1: 115–158.
Stojanović, Ljiljana. 2009. „Priznanje stranih sudskih odluka u uporednom pravu." Doktorska disertacija. Univerzitet u Beogradu: Pravni fakultet.
Supreme Court of the United States [SCOTUS], *Hilton v. Guyot*, 159 U.S. 113 (1895), Argued April 10, 1894, Decided June 3, 1895.
Vrhovni kasacioni sud [VKS], Prev. 123/2015 od 12. novembra 2015. godine.
Vrhovni kasacioni sud [VKS], Rev. 1695/2019 od 11. marta 2020. godine.
Vrhovni kasacioni sud [VKS], Rev. 2658/2020 od 8. jula 2020. godine.
Vrhovni kasacioni sud [VKS], Rev. 3410/2020 od 21. oktobra 2020. godine.
Vrhovni sud Srbije [Vrhovni sud], Prev. 217/93 od 26. oktobra 1994. godine.
Vrhovni sud Srbije [Vrhovni sud], Prev. 210/99 od 20. oktobra 1999. godine.
Zakon o međunarodnom privatnom pravu [ZMPP], „Narodne novine", 101/2017, 67/2023.
Zakon o rešavanju sukoba zakona sa propisima drugih zemalja [ZRSZ], „Službeni list SFRJ", br. 43/82 i 72/82 - ispr., „Službeni list SRJ", br. 46/96 i „Službeni glasnik RS", br. 46/2006 - dr. zakon.
Zivilprozessordnung [ZPO], "Bundesgesetzblatt I S. 3202." Last accessed on April 25, 2026. https://www.gesetze-im-internet.de/zpo/

Јелена Јакшић*

Правни факултет, Универзитет у Приштини
са привременим седиштем у Косовској Митровици

РЕЦИПРОЦИТЕТ КАО УСЛОВ ПРИЗНАЊА СТРАНИХ СУДСКИХ ОДЛУКА: ПОЛИТИЧКО-ПРАВНИ АСПЕКТ И САВРЕМЕНИ ЗНАЧАЈ У ДОМАЋЕМ И УПОРЕДНОМ ПРАВУ

Резиме

У овом раду разматра се институт реципроцитета као услов признања страних судских одлука, са посебним освртом на српско право и упоредноправне трендове, указујући на његов политичко-правни значај у савременим односима између држава. Реципроцитет се анализира као традиционални механизам заштите државног суверенитета и равноправности држава, али и као инструмент уређивања међународне правне сарадње. Полази се од разликовања правног, фактичког и претпостављеног реципроцитета и њихове улоге у обезбеђивању узајамности у прекограничним односима, уз указивање на постепену трансформацију од формалног ка функционалном приступу. Анализа судске праксе и упоредноправних решења показује еволуцију од строгог формалног ка материјалном (фактичком) реципроцитету и све израженију тенденцију да се узајамност претпоставља, уместо да се формално доказује, при чему се тежиште све више помера ка процесним гаранцијама, јавном поретку и принципу узајамног поверења. Посебна пажња посвећена је савременим решењима у праву Европске уније и другим правним системима, као и утицају Хашке конвенције о признању и извршењу страних судских одлука из 2019. године, која афирмише модел заснован на стандардима поступка, а не на формалној узајамности. Критичка анализа показује да формални реципроцитет у савременом праву постепено губи улогу општег предуслова признања и све више

* Имејл: jelena.jaksic@pr.ac.rs; ORCID: 0000-0002-8281-5590

уступа место функционалним моделима, који одражавају потребу за балансирањем између заштите државног суверенитета и јачања међународне сарадње и поверења. Закључује се да домаћи правни систем већ садржи елементе овог модернијег приступа, те да даљи развој треба усмерити ка јачању конвенцијских и наднационалних механизама признања, уз задржавање реципроцитета као супсидијарног инструмента у заштити националних интереса.

Кључне речи: признање страних судских одлука, међународно приватно право, фактички реципроцитет, узајамно поверење, судска пракса

* This manuscript was submitted on April 24, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

UDC: 321:343.8(497.11)"20"
DOI: 10.5937/spm97-62284
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 53-67

Ivan Đokić*
Faculty of Law, University of Belgrade

NEW – OLD TRENDS IN THE FIELD OF CRIMINAL POLICY IN THE REPUBLIC OF SERBIA

Abstract

The Draft Law on Amendments to the Criminal Code of 2025 announces a significant reform of Serbia's substantive criminal legislation. In addition to a series of newly introduced criminal offences – many of them controversial from a criminal policy standpoint – it also proposes a substantial tightening of sentencing ranges for certain offences. Driven by populist rhetoric and accompanied by an almost dismissive attitude toward the achievements of criminal law scholarship, the Draft disregards empirical knowledge of the real capacities of punishment and the actual effect of increased repression on crime prevention. By threatening excessive penalties for violations of criminal norms in the sphere of serious forms of criminal behavior, the proponent of these measures continues to strengthen retributive tendencies. In doing so, Serbian criminal law increasingly diverges from the liberal, rule-of-law model, and is rapidly transforming into a form of "enemy-oriented" criminal law – one in which all means are considered permissible in the state's effort to combat threats to the legal order. Such an orientation is inappropriate for a legal system that seeks to preserve democratic features, as it poses a serious risk of undermining fundamental human rights in the realm of punishment. Moreover, it is frequently accompanied by inefficiency and weak results in controlling criminal behavior. It

* E-mail: djokic@ius.bg.ac.rs; ORCID: 0009-0006-8076-0633

could be said that such an orientation in the field of criminal policy in the Republic of Serbia is nothing new; on the contrary, if we consider the period since the first serious instance of intensified penal repression in 2009 – when the penalty ranges for as many as one third of existing criminal offences were made more severe – the trend toward prescribing increasingly harsher punishments has shown no sign of abating. What is most concerning, however, is the well-founded fear that this tendency has not yet reached its peak and is likely to continue in the future.

Keywords: punishment, repression, life imprisonment, hyper-criminalization, enemy-oriented criminal law

INTRODUCTION

For many decades, criminal law was regarded as a particularly stable branch of the legal system, largely immune to frequent legislative intervention. Its defining feature was the longevity of the Criminal Code as the fundamental source of criminal law norms. This does not mean, of course, that criminal legislation should remain ossified or unresponsive to social developments. Yet there are compelling reasons why frequent changes to its normative framework are undesirable. Especially dangerous are those legislative amendments that are not the product of thorough scientific engagement with the structural problems every criminal justice system faces, but rather hasty responses to specific events – often designed to calm a disturbed public eager for harsher state reactions to crime. Nevertheless, modern criminal law, both in Serbia and abroad, has acquired an unusual dynamism. The process of expanding the sphere of punishment is accelerating. Admittedly, such a process need not necessarily carry a negative connotation, if it represents a rational response to an objectively increased need for criminal law protection in certain areas. In Serbia, however, this trend is typically accompanied by poor drafting of norms, where reforms are frequently guided by lay opinions and, in essence, primitive reactions to wrongdoing – reactions grounded more in emotion than in reason. Equally striking is the absence of any serious long-term strategy for crime control, one that would rely on a thorough analysis of how existing provisions are applied and whether corrections are truly necessary. Instead, legislative priority is given to the easy acceptance of international obligations

arising from conventions, as well as to numerous initiatives promoted by non-governmental organizations.[1]

If we examine the period of the past two decades, beginning with the adoption of the Criminal Code, it becomes clear that since the 2009 amendments, the legislature has pursued a consistent course – one that can be summarized in a simple formula: the unbearable ease of intensifying criminal repression at the normative level. In the official justification of the 2009 reforms, it was emphasized that the sentencing range had been increased for nearly one-third of all criminal offences. This tendency has not been abandoned in subsequent amendments; on the contrary, it has become entrenched and is now set to culminate with the announced 2025 revisions of the Criminal Code. The constant tightening of penalties for certain crimes has been accompanied by other measures aimed at constructing a system increasingly oriented toward treating offenders as enemies of the state. Over the past decade, Serbian criminal law has introduced an array of new offences – often of dubious legitimacy from the perspective of criminal policy – while also modifying general provisions in ways that unmistakably reflect the state's determination to wage its war on crime under the slogan that harsher retribution is the best cure for wrongdoing. In this context, it is enough to mention the introduction of prohibitions on sentence mitigation for certain, arbitrarily selected, criminal offences; the revival of the concept of multiple recidivism;[2] the restriction of conditions for suspended sentences; the denial of parole for certain crimes; and finally,

---

[1] It is noteworthy that the official explanation of the proposed 2024 Draft Amendments to the Criminal Code emphasizes that their preparation was "preceded by an analysis of the effectiveness of the criminal justice system, based on completed cases with the aim of identifying and remedying its weaknesses and shortcomings" (Nacrt 2025, Razlozi za donošenje zakona). Yet no information is provided as to who conducted this analysis, during which period, within what scope, or what conclusions were reached.

[2] The cruelty, as well as the absurdity, of the institute of multiple recidivism – particularly when its application is linked to the proclaimed aim of punishment as achieving justice and proportionality between the offence committed and the severity of the sanction – is clearly illustrated in the decision of the Higher Court in Novi Pazar (Presuda VSNP, K. 3/23). In that case, the defendant, previously convicted on several occasions, was sentenced to seven years and seven months of imprisonment (the minimum sentence available to the court in cases of multiple recidivism for this offence) for selling a single tablet of buprenorphine (8 mg) for the price of merely 1,100 dinars!

the introduction of life imprisonment – applied to a broader circle of offences compared to the earlier system, which envisaged prison sentences ranging from thirty to forty years (Kolarić 2019, 16–33).

"NOTHING NEW IN THE WEST" – FURTHER ESCALATION OF PENAL REPRESSION IN THE DRAFT AMENDMENTS

At the end of last year, the Ministry of Justice published the extensive text of the Draft Law on Amendments to the Criminal Code, accompanied by a one-month public consultation process that included four round-table discussions. The outcome, with additional comments from both the academic community and the wider public, led to a postponement of the adoption of the proposed measures. Nevertheless, on 27 November 2024, the National Assembly passed the Law on Amendments to the Criminal Code (Zakon o izmenama i dopunama Krivičnog zakonika 2024). This law introduced harsher penalties for serious forms of traffic offences endangering public safety, as well as three new criminal offences aimed at strengthening the protection of employees in health, education, and social welfare institutions (Vuković 2025, 106–109). When the other proposed measures are taken into account, the orientation chosen by the drafters can be summarized in a single sentence – according to a well-worn formula: further intensification of penal repression, by expanding the boundaries of criminalized behavior through the introduction of new offences and harsher sanctions for existing ones.

After numerous comments were submitted on the 2024 Draft, the Ministry of Justice decided to put the proposed amendments on hold. Consequently, it was only in the first half of September this year that the text of the new Draft Law on Amendments and Supplements to the Criminal Code was published. Compared to last year's draft, it introduces a number of new solutions alongside certain modifications. The provisions of the Draft that will be discussed in the following text have not undergone any changes in relation to the earlier version.

According to the drafters, who appear well acquainted with the supposed "power" of punishment but not with its limitations, tightening the penal policy with respect to certain offences "would undoubtedly also have a preventive effect on potential offenders" (Nacrt 2025, Razlozi za donošenje zakona). Particular attention should be given to

Article 15 of the Draft (Nacrt 2025, čl. 15), which proposes changes to the prescribed sentence for the crime of murder (Krivični zakonik 2024, čl. 113). Instead of the current range of five to fifteen years' imprisonment, the Draft introduces a new range of five to twenty years, or life imprisonment. The justification provided is that this measure "ensures consistency within the system of criminal sanctions in the context of harsher penalties for certain offenses" (Nacrt 2025, čl. 15).

The problem with this solution is that, if adopted, it would prescribe the same maximum sentence for both ordinary murder and aggravated murder (Krivični zakonik 2024, čl. 114). The only distinction would lie in the minimum penalty – five years for ordinary murder, ten for aggravated murder. In practice, this would mean that both the basic and the aggravated form of homicide carry the same maximum sanction, which represents a legal absurdity. Such an arrangement contradicts both legislative technique in qualifying criminal acts and the basic logic that aggravated forms of a crime must carry harsher penalties precisely because of the specific circumstances or consequences that make them more serious.

The argument that the minimum penalties would differ is insufficient to counter this objection: aggravated murder could no longer be considered "more serious" if it did not carry a higher maximum penalty. The only way Article 15 of the Draft (Nacrt 2025, čl. 15) would make sense is if Article 114 of the Criminal Code (Krivični zakonik 2024, čl. 114) – covering aggravated murder – were repealed, or if, following certain comparative models, it prescribed life imprisonment as a mandatory sanction. Otherwise, if the same maximum sentence applied to all forms of intentional homicide, Article 114 would lose any practical or legal significance.

A similar issue arises with Articles 28, 30, 31 of the Draft (Nacrt 2025, čl. 28, čl. 30, čl. 31), which propose the possibility of imposing life imprisonment for all forms – both the basic and the aggravated – of criminal offences against sexual freedom, including rape, sexual intercourse with a helpless person, and sexual intercourse with a child. Under the current law, life imprisonment is reserved only for the most aggravated forms of these offences. In the official explanation of the Draft, the justification for extending life imprisonment even to the basic form of rape (and the other enumerated offences) was said to be that such punishment "should unequivocally represent the expected consequence that will befall every perpetrator of this extremely serious crime" (Nacrt

2025, čl. 28). Furthermore, it was argued that these measures were prompted by "a rising trend in the number of reported sexual offenses, indictments, and convictions over the past five years in the Republic of Serbia" (Nacrt 2025, Razlozi za donošenje zakona).

Yet this rationale suffers from the same shortcomings as those already noted with respect to homicide. First, in Serbian criminal law, life imprisonment is never a mandatory sentence: it can only be imposed as an alternative to a fixed term of up to twenty years, leaving the court discretion to choose between the two. Consequently, life imprisonment cannot serve as the "expected" outcome for all offenders.

Second, the science of criminal law has long demonstrated that the severity of punishment exerts a weaker preventive effect than the certainty of punishment. Offenders, especially those driven by pathological sexual impulses, rarely consider potential penalties before acting. In such cases, the severity of the sanction is unlikely to deter; at most, life imprisonment could achieve incapacitation by isolating the offender for a longer period. But this strategy faces serious obstacles: overcrowded prisons, high financial costs, and, not least, the risk of contravening international human rights standards on punishment.

Third, the assertion of a "rising trend" in sexual offences is misleading. Official statistics from the Republic Statistical Office show no dramatic increase in either reported cases or convictions (Republički zavod za statistiku Srbije 2025); the figures, while fluctuating, remain broadly consistent with long-term averages.[3] This raises the question: what data did the drafters rely on, if not the official, readily available ones? The explanation appears to rest on a superficial claim designed to justify harsher penalties in a field where sentences are already exceptionally severe and where recent amendments have significantly restricted the application of general mitigating provisions.[4]

[3] Thus, the number of criminal complaints filed for the offence of rape (Krivični zakonik 2024, čl. 178) has not changed significantly in the past five-year period, averaging around seventy reported cases (in 2022, there were fifty-eight complaints). The same applies to convictions for this offence within a single calendar year, as the number of convictions has not exceeded twenty-five (fourteen in 2022).

[4] For example, under the Montenegrin Criminal Code, the basic form of the offence of rape carries a penalty of two to ten years of imprisonment, whereas under the Serbian Code – if the Draft Amendments are enacted – the range would be five to twenty years, with the possibility of imposing life imprisonment. Moreover, a

For instance, since 2009, Article 57 Paragraph 2 of the Criminal Code (Krivični zakonik 2024, čl. 57, st. 2) has prohibited sentence mitigation for sexual offences (Krivični zakonik 2024, čl. 178–180). In 2019, further restrictions were introduced, eliminating the possibility of parole for aggravated forms of rape (Krivični zakonik 2024, čl. 178, st. 4), sexual intercourse with a helpless person (Krivični zakonik 2024, čl. 179, st. 3), sexual intercourse with a child (Krivični zakonik 2024, čl. 180, st. 3), and sexual intercourse through abuse of position (Krivični zakonik 2024, čl. 181, st. 5). Now, as if these measures were insufficient, the Draft not only expands sentencing ranges but also extends the ban on parole to *all* forms of the offences listed in Articles 178, 179, and 180.

Interestingly, the official justification for this move states that, while aligned with stricter penal policy, it is also "entirely consistent with international human rights standards" (Nacrt 2025, čl. 6). Yet the established case law of the European Court of Human Rights proves the opposite (Van Zyl and Appleton 2019; Foster 2015, 148–154; Ilić 2019, 156–173).

Finally, extending life imprisonment to a broader set of offences than at present also conflicts with Article 44a of the Criminal Code (Krivični zakonik 2024, čl. 44a), which explicitly provides that this penalty may be prescribed *only exceptionally*, alongside fixed-term imprisonment, and only for the most serious criminal offenses and the gravest aggravated forms of serious crimes. While it is undisputed that the offences targeted by the Draft are indeed serious, they cannot all be considered the "most serious," nor do they represent the "gravest forms" of such crimes, as required by the Code. The proposed equalization of penalties – applying the same ultimate sanction to both the basic and aggravated forms of a given offence – represents a serious legal precedent. It undermines the fundamental legislative logic by which different forms of criminal conduct are distinguished and punished according to their relative degree of unlawfulness. In short: the graver the crime, the harsher the punishment. Moreover, such a reform would be manifestly unlawful, given that the conditions for prescribing life imprisonment would not be met under the cited provision of the Criminal Code.

The Draft also substantially increases penalties for all forms of the offence of domestic violence. While the protection of the physical and

recent study has shown that, according to the prescribed sentencing ranges, Serbia's criminal legislation ranks among the harshest in Europe (Stojanović 2020, 29–31).

psychological integrity of family members is undoubtedly a legitimate legislative objective, one must ask whether family peace can truly be secured by means of a strict penal policy. The law, especially coercive norms, is ill-suited to regulating the intimate sphere of private life. Although the drafters may have been motivated by good intentions, there is a real danger that excessive repression in this domain will cause more harm to family relations than any benefit it might bring (Ristivojević i Samardžić 2017, 1449–1450). Interestingly, the justification for these amendments states that they continue the "trend of enhanced protection of victims of domestic violence, especially women and children, given that previous reforms did not achieve their purpose, and therefore further amendments are necessary to influence current and future offenders" (Nacrt 2025, Razlozi za donošenje zakona). This reasoning leads to an absurd conclusion: since strict penal policy in this area has failed, let us try an even stricter one. When this is combined with the already enacted increase of penalties for serious traffic offences endangering public safety, as well as the proposed tightening of sanctions for certain forms of human trafficking (Nacrt 2025, čl. 82), there can be little doubt: the Serbian legislature has embraced an approach to crime control reminiscent of the infamous ancient Athenian lawmaker Draco, for whom excessively harsh punishment was the ultimate triumph.

CONCLUDING REFLECTIONS

The solutions contained in the Draft represent a continuation of the policy of intensifying repression at the normative level – a policy that, in Serbia's public discourse and legislative practice, has been gaining momentum for two decades. With the benefit of this two-decade perspective since the adoption of the Criminal Code, it can be concluded without hesitation that punitive escalation has become the legislature's dominant orientation.

Rather than a rational activity informed by scientific and practical insights into the limits and effects of punishment, contemporary crime control policy is shaped by political imperatives and popular sentiment. Reform initiatives are typically triggered by isolated incidents, accompanied by sweeping and arbitrary claims that "reality" demands a new legal framework, even when official statistics show no dramatic increase in crime rates. Most importantly, these dynamics are driven by populist tones – more emotional than rational – while the influence of

expert knowledge about the modest effects of punishment in both general and special prevention has diminished dramatically. The marginalization of criminal law scholarship and the intrusion of everyday politics into crime control reflect the spirit of the "brave new world" we inhabit, in which everyone presumes to be an expert on criminal law.[5] Yet in untrained hands, criminal law – especially when deployed as an instrument of political goals – can prove more dangerous to citizens than the offenders it purports to restrain.

Each new amendment distances Serbian criminal law further from the model of a rule-of-law system, in which punishment ought to be a *last resort*, applied only when the protection of an essential social good cannot be achieved through other, less coercive means. Instead, criminal law increasingly functions as the *first* or even the *only* tool in combating crime. Scholars increasingly describe the emergence of a new "security law," applicable even in the pre-zone of endangerment of protected goods (Stojanović 2011b, 5). If we have come to the point of imagining punishment as the solution to complex social problems, then society itself has strayed from the right path. Punishment, as the legal consequence of crime, can rarely serve as a genuine remedy; experience shows that its effect on crime prevention and offender resocialization is minimal (Martinson 1974, 48–50). If harsher punishment was truly effective, the simplest solution would be to impose draconian sentences across the board. This "primitive" approach (Stojanović 2023, 147), however, requires no expertise and has already proven a failure. American experience with the notorious "three strikes and you are out" policy – mandatory long-term or life imprisonment for third-time offenders – resulted in negligible reductions in crime, but at the cost of enormous financial burdens and intolerable increases in prison populations (Walter 1999, 586–588).

The present situation thus reflects a crisis of contemporary crime control policy – not only in Serbia, but globally – as well as a setback for the science of criminal law. Instead of rational and restrained reliance on punishment, we witness a wave of hyper-criminalization, reviving the

[5] This was perceptively noted several decades ago by a renowned American scholar of criminology: "There are many so-called scientists and self-styled experts on crime, for the subject fascinates very different kinds of people. Every grocer on your street, every gas-station attendant, and practically everyone's Aunt Mary can tell you what should be done right now to reduce the present crime rate. Serious students of criminology cannot take such an optimistic view" (Eliot 1962, 17).

old idea that the essence of criminal law is the protection of legal goods, which requires not fragmented but systematic action – and ever more punishment (Zaczyk 2011, 691). Too often, criminal law is deployed as a tool of everyday politics, with new offences or harsher penalties serving symbolic rather than substantive purposes.[6]

The conscious recognition of the inability of criminal law to effectively suppress certain forms of behavior is concealed behind the claim that the existing law is of poor quality and must be adapted to new forms of criminality in order to provide more effective protection. In this way, an illusion is created that "something is being done." In foreign literature, this phenomenon is described as *ad hoc* legislation, which is not based on a comprehensive assessment of the actual capacities of criminal law in combating crime, and is often adopted without serious scholarly or public debate on how the boundaries of punishability should be shaped.

Criminal law is increasingly being tailored to the offender, who is viewed not as a citizen expected to comply with existing norms and deterred by the mere threat of punishment, but rather as an enemy of the legal order. Its foundation thus no longer rests on trust in the law-abiding citizen, but instead on pronounced distrust toward individuals who might otherwise remain faithful to legal norms (Neubacher 2006, 855).

In practice, this means building a system of criminal justice rooted in distrust of citizens – treating them as potential enemies of the legal order – rather than on the assumption that most will respect the law voluntarily.[7] The expectation, unfortunately, is that this policy of ever-expanding penal repression has not yet reached its peak (Neubacher

[6] In foreign legal literature, reference is made to criminal law of merely symbolic significance (*Symbolisches Strafrecht*) – that is, when a new legislative measure is not intended from the outset to be practically applied, but is instead designed to achieve some other social effect (Heinrich 2017, 8).

[7] In German doctrine, the concept of so-called "eliminatory criminal law," or *Feindstrafrecht* ("criminal law for enemies"), has been developed. At its core lies the idea that the fight against crime must be waged at any cost, and that even the most rigorous measures—such as long-term or life imprisonment of particularly dangerous offenders—are entirely acceptable tools of criminal policy. Citizens are no longer viewed as individuals expected to remain faithful to the law, deterred by the mere threat of punishment from engaging in proscribed conduct. Instead, they are regarded as enemies of the legal order who must be eliminated, even at the stage of incipient criminal behavior. For more on this concept in Serbian literature, see Bock 2010, 139–167.

2006, 856). In contrast to the wave of liberalization of criminal law that emerged in the second half of the twentieth century, when criminal law was partially withdrawn in certain areas, reflected in the decriminalization of specific behaviors, today we are faced with a form of criminal law that is undemocratic and excessively protectionist. This form of law seeks to provide protection at any cost, regardless of the potential consequences for the observance of human rights. A rational criminal policy, on the other hand, should above all be careful not to elevate criminal law to the status of the primary instrument of social protection (Neubacher 2006, 877). As a corrective to the prevailing climate of moral panic, penal populism, and the glorification of mass incarceration (Mrvić Petrović 2022, 419–421), we should recall the wise words of Professor Grgur Milovanović, spoken more than a century ago: "punishment is like a poison, which may serve as a cure if administered in the right dose, at the right time, and in the right place" (Stojanović 2011a, 137).

REFERENCES

Bock, Michael. 2010. „Pozitivna specijalna prevencija i nove tendencije u kriminalnoj politici - o nedostacima eliminatornog Feindstrafrecht-krivičnog prava i značaju primenjene kriminologije za kriminalnu politiku po meri ljudske zajednice." *Crimen (Beograd)* 1 (2): 139–167. DOI: 10.5937/crimen1002139B

Eliot, Mejbl A. 1962. *Zločin u savremenom društvu*. Sarajevo: Veselin Maleša.

Foster, Steve Harold. 2015. "Whole Life Sentences and Article 3 of the European Convention on Human Rights: Time for Certainty and a Common Approach?" *Liverpool Law Review* 36: 147–169. DOI: 10.1007/s10991-015-9166-7

Heinrich, Bernd. 2017. "Zum heutigen Zustand der Kriminalpolitik in Deutschland." *Kriminalpolitische Zeitschrift* 1: 4–20.

Ilić, Vladica. 2019. „(Ne)pomirljivost kazne doživotnog zatvora i ljudskih prava." *Crimen (Beograd)* 10 (2): 156–173. DOI: 10.5937/crimen1902156I

Kolarić, Dragana. 2019. „Orijentacija zakonodavca u poslednjem zakonu o izmenama i dopunama Krivičnog zakonika – (ne) opravdano jačanje krivičnopravne represije." *Arhiv za pravne i društvene nauke* 3–4: 13–43. DOI: 10.22182/apdn.342019.1

Krivični zakonik, „Službeni glasnik Republike Srbije", br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024

Martinson, Robert. 1974. "What Works? – Questions and Answers About Prison Reform." *The Public Interest* 35: 22–54.

Mrvić Petrović, Nataša. 2022. „Kako učiniti human(ij)im doživotni zatvor koncepta „zaključaj i baci ključ" na primerima Italije i Holandije." *Strani pravni život* 3: 403–428. DOI: 10.56461/SPZ_22304KJ

Nacrt zakona o izmenama i dopunama Krivičnog zakonika [Nacrt], 9. septembar 2025. https://ekonsultacije.gov.rs/topicOfDiscussionPage/528/4

Neubacher, Frank. 2006. "An den Grenzen des Strafrechts – Stalking, Graffiti, Weisungsverstöße." *Zeitschrift für die gesamte Strafrechtswissenschaft* 118 (4): 855–877. DOI: 10.1515/ZSTW.2006.031

Presuda Višeg suda u Novom Pazaru [VSNP], K. 3/23 od 3. aprila 2003. godine.

Republički zavod za statistiku Srbije. 2025. „Punoletni učinioci krivičnih dela, 2024." 16. jul 2025. https://publikacije.stat.gov.rs/G2025/Pdf/G20251190.pdf

Ristivojević, Branislav R., i Stefan S. Samardžić. 2017. „Zakon o sprečavanju nasilja u porodici – kritički osvrt iz ugla krivičnog prava." *Zbornik radova Pravnog fakulteta, Novi Sad* 51 (4): 1441–1451. DOI: 10.5937/zrpfns51-16133

Stojanović, Zoran. 2011a. „Grgur Milovanović – profesor krivičnog prava i krivičnog postupka." *Crimen (Beograd)* 2 (1): 133–137.

Stojanović, Zoran. 2011b. „Preventivna funkcija krivičnog prava." *Crimen (Beograd)* 2 (1): 3–25.

Stojanović, Zoran. 2020. „Kazneni rasponi i represivnost krivičnog zakonodavstva." *Crimen (Beograd)* 11 (1): 3–33. DOI: 10.5937/crimen2001003S

Stojanović, Zoran. 2023. *Politika suzbijanja kriminaliteta*. Beograd: Pravni fakultet u Beogradu.

Van Zyl Smit, Dirk, and Catherine Appleton 2019. *Life Imprisonment – A Global Human Rights Analysis*. Cambridge, Massachusetts; London: Punishment & Society.

Vuković, Igor. 2025. „Lična svojstva žrtava kao kvalifikatorna obeležja krivičnih dela – aktuelne tendencije." U *Izazovi međunarodnog*

krivičnog prava i krivičnog prava, tom 1., ur: Milan Škulić, Ivana Miljuš i Aleksa Škundrić, 105–124. Palić: Udruženje za međunarodno krivično pravo.

Walter, Gordon L. III. 1999. California's Three Strikes Law: Tyranny of the Majority. *Whittier Law Review* 3: 577–624.

Zaczyk, Rainer. 2011. "Die Notwendigkeit systematischen Strafrechts – Zugleich zum Begriff ‚fragmentarisches Strafrecht'." *Zeitschrift für die gesamte Strafrechtswissenschaft* 123 (4): 691–708. DOI: 10.1515/zstw-2011-0691

Zakon o izmenama i dopunama Zakona Krivičnog zakonika, „Službeni glasnik Republike Srbije", br. 94/2024

Иван Ђокић*
Правни факултет, Универзитет у Београду

НОВЕ – СТАРЕ ТЕНДЕНЦИЈЕ У ДОМЕНУ КРИМИНАЛНЕ ПОЛИТИКЕ У РЕПУБЛИЦИ СРБИЈИ

Резиме

Нацртом закона о изменама и допунама Кривичног законика, најпре из 2024, а потом и из 2025. године, најављена је значајна реформа кривичног материјалног законодавства Србије. Поред читавог низа нових, криминалнополитички углавном спорних инкриминација, предложено је знатно заоштравање казнених распона код одређених кривичних дела. То се пре свега односи на предложено проширивање примене казне доживотног затвора у односу на кривично дело убиства и поједина кривична дела против полне слободе. Оно што нарочито доводи у сумњу такав евентуални законодавни потез јесте прописивање казне доживотног затвора за све облике (како основни, тако и за све остале облике квалификоване тежом последицом или нарочитом околношћу) појединих кривичних дела, што представља својеврсни правни апсурд, који противречи законодавној техници квалификовања бића кривичног дела и природној логици да је тежи облик кривичног дела тежи управо због тога што је услед неких нарочитих околности или какве даље последице за њега прописана строжа/тежа казна. Поврх тога, прописивање казне доживотног затвора за шири круг кривичних дела од постојећег коси се и са одредбом члана 44а КЗ, којом је предвиђено да се та казна може изузетно прописати, уз казну затвора, за најтежа кривична дела и најтеже облике тешких кривичних дела. Иако није спорно да кривична дела код којих је предложено увођење казне доживотног затвора представљају тешка кривична дела, она ипак нису најтежа кривична дела, нити представљају најтеже облике тешких кривичних дела. Могло би се рећи да таква оријентација у домену криминалне политике у Републици Србији није никаква новина; напротив, уколико се

* Имејл: djokic@ius.bg.ac.rs; ORCID: 0009-0006-8076-0633

сагледа период од првог озбиљног ексцеса на плану заоштравања казнене репресије из 2009. године, када је код чак трећине постојећих кривичних дела дошло до пооштравања казнених распона, тенденција прописивања све строжих казни не губи на интензитету. Оно што највише забрињава, јесте постојање основане бојазни да поменута тенденција још увек није достигла зенит и да ће се и у будућности наставити. Популистички диригованом реториком и уз готово презрив став према достигнућима науке кривичног права, занемарујући и научна сазнања о реалним могућностима казне и стварном ефекту појачане репресије на плану превенције криминалитета, предлагач нових решења још одлучније наставља процес јачања ретрибутивних тенденција, претећи прекомерном мером казне за повреду кривичноправних норми у сфери тежих форми криминалног понашања. На тај начин се српско кривично право све више удаљава од либералног, правно-државног модела кривичног права, све брже се претварајући у кривично право по мери непријатеља поретка, против којег су, у настојању друштва да обезбеди ефикасну заштиту, сва средства дозвољена. Не само да такво опредељење услед озбиљног угрожавања елементарних људских права у домену кажњавања није примерено поретку који настоји да очува црте демократичности, већ је оно често праћено неефикасношћу и слабим резултатима на пољу контроле криминалног понашања.

Кључне речи: казна, репресија, доживотни затвор, хиперинкриминализација, непријатељско кривично право

* This manuscript was submitted on October 20, 2025, and accepted by the Editorial Board for online publication and published *online first* on December 11, 2025. It was accepted by the Editorial Board for publishing on May 12, 2026.

UDC 321:314.15(497.11)"20"
DOI: 10.5937/spm97-62135
Review article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 69-90

Uroš Novaković*
Faculty of Law, University of Belgrade

BEST INTERESTS OF THE MIGRANT CHILDREN IN THE SYSTEM OF ASYLUM IN THE REPUBLIC OF SERBIA**

Abstract

In all the proceedings where the child appears as a party, the principle of the best interests of the child appears as the most general principle through which the child is protected. The following laws regulate the best interests of migrant children in the Republic of Serbia: Family Law, Law on Foreigners, Law on Asylum and Temporary Protection, and Law on Social Protection. One of the problems in practice is that an unaccompanied child, from entering the territory of Serbia until the submission of the asylum application, is assigned different persons as temporary guardians on several occasions. The major problem in the administrative procedure and the realization of the best interests of the child is reflected in the fact that police officers register unaccompanied and separated children and conduct official actions in the asylum procedure without the presence of a temporary guardian. Processing of asylum applications is not a priority, and the speed of decision-making depends on many factors, including the expediency of the acting official of the first instance body. The Asylum Office must take into account the best interests of the child at every stage of the asylum procedure,

* E-mail: uros.novakovic@ius.bg.ac.rs; ORCID: 0009-0002-9749-7369

** This paper is a result of research within the project of the Faculty of Law of the University of Belgrade for the year 2024 entitled "Problems of creation, interpretation and application of law," sub-topic Rule of Law, democracy and human rights.

particularly when deciding on the child's asylum application, and must take into account the opinion of the guardianship authority and the opinion of the child, which is one of the basic elements of the principle of the best interests of the child.

Keywords: administrative proceeding, asylum, best interests of the child, child, migration

INTRODUCTION

In modern law, in all the proceedings where a child appears as a party, the principle of the best interests of the child should be given primary consideration. The Convention on the Rights of the Child (CRC) contains a number of substantial rights, where a holistic approach to the wellbeing and the best interest of the child is guaranteed under Article 3, which is the most widely ratified human rights instrument in the modern world (Convention on the Rights of the Child [CRC] 1989, Art. 3). Implementation of such international legal standard is guaranteed by the obligation of each state party to take all available measures to achieve the fulfillment and protection of all rights of the child – in the field of social protection, health, education, thus creating an environment in which children can realize their full potential. Therefore, each state has an obligation to intervene in order to secure the best interests of the child principle (Freeman 1997, 370).

The significance of this principle multiplies when it comes to the right to stay of migrant children or the right to the reunification of migrant children with their families. Seeking family members and a possibility to reunite with their family is certainly of paramount importance for an unaccompanied and separated child.[1] This right is also envisaged as part of the right to respect family life, within the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the right to family reunification. During this procedure, it is very important that the child stays in the least restrictive environment that is most similar to the family. The UN Guidelines for Alternative Care for Children (UNGACC) acknowledge such formal and informal care for

[1] Unaccompanied and separated children fall into the category of children on the move (see: Bogetić i Jugović 2019, 1293–1318).

children (small dormitory communities, shelters, or institutions) and community accommodation (Novaković 2016, 101).

As stated elsewhere, determining the best interests of the child is part of a formal procedure accompanied by stringent procedural guarantees based on the child's best interest assessment (UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families [CMW] and Committee on the Rights of the Child [CRC], CMW/C/GC/3-CRC/C/GC/22, 7). In the Republic of Serbia (RS), such assessment is introduced by the general clause in the Family Law (2015) which imposes an obligation to courts and other administrative bodies to always be guided with the best interests of the child when deciding on the protection of the child's rights or exercising parental rights (Porodični zakon [PZ] 2015, čl. 266 i 268). To buttress the application of this principle, the Law on Asylum and Temporary Protection (LATP) reiterates its importance by mandating its strict enforcement within the asylum proceedings (Zakon o azilu i privremenoj zaštiti [ZAPZ] 2018, čl. 10). Therefore, the organizational unit of the Ministry of Interior Affairs, the Asylum Office, which is charged with the authority to grant or deny the right to asylum to the applicants, shall always act in accordance with the wellbeing, social development, and origin of the minor as well as the minor's opinion serving as main tools for assessment of the child's interest principle prescribed by the asylum regulation. Nevertheless, this also applies to the Asylum Commission, which stands as the second instance body, authorized to decide on appeals. As the last resort, where the applicant can seek redress for their encroached right to asylum, stands the Administrative Court, where all administrative decisions can be revoked or affirmed (čl. 20–22).

LAW ON FOREIGNERS

According to Article 6 of the Law on Foreigners (LF), a foreigner may enter and stay in the Republic of Serbia with a valid travel document in which a visa or residence permit has been granted, unless otherwise stated by law or an international agreement (Zakon o strancima [ZS] 2018). Article 3 of the said law defines the foreigner as any person situated at the territory of the Republic of Serbia that does not possess the citizenship of the Republic of Serbia (čl. 3). In accordance with Article 17, a foreigner may leave the Republic of Serbia freely, and only exceptionally, this right may be restricted if the foreigner does not have

a valid travel or other document used for crossing the state border, if he/she does not have a visa or if there is a justified suspicion that by leaving the RS he/she could avoid criminal or misdemeanor prosecution, serving a prison sentence, execution of a court order, deprivation of liberty or execution of property obligation, by order of a competent state body or court (čl. 17).

The competent authority, which is the Border Police, can refuse the entry of a foreigner into the Republic of Serbia. A positive novelty (Zakon o izmenama i dopunama Zakona o strancima 2019) in relation to the former LF (2018), according to which the refusal of entry was stated only in the travel document of a foreigner, is that the new law makes it obligatory to render a decision on refusal of entry printed on the prescribed form stating the reasons for refusal, which is issued both in Serbian and English. There is a possibility of filing an appeal against the said decision within 8 days following the date of the refusal of entry, which does not have the automatic suspension effect on the decision. The appeal is decided by the Ministry of the Interior of the Republic of Serbia (MI) and shall be submitted via Border Police station issuing refusal of entry or via diplomatic or consular mission of the Republic of Serbia abroad in accordance with the provisions of The Rulebook on the Form of the Decision on Refusal of Entry into the Republic of Serbia, the Form of the Decision on the Approval of Entry into the Republic of Serbia and the Manner of Entering Data on the Refusal of Entry into the Travel Document of the Foreigner (Pravilnik o izgledu obrasca o odbijanju ulaska u Republiku Srbiju, o izgledu obrasca o odobrenju ulaska u Republiku Srbiju i načinu unosa podataka o odbijanju ulaska u putnu ispravu stranca 2018). Article 83 of LF is of great importance, as it defines the prohibition of forcible removal of a foreigner to the territory where there is a risk that he/she will be subjected to the death penalty, torture, inhuman or degrading treatment or punishment, or where he/she is threatened with a serious violation of constitutional rights (non-refoulement) (ZS 2018, čl. 83).

Regarding the endorsing of the temporary residence, the foreigners who have established family, cultural or social ties with the RS in a certain period of time, or who can be considered to have achieved a certain degree of integration into Serbian society may be granted temporary residence for humanitarian reasons (ZS 2018, čl. 61). These certain types of temporary residence can only be issued in the period of at least 6 months up to 1 year at the most and can be prolonged if the

basis for such endorsement is still valid. The situation is slightly different when it comes to children born to foreign parents on the territory of the Republic of Serbia, where is mandatory for a parent, guardian, or legal representative of a child to submit a request for approval of temporary residence for the child within three months from the birth of the child (čl. 58). Temporary residence shall be permitted in the period until the expiry of the temporary residence of its parents or in a period of 1 year if the parent, guardian, or legal representative is a permanent resident (čl. 58).

Article 65 says that during decision-making on the temporary residence of the foreign child competent authority is guided with the solution that is in the best interest of such child (ZS 2018, čl. 65). Through this provision, the best interest of the child is elegantly introduced in the LF, and it diligently implies an assessment of all underlying elements that come into use and collision when deciding what is the best solution for the specific child at the specific point of time. Other uses of it refer to the procedure of returning the foreign child to his home country, or to the integration of the foreign child who is a victim of family violence, or in granting temporary residence to him, and such standards shall also be held in consideration during the residence of the child in the shelter. In all these situations, the child's best interest shall be assessed and considered before resorting to any form of decision.

THE LAW ON ASYLUM AND TEMPORARY PROTECTION

The Law on Asylum and Temporary Protection regulates the principles, conditions, and procedure for granting and terminating the right to asylum and temporary protection, and asylum seekers' and asylum holders' status, rights, and obligations, including other matters concerning asylum and temporary protection (ZAPZ 2018, čl. 1).[2] LATP stresses out that upon admission to the asylum center or other facility intended for accommodation of applicants, the individual has the right to reside in the RS, and during that time he/she can move freely on the territory of the RS unless there are reasons for restricting his/her movement as determined by law (čl. 49). Restrictions on the freedom of movement of asylum seekers may be determined in the form of a

[2] On the concept, origin, and procedure for obtaining asylum in the Republic of Serbia see: Đurić 2011, 31–48.

forbiddance to leave the asylum center or certain place or a certain space. Such a restriction can last for a maximum of three months, and this measure can be extended for another three months (čl. 78). Migrants who are granted the right to asylum have the right to obtain personal documents, including those intended and necessary for travel in and outside of the country. Migrants that are granted the right to asylum have the right to obtain personal documents, including ones intended and necessary for travel in and outside of the country. In concrete, the Asylum Office (AO) will upon an application filed by the asylum holder in RS, issue a travel document with a validity period of five years on the prescribed form (čl. 91). However, the MI has not yet adopted a form on the appearance and content of the travel document for refugees, due to lack of "technical conditions," as it has been explained. This practice leads to restricting the freedom of movement of these persons, which is contrary to the Constitution of the Republic of Serbia (SC), the ECHR, as well as the Convention Relating to the Status of the Refugees (Convention Relating to the Status of Refugees [CRSR] 1951).

A person who was afforded the right to asylum has the right to life and the upbringing of children in accordance with their religious beliefs. Needless to state, such a person is bestowed with the right of family reunification, which empowers the principle of family unity guaranteed in Article 9 of LATP (ZAPZ 2018, čl. 9).

There are several principles that permeate the LATP and direct the way the law shall be enforced and interpreted. Of great importance for this paper is the minor's best interest principle that reiterates the importance of the child's rights, interests, and wellbeing even within the asylum proceeding. The best interests of the child must be observed in civil, administrative, or criminal proceedings in which the child appears as a participant (UNHCR 2013). This principle comes as a protective umbrella for all the migrant children and especially those who are due to poverty and scarcity of resources, which makes them, on the one hand, socially excluded and, on the other, susceptible to exploitation and abuse. Therefore, persecution, conflict, and mass encroachment on human rights in the country of origin make them just more vulnerable (Udruženje Atina 2015, 19–20).[3]

[3] Therefore, the LATP prescribes that enforcement of any provision set forth shall include assessment and application of the best interests of minors. In support of such, Article 3, paragraph 1 of the Convention on the Rights of the Child states that

What is in the best interest of the minor is not left to be interpreted completely by the competent authority, but the law instead gives the elements that ought to be considered when assessing the minor's best interests. Especially, the recognition should be given to the special protection of the victims of human trafficking and family violence since these categories, in addition to the status of minors, are one of the most vulnerable and endangered groups of people and deserve immediate protection and intervention of the competent authorities. It is of utmost importance that children are not exposed to the possibility of being neglected, abused, or misused (UNICEF Beograd 2018, 33). Also, the LATP includes the major procedural principle of allowing each party to effectively participate in the proceeding, i.e., to state its opinion upon its age and maturity.[4] The Family Law singles out the right of the minor to state its opinion in every situation as the separate and independent privilege of each child (PZ 2015). This is, of course, conditioned upon the minor's capacity to form the opinion, and it also imposes the obligation of the others to timely and fully inform the minor to be able to conceive the opinion in the first place. In the judicial and administrative proceeding, the minor is allowed to state his opinion freely and seek the assistance of the court or other administrative body through other people and institutions if he turns the age of 10 (PZ 2015, čl. 65).

The procedure for determining the best interests is specified in the Rulebook on the organization, norms, and standards of work of the Center for Social Work (Pravilnik o organizaciji, normativima i standardima rada centra za socijalni rad 2025). In terms of the assessment of the best interests of children, from the first contact and the initial assessment, the children must be fully involved in the whole process, they must be presented with all the facts that can help them make a decision, and this must be done in a language they understand (The United Nations Refugee Agency [UNHCR], n.d., 7).

"in all activities concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (CRC 1989, Art. 3).

4 In the Republic of Serbia, the age of a child is determined solely on the basis of its statement (see: Marković 2019, 47–64; Krasić, Milić, i Šahović 2017; Rakić i Bogdanić 2017, 137–148). In case of doubt as to whether the person being identified is a child, reasonable suspicion should be allowed and the person should be treated as such (see: Centar za prava deteta 2017).

THE RIGHT TO CITIZENSHIP AND THE LAW ON CITIZENSHIP

In addition to the right to know the origin, the right of the child to live with his/her parents and to grow up and develop in a family environment is one of the basic rights of the child. This right may be jeopardized if the child is in the territory of another state unaccompanied by the parent due to armed conflict or other natural disasters or circumstances. The absence of documents on the child's origin, as well as on his/her national status (citizenship), prevents the child from enjoying other rights that are conditioned by these rights: the right to education, health care, the right to a personal name, and social protection. Article 15 of the Universal Declaration of Human Rights (United Nations General Assembly [UNGA], A/RES/217 [lll] A, Art. 15) stipulates that everyone has the right to citizenship and the prohibition of arbitrary deprivation of citizenship and denial of the right to change citizenship. The Convention on the Rights of the Child prescribes the right of a child to citizenship and prohibits the occurrence of statelessness in children (CRC 1989, Art. 7). The manner and conditions of acquiring citizenship are regulated by the internal regulations of the state, but the international standard requires that no distinction is made between newborn children. The Convention Relating to the Status of Stateless Persons obliges states to apply to stateless persons the same regime that applies to foreigners in general (Convention Relating to the Status of Stateless Persons [CSSP] 1954, Art. 7), and the Convention on the Reduction of Statelessness provides that a state will grant citizenship to a person born in its territory if it would otherwise remain stateless (Convention on the Reduction of Statelessness [CRS] 1961, Art. 1).

The ECHR does not prescribe the right to citizenship as a special right, but indirectly, through the protection of other rights, protects the right to citizenship. The right to citizenship is not guaranteed in the Serbian Constitution, but Art. 38 stipulates that the acquisition and termination of citizenship of the RS are regulated by law and that a Serbian citizen cannot be expelled or deprived of citizenship or the right to change it and that a child born on Serbian territory has the right to citizenship if he/she cannot acquire the citizenship of another state (Ustav Republike Srbije 2006, čl. 38).

According to the Law on Citizenship (Zakon o državljanstvu Republike Srbije 2018), a child acquires citizenship by origin if both

parents are citizens of the RS at the time of its birth if one of the parents is a citizen of the RS at the time of its birth and the child is born on the territory of the RS if one parent is a citizen of Serbia at the time of its birth and the other is unknown, of unknown citizenship or stateless and the child is born abroad (čl. 7). If the child is born to one of the parents that is a citizen of the RS and the other is a foreign citizen, the child can acquire citizenship if the parent, citizen of the RS registers the child until it turns 18 before the competent diplomatic or consulate missions of the RS (čl. 9) or by its own request by the age of 23 (čl. 10). If the child was born or found in the territory of Serbia, it acquires the citizenship of Serbia if both parents are unknown or of unknown citizenship or stateless, or if the child is stateless, and may, at the request of the parents, lose his citizenship if it is determined that both of his parents are foreign nationals (čl. 13).

CHILD RIGHTS IN THE ASYLUM PROCEDURE

Regarding the decision on the asylum application, in its explanatory part, the circumstances in which the child finds itself need to be explicitly outlined. When the competent authority renders a decision that is unlike the child's opinion, it should clearly state the reasons behind such a discrepancy and why the rendered decision is in the best interest of the child. Even the child's best interest is the general principle introduced by the Family Law, and as such shall be applicable by each authority when the child is the subject matter of the proceeding. In practice, there were no cases of its application and use until the enactment of the LATP. Therefore, the previous valid Law on Asylum (2007), only prescribed in Article 15, that persons with special needs, including thereby minors, shall be taken into special consideration (Zakon o azilu 2007, čl. 15). The former case law was on the trace of recognizing this principle but far from what the new law and current judicial practice achieved. The closest the court reached in terms of the child's best interests principle is the Administrative Court Decision No. U. 15736/13 as of March 9, 2015 which recognized the special approach and due consideration to the categories underlined in Article 15 of LA including the minors, where the Administrative Court has concluded that Asylum Commission (AC) breached the rules of procedure when did not enforce and take into account this provision and as a result rescinded

its decision (Odluka Upravnog suda Republike Srbije [USRS], 21 U. 15736/13). In the contemporaneous practice of the AO, there is almost always a review of the best child's interest in accordance with the consultation of the Center for Social Work (CSW).

In Article 11 of the LATP, it is stated that the intention of minors to apply for asylum shall be expressed by the parent or guardian and the same shall apply in terms of lodging the request for obtaining the asylum (ZAPZ 2018, čl. 11). However, the law specifies the exemption when it comes to minor who turned the age of 16 and is married, mainly to refrain parents and guardians from interfering in the private and intimate sphere between spouses. Furthermore, the law specifically governs the procedural guarantees of unaccompanied minors and provides some effective legal means for the protection of their rights and interests. Before all, such is the right to be bestowed with the temporary guardian as soon as it is determined that the minor is unaccompanied, and at the latest before the submission of the request for asylum (see: Budimir 2020, 203–222).[5] In practice, this standard is mainly applied by the courts and administrative bodies when deciding on the child's rights; however, for the benefit of the unaccompanied child, even his legal representative must be guided by this principle. Remains the question whether the child can appeal or challenge the decision of the higher instance authorities or file a subsequent asylum application on the basis that the temporary guardian did not act in the best interest of the child. In the author's opinion, such shall be granted by the court or administrative authority due to the change of circumstances. In any case, CSW shall release the temporary guardian before the end of the proceeding when it determines he has ceased to conduct his duty, or he has abused his rights and harshly neglected his duties, or due to the emergence of some other facts that would prevent him from being appointed as a temporary guardian. Additionally, a temporary guardian should also be released when it conducts its duties recklessly or if it would be beneficial for the protégé to be assigned with another guardian

[5] When it comes to determining the temporary guardian of an unaccompanied child as a problem which has been observed in practice, the assignment of multiple temporary guardians to a child due to the mobility of the child (see: Ćopić i Ćopić 2019, 49–72). Also, it is not uncommon for one person to be appointed guardian of a large number of children. For example, in the reception centre in Obrenovac, one guardian was appointed to altogether 218 unaccompanied children staying there (see: Batrićević i Kubiček 2019, 349–377).

(PZ 2015, čl. 133). Also, LATP stipulates those proceedings initiated by the unaccompanied minor concerning the asylum shall have priority in rendering the decision (ZAPZ 2018, čl. 12). In practice, according to the experience of the Belgrade Centre for Human Rights (BCHR) in 2019, children were used to expressing the intention to seek asylum without the presence of a temporary guardian (Belgrade Centre for Human Rights [BCHR] 2020a). It is stated that in the best-case scenario, the temporary guardian just showed up to sign the registration form that affirms the child has expressed its intention to file for asylum. However, in the following report from 2020, BCHR stresses that in practice there are still ongoing situations that unaccompanied children are registered without the presence of a temporary guardian, but generally speaking the overall situation is getting to better, specifically singling out the example of CSW in Dimitrovgrad, where employees in the capacity of temporary guardians were always present during the registration (BCHR 2020b, 105).

Among the first decisions of the AO based on the enacted LATP that has granted the right of asylum to the minor is the AO Decision No. 26-2348/17 as of January 28, 2019, concerning P., a citizen of Iraq (Odluka KA, br. 26-2348/17). This decision in its rationale explicitly stated that it was guided by the best interest of the minor in accordance with Article 10 of LATP. Furthermore, having in mind that the minor was unaccompanied, it has diligently considered the report on the psychological assessment of the minor as well as the report of the temporary guardian assigned by the CSW. Moreover, the AO was also referring to the Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR 2019, 46), in which it is stated that in the case of an unaccompanied minor, it is necessary to consult an expert in the field of children's psychology, which was certainly performed, and it was a laudable act. It seems that a temporary guardian often is not the person equipped with in-depth knowledge and experience to handle specific types of issues that burden the unaccompanied minor. This is especially the case, like the present one, where the minor *inter alia* confessed that at some points during the ongoing process, they tried to commit suicide. Hereby, the author draws a conclusion that it is necessary to perform every method of examination to determine the minor's mental and physical state and provide an adequate response, which will usually be in the form of a decision on granting asylum and providing shelter.

Furthermore, the AO in the Decision No. 26-652/16 as of June 17, 2016 granted the subsidiary protection to an Afghani national, S., mother of two children Afghani nationals, one of which was two and the other four years old at the time of the submission of the application (Odluka Kancelarije za azil [KA], 26-652/16In essence, the AO found that under Article 4, Section 2 of the LATP, no conditions were fulfilled for granting the right to asylum for all three applicants. Regardless of such decision-making, the AO has taken into account the current security situation in Afghanistan and that, in the event of their return, the applicants would be exposed to risk due to internal armed conflicts and their basic human rights would be breached. Interestingly, the AO never related to the best interests of the children nor assessed the requisite elements when rendering the decision. For the AO, only the current situation in the country of origin which was graded as highly risky and detrimental to their return mattered.

The issue of the inconsistent practice in asylum matters should be specifically addressed and underlined as a major setback for the exercise of the rights bestowed under the LATP. Concretely, the AO came to a completely opposite conclusion in the AO Decision 26-378/19 as of February 11, 2020, when it drew the conclusion that the situation in Afghanistan is safe for living according to the stance of UNHCR dating from 2002 (Odluka KA, br. 26-378/19). This can be described only as a blatant transgression of fundamental human rights and as such imposes the real encroachment of the *non-refoulement principle.*

The refoulement principle is introduced, in the Article 33 of the Convention Relating to the Status of Refugees where it says that "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (CRSR 1951).[6] Also, according to the Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: "No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of

[6] In order to determine whether a refugee's life and freedom are truly at risk, the competent authorities of the country of asylum should weigh all relevant facts, taking into account, where possible, whether there is a gross and widespread violation of fundamental political rights in that country (see: Pavlica 2005, 85–102).

being subjected to torture" (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CATOCIDTP] 1984). Paragraphs 27 and 28 of the CRC Committee's General Comment No. 6 (UNHCR 2005) further specify these provisions and stress that minors must not return to the countries if there is a possibility they can be recruited to fight in armed conflicts or where they would be irreparably harmed (also specified within: UNHCR 2018, part VIII).

Duration of the asylum procedure

The asylum proceeding, from its beginning when the asylum applicant expresses the intention to seek asylum until the decision becomes effective and enforceable, is equipped with precise and tight deadlines for each legal action as a procedural safeguard for the applicants. At first, the Family Law qualifies the procedure of assigning temporary guardians as urgent, requiring the CSW to render the decision on assigning the guardian immediately, or up to 30 days as of its discovery that the protégé is in need of a guardian (PZ 2015, čl. 332). Secondly, LATP recognizes the importance of the speedy resolution of the asylum matter and sets out exact deadlines in which the actions and certain parts of the procedure need to be completed, even though it does not attribute the proceeding as urgent (ZAPZ 2018). Anyhow, the principal provisions of the Family Law governing the judicial proceedings with minors shall strictly apply when deciding in asylum procedure on the rights of the minor. These provisions qualify such process as particularly urgent which means that the first hearing needs to be scheduled in a period of 8 days as of the receipt of the application, that second instance body must deliver the decision not later than 15 days as of receipt of the appeal and that whole proceeding shall be conducted in two hearings at the most (PZ 2015, čl. 204 i 268). Finally, LATP prescribes that those proceedings with unaccompanied children shall have priority over all others (ZAPZ 2018, čl. 12, para. 8).[7]

[7] Considering LATP, migrants who express the intention to seek asylum shall be immediately transferred to the place designated for accommodation, and within 15 days of their registration, must file an asylum application (ZAPZ 2018). If the officials at the AO hinder the applicant to do so, he can submit the application on his own by filling out the form and submitting it to the AO in the following 8 days as of the expiry of the previous deadline (čl. 36). Even though the legislator provided another deadline if the first is exceeded, it is still uncertain how the

Administrative Court in its Decision U 9284/20 as of December 17, 2020, concluded that officials have breached the applicant's right to aid since they conducted the proceeding without the translation and used the English language that the Afghan national did not comprehend, and eventually delivered the decision only in the Serbian language (Odluka USRS, U. 9284/20).[8]

In practice, significant discrepancies were noticed regarding strict deadlines and the urgency principle guaranteed by the law. BCHR states that in case No. 26-379/19, as of May 29, 2019, the minor waited for 6 months to be scheduled with a hearing, and more than a year from the application until receiving the first instance decision (BCHR 2020a, 111). In the same report, it is stated that all procedures initiated by the BCHR were unreasonably long and only one applicant received the notification that the procedure was going to be delayed (BCHR 2020a, 111).

These are a few examples where the deadlines were not respected, and where the migrant child stayed in the status quo, for which time the fear of return to the unsafe and dangerous country is multiplied by each day of uncertainty waiting for the decision to arrive. A conclusion is that hearings are often scheduled in up to three months and even longer in exceptional cases, which is certainly a long period due to the LATP provision that prescribes scheduling *in the shortest period.* The more concerning part is that the decisions are rendered by the first instance body after a year, and in administrative proceedings, this can last up to 3, 4, or more years, which causes the justice to be slow and inefficient.

migrant will be able to obtain, read, understand, and file the form on his own without the necessary help from the official (čl. 35–36). This is only well regulated if the minor is unaccompanied, and due to the fact that he would be assigned a temporary guardian who shall provide the required legal assistance. In practice, a common issue is that applicants were not served by a translator, which significantly aggravated their chances.

[8] Further, LATP states that the hearing shall be conducted in the shortest possible period and explicitly prescribes that the decision has to be rendered within a period of 3 months as of the submission of the application or subsequent application (ZAPZ 2018). The deadline can be prolonged for another 6 months if the application is based on a complex legal and factual background, or if a vast number of migrants are seeking asylum. Each delay in delivering the decision has to be notified, and the applicant should be aware of such circumstances (čl. 37 and 39).

CONCLUSION

All children, regardless of their legal status or the legal status of their parents, are entitled to the respect of the best interests of the child in all activities and to the use of their rights and privileges without discrimination. By analyzing the legal framework and the implementation of laws in practice, it is noted that even when the law secures a full corpus of minors' rights in terms of asylum, there are significant obstacles in practice to enforce such rights. Firstly, the children who are separated from their parents are among the most vulnerable groups exposed to the risk of abuse and exploitation.[9] Nevertheless, this also applies to children accompanied by their parents whose rights are collectively in breach by the official authorities or not guaranteed by the respective regulations. Finally, the situation of unaccompanied children who have not sought asylum and/or entered the territory of the RS illegally is especially difficult. These children have a much harder time exercising their basic rights, including their rights to education, health care, and social inclusion, which is practically unattainable since they are invisible to the legal system. Some of the problems the children encounter are lengthy proceedings, a lack of translators, legal uncertainty in terms of different interpretations of the current safety status of specific countries, and interpretations of third safe countries. Moreover, a certain number of unaccompanied children are placed in social protection institutions, which are neither competent nor specialized for the care of migrant children and lack translators, psychologists, medical staff, and other experts.

In terms of the amendments to the current law, the good practice of AS should be taken into consideration in light of supplementing the law to include the mandatory presence of the psychologist, medical staff, and other experts during the first encounter with the child migrant and further in case of needIn some cases, even readmission to the third safe country may be possible by the objective elements; however, it should be carefully considered whether such action will deteriorate the child's medical conditions and put him in an endangered position. Also, the bylaws on content and form of the travel document shall be immediately adopted by the MI since the passive stance of the competent ministry

[9] What dangers unaccompanied children can be exposed to (see: Kostić 2016, 391–412).

that neglects the rightful need of the asylum holders is nothing but the blatant encroachment of their basic human rights.

Finally, the long duration of the asylum proceedings concerning the minor asylum seekers shall be addressed accordingly. However, this is an everlasting issue and the main setback toward the judicial reforms and European integrations in the Republic of Serbia, and would require serious institutional endeavors to improve the current situation.

REFERENCES

Batrićević, Ana, and Andrej Kubiček. 2019. "The Integration of Migrant Children in Serbia: Legal and Social Aspects." In: *Yearbook: Human Rights protection, protection of the right's of the child "30 years after the adoption of The Convention on the Rights of the Child,"* ed. Zoran Pavlović, 349–377. Novi Sad: Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research.

Belgrade Centre for Human Rights [BCHR]. 2020a. *Right to Asylum in the Republic of Serbia 2019*. Last Accessed on October 7, 2023. http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-in-Serbia-2019.pdf

BCHR. 2020b. *Right to Asylum in the Republic of Serbia 2020*. Last Accessed on October 7, 2023. https://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-in-Serbia-2020.pdf

Bogetić, Dragica, i Aleksandar Jugović. 2019. „'Deca u pokretu' kao ranjiva populacija." *Sociološki pregled* 53 (3): 1293–1318.

Budimir, Miroslav. 2020. „Zaštita maloletnih migranata bez pratnje u Republici Srbiji – predlozi za njeno unapređenje zasnovani na uvidima iz prakse." *Godišnjak Fakulteta političkih nauka* 14 (24): 203–222.

Centar za prava deteta. 2017. *Opšti komentar Komiteta za prava deteta br. 6 - Postupanje sa decom bez pratnje i razdvojenom decom van zemlje porekla.* Poslednji pristup 5. februara 2025. https://cpd.org.rs/wp-content/uploads/2017/11/288_Opsti-komentar-6-Postupanje-sa-decom-bez-pratnje-i-razdvojenom-decom-van-zemlje-porekla.doc

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CATOCIDTP], 10 December 1984, UNTS 1465, I-24841.

Convention on the Rights of the Child [CRC], 20 November 1989, UNTS 1577, I-27531.

Convention on the Reduction of Statelessness [CRS], 30 August 1961, UNTS 989, I-14458.

Convention Relating to the Status of Refugees [CRSR], 28 July 1951, UNTS 189, I-2545.

Convention Relating to the Status of Stateless Persons [CSSP], 28 September 1954, UNTS 360, I-5158.

Ćopić, Sanja, i Slobodan Ćopić. 2019. „Deca migranti i izbeglice bez pratnje u Srbiji: standardi postupanja i nivo poštovanja njihovih prava." *Zbornik Instituta za kriminološka i sociološka istraživanja* 38 (2): 49–72.

Đurić, Vladimir. 2011. „Postupak azila u Republici Srbiji." U *Aktuelne promene u pravnom sistemu država u regionu,* ur. Marijana Dukić Mijatović, 31–48. Novi Sad: Pravni fakultet za privredu i pravosuđe Univerzitet Privredna akademija.

Freeman, Michael. 1997. "The Best Interest of the Child? Is the Best Interests of the Child in the Best Interest of Children." *International Journal of Law Policy and the Family* 11 (3): 360–388. DOI: 10.1093/lawfam/11.3.360

Kostić, Nataša. 2016. „Deca – migranti bez pratnje." *Leskovački zbornik* 56: 391–412.

Krasić, Bogdan, Nikolina Milić, i Vlada Šahović. 2017. *Položaj nepraćene i razdvojene dece u Srbiji*. Beograd: Beogradski centar za ljudska prava.

Marković, Violeta. 2019. „Alternativno staranje za decu migrante/tražioce azila bez pratnje roditelja ili staratelja u Srbiji." *Socijalna politika* 54 (3): 47–64.

Novaković, Uroš. 2016. „Smernice Ujedinjenih nacija za alternativnu brigu o deci." U *Ljudska prava između ideala i izazova sadašnjosti*, ur. Marija Krvavac, 93–107. Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici.

Odluka Kancelarije za azil [KA], br. 26-652/16 od 17. juna 2016. godine.

Odluka Kancelarije za azil [KA], br. 26-2348/17 od 28. januara 2019. godine.

Odluka Kancelarije za azil [KA], br. 26-378/19 od 11. februara 2020. godine.

Odluka Upravnog suda Republike Srbije [USRS], 21 U. 15736/13 od 9. marta 2015. godine.

Odluka Upravnog suda Republike Srbije [USRS], U. 9284/20 od 17. decembra 2020. godine.

Pavlica, Branko. 2005. „Izbeglice i azilanti iz Jugoslavije u SR Nemačkoj." *Strani pravni život* 3: 85–102.

Porodični zakon [PZ], „Službeni glasnik Republike Srbije", br. 18/2005, 72/2011 - dr. zakon i 6/2015.

Pravilnik o izgledu obrasca o odbijanju ulaska u Republiku Srbiju, o izgledu obrasca o odobrenju ulaska u Republiku Srbiju i načinu unosa podataka o odbijanju ulaska u putnu ispravu stranca, „Službeni glasnik Republike Srbije", br. 50 od 29.06.2018.

Pravilnik o organizaciji, normativima i standardima rada centra za socijalni rad, „Službeni glasnik Republike Srbije", br. 59/2008, 37/2010, 39/2011 – dr. pravilnik, 1/2012 – dr. pravilnik, 51/2019, 12/2020, 83/2022 i 10/2025.

Rakić, Jelena, i Milena Bogdanić. 2017. „Maloletnici bez pratnje u azilnom sistemu Republike Srbije." *Pravne teme – časopis Departmana za pravne nauke Univerziteta u Novom Pazaru* 5 (9): 137–148.

The United Nations Refugee Agency [UNHCR]. n.d. "Refugee Protection and Mixed-Migration: The 10-Point Plan in Action: Chapter 4 Reception arrangements. Reference 2 - UNHCR, Reception Standards for Asylum-seekers in the European Union, 1 July 2000." Last Accessed on October 7, 2023. https://bit.ly/2Qbewq9

Udruženje Atina. 2015. *Vodič za procenu najboljeg interesa deteta*. Beograd: Udruženje građana za borbu protiv trgovine ljudima i svih oblika nasilja nad ženama – Atina. Last Accessed on October 7, 2023. http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/03/Vodic_za_procenu_najboljeg_interesa_deteta.pdf

UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families [CMW] and Committee on the Rights of the Child [CRC], CMW/C/GC/3-CRC/C/GC/22 (2017), Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration Adopted by the

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, on November 16, 2017. Last Accessed on October 7, 2023. https://www.refworld.org/docid/5a1293a24.html

United Nations General Assembly [UNGA], A/RES/217 (lll) A (1948), Universal Declaration of Human Rights (1948) Adopted by the General Assembly on 10 December 1948.

UNHCR. 2005. "General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin." 01.09.2005. Last Accessed on October 7, 2023. https://www.refworld.org/docid/42dd174b4.html

UNHCR. 2013. "General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)." 29.05.2013. Last Accessed on October 7, 2023. https://www.refworld.org/docid/51a84b5e4.html

UNHCR. 2018. "General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22." 09.02.2018. Last Accessed on April 12, 2024. https://www.refworld.org/legal/general/cat/2018/en/120416

UNHCR. 2019. "Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees." Last Accessed on April 12, 2024. https://www.refworld.org/policy/legalguidance/unhcr/2019/en/123881

UNICEF Beograd. 2018. *Jačanje porodica iz osetljivih grupa: Pogled na mogućnosti*. Beograd: UNICEF Beograd. Last Accessed on October 7, 2023. https://www.unicef.org/serbia/media/8221/file/Ja%C4%8Danje%20porodica%20iz%20osetljivih%20grupa.pdf

Ustav Republike Srbije, „Službeni glasnik Republike Srbije", br. 98/06 i 115/2021.

Zakon o azilu, „Službeni glasnik Republike Srbije", br. 109/2007.

Zakon o azilu i privremenoj zaštiti [ZAPZ], „Službeni glasnik Republike Srbije", br. 24/2018.

Zakon o državljanstvu Republike Srbije, „Službeni glasnik Republike Srbije", br. 135/2004, 90/2007, i 24/2018.

Zakon o izmenama i dopunama Zakona o strancima, „Službeni glasnik Republike Srbije", br. 31/2019.

Zakon o strancima [ZS], „Službeni glasnik Republike Srbije", br. 24/2018, 31/2019.

Урош Новаковић*
Правни факултет, Универзитет у Београду

НАЈБОЉИ ИНТЕРЕС ДЕЦЕ МИГРАНАТА У СИСТЕМУ АЗИЛА У РЕПУБЛИЦИ СРБИЈИ**

Резиме

Сва деца, без обзира на њихов или правни статус њихових родитеља, имају право на поштовање најбољих интереса у свим активностима и на коришћење својих права и привилегија без дискриминације. Анализом правног оквира и примене закона у пракси примећује се да, чак и када закон обезбеђује потпуни корпус права малолетника у погледу азила, у пракси постоје значајне препреке за њихово спровођење. Најбољи интерес деце мигранта у Републици Србији (РС) регулишу следећи закони: Породични закон, Закон о странцима, Закон о азилу и привременој заштити, Закон о социјалној заштити. Деца која су одвојена од родитеља спадају међу најрањивије групе изложене ризику од злостављања и експлоатације. Ипак, ово се односи и на децу у пратњи родитеља чија права колективно крше званичне власти или нису гарантована одговарајућим прописима. Коначно, посебно је тешка ситуација деце без пратње која нису тражила азил и/или нису илегално ушла на територију РС. Ова деца много теже остварују своја основна права, укључујући права на образовање, здравствену заштиту, а њихова социјална инклузија је практично недостижна, јер су невидљива за правни систем. Неки од проблема са којима се деца сусрећу су дуготрајни поступци, недостатак преводилаца, правна несигурност у смислу различитог тумачења тренутног безбедносног статуса

* Имејл: uros.novakovic@ius.bg.ac.rs; ORCID: 0009-0002-9749-7369

** Овај рад је резултат истраживања у оквиру пројекта Правног факултета Универзитета у Београду за 2024. годину под насловом „Проблеми стварања, тумачења и примене права", подтема владавина права, демократија и људска права.

појединих земаља и тумачења треће сигурне земље. Штавише, одређени број деце без пратње смештен је у установе социјалне заштите, које нису надлежне нити специјализоване за бригу о деци мигрантима и немају преводиоце, психологе, медицинско особље и друге стручњаке. Главни проблем у административном поступку и остваривању најбољег интереса детета огледа се у чињеници да полицијски службеници региструју децу без пратње и раздвојену децу и спроводе службене радње у поступку азила без присуства привременог старатеља. Број деце миграната у Републици Србији стално расте, а време које проводе на њеној територији се повећава, посебно због континуиране пандемијске ситуације. Стога је од највеће важности да се што пре успостави ефикасан систем заштите ове деце у складу са одговарајућим законским стандардима, посебно када је у питању здравство, социјална заштита, психолошка подршка, као и образовање. Пре свега, ово је одговорност и дужност Републике Србије, али укључивање цивилног сектора и невладиних организација не сме бити занемарено и изостављено у процесу због њихове подобности и капацитета да пруже и допринесу неизбежној помоћи систему за избеглице и азил у целини. Канцеларија за азил мора узети у обзир најбољи интерес детета у свакој фази поступка азила, посебно приликом одлучивања о захтеву детета за азил, и мора узети у обзир мишљење органа старатељства и мишљење детета, што је један од основних елемената принципа најбољег интереса детета. У погледу измена важећег закона, треба узети у обзир добру праксу Канцеларије за азил у светлу допуне закона како би се укључило обавезно присуство психолога, медицинског особља и других стручњака приликом првог сусрета са дететом мигрантом и даље по потреби. У неким случајевима, чак и поновни пријем у трећу сигурну земљу може бити могућ објективним елементима, али треба пажљиво размотрити да ли ће таква акција погоршати здравствено стање детета и довести га у угрожен положај. Такође, Министарство унутрашњих послова ће одмах усвојити подзаконске акте о садржају и облику путне исправе, јер пасивни став надлежног министарства, који занемарује оправдане потребе азиланата, није ништа друго до очигледно кршење њихових основних људских права. На крају, дуготрајност поступка азила у вези са малолетним тражиоцима азила мора се решити на одговарајући начин. Међутим, ово је вечни проблем и главна препрека ка правосудним реформама и европским интеграцијама у Републици Србији и захтевало би

озбиљне институционалне напоре како би се побољшала тренутна ситуација.

Кључне речи: управни поступак, азил, најбољи интерес детета, дете, миграција

* This manuscript was submitted on October 13, 2025, and accepted by the Editorial Board for online publication and published *online first* on November 27, 2025. It was accepted by the Editorial Board for publishing on May 12, 2026.

UDC 342.53(497.11)"20"
DOI: 10.5937/spm97-66654
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 93-122

Mijodrag Radojević[*]
Institute for Political Studies, Belgrade
Petar Matić[**]
Institute for Political Studies, Belgrade

LOCAL COMMUNITY ASSEMBLIES IN SERBIA AS A FORM OF DIRECT CITIZEN PARTICIPATION IN LOCAL GOVERNMENT – BETWEEN TRADITION, REPRESENTATIVE AND DIRECT DEMOCRACY –[***]

Abstract

The subject of this research is local community assemblies as forms of direct democracy in Serbia. The paper seeks to identify a correlation between the traditional forms of these assemblies and the development of local self-government and democracy. By using the doctrinal concepts of direct democracy and local self-government, as well as theoretical methods, such as the dogmatic and normative legal method, historical and comparative methods, and, based on empirical findings, the authors provide a diachronic overview of local assemblies of all citizens. These assemblies have a long tradition in Serbia. From former custom-based institutions, they were transformed into local government bodies during the nineteenth century. This transformation meant a gradual phasing-out of their direct representative character and their importance as

[*] E-mail: miodrag.radojevic@gmail.com; ORCID: 0000-0002-1104-9219
[**] E-mail: pmatic75@gmail.com; ORCID: 0000-0003-0205-9762
[***] This paper was written within the research activity of the Institute for Political Studies, funded by the Ministry of Science, Technological Development, and Innovation of the Republic of Serbia.

central bodies of local government. The underlying cause of these changes results from the conflict between political conceptions of local democracy (decentralists) and proponents of a strong state and local administration (centralists), as well as broader political circumstances. The model of classical representative body in local self-government persisted until the beginning of World War II. In the post-war period, consistent with the ideological postulates of Marxism and self-management socialism, two new forms of these bodies emerged in the communist Yugoslavia – assemblies in local communities (citizens' assemblies) and assemblies in business enterprises and organizations (working people's assemblies). During the final decade of the twentieth century, following the dismantling of self-management socialism and a return to the classical model of local self-government, these forms of direct democracy at the local level were abolished. The authors conclude that the era of socialist self-management left a contradictory legacy in terms of attitudes toward direct democracy and direct citizen participation in local government. A residual element of such a legacy is the concept of assemblies in local communities, which, in practice, has no substantial role in the functioning of local self-government in Serbia. The authors point to the shortcomings in the legal framework and propose normative and technical solutions that could improve the way of citizens' direct participation in the exercise of local power.

Keywords: direct democracy, local administration, local self-government, centralization, citizens' assembly, local assemblies, local communities

LOCAL-LEVEL ASSEMBLY OF ALL CITIZENS AS A HISTORICAL AND NORMATIVE CURIOSITY

The "renaissance" of direct democracy in recent decades has been associated with the process of the collapse of communism and authoritarian systems, but also with criticism of parliamentarism in Western democracies.[1] Citizens' direct say on public affairs is expected to strengthen the development of democracy and address the weaknesses of

[1] Such a thesis is supported by statistical data on the increasing frequency of instruments of direct democracy (referendums and citizens' initiatives) during this period at the global level.

representative systems of government. In comparative law and political practice, the debate over the use of referendums for key decision-making at the national level has been at the center of controversy not only in the so-called 'new democracies' but also in established constitutional and political systems. In this paper, we use historical institutionalism in order to identify patterns and forms in the development of the citizens' assembly concept in Serbia during its modern history. In the introductory part, a comparative paradigm is also employed to point to the existence of related forms of citizens' assemblies in different political systems. We also highlight the specific context in which the institutionalization of citizens' assemblies unfolded, while tracing the genesis and trajectory of their development in Serbia.

The spreading of direct democracy in a number of political systems has also contributed to the development of other mechanisms; for example, to the establishment of a supranational citizens' initiative (*European Citizens' Initiative*) under the Treaty of Lisbon (Radojević 2024, 146) within the European Union. Another significant novelty is the emergence of various institutions of citizen consultation and public deliberation (deliberative democracy), which complement the concept of direct democracy. Furthermore, relevant recommendations and standards concerning institutions of direct democracy have been adopted (European Commission of Democracy through Law [Venice Commission], CDL-AD(2022)015; Venice Commission, CDL-AD(2020)031). The renewed interest in direct democracy, however, has often been exposed to criticism based on empirical grounds. The fear of its use has been prompted by abuse, particularly in populist regimes (Gerber 1999).

On the other hand, the proliferation of direct democracy in local self-government units has been less pronounced. Most states recognize the local referendum and the popular (citizens') initiative, while far fewer legal systems feature local parliaments with elements of direct democracy (assemblies, local all citizens' assemblies, communal assemblies, etc.). Like other direct democracy mechanisms, these assemblies appear in different variations in comparative law. Generally speaking, they may be mixed in nature, by being both a body of local authority and a form of direct democracy. In some countries, they are the principal body of the basic or lowest level of local self-government. In other cases, they exist within narrower territories of administrative and self-governing units and may be optional, meaning that their opinions are not binding

upon local authorities, but may influence decision-making under certain conditions.

Unlike the classical local parliament, they are not representative. Local community assemblies are composed of inhabitants with voting rights, or residents holding domicile or temporary residence status. These assemblies may launch initiatives and/or make key decisions for governance in their local communities and elect members of other governing bodies. Such examples are foremost historical curiosities or relics – a reflection of tradition. Population growth and urbanization gradually led to the disappearance of such assemblies. In most countries, such as Sweden and Switzerland, the model of the communal assembly has been replaced by a local parliament whose councilors are elected by citizens in elections, along with a local council.

All citizens' assemblies, as a legal mechanism, are generally typical in smaller geographic areas (settlements and smaller rural municipalities) or parts of larger local self-government units (cities, municipalities) consisting of a limited number of inhabitants. Some well-known examples include the *concejo abierto* ("open council") in Spain and the assembly of registered voters (*Freguesia*) in Portugal, both of which are constitutionally guaranteed categories. Furthermore, all citizens' local assemblies also exist in some municipalities in Switzerland and Liechtenstein. In Switzerland, local and cantonal assemblies (*Landsgemeinden*), traditional forms of direct decision-making, have been preserved primarily in cantons with smaller populations. This is the case in the cantons of Glarus and Appenzell Innerrhoden, where citizens meet once a year, in the last week of April and the first week of May, to deliberate on all matters of importance for the functioning of their communities. The specific context and geographic fragmentation of settlements have led to the interdependence of their inhabitants, thus allowing these traditional institutions of direct democracy to survive to the present day. In the United Kingdom, parish meetings represent the lowest form of local self-government, managing community affairs in areas with a certain number of inhabitants.[2] In the United States,

[2] One of the specific features of the system of local self-government in the United Kingdom of Great Britain is the existence of parishes, which are present in certain parts of the country, primarily in England. In administrative units with fewer than 150 voters, decision-making on local competences is generally in the hands of parish meetings. This body was retained even after the major legislative changes of the 1970s as the basic level of local democracy. Through reforms in 2007 and

similar institutions are town meetings. In some German Länder, there is a legal obligation to convene assemblies of all voters upon request of a certain number of citizens and the mayor ("public assemblies") in local self-governments for the adoption of certain decisions or legal acts (Radojević i Matić 2025, 226–229). A similar legal mechanism exists in Slovenia (Zakon o lokalni samoupravi 2026, čl. 44; 46). Local assemblies of all citizens also exist in Poland, while in Croatia (Zakon o lokalnoj i područnoj (regionalnoj) samoupravi 2020, čl. 24; 24b) and Montenegro (Zakon o lokalnoj samoupravi 2020, čl. 16; 158), as a form of so-called sub-municipal self-government, and they are regulated under the identical name as in Serbia – assembly (*zbor*).[3]

According to the importance, role, and binding force of the decisions they adopt, we can distinguish between two types of these assemblies. Unlike traditional local assemblies, consultative assemblies adopt proposals that do not bind local authorities. Local authorities consider these proposals, but without any obligation to adopt them *eo ipso*. Common to both these types is that they may serve as an important forum for deliberation and local democracy. Therefore, it is possible to observe a reversible process – the first type of local assemblies is gradually disappearing, while the advisory local assemblies' mechanism is emerging in their place. Support for the establishment of these bodies in Europe is provided by the Council of Europe in accordance with the European Charter of Local Self-Government, with the aim of increasing direct citizen participation in the exercise of local government and improving the quality of the functioning of local administration and democracy.

Serbia is one of the examples where the possibility of holding all citizens' assemblies in local self-government also exists. The assembly (*zbor)*, as a form of direct citizen participation in the exercise of local self-government, is defined both as a form of local self-government and as a form of direct democracy, alongside the local referendum and citizens' initiative. The *assembly* in smaller parts of settlements, in municipalities or city municipalities, is an assembly of all citizens of

2011, the legislator provided that a parish with a larger number of voters is obliged to elect parish councils, whose competences have been expanded (legislation.gov.uk, n.d.).

[3] In the Federation of Bosnia and Herzegovina, the term "local citizens' assembly" (*mjesni zbor građana*) is used (Zakon o principima lokalne samouprave u Federaciji Bosne i Hercegovine 2009, čl. 43).

the local community. It is conceived as a form of citizen participation in the exercise of local government, with modest consultative competences.

In the contemporary legal system of Serbia, local community assemblies have been formally established since 2002. Empirical data, however, do not provide sufficient evidence about their functioning, nor do they suggest that they play a greater role in practice. However, representative local assemblies of all citizens have a far longer tradition in Serbia. Over the previous two centuries, their character has changed – from a form of direct democracy and local authority, through a body of local self-government and administration, to advisory bodies in smaller communities. During the nineteenth century, they were mainly of a mixed nature, as both local authority bodies and administrative bodies. For example, the 1866 Law on the Organization of Municipalities and Municipal Authorities, adopted three years before the Regency Constitution (1869), introduced the legal mechanism of the municipal assembly in which all adult citizens could participate, provided that they paid taxes (Matić 2011, 155). The difficulty in precisely defining the fluid status of local assemblies is a consequence of shortcomings in the legislation of the then Principality and Kingdom of Serbia, where regulations were frequently amended and often contained insufficiently clear and imprecise provisions.

The transformation of the role and importance of local assemblies of all citizens (*zborovi*) in Serbia shows a correlation between the traditional forms of these assemblies and the development of local self-government and direct democracy. The development of these institutions was influenced by various factors, but their position was particularly shaped by the conflict between the proponents of centralization, with a focus on strong national state policy and administrative apparatus, on the one hand, and the proponents of decentralism, with claims for establishing parliamentarism and respecting rights to local self-government, on the other.

CITIZENS' ASSEMBLY OR ASSEMBLY OF ALL CITIZENS – A FORM OF DIRECT DEMOCRACY AND A LOCAL (SELF-) GOVERNMENT BODY

Tradition of Citizens' Assemblies in Serbia and the First Yugoslavia

All citizens' assemblies in Serbia have a long tradition, whose origins can be traced to institutions based on custom and rural self-government (Radojević 2023a, 96; Radojević 2023b, 132). During the Middle Ages, the original term encompassed "various meetings and gatherings," among which state councils (*sabor*) were particularly significant (Ćirković i Blagojević 1999). In rural and other settlements, the assembly was the most important body of local administration during the Nemanjić dynasty. Matters decided at these assemblies included important issues, such as demarcation of boundaries between estates, granting special rights and privileges, and it also functioned as a court for resolving disputes where even severe punishments, such as for theft and murder, could be pronounced (Novaković 1891, 110–113). Emperor Dušan's Code, the most famous Serbian medieval legal act from the mid-fourteenth century, prohibited "commoners' assemblies" (*sebarski zborovi*) – local gatherings or meetings of all villagers (Dušanov zakonik n.d., Art. 69). According to the interpretation of the legal historian Soloviev, the reason for the prohibition was that the legislator assumed that they could be organized with the intention of inciting rebellion, and thus unauthorized gatherings were not allowed unless previously approved and attended by representatives of state authorities or feudal lords (Solovjev 1928, 175). By regulating the organization of popular assemblies, the authority of the central government was reinforced, as was also the case in the neighboring feudal countries such as Byzantium and Hungary.

With the collapse and loss of independence of the Serbian medieval state, local assemblies acquired a different political and legal importance. Under Ottoman rule from the fifteenth to the early nineteenth century, assemblies were a form of self-governing authority, as the basis of village and district (*knežina*) self-government in accordance with Serbia's autonomous status (Guzina 1966, 96). Local assemblies elected popular leaders, a right that was recognized in self-governing

privileges – decrees (*firmans*) of 1793 and 1794 (Nikić 1927, 23–25). District assemblies did not include all inhabitants, but rather so-called village household heads and persons of standing (merchants and clergy). This form of functioning of the political community was also described as the "patriarchal democracy of the Serbian village" (Čubrilović 1958, 72), and this type of assembly was also known as the assembly of village notables.[4] The principle of representativeness, however, was not consistently applied. In some communities, appointment of leaders was hereditary, passing from father to son, while in others, local leaders were imposed by force.

Aside from tradition, the position of local assemblies was also influenced by political and social circumstances. The majority of the Serbian population lived outside the few towns (*varoši*) and gathered in assemblies whenever a need arose. Besides electing local leaders, these assemblies decided on matters of importance for the local community, particularly tax collection (Svirčević 2011, 42; Guzina 1966, 96). Petitions and complaints addressed to Ottoman authorities, and later to the Serbian prince after the Second Serbian Uprising, were formulated at these gatherings. However, the key role was played by higher-ranking leaders (district princes in *nahije* and *knežine*), who acted as intermediaries between the Ottoman authorities and the people and were, for a brief period, considered holders of self-governing authority. Village assemblies, in accordance with customary forms of direct democracy, exercised judicial functions in minor criminal matters and the execution of penalties, and served as places for debate and consultation not only on issues of local importance but also on matters of general concern during the first decades of the nineteenth century. Decisions of central administrative authorities were communicated at these assemblies, and

[4] Čubrilović and other researchers believe that these assemblies contained the seeds of the future development of democratic institutions (Čubrilović 1958, 74) and civil society. However, there is still a lack of sufficiently thorough research and evidence on this topic. Some researchers also argue that the term "patriarchal" does not have a negative connotation, but in this context denotes a level of political culture and freedom based on the equality of community members and mutual respect. In that sense, this type of local democracy represents a counterpart to a bureaucratized and centralized administrative structure (Novaković 2021) and constitutes a strategy of the democratic constitution of the *demos*, as opposed to the alienation of constitutive and political power that underlies non-democratic forms of governance.

occasionally, their opinion was sought. Along with the dramatic changes that occurred in Serbian society, the role and significance of assemblies also changed.

At the beginning of the nineteenth century, meetings of popular leaders and the population adopted decisions to raise uprisings against the Ottomans. In line with the traditional role of these popular assemblies, their consent was considered confirmation of the legitimacy and legality of important decisions. After the Second Serbian Uprising, village assemblies were also known as village meetings, gatherings of elders, assemblies of elders, or assemblies of elders or notables. An important change in their functioning was the legalization of the right of these assemblies to appoint or approve the election of village leaders (*kmetovi*) by higher authorities. However, since the village leaders (*kmetovi*) convened these assemblies, higher authorities largely controlled the electoral process in this way (Guzina 1966, 157). The uprisings changed the organization of local government, as self-government was suppressed through the establishment of military organization with competencies of managing civil affairs in districts and villages, and later through the organization of state administration. This process, however, did not proceed without resistance to centralization, already during the First Serbian Uprising (Prodanović 1936, 10; Prodanović 1947, 21–22).

Soon after the end of the Second Serbian Uprising (1815), Serbian Prince Miloš Obrenović restricted self-governing rights and effectively abolished local self-government, under the pretext that Serbia was emulating modern European countries of the time (Pavlović 2008, 18–19), with the aim of establishing a strong state administration. Centralism was carried out by suppressing traditional assemblies and customary self-governing bodies of local authority. Districts (*knežine*) were transformed into administrative units (*nahije*) governed by district princes appointed directly by Prince Miloš. In villages, the custom and right of assemblies to elect village leaders independently was abolished. The chief (village) leader was generally appointed by the district prince. The people, who until then had directly participated in decision-making, lacked both the political strength and determination to resist administrative centralization (Guzina 1966, 102). In part, one of the reasons was also the belief that, through the central authority, they could more easily resist local powerholders who often abused customary institutions to impose their will. Consequently, local self-government with attributes of municipal autonomy, except for brief periods, was not established

during the nineteenth century. The mixed nature of administrative and territorial units meant that they occasionally possessed elements of limited autonomy. Local authorities had neither independent jurisdiction nor financial and organizational autonomy. They primarily exercised administrative powers alongside self-governing tasks. For example, the leader in villages was both the village head and an organ of central administration. The scope of autonomous affairs of administrative units and villages was largely narrowed and exercised under strict supervision of the central authority.

Following the adoption of regulations on organizing administrative authority, assembly became a generic term for various bodies, not only village assemblies (assemblies of village notables), but also assemblies in larger settlements (municipal assemblies), and it also became synonymous with the electorate. The most important power of assemblies was electoral – the right to nominate and appoint their representatives and municipal officials, as well as deputies to the national assembly. Authorities restricted and even entirely denied this right during a period of time. Superior authorities convened, confirmed, or annulled assembly decisions and could make discretionary decisions on their dissolution, and municipalities also lacked financial autonomy.

At the same time, Serbia used its position as an autonomous province within the Ottoman Empire to regulate its internal affairs independently. It did so by attempting to establish its own administration at the expense of suppressing traditional institutions of direct democracy and local self-government. This process, however, was not linear, but subject to dynastic upheavals, changes of rulers, political struggles between government and opposition, and other obstacles. In broad terms, two conceptions emerged more clearly – a centralist and a decentralist one. The first one believed that national independence and the creation of a strong bureaucracy, a modern administration modeled after the French or Prussian systems, were the top priorities for the Serbian society. The second one held that due regard must also be given to the development of political institutions such as parliamentarism, limiting the ruler's arbitrariness, and protecting political freedoms and rights. Proponents of the decentralist model stood for municipal self-government. After the First Uprising, this concept gradually weakened until the 1880s, with the emergence of the first political party – the Serbian Radical Party. In the meantime, resistance to centralism appeared, mainly in the form of conflicts between the prince and his opponents.

The conflicts between the different concepts of Serbia's development also affected the state of local self-government. Supporters of the centralist conception pointed to the population's alleged tendency toward violence, lawlessness, and even anarchy. A particular problem was brigandage, which also had a political background, and served as a pretext for repressive measures and police control in administrative units. Advances in weakening state supervision over municipalities were short-lived, often leading to unrest and rebellion. Periodic political compromise allowed rudimentary institutions of direct democracy to resume functioning. Under pressure, authorities permitted a degree of freedom and self-government in municipalities and villages. An expression of this situation was the mechanism of "conciliation courts," local courts composed of three judges directly elected by residents (Constitution of the Principality of Serbia 1838, Art. 30–31 cited in: Petrov, Simović i Radojević 2021, 135–136). These conciliation courts were courts of first instance and resolved disputes of a certain monetary value.

In Serbia of that time, aside from village assemblies (gatherings of peasants), there were also citizens' assemblies in larger settlements (*varoši*). They were headed by an individual, traditionally called a village leader, or '*kmet'*, later municipality president (1884), who was appointed by the prince and later by the central executive authority. The first Municipalities Act (MA) sought to regulate administrative government at a time when the prince's personal rule was challenged by another constitutional actor – the State Council (Ustrojenije obština 1839 cited in: Milosavljević 2015, 50–54).[5] Under this law, the assembly was regulated as a body of local authority in all municipalities ("assembly of all municipal inhabitants") deciding on "important affairs," although the scope of these powers was not further specified. Assemblies gathered adult citizens, under certain conditions, in the first two categories of municipalities (Ustrojenije obština 1839. čl. 14; 19 cited in: Milosavljević 2015, 50–54). In municipalities of the so-called

[5] Later, this second constitutional factor would transform into the political movement of the so-called Constitutionalists (*ustavobranitelji*), opponents of the prince's personal rule, who modernized the system of administrative governance but, as advocates of oligarchic rule, opposed broader political freedoms and rights for citizens. They believed that authority should first be organized at the municipal level and, therefore, unlike Prince Miloš, who was not a supporter of written laws, advocated the adoption of regulations to organize state administration.

third category (rural municipalities), in line with patriarchal culture and traditions of extended family households, the village assembly was composed mainly of household heads (Ustrojenije obština 1839. čl. 24 cited in: Milosavljević 2015, 50–54).

The Municipalities Act (1866) partially changed the scope of the competence of assemblies and limited their representative character. Municipalities were no longer autonomous, but assemblies survived in municipalities and villages. Their main competence was electoral. Assemblies elected the *kmet* (municipal president), the highest administrative authority in municipalities,[6] but also deputies and delegates to the National Assembly,[7] municipal councilors and their deputies. Furthermore, assemblies served as bodies for opinions on certain issues. The assembly could discuss only matters referred to it by administrative authorities or the municipal court (Guzina 1976, 125; Milosavljević 2015, 36). Attendance at assembly meeting was mandatory (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 17 cited in: Milosavljević 2015, 65–86)[8], though they did not include all adult citizens. The law prescribed conditions for participation. For example, members of municipal assemblies in towns were citizens paying a certain amount in annual tax and who were not deprived of voting rights (such as, e.g., officers, soldiers, convicted persons, persons under investigation or bankruptcy, persons owing taxes, etc.), while additional requirements also existed (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 14–15 cited in: Milosavljević 2015, 65–86). The assembly was convened by the municipal court; at least one-third of voters was required as a decision-

[6] The assemblies (*zborovi*) did not have the right to recall him. Dismissal was decided by a higher administrative authority, which also gave consent at the time of his appointment. A major shortcoming was that the election of municipal bodies was conducted in the presence of the police, whose confirmation determined the validity of these elections.

[7] Local assemblies directly elected deputies, while in rural areas they elected commissioners–delegates who gathered in district assemblies and elected deputies to the National Assembly (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 13 cited in: Milosavljević 2015, 65–86).

[8] The municipal court performed tasks within the municipal scope of authority, as well as delegated administrative tasks (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 34–35 cited in: Milosavljević 2015, 65–86). In addition, it had other competences, and to a limited extent exercised judicial authority in cases of minor property damage (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 41 cited in: Milosavljević 2015, 65–86).

making quorum (Zakon o ustrojstvu obština i obštinske vlasti 1866, čl. 18 cited in: Milosavljević 2015, 65–86), and its work was chaired by the municipal leader (*kmet*).

An attempt to significantly expand the competence of local assemblies in order to obtain self-government status came with the amendments to the Law on the Organization of Municipalities in 1875 (Guzina 1976, 217). The assembly could adopt decisions of a substantive and binding character, elect the municipal court and municipal board, decide on the amounts of municipal taxes, gave its consent for the disposal of the municipally owned immovable properties, decided on the merger of several municipalities into a single one or on separation of villages into separate municipalities, and decide on the responsibility (recall) of the municipal leader (*kmet*) and municipal administration. These amendments were the result of the influence of a growing liberal movement, which sought to organize administration after the model of moderate Western European monarchies. Parliamentary government primarily implied granting legislative power to the National Assembly and then establishing local self-government. The strengthening of the liberal movement in Serbia sparked the struggle for local self-government. According to the socialist Svetozar Marković, the creation of a free society required full decentralization, a system in which the highest authority in municipalities would belong to citizens gathered in their own assemblies (Nikić 1927, 104–105; Guzina 1976, 170–171). The amendments, however, never entered into force because the declaration of martial law the following year (1876) suspended their application, and supervision of local authorities by administrative authorities was restored (Svirčević 2011, 198). Yet after the 1884 amendments and territorial-political reorganization, the municipal assembly retained its status as a local authority body and form of direct democracy. More rigorous conditions were also introduced for membership in the assembly; among other things, a citizen had to be literate.

In the Kingdom of Serbia, assemblies were a constitutional category (under the Constitutions of 1888 and 1903), a local authority body through which municipal self-government was exercised. In accordance with these constitutions, assemblies decided on municipal property and finances. A new Municipalities Act was passed a year later (1889) and, regarding municipal organization, relied on constitutional provisions and the 1875 MA amendments. However, it did not go any further in terms of the development of local self-government. Under

the 1889 Municipalities Act, municipal and self-governing competences were not clearly separated, and municipal bodies remained under strict supervision. The mixed nature of municipalities, simultaneously as "basic administrative units" (in reference to the laws of 1889 and 1902) and self-governing authorities, reflected a political compromise between centralist and decentralist concepts (Đorđević 2017, 253). Municipalities were not free in exercising their self-governing competences and, "as parts of the state as a whole," remained under full supervision of higher authorities. Under the regulations of that time, most decisions adopted at assemblies (municipal and local assemblies) required approval of competent authorities, and representatives of higher authorities attended their meetings. However, literature also describes them as "the most important body of municipal authority" (Svirčević 2011, 37) during this period.

The next change was a step back toward centralization. Within only a few years, citizens lost any influence over the exercise of local government. For the first time, the people's right to elect the municipal president at their assemblies (1898)[9] was abolished, while district and county assemblies lost their electoral character. The 1902 Municipalities Act restored assemblies' right to elect municipal bodies and decide on taxes up to a certain amount (Guzina 1976, 338), although it was restricted by approval of other authorities (1909). In addition to the municipal assembly, "village meetings" were regulated in municipalities comprising several municipalities and villages. These village meetings also became institutions for electing representatives or delegates to county assemblies, where deputies to the National Assembly were elected.

After the First World War, Serbia became part of the Kingdom of Serbs, Croats and Slovenes and afterward, the Kingdom of Yugoslavia. In a state composed of several nations, political life was turbulent and influenced its constitutional development and consequently also its internal organization. Alignment of legislation proceeded slowly, and a uniform Municipalities Act was adopted only in 1933. Until then, the Law on Regional and County Self-Government (1922) remained in force in Serbia until 1927, along with earlier municipal regulations. In the meantime, local self-government was completely abolished during King Alexander's dictatorship (1929–1931).

[9] The mayor was appointed by the Minister of the Interior in rural municipalities.

The Municipalities Act replaced assemblies with the municipal board, an assembly composed of councilors elected in elections (Zakon o opštinama 1933). However, in some parts of municipalities "local community assemblies" were introduced, consisting of all voters in that part of the municipality (Zakon o opštinama 1933, čl. 110). The legislator found the *rationale* for introducing local assemblies in protecting the specific rights and interests of parts of municipalities. The local community assembly decided on the election of the local leader, local property, the needs and interests of the local community, and special taxes. Depending on its decisions, the local community assembly met at least once a year and was convened at the request of the municipal president or one-fifth of voters (Zakon o opštinama 1933, čl. 112). Decisions were adopted by majority vote, provided at least one-third of registered voters participated. These solutions are similar to those existing in contemporary legal systems concerning local assemblies (Germany, Slovenia, etc.). This model would also influence lawmakers in the Second Yugoslavia and survive, with certain interruptions, almost until the present day. In the Kingdom of Yugoslavia, the term assembly (*zbor*) was also used for a form of public gathering of citizens. Approval for public gatherings required notification to competent authorities, and there were various other requirements depending on who convened the gathering and its agenda.

The Position of Local Assemblies (*Zborovi*) and Direct Democracy in the Second Yugoslavia

After the Second World War, in Yugoslavia (the so-called 'Second Yugoslavia,' 1945–1990), the concepts of direct democracy and local assembly acquired different meanings. The Yugoslav doctrine of that time believed that the model of direct democracy was "socialist democracy," which represented, in a certain sense, an incarnation of the original meaning of Athenian democracy as a community or association. However, direct democracy did not imply traditional mechanisms of direct democracy, such as the referendum and popular initiative,[10] but rather, in accordance with the so-called new type of democracy, it included new institutions or different content of these concepts. Socialist

[10] There was no unified position in Yugoslav theory regarding the legal nature of local communities (Tomac 1977, 97–99).

democracy was simultaneously self-managing and direct democracy (Đorđević 1978, 36; 447), in which the classical parliamentary and representative system was "superseded." The representative system was replaced by the delegate system from 1974 onward, and within such a system, the assembly of all voters in local communities, or the assembly of employees in business enterprises, had a particular function. The voters' assembly was defined as a form of direct citizens' decision-making on rights and duties of municipalities, through sub-municipal units (*mesne zajednice*) established by the 1963 Constitution of the Socialist Federal Republic of Yugoslavia (Ustav Socijalističke Federativne Republike Jugoslavije [Ustav SFRJ] 1963, čl. 96 (3)).[11]

According to theorists of Yugoslav self-management, the voters' assembly was also a basic form of deliberative democracy ("discursive democracy," Đorđević 1978, 469), with a special function in the delegate system, but also with power to make decisions, formulate proposals, and initiatives concerning matters of local significance in settlements and municipalities. For Yugoslav theorists, it was also the oldest form of direct democracy, whose origins lay in the wartime revolution and bodies of communist authority. Within the local community, the basic form of organizing citizens at the local level was not a formal body, but it exercised a role in electing the assembly.

Consistent with the Marxist ideology of direct democracy, community system, and its Yugoslav version – self-management – which required direct involvement of as many citizens as possible in the exercise of power, local voters' assemblies were a constitutional category under the 1946 Constitution of the Federal People's Republic of Yugoslavia (Ustav Federativne Narodne Republike Jugoslavije 1946, čl. 112). This form of direct democracy was regulated in greater detail by a special federal law (Opšti zakon o narodnim odborima 1953) and in the federal units. Voters' assemblies were envisaged in both municipalities and cities (čl. 72), and held broad powers, including that their conclusions were necessary for the adoption of certain legally valid decisions in local communities (Stefanović 1956, 561). Under national regulations,

[11] The authors suggest extending such a possibility to the citizens' initiative, which in the legal system of Serbia is the statutory term for a form of direct democracy at the local level. Serbia should, in particular, make use of the experiences of other countries that already employ digital platforms (e.g., Estonia) or maintain databases with archives and electronic access to held referendums and citizens' initiatives (e.g., Switzerland).

voters' assemblies could be held in parts of municipalities, settlements, and villages, and consisted of all citizens with voting rights. One of their powers was initiative, in accordance with the imperative mandate mechanism, to review the responsibility of elected representatives (deputies) and initiate their recall (Opšti zakon o narodnim odborima 1953, čl. 118–119). In the basic units of local self-government, voter consent expressed in assemblies was necessary for changes in the status and territory of municipalities and local communities (voters' assemblies and assemblies of citizens and working people). Hence, assemblies were not merely advisory and supervisory bodies of local authorities, but also had the character of local authorities (cf. Guzina 1961, 448–449).

Assemblies retained their constitutional category status in the 1963 Constitutions of the Socialist Federal Republic of Yugoslavia and 1974 (Ustav SFRJ 1963, čl. 67–69; Ustav SFRJ 1974, čl. 1; 14). They were mainly held in local communities, and could submit their initiatives and motions to the local community and municipality, but also other bodies operating within the territory of the local community. The assembly of all voters also determined candidate (delegate) lists for representative bodies (assemblies) in local communities and municipalities. Key decisions concerning the development of local self-government in the so-called 'local communities' (*mesne zajednice*), as well as smaller geographic areas, were adopted in citizens' assemblies. The significance and role of assemblies in local communities also stemmed from the broad competences granted to local communities under the 1982 Law on Local Communities.

A distinctive feature of Yugoslav practice during the period of self-management socialism was that, besides the assembly of all voters in local communities (citizens' assemblies), as a territorial political institution of direct democracy, there were also workers' assemblies (assemblies of all employees) as a "form of direct self-management" (Đorđević 1988, 324). Working people's assemblies were a form of workers' participation ("workers' self-management") in managing the economy (enterprises) and public institutions, and included all employees. At these assemblies, decisions were made on convening the highest governing bodies (workers' councils) and proposing candidates for representative bodies; proposals and opinions were formulated and submitted to management bodies. Decisions adopted at these assemblies were binding on management bodies. Common to both types of assemblies was that they were, in a certain sense, not only forms of direct

democracy but also electoral bases and units in which delegates were elected for local authorities and other political institutions, in accordance with the principle of the delegate system and the complex structure of the assembly system.

The actual significance and role of assemblies of all voters and assemblies of employees in the economy and public institutions in the Second Yugoslavia – as forms of direct democracy – is reflected in the fact that in the Federal Assembly, nominally the highest body of state power, more than 90 percent of deputies belonged to the ruling party (Marković 2025, 342). Real political power lay in the hands of the communist party, which controlled not only the electoral process but also all levels of authority and political decision-making. The totalitarian character of the political system was concealed by the façade of the so-called self-management socialist democracy, making the democratic capacity of local communities and voters' assemblies questionable. This experience served as an alibi for the Serbian legislators and their contradictory approach to regulating institutions of direct democracy in the last decade of the twentieth century.

Return to the Classical Concept of Direct Democracy, Citizens' Assemblies, and Local Self-Government in Serbia Since 1990

Following political changes in the late 1980s, the constitutional and political system in Serbia was reformed. With the return to the framework of liberal-democratic constitutionalism, the Yugoslav self-management socialism and the so-called socialist constitutionalism model were abandoned. Consequences of this transition were different approaches to direct democracy and local self-government. Since the model of socialist democracy had been compromised, the prevailing belief was that constructing related institutions should be tackled with caution, which resulted in the absence of constitutional recognition of the right to local self-government and of other provisions related to direct local democracy. Another factor that shaped constitutional solutions was the dissolution of Yugoslavia and secessionist movements, which had (mis)used direct democracy institutions for their political ends. For this reason, Serbia's constitutional and legal system absorbed certain elements of centralism, reflected in narrowing the competences and original functions of local self-governments or deregulating mechanisms

of direct democracy. In a sense, the danger of such modeling of democratic mechanisms was that it could turn them into simulacra.

The 1990 Constitution of the Republic of Serbia redefined the concept of direct democracy through the referendum and popular initiative at the national level, as a supplement to representative government and as a form of exercising citizen sovereignty (Ustav Republike Srbije 1990, čl. 2). The impacts of the legacy from previous period was nevertheless recognizable in the constitutionalization of the local referendum in the 1990 Constitution of the Republic of Serbia (čl. 116), a rarity in comparative law. The constitution-maker, however, failed to regulate the status of local communities and citizens' assemblies. The local community was established by legal norms (Zakon o teritorijalnoj organizaciji Republike Srbije i lokalnoj samoupravi 1991, čl. 20; 26–27), but not according to the earlier model; rather, as an optional form of direct citizen participation in municipal decision-making and "a form of satisfying common needs." Its scope of work was also more modest than in socialist Yugoslavia. Another fault of the legal framework was delegating more detailed regulation of local communities to municipal statutes (Kovačević 2025, 480–481), which contributed to variations in their organization and functioning.

Although the lawmaker indicated that citizens could exercise their rights in municipalities and local communities directly through other means not prescribed by law, citizens' assemblies were not legally regulated until 2002 (Zakon o lokalnoj samoupravi 2002, čl. 65). That Law contained only a general provision according to which the citizens' assembly was a form of direct participation in the exercise of local self-government, alongside citizens' initiative and referendum. These mechanisms were not adequately regulated in systemic legislation, notably because an outdated Law on Referendum and Popular Initiative remained in force until 2021 (Zakon o referendumu i narodnoj inicijativi 2021). The 2007 Law on Local Self-Government partially remedied this deficiency by prescribing the role and competences of citizens' assemblies, though not other elements defining their legal status more precisely, such as who has the right to participate, how assemblies are convened, or how positions on certain matters are established (Zakon o lokalnoj samoupravi 2007, čl. 69).

Under the 2007 Law on Local Self-Government, the assembly is convened for a part of the territory of a local self-government unit in accordance with its statute (Zakon o lokalnoj samoupravi 2007, čl.

69 (1)). This may include territories of local communities, parts of settlements, streets, or individual villages (Milosavljević i Jerinić 2020, 307; Vujadinović 2010, 20). Such territory should not include areas with a large population (ideally no more than several hundred citizens), especially in urban areas, as otherwise it may lead to problems in terms of technical organization of such gatherings. In Switzerland, similar assemblies are held in open spaces where several thousand people may gather in one place, which would be more difficult to achieve in cities.

Citizens' assemblies do not make decisions, but instead, they deliberate and formulate proposals, since they are neither local nor sub-municipal self-government authorities (Zakon o lokalnoj samoupravi 2007, čl. 69 (2)). An assembly may debate issues based on proposals within the competence of local self-government authorities, such as urban plans or the introduction of a local self-contribution, but it is not authorized to adopt binding decisions. This is the demarcation line distinguishing its legal nature as a form of direct citizen participation in the exercise of local authority from the role of a local authority.

A municipality or city may request that a citizens' assembly take a position on an issue related to the competence of the local self-government unit, making this mechanism similar to public consultations (see: Zakon o lokalnoj samoupravi 2007, čl. 69 (5)). The right of initiative to convene a citizens' assembly should be vested in the citizens. Local self-government assembly statutes and decisions have generally accepted this solution, though under different conditions. The right to convene a citizens' assembly may be vested in the mayor (or head of a city municipality), the assembly president, or citizens, with thresholds and quorums usually defined as percentages (from 5 to 10 percent) of citizens with voting rights residing in the area where the assembly is held. Some statutes also stipulate an obligation of the municipal administration and expert services to assist in formulating proposals or requests of the citizens' assembly. It is also necessary to ensure that the period between convening and holding a citizens' assembly is not too short, so as to allow sufficient time for the preparation for a substantive discussion at the meeting.

The assembly adopts requests and proposals by the majority of those present (Zakon o lokalnoj samoupravi 2007, čl. 69 (3)), but the lawmaker does not define the quorum required for effective decision-making, leaving this to the statutes and decisions of municipal authorities. Local self-government bodies and services are required to respond to

initiatives and proposals submitted by a citizens' assembly within 60 days of the assembly (čl. 69 (4)). For reasons of legal certainty, these and other issues should be regulated by legislation or through recommended model solutions standardized and consistent across all local communities. This could include, for example, the use of electronic communication tools and internet portals, in order to streamline participation, facilitate citizen engagement, and enhance transparency. These avenues should be explored, especially since Serbia has already regulated the exercise of electronic popular initiative (Uredba o elektronskoj narodnoj inicijativi 2023) and set up an application on the e-government portal (euprava.gov.rs, n.d.).[12]

Our conclusion is that, in the preceding period, the practice of citizens' assemblies, as well as other mechanisms of direct citizen participation in local self-government, has not been developed (Radojević 2023b, 135). Unfortunately, we had to rely on limited research available and could not use a larger number of empirical sources, such as the competent ministry or local self-government units. Analyses available confirm the assumption that assemblies and local referendums are rarely held, while the very few citizens' initiatives that do arise are not implemented in accordance with legal rules and procedures. Such practice is conducive to extra-institutional means of communication between citizens and local authorities, which hardly contributes to improving the quality of democracy and local self-government.

THE TRADITION AND EXPERIENCE OF ASSEMBLIES IN SERBIA (CONCLUDING REMARKS)

In Serbia's political tradition, local assemblies played an important role in the development of the state and political life since the Middle Ages. From the medieval period and up until the early nineteenth century, they were centers of political and social life, shelters of autonomy and of an archaic understanding of democracy. Gradually, they were

[12] The authors advocate extending such a possibility to the citizens' initiative, which in the legal system of Serbia is the statutory term for a form of direct democracy at the local level. Serbia should, in particular, make use of the experiences of other countries that already employ digital platforms (e.g., Estonia) or maintain databases with archives and electronic access to held referendums and citizens' initiatives (e.g., Switzerland).

transformed from institutions of customary law into local authority bodies during the nineteenth century. In the transitional period, they occasionally performed the function of direct democracy and of a hybrid political institution. This process unfolded under the influence of several factors, foremost the formation of the national state and centralized local administration. State administration was built on patriarchal institutions such as assemblies in districts and villages, which may be regarded as seeds of the development of later democratic institutions. These local assemblies have lost their direct representative character, but the struggle was transferred to the field of local self-government. The achievement of local self-government was a difficult and protracted process, and it was not completed before the end of the First World War in the Kingdom of Serbia.

In the interwar period, in the Kingdom of Yugoslavia, influenced by the tradition of assemblies in Serbia, a form of sub-municipal self-government was established in parts of municipalities. The task of the local community assembly, as a gathering of all voters in that area, was to care for the needs and interests of the local community. Although this mechanism did not endure over a longer period of time, the idea re-emerged after the Second World War, albeit in a different ideological environment. In the communist Yugoslavia, the all-voter assembly in smaller administrative units once again assumed the role of direct citizen decision-making on the rights and duties of citizens, as well as working people. Apart from making decisions, the citizens' assembly formulated proposals and initiatives, functioned as an electoral body proposing candidates in accordance with the delegate system, and exercised supervisory control over delegates whose mandate was imperative. Voters' assemblies were regarded as the basic link in the system of socialist self-management and direct democracy. Alongside citizens' assemblies, the Yugoslav self-management doctrine also constructed working people's assemblies as a form of workers' democracy in managing the economy and public institutions.

During the final decade of the last century, Serbia underwent another historical-ideological and socio-political shift. In adopting the model of a civic constitutional state, it also embraced the classical institutions of direct democracy – the referendum and citizens' initiative. At the local level, the local referendum was constitutionalized, but not sub-municipal self-government or direct citizen participation in the form of citizens' assemblies. After political changes in 2000, decentralizing

and democratizing the system of local self-government also implied a return to traditional mechanisms that were not transplants from comparative law. In this sense, correlation can be identified with both the near and distant past, between original and customary forms of citizen participation in exercising authority at the local level. Yet little progress has been made because these institutions largely exist only on paper, have not taken root in practice, and appear as simulacra within the constitutional and political system. The authors propose normative and technical solutions that could improve and streamline citizen participation in the direct exercise of authority at the local level.

REFERENCES

Čubrilović, Vasa. 1958. *Istorija političke misli u Srbiji XIX veka*. Beograd: Prosveta.

Ćirković, Sima, i Miloš Blagojević. 1999. „Zbor." U *Leksikon srpskog srednjovekovnog veka*, ur. Sima Ćirković i Rade Mihaljčić, 222–228. Beograd: Zavod za grafičku tehniku Tehnološko-metalurškog fakulteta.

Dušanov zakonik. n.d. *Scribd*. Poslednji pristup 11. maj 2026. https://www.scribd.com/doc/244762285/Dusanov-zakonik

Đorđević, Jovan. 1978. *Ustavno pravo,* treće dopunjeno izdanje. Beograd: Savremena administracija.

Đorđević, Jovan. 1988. *Politički sistem – prilog nauci o čoveku i samoupravljanju,* izmenjeno izdanje. Beograd: Savremena administracija.

Đorđević, Dimitrije. 2017. *Istorija moderne Srbije 1800–1918*. Beograd: Zavod za udžbenike.

euprava.gov.rs. n.d. „Elektronska narodna inicijativa." Poslednji pristup 20. april 2026. https://euprava.gov.rs/narodna-inicijativa

European Commission of Democracy through Law [Venice Commission], Opinion No. 887/2017, CDL-AD(2022)015, Revised Code of Good Practice on Referendums. Last accessed on April 15, 2026. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)015-e

Gerber, Elisabeth R. 1999. *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation*. Princeton: Princeton University Press.

Guzina, Ružica. 1961. „Zbor birača i komuna." *Anali Pravnog fakulteta* 9 (4): 440–449.

Guzina, Ružica. 1966. *Opština u Kneževini i Kraljevini Srbiji, I deo 1804–1839.* Beograd: Institut za pravnu istoriju.

Guzina, Ružica. 1976. *Opština u Srbiji 1839–1918.* Beograd: Izdavačko preduzeće „Rad."

Kovačević, Aleksandar. 2025. „Mesna zajednica kao oblik lokalne samouprave u političkom sistemu SFRJ nakon Ustava iz 1974. godine." U *Ustav SFRJ iz 1974. godine – 50 godina kasnije,* ur. Jelena Vučković, 469–485. Kragujevac: Pravni fakultet Univerziteta u Kragujevcu.

legislation.gov.uk. n.d. "Local Government Act 1972." Last accessed on April 10, 2026. https://www.legislation.gov.uk/ukpga/1972/70/section/10

Marković, Goran. 2025. „Skupštinski sistem u Ustavu SFRJ od 1974. godine." U *Pola veka Ustava Socijalističke Federativne Republike Jugoslavije iz 1974. – između mitova i prošlosti*, ur. Mijodrag Radojević, Petar Matić i Vladan Stanković, 335–363. Beograd: Institut za političke studije.

Matić, Petar. 2011. „Geneza i razvoj lokalne samouprave u Srbiji." U *Protivrečnosti političkog sistema*, ur. Živojin Đurić i Milan Jovanović. Beograd: Institut za političke studije.

Milosavljević, Bogoljub. 2015. *Dva veka lokalne samouprave u Srbiji: razvoj zakonodavstva 1804–2014.* Beograd: Stalna konferencija gradova i opština – Savez gradova i opština Srbije.

Milosavljević, Bogoljub i Jelena Jerinić. 2020. *Komentar Zakona o lokalnoj samoupravi.* Beograd: Službeni glasnik.

Nikić, Fedor. 1927. *Lokalna uprava Srbije u XIX i XX veku.* Beograd: Izdavačka knjižarnica Gece Kona.

Novaković, Aleksandar. 2021. „Seljačka demokratija prerevolucionarne Srbije – kako nam naši 'zatucani' preci mogu pomoći." *Talas.* 16.04.2021. Poslednji pristup 12. Mart 2026. https://talas.rs/2021/04/16/seljacka-demokratija-predrevolucionarne-srbije-kako-nam-nasi-zatucani-preci-mogu-pomoci/

Novaković, Stojan. 1891. *Narod i zemlja u staroj srpskoj državi.* Beograd: Štamparija Kraljevine Srbije.

Opšti zakon o narodnim odborima: sa izmenama i dopunama, „Službeni list Federativne Narodne Republike Jugoslavije", br. 35/53

Pavlović, Marko. 2008. *Pravna evropeizacija Srbije.* Kragujevac: Pravni fakultet Univerziteta u Kragujevcu, NIP Pogledi.

Petrov, Vladan, Darko Simović, i Mijodrag Radojević. 2021. *Srpski ustavi – knjiga prva, ustavi Kneževine i Kraljevine Srbije sa ustavnim aktima od Prvog srpskog ustanka.* Beograd: Službeni glasnik.

Prodanović, Jaša. 1936. *Ustavni razvitak i ustavne borbe u Srbiji.* Beograd: Izdavačko i knjižarsko preduzeće Geca Kon a. d.

Prodanović, Jaša. 1947. *Istorija političkih stranaka i struja u Srbiji, knj. 1.* Beograd: Prosveta.

Radojević, Mijodrag. 2023a. „O oblicima neposredne demokratije – između ideala, tradicije i sadašnjosti." U *Pravo između ideala i stvarnosti,* ur. Duško Čelić i Strahinja Miljković, 91–110. Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedište u Kosovskoj Mitrovici; – Beograd: Institut za uporedno pravo.

Radojević, Mijodrag. 2023b. „Lokalna demokratija i oblici direktnog učešća građana u vlasti." *Srpska politička misao* 81 (3): 121–143. DOI: 10.5937/spm81-45784

Radojević, Mijodrag. 2024. „Narodna inicijativa kao oblik neposredne demokratije u savremenom pravu i pravnom sistemu Republike Srbije." U *Pravni principi u savremenom pravu,* ur. Nebojša Raičević i Dušica Miladinović-Stefanović, 37–164. Niš: Pravni fakultet Univerziteta u Nišu.

Radojević, Mijodrag, i Petar Matić. 2025. „Skupštine građana (zborovi) kao forma neposredne demokratije u uporednom pravu i u Republici Srbiji." U *Pravo i društveni konflikti,* ur. Nebojša Raičević i Dušica Miladinović-Stefanović, 221–242. Niš: Pravni fakultet Univerziteta u Nišu.

Solovjev, Aleksandar. 1928. „Sebrov zbor." *Arhiv za pravne i društvene nauke* 17 (1–6): 170–177.

Stefanović, Jovan. 1956. *Ustavno pravo FNR Jugoslavije i komparativno, knjiga 1.* Zagreb: Školska knjiga.

Svirčević, Miroslav. 2011. *Lokalna uprava i razvoj moderne srpske* države. Beograd: Balkanološki institut Srpske akademije nauka i umetnosti.

Tomac, Zdravko. 1977. „Razvoj i osnovne karakteristike primarnih zajednica u socijalističkoj Jugoslaviji." *Časopis za suvremenu povijest* (9) 3: 81–106.

Ustav Republike Srbije, „Službeni glasnik Republike Srbije", br. 1/90.
Ustav Socijalističke Federativne Republike Jugoslavije [Ustav SFRJ], „Službeni list Socijalističke Federativne Republiek Jugoslavije", br. 14/63.
Ustav SFRJ, „Službeni list Socijalističke Federativne Republike Jugoslavije", br. 9/74.
Ustav Federativne Narodne Republike Jugoslavije, „Službeni list Federativne Narodne Republike Jugoslavije", br. 10/46.
Uredba o elektronskoj narodnoj inicijativi, „Službeni glasnik Republike Srbije", br. 85/23.
Venice Commission, CDL-AD(2020)031, Revised guidelines on the holding of referendum, Strasbourg, October 8, 2020. Last accessed on April 15, 2026. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)031-e
Vujadinović, Petar. 2010. *Analiza sistema mesne samouprave.* Beograd: Stalna konferencija gradova i opština.
Zakon o lokalni samoupravi, „Uradni list", št. 94/07 – uradno prečiščeno besedilo, 76/08, 79/09, 51/10, 40/12 – ZUJF, 11/14 – popr., 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A, 80/20 – ZIUOOPE, 62/24 – odl. US, 102/24 – ZLV-K, 83/25 – ZOUL in 10/26
Zakon o lokalnoj i područnoj (regionalnoj) samoupravi, „Narodne novine", br. 33/0, 60/01, 129/05, 109/07, 125/08, 36/09, 36/09, 150/11, 114/12, 19/13, 137/15, 123/17, 98/19, 144/20.
Zakon o lokalnoj samoupravi, „Službeni glasnik Republike Srbije", br. 9/02.
Zakon o lokalnoj samoupravi, „Službeni glasnik Republike Srbije", br. 129/07.
Zakon o lokalnoj samoupravi, „Službeni list Crne Gore", br. 2/2018, 34/19 i 38/20.
Zakon o opštinama, 1933. n.d. *Scribd*. Poslednji pristup 11. maj 2026. https://www.scribd.com/document/865622301/Zakon-o-opstinama-1935
Zakon o principima lokalne samouprave u Federaciji Bosne i Hercegovine, „Službene novine Federacije Bosne i Hercegovine", br. 46/09 i 51/09.
Zakon o referendumu i narodnoj inicijativi, „Službeni glasnik RS", br. 111/21 i 119/21.

Zakon o teritorijalnoj organizaciji Republike Srbije i lokalnoj samoupravi, „Službeni glasnik Republike Srbije", br. 47/91.

Мијодраг Радојевић[*]
Институт за политичке студије, Београд
Петар Матић[**]
Институт за политичке студије, Београд

ЛОКАЛНЕ СКУПШТИНЕ У СРБИЈИ КАО НАЧИН НЕПОСРЕДНОГ УЧЕШЋА ГРАЂАНА У ВРШЕЊУ ЛОКАЛНЕ ВЛАСТИ – ИЗМЕЂУ ТРАДИЦИЈЕ, ПРЕДСТАВНИЧКЕ И ДИРЕКТНЕ ДЕМОКРАТИЈЕ –[***]

Резиме

Овај чланак истражује концепт грађанских скупштина (зборова) као средства за директно учешће грађана у локалној самоуправи у Србији. Аутори су користили доктринарне концепте непосредне демократије и локалне самоуправе, заједно са теоријским методама као што су догматски и нормативно-правни метод, историјски и упоредни метод. Такође су применили историјски институционализам како би идентификовали обрасце и облике развоја грађанских скупштина у Србији кроз њену модерну историју. Увод укључује упоредну парадигму како би се истакли слични облици грађанских скупштина у различитим политичким системима. Текст разматра специфичан контекст институционализације грађанских скупштина, њихову генезу и развој у Србији. Главни теоријски изазов био је утврђивање корелације између традиционалних облика ових скупштина и напретка локалне самоуправе и непосредне демократије. Значајна препрека у завршетку истраживања био је недостатак емпиријског материјала. Непосредна представничка скупштина (збор) има дугу традицију у Србији. У средњем веку, то је био рудиментаран и

[*] Имејл: miodrag.radojevic@gmail.com; ORCID: 0000-0002-1104-9219
[**] Имејл: pmatic75@gmail.com; ORCID: 0000-0003-0205-9762
[***] Овај рад је настао у оквиру научноистраживачке делатности Института за политичке студије, коју финансира Министарство науке, технолошког развоја и иновација Републике Србије.

архаичан облик непосредне демократије и локалне самоуправе. Касније, након губитка независности, ова скупштина у селима и већим територијално-политичким јединицама (кнежевинама), у складу са аутономним статусом Кнежевине Србије, претворила се у (само)управно тело. Ова скупштина је такође била заснована на демократском принципу једнакости и правичности. Према неким истраживачима, она је била и клица развоја грађанског друштва и локалне демократије, где се поштовала вредност слободе. Њена главна надлежност била је наплата пореза, избор локалних старешина и брига о другим заједничким интересима и пословима локалних заједница. Статус ових скупштина се променио током 19. века. Изгубиле су свој директно репрезентативни карактер, заједно са институцијама непосредне демократије. Уместо тога, поверавани су им задаци и стављене под надзор централне власти. Отпор централизацији усмерио се на борбу за успостављање локалне самоуправе, што је само делимично постигнуто током 19. века. Политички и династички сукоби утицали су на промене у законодавству и нејасан и нестабилан правни статус скупштина. Оне су мењале не само своја имена, већ и своја овлашћења и положај. Ова ситуација је трајала до краја Првог светског рата. У периоду између два светска рата, најзначајнија промена у вези са директним учешћем грађана у вршењу локалне самоуправе било је оснивање локалне скупштине у Краљевини Југославији. Локална скупштина се састојала од бирача на територији општине и била је овлашћена да се бави потребама и интересима локалне заједнице. По нашем мишљењу, ова институција није темељно проучена, али су примећене сличности са каснијим концептом локалне самоуправе и скупштине грађана у социјалистичкој Југославији. После Другог светског рата, југословенски комунисти су развили доктрину директне демократије, за коју су веровали да је синоним за социјалистичку самоуправу и социјалистичку демократију. У оквиру уставног система југословенског социјализма, стварање институција укључивало је скупштину грађана виђену као начин да грађани директно остваре своја права и интересе, са широким компетенцијама које су укључивале предлагање иницијатива и избор кандидата за општинске скупштине, надгледање њиховог рада са императивним мандатом и доношење одлука. Југословенски комунисти тврде да је инспирација за институционализацију скупштина грађана дошла из организације власти на ослобођеним

територијама које је контролисао партизански покрет током Другог светског рата. Ова идеја је можда наслеђена и из марксистичке доктрине и локалних скупштина у Краљевини Југославији. Коначно, разматра се савремена фаза институционализације директног учешћа грађана у локалној самоуправи. Зборови грађана су реорганизовани од 2002. године. За разлику од свог претходника из социјалистичког периода, скупштина свих бирача у локалној заједници сада има овлашћење да предложи иницијативу, што значи да могу да поднесу захтев општинским властима о питањима из надлежности јединице локалне самоуправе. Збор грађана има скромније надлежности, а његово детаљније регулисање је препуштено подзаконодавцу. Међутим, у пракси, потенцијал ове институције остаје неискоришћен. Аутори су закључили да унутар политичке традиције постоји богато и контрадикторно, али недовољно испитано наслеђе директног учешћа грађана у локалној самоуправи. На основу досадашњих истраживања, очигледно је да су постојали различити облици директне демократије у историјским периодима, од средњег века до модерног доба. Кључни реликт овог наслеђа је институт скупштине у локалним заједницама, што, међутим, не игра већу улогу у функционисању локалне самоуправе и демократије у Србији.

Кључне речи: директна демократија, локална управа, локална самоуправа, централизација, збор грађана, локалне скупштине, месне заједнице

* This manuscript was submitted on April 20, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

UDC 327:94(497.6)
DOI: 10.5937/spm97-62757
Review article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 125-148

Velibor Lalić*
Faculty of Security Science, University of Banja Luka

SECURITY IMPLICATIONS OF THE CONSTITUTIONAL CRISIS IN BOSNIA AND HERZEGOVINA: BETWEEN THE DAYTON CONSTITUTIONAL FRAMEWORK AND INTERNATIONAL INTERVENTIONISM

Abstract

The constitutional crisis in Bosnia and Herzegovina (BiH) represents a complex case of legal and political destabilization in a post-conflict context. This paper analyzes the security implications of the constitutional crisis through the lens of internal political conflicts and international interventionism. It also highlights how the actions of international actors – particularly the Office of the High Representative (OHR) – function as a mechanism for altering the political balance established by the Dayton Peace Agreement. This dynamic generates new sources of instability which, although not yet amounting to a full-scale security crisis, nevertheless produce significant security consequences. The liberal project of state-building and the policy of international interventionism, rather than fostering reconciliation, have led to growing ethnic polarization and the weakening of institutional functionality. The paper points out a research gap in the existing literature, which has neglected systematic consideration of the security aspects of international interventionism on domestic developments in BiH, and argues that a return to the constitutional principles of the

* E-mail: velibor.lalic@fbn.unibl.org; ORCID: 0000-0001-8633-0470

Dayton Peace Agreement may provide a framework for overcoming the current challenges.

Keywords: constitutional crisis, Office of the High Representative, state-building, interventionism, Bosnia and Herzegovina

INTRODUCTION

The constitutional crisis in BiH represents a complex case of legal and political destabilization in a post-conflict context. From the standpoint of international law, BiH occupies a unique position: its Constitution is not the product of a domestic constituent process, but rather Annex IV of the Dayton Peace Agreement – an international treaty ratified by the UN Security Council Resolution 1031 (UNSC, S/RES/1031). This form of internationalized constitution making – in which a peace agreement becomes a permanent constitutional framework – creates structural tensions between international legal obligations, sovereignty, and the democratic right to self-determination. The constitutional crisis in BiH demonstrates the limitations of externally imposed peacebuilding and constitutional engineering. A sustainable constitutional order in post-conflict societies requires political legitimacy and internal dialogue. The absence of these elements in BiH, combined with international interventionism, has become a primary source of political instability.

In the existing literature, two dominant interpretative frameworks attempt to explain the causes and nature of the constitutional crisis in BiH. The first is the legalist approach, which locates the causes in the failure to respect the constitutional order of BiH, whether through the mechanisms of the Constitutional Court of BiH or by political actors at the entity level (Graziadei 2017; Bonifati 2022; Knežević 2024; Pilipović 2025). The second framework, equally significant from a theoretical perspective, is the political-structural approach. It emphasizes that the sources of the crisis lie in the very dysfunctionality of the political system, as well as in international interventionism – primarily in the role of the Office of the High Representative (OHR) and the so-called Bonn powers – which alter the domestic political balance (Vranješ i Budimir 2023). While the legalist framework focuses on the consequences of the crisis, the political-structural approach considers its causes, linking them to the broader project of state-building, i.e., neoliberal interventionism.

This paper argues that international interventionism in BiH, particularly in the legislative sphere and in the application of law, functions as a mechanism for altering the political balance established by the Dayton Peace Agreement, of which Annex IV constitutes the Constitution of BiH. This is the primary source of political instability, which generates significant security implications, even though they have not yet escalated into a full-fledged security crisis. International interventionism in BiH, with its liberal state-building agenda, through various forms of external pressure and institutional dominance, has produced effects contrary to its declared objectives – rather than reconciliation, it has deepened ethnic polarization and further undermined institutional functionality.

Although there is an extensive body of literature on state-building in BiH and its consequences, there is a noticeable lack of studies that systematically examine the impact of international interventionism on security dynamics. This is precisely the focus of this paper. It proceeds from the following research questions:

1. Does international interventionism influence the security dynamics in BiH?
2. What are the security implications of international interventionism in BiH?

The findings of this study are based on an interdisciplinary approach that combines law, political analysis, and security studies. The aim of the paper is to contribute to the broader comparative debate on constitutional crises in post-conflict societies. In this context, BiH offers a specific case for reexamining the concepts of constitutionality, sovereignty, and external governance in fragile states. Furthermore, the BiH case demonstrates that threats do not necessarily arise from the absence of law, but from its selective enforcement and perceived illegitimacy. In such circumstances, the legal order becomes a source of insecurity rather than stability. This insight is equally valuable for analyzing other post-conflict and deeply divided societies. By integrating the security dimension into the analysis of constitutionality, it is possible to better understand the resilience of post-conflict legal systems, as well as the types of reforms that may contribute to political stability and long-term legitimacy.

LITERATURE REVIEW

In the literature on post-conflict societies, a strong current of authors has emerged who advocate for international interventionism and the paradigm of liberal state-building, while simultaneously pointing out their limitations and failures (Dobbins *et al*. 2003; Fukuyama 2004; Paris 2004; Doyle and Sambanis 2006; Call and Cousens 2008). Their works place at the forefront the role of the international community in building institutions, democracy, and the rule of law, with domestic actors occupying only a secondary or peripheral role. In contrast, a significant number of scholars critically examine liberal state-building, highlighting its problems, constraints, and shortcomings in the reconstruction of post-conflict societies (Berdal 2009; Dodge 2021; Eriksen 2009). A particularly prominent place in these debates is occupied by the case of BiH, which for many years has been at the center of international politics and interventionism. Chandler emphasizes that the international imposition of reforms produced the opposite effect of the declared objectives, as it created dependency on international actors rather than democratic capacity (Chandler 2000). Bose points to deep ethnic divisions and the limited potential of "top-down imposed" reforms (Bose 2002). Caplan critically reflects on international administrations in post-conflict states, stressing their weak legitimacy and long-term dysfunctionality (Caplan 2005). Kasapović identifies the causes of BiH's dysfunctionality in the absence of a fundamental consensus among the constituent peoples, interpreting international interventionism as a form of external pressure without sustainable long-term results (Kasapović 2005). Critical perspectives in the literature go even further. Some authors openly question the viability of the state-building project in BiH, leaving room for the conclusion that ethno-territorial divisions may represent the only sustainable long-term solution. Such an interpretation can be found in Waters (Waters 2004) and Downes (Downes 2004), while Belloni (Belloni 2008) underscores the failures of international interventionism and the problematic assumptions underlying multiethnic democracy, thereby indirectly legitimizing the argument that ethnic partition might be a viable solution. A third line of thought offers a more nuanced position, such as Chesterman, who recognizes the necessity of international interventions in post-conflict societies but simultaneously problematizes their legitimacy and sustainability, warning against the dangers of paternalism and the lack of *domestic political ownership*

(Chesterman 2004). Similarly, authors like Güven, Preljević, and *Özerdem* point out that international interventionism in BiH, despite its contradictions and dysfunctions, was at certain moments a necessary evil, primarily in order to prevent the possible renewal of armed conflict (Güven, Preljević, and Özerdem 2023).

Thus, the literature clearly delineates three lines of thought: (1) those who emphasize the necessity of international interventionism and liberal state-building; (2) those who see it as a source of dysfunctionality and political deadlock; and (3) those who stress its dual nature – as both an instrument of stabilization and a generator of long-term problems. This debate provides the theoretical framework for further analysis of the security implications of the constitutional crisis in BiH.

ORIGINS AND NATURE OF THE CRISIS

BiH represents a rare case in comparative constitutional law. As already noted, its Constitution is not the result of an internal political consensus, but is, rather, formally, the Annex IV of the Dayton Peace Agreement, which ended the war in BiH in 1995. This fact renders the constitutional order of BiH both legally and politically vulnerable. The so-called Dayton Constitution institutionalized ethnic representation but failed to create a shared political identity, relying instead on external guarantees to maintain balance. This opened the space for competing political demands: centralization, predominantly advocated by Bosniak political actors, and decentralization, insisted upon by Serb and Croat representatives. The absence of consensus on fundamental state issues further deepens systemic fragmentation. In constitutional theory, a constitution is as much a political act as it is a legal act – an agreement on the distribution of power and the principles of governance. In the case of BiH, this balance has grown increasingly fragile. The crisis is simultaneously interpreted through different political discourses produced by the actors themselves, adapting them to their respective interests (Sahadžić 2021). From the standpoint of international law, peace agreements create binding obligations for states (*pacta sunt servanda*).[1] In BiH, the transformation of a peace treaty annex into a permanent constitutional framework, without a broader process of

[1] In international law, this principle is codified in the Vienna Convention on the Law of Treaties (VCLT 1969, Art. 26).

domestic consensus, raises questions about the full realization of the internal right of peoples to self-determination – understood as the ability to democratically shape their own constitutional and political order. International oversight – particularly through the OHR and the so-called Bonn powers – further complicates this balance. The authority of the High Representative to impose laws and dismiss elected officials challenges the principles of sovereignty and democratic legitimacy.

In recent years, the crisis has reached one of its most serious dimensions since the end of the war. It is characterized by growing ethno-political tensions, institutional deadlock, and open challenges to the authority of state institutions. A particularly acute problem is the non-implementation of Constitutional Court rulings, which highlights the fragility and weakness of the constitutional order (*Radio Slobodna Evropa* 2023).

BiH faces an internal legitimacy crisis, as it lacks what is referred to as *internal recognition*. Bosniak political elites express dissatisfaction with the existing constitutional arrangements and advocate for radical changes, while political elites from Republika Srpska respond with secessionist threats, conditionally – should the other side continue to disregard the basic political agreement, i.e., Annex IV of the Dayton Peace Agreement (Savanović i dr. 2020). The trial of the President of Republika Srpska, Milorad Dodik, is a consequence of deep political divisions and the absence of internal dialogue. The verdict in this case extends beyond the legal framework and carries serious political implications. The National Assembly of the Republic of Srpska adopted, on 21 and 27 June 2023, the Law on Amendments to the Law on the Publication of Laws and Other Regulations of the Republic of Srpska (which abolishes the obligation to publish decisions of the High Representative) and the Law on the Non-Application of Decisions of the Constitutional Court of Bosnia and Herzegovina (CBiH Decision 2025). The President of the Republic of Srpska, Milorad Dodik, signed the decrees promulgating these laws on July 7, 2023 (CBiH Decision 2025). The issue of state property was particularly emphasized, where the Constitutional Court decided by outvoting judges from Republika Srpska. The Serb side perceives these rulings as politically biased and as instruments for reshaping the constitutional structure to the detriment of the Serb people. By contrast, Bosniak political elites and the OHR interpret the aforementioned laws solely as an attack on the constitutional order and the Dayton Peace Agreement.

On July 1, 2023, High Representative Christian Schmidt invoked the Bonn powers to annul them and subsequently imposed amendments to the Criminal Code of BiH, introducing a new criminal offense – failure to implement decisions of the High Representative (Art. 203a) (Office of the High Representative [OHR] 2023a). This created the legal basis for the criminal prosecution of President Dodik. The first-instance conviction triggered strongly polarized reactions: in Republika Srpska, it was deemed politically motivated and directed against democratically elected institutions, while in the Federation of BiH, among international organizations and foreign representatives, it was welcomed as strengthening confidence in the judiciary and clarifying the institutional dispute (Huseinović 2025a). Luigi Soreca, EU Ambassador and Special Representative in BiH, stated in an interview that neither Brussels nor EUFOR[2] could resolve the crisis, stressing instead that domestic institutions must do so – thus highlighting the problem of a lack of internal legitimacy (*ownership*) (Šajinović 2025). At the same time, Soreca criticized the leadership of Republika Srpska, underscoring that laws must result from a legitimate legislative procedure with authorized proposers. This statement stands in contrast with the practice of the OHR and the imposition of legislative amendments by the High Representative, further fueling political and ethnic polarization. On the other hand, the defense of President Dodik contests the legitimacy of Schmidt's actions, pointing out that his mandate has not been confirmed by the UN Security Council. The OHR, however, maintains that such confirmation is not necessary, as High Representatives are appointed by the Steering Board of the Peace Implementation Council, citing earlier UN resolutions (Huseinović 2025a). President Dodik's legal team announced that it would appeal to the European Court of Human Rights, invoking the violation of the principle of legality (*nullum crimen sine lege*), the prohibition of retroactive application of criminal law, and irregularities in the procedure of adopting amendments to the Criminal Code. They also challenged the legal standard for a law's entry into force, since Schmidt's amendments were not published in the "Official

[2] EUFOR (European Union Force) Althea represents a military mission of the European Union in Bosnia and Herzegovina, established in 2004 by taking over the mandate from NATO's SFOR mission. It operates on the basis of UN Security Council Resolution 1575 (UNSC, S/RES/1575), with the task of ensuring the implementation of the Dayton Peace Agreement, maintaining a safe and secure environment, and supporting defense and security sector reforms in BiH.

Gazette of BiH" (Ristić 2025). At the political level, Dodik expressed readiness for dialogue on constitutional issues (A. O. 2025), while Bosniak political parties rejected such proposals, citing the ruling of the BiH Court and emphasizing that the ban on political activity imposed on the President of Republika Srpska was a measure to safeguard the constitutional order. This dynamic further escalated the crisis, bringing BiH institutions to a critical point.

The lack of internal legitimacy and political dialogue, combined with international interventionism and the use of institutions (the Constitutional Court of BiH, the Court of BiH) as instruments for altering the political balance established by the Dayton Peace Agreement, constitute the fundamental source of instability in BiH. The combination of these two factors results in a permanent state of political and institutional uncertainty, in which the functionality of the system remains seriously jeopardized.

SECURITY IMPLICATIONS

The dysfunctionality of the political system in BiH has crucial implications for the sector of political security, which is also the primary focus of this analysis. As already emphasized in the discussion on security sectors, the referent object in the political sector is the organizational stability of order within the political community (Buzan, Wæver, and de Wilde 1998, 141), that is, the stability of the state itself. In addition, depending on the context, the referent object may also be a grave violation of the fundamental principles of international law – such as sovereign equality, territorial integrity, and human rights (Ejdus 2024, 155). In the case of BiH, the constitutional crisis has multiple and complex implications. Due to big ideological differences and diverging interpretations of the very nature of the crisis, political actors perceive the same processes through the lens of their narrow interests, which further complicates political dialogue. Nevertheless, regardless of these divisions, it is evident that the constitutional crisis directly undermines the organizational stability of the state. The legitimacy crisis and the interventionism of the High Representative, rather than stabilizing the order, further strengthen centrifugal forces and fuel secessionist rhetoric (Savanović i dr. 2020). It should be emphasized that interventionism, although often justified by the need to strengthen functional institutions (*state-building*), in practice undermines the basic political consensus

established by the Dayton Peace Agreement. Consequently, instead of stabilization, such interventions produce precisely the opposite effect – organizational instability of the state, which is at the same time one of the most visible aspects of the current constitutional crisis. Given that international interventionism is not supported by consensus among key political actors, BiH remains a state of limited sovereignty and is marked by continuing political weaknesses. Secessionist tendencies of the leadership of Republika Srpska, which may also be understood as a reaction to such interventionism, from the perspective of the international community and Bosniak political actors, directly endanger the territorial integrity of the country.

The strength of a state, it should be recalled, can be both internal and external (Ejdus 2024, 156). However, the level of vulnerability does not depend solely on the intensity of threats but also on the state's capacity to resist them. Rotberg distinguishes between strong, weak, failing, and failed states (Rotberg 2004). BiH, due to deep ethnic divisions and the lack of political consensus, realistically falls into the category of weak states (Subotić 2020, 98). According to the *Fragile States Index* of the Fund for Peace, BiH is classified as a weak state with an elevated warning (ranked 77th) (Fund for Peace 2024), which corresponds with the broader argument of this paper.

Threats to the state can be internal or external. If internal threats are absent, the state possesses positive sovereignty, while the absence of external threats implies negative sovereignty. Only in the absence of both internal and external threats does a state enjoy full empirical sovereignty (Ejdus 2024, 159). BiH, however, faces both internal and external threats. Internal threats arise from an ethnically divided society and most often manifest through deliberate political pressures and threats from one side to another. External pressures, on the other hand, stem from international interventionism and carry an ideological character – primarily through the projection of a vision of a unitary civic state that disregards ethnic differences among the peoples of BiH. One example, while not directly tied to the discourse on threats, illustrates the ideological approach to interpreting the crisis in BiH. On April 9, 2025, Kaja Kallas, the EU High Representative for Foreign Affairs and Security Policy, visited BiH. During her visit to the EUFOR base in Sarajevo, she stated, "The leaders of Republika Srpska are undermining the constitution and the legal order, threatening the fundamental freedoms of all citizens" (Huseinović 2025b). Kallas

delivered a sharp judgment without addressing the underlying causes of the crisis. Ideology represents the worldview of an interest group seeking to present its particular interests as universal (Šušnjić 1993). Kallas argued that the constitutional crisis threatens all citizens of BiH. Such an interpretation does not reflect the factual situation, given that the vast majority of the Serb population in BiH does not share her assessment. It is precisely this dual vulnerability – internal and external – that renders the political security of BiH particularly fragile and complex to analyze.

The question arises as to whether the current situation has the characteristics of a crisis in the security context. To answer this, we must first provide a definition of crisis. Different definitions exist in the literature, but for the purposes of this paper, we will adopt the working definition of Boin *et al*. (Boin *et al*. 2010). Their definition includes the subjective dimension of crisis – how a given threat is perceived as a crisis. A situation is defined as a crisis when policymakers perceive "a serious threat to the basic structure or fundamental values and norms of a system, which under time pressure and highly uncertain circumstances requires vital decisions" (Boin *et al*. 2010, 12). Thus, a crisis comprises threat, time pressure, and uncertainty. All three elements must be cumulatively fulfilled in order to speak of a crisis. A threat is the explicit intention to damage or destroy a valued good. For its realization, however, in addition to intent, there must also exist the capacity of the threatening side to carry it out (Vellani 2006).

We shall now analyze how policymakers perceive the current situation in the context of crisis. Specifically, we will examine the positions of some policymakers from Republika Srpska, the Federation of Bosnia and Herzegovina, as well as representatives of EUFOR, which is the key international security actor in BiH. On May 15, 2025, at the Fourteenth Regular Session of the National Assembly of Republika Srpska, the President of Republika Srpska, Milorad Dodik, stated that the current crisis is primarily legal, and not security-related. On that occasion, President Dodik declared, "You could hear the Bosniak member of the Presidency talking about armed formations and conflicts. This National Assembly rejects any assessment that this is a security crisis" (Petrušić 2025). Namely, on January 28, 2025, the Office of the BiH Presidency Member Denis Bećirović issued a press release stating that the renowned French daily *Libération* had published his op-ed, in which he pointed to the serious endangerment of peace and the General Framework Agreement for Peace in BiH. The article contained

severe accusations against the leadership of Republika Srpska, asserting that the threat of armed conflict in BiH and the Western Balkans is real. As Bećirović noted in the text, "The authorities of the Republika Srpska entity are taking dangerous steps and openly undermining the independence, sovereignty, and territorial integrity of the state of Bosnia and Herzegovina" (Predsjedništvo Bosne i Hercegovine 2025). As for EUFOR and the NATO Headquarters in Sarajevo, on the eve of the pronouncement of the first-instance verdict against the President of Republika Srpska, Milorad Dodik, by the Court of BiH on February 26, 2025, they announced that they would not allow destabilization of BiH and that they were prepared to respond if necessary (Huseinović 2025a).

CRISIS: AN ANALYTICAL FRAMEWORK

Let us return to Boin et al.'s definition of crisis, which rests on the perception of policymakers and the way in which they sense a serious threat to the basic structures or fundamental values and norms of the system (Boin *et al*. 2010). The perception of a threat, under time pressure and in highly uncertain circumstances, necessitates the making of vital decisions. This definition offers a useful analytical framework for examining events and processes in the context of crisis. The framework consists of three elements: threats, time pressure, and uncertain circumstances –the focus of the analysis that follows. As previously noted, a threat can be understood as a declared intention to damage or destroy a particular good. To be realized, however, intention alone is insufficient; there must also be the capacity of the actor to carry out such an intention. In other words, it is not enough to desire; it is necessary to possess resources, means, and expertise. In this analysis, threats are considered in the context of the perceived jeopardy to fundamental structures, values, and norms. However, before that, it is necessary to examine what different actors in BiH identify as these fundamental structures, values, and norms – Serbs, Bosniaks, and the international community, which is an important factor in the crisis. In the context of BiH, the term "international community" is often used as a euphemism for a limited circle of Western states and international organizations engaged in political processes in the Western Balkans (Šolaja 2010, 107–108). The term, however, does not reflect a universal international consensus, but rather the positions and interests of Western actors, primarily the United States and the EU (Šolaja 2010, 107–108).

From their perspective, the fundamental structure is the Euro-Atlantic community, and the values are peace and stability in BiH, alongside the country's progress toward Euro-Atlantic integration (Krstić 2022). For Serbs, the fundamental structure is the Republika Srpska. Their core values and norms lie in preserving the constitutional and legal status guaranteed by the Dayton Peace Agreement, which defines BiH as a state union of two entities (and, since 1999, the Brčko District) while safeguarding constitutional competences as set forth in Annex IV (Subotić 2021). For Bosniaks, the fundamental structure is BiH itself, while values and norms are reflected in the vision of a unitary state of BiH without entities. In public discourse, Bosniak political representatives often link this to the model of a civic state based on the principle of "one person – one vote," whereby the majority nation would have a dominant role (Mrduljaš 2014; Mrduljaš 2019).

Threats may arise from within the political community or from external sources. Let us first consider the external element. The EUFOR mission in BiH is often perceived as a potential actor of interventionism. However, the EU Special Representative in BiH, Luigi Soreca, emphasizes that it is a military mission with a strictly defined mandate in accordance with UN Security Council Resolution 1575 (UNSC, S/RES/1575). Its aim is the preservation of peace and stability, not law enforcement or intervention in domestic political processes (Šajinović 2025). Thus, while EUFOR possesses capacity, it lacks both the intention and the legal basis for such an action. Regarding neighboring states, under current circumstances, the political environment and the international positioning of regional countries exclude the possibility of a threat to BiH's territorial integrity and sovereignty. The dominant threats in BiH come from within, primarily from the societal security sector.[3]

Identity politics and ethnic tensions inevitably spill over into the political sphere, i.e., into the sector of political security. Vertical competition[4] among the three dominant ethnic groups (Bosniaks, Serbs,

[3] The societal security sector is one of the five sectors of security according to the Copenhagen School of security studies. The referent object of security in this sector is collective identity (Buzan, Wæver, and de Wilde 1998, 119–140).

[4] Vertical competition refers to the conflict between different levels of collective identity – whether emphasis is placed on broader integration projects such as the EU, or on narrower secessionist/regional projects such as Catalonia or Quebec. The

and Croats) is continuous and supported by both intent and capacity. Over the long term, this competition generates instability due to conflicting identity-based politics and the absence of consensus on key issues of political organization (centralization vs. autonomy), as well as in other spheres of social life (Lalić 2021, 40–51). The rhetoric of constitutional crisis further heightens the intensity of vertical competition, especially between Serbian and Bosniak political actors. Potential secession of Republika Srpska represents one of the most serious scenarios in political discourse. Referenda on competences and threats of secession are frequently invoked in public statements by the political leadership of Republika Srpska. In this discourse, intent is framed as a "defensive" measure and generally has a rhetorical function. As for the capacity for secession, neither the international environment nor internal political consensus within Republika Srpska supports such a move. For Serbian political actors, the primary threat lies in the continued erosion of Republika Srpska's constitutional competences through the decisions of the Constitutional Court of BiH. The intent for this is demonstrated by a series of court rulings, including judgments on state property (Office of the High Representative [OHR] 2023b).[5] Capacity exists insofar as Serbian representatives in the Constitutional Court of BiH are continuously outvoted by judges from the other two constituent peoples and by international judges. In the political discourse of Republika Srpska, such decisions are interpreted as a form of structural violence (Galtung 1969), backed by international actors (Blagojević 2021). According to this narrative, such practices deepen political polarization and further exacerbate the constitutional crisis in BiH.

essence lies in the question of which of the concentric circles of identity should be given primary significance (Buzan, Wæver, and de Wilde 1998, 121).

5 The Constitutional Court of Bosnia and Herzegovina has, on several occasions, issued decisions annulling legal acts of the Republic of Srpska related to state property. The following cases are involved: U-1/11 – Law on the Status of State Property Located on the Territory of the RS and Subject to Disposal Ban (13 July 2012); U-8/19 – Law on Agricultural Land of the RS (6 February 2020); U-9/19 – Law on Inland Navigation of the RS (6 February 2020); U-16/20 (1–3) – dispute concerning RS concession decisions (Partial Decision, 16 July 2021; Non-implementation Decisions, 3 December 2021 and 19 January 2023); U-4/21 (1–2) – Law on Forests of the RS (23 September 2021; Non-implementation Decision, 6 July 2022); and U-10/22 – Law on Immovable Property Used for the Functioning of Public Authorities of the RS (22 September 2022) (OHR 2023b).

Let us now turn to time pressure as an element of crisis. In crises caused by threats, decisions must be made under time pressure. BiH has been in political crisis since the disintegration of the former socialist Yugoslavia – first in its extreme form during the War in BiH (1992–1995), and later in the post-Dayton period (Chandler 2000; Bose 2002). Political disagreements and vertical competition among the peoples of BiH represent long-term processes with deep historical roots, making them a specific example of what Braudel calls *longue durée* processes (Braudel 1958). The current crisis is only one episode in a long continuity of instability; therefore, when these facts are taken into account, in the case of BiH, time pressure as an element of crisis is not strongly expressed. Let us recall: for a situation to be defined as a crisis, all three conditions must be met – existence of a threat, time pressure, and uncertain circumstances.

Uncertain circumstances as an element of crisis are not clearly expressed in the case of BiH. In classical crisis situations, they entail unpredictability, lack of information, and the inability to forecast future developments. In BiH, the situation is different: here, the crisis has become a continuous state, which creates a paradox. Precisely due to prolonged political instability, patterns of behavior have become predictable, and uncertainty has transformed into a recognizable and expected pattern. Literature on ontological security emphasizes that individuals and communities seek stability and continuity in social relations (Giddens 1991; Mitzen 2006; Steele 2008; Croft 2012; Subotić 2016; Ejdus 2020). The paradox in BiH is that chronic crisis itself generates a sense of predictability, thereby providing actors with a certain degree of ontological security. In other words, uncertainty has become normalized and, in its predictability, it no longer functions as a typical determinant of crisis conditions. Thus, although BiH undoubtedly faces threats to political and social stability, the elements of time pressure and uncertainty do not fully meet the criteria of crisis, since "crisis in BiH" has become a chronic and predictable pattern. This paradoxical predictability of long-term instability provides actors with a measure of ontological security, consistent with Giddens' conception of ontological security as stability of routines (Giddens 1991) and Mitzen's thesis that even conflict can serve as a source of ontological security (Mitzen 2006).

BIH BETWEEN INTERVENTIONISM, INTERNAL STABILITY, AND SECURITY

The argument that international interventionism in BiH – especially in the sphere of legislative activity and law enforcement – acts as a mechanism for altering the political balance established by the Dayton Peace Agreement and serves as a source of social instability with significant security implications is supported by empirical evidence. The interpretation of these facts naturally depends on the ideological position of the observer. Regardless of interests and political convictions, international interventionism in BiH undeniably has security implications. Although the crisis has not yet reached the level of an open security threat, its consequences are already visible. The constitutional crisis, in addition to existing ones, fosters further ethnic polarization, deepening ethnic divides and ethnic homogenization – all of which run counter to the concept of a civic BiH, which is the central idea of the proponents of failed state-building policies and international interventionism (American Institutes for Research 2023, 43–44). This is confirmed by David Chandler's widely cited study *Bosnia: Faking Democracy after Dayton* (Chandler 2000). Chandler offers extensive evidence that the process of state-building has not contributed to the development of democracy in BiH, concluding that political autonomy and accountability are now more distant than at the outbreak of the war. The book was published 25 years ago, and the processes Chandler described have only intensified since then. The United Nations Security Council is the sole body authorized to implement the Dayton Peace Agreement with respect to the High Representative's mandate and the entrusted civilian aspects. Decisions on such matters, in accordance with international law, should therefore be made within the UN Security Council, given that the Dayton Agreement is an international treaty. This would prevent unilateral interpretations by the OHR, whose legitimacy and legality are increasingly contested.

Political actors in BiH face a choice between strengthening the constitutional order based on internal agreement and continuing with the practice of international interventionism. Based on the arguments presented, it is concluded that neither secession nor the model of neo-colonial state-building (Chandler 2006, 123–142), which rests on mechanisms of pressure and institutional imposition, offers sustainable

solutions. Both paths produce instability. A return to the constitutional principles established by the Dayton Peace Agreement provides a potential framework for overcoming the political crisis.

CONCLUSION

Based on the arguments presented, it is concluded that the constitutional crisis in BiH is primarily the result of the erosion of the political agreement upon which Annex IV of the Dayton Peace Agreement rests. When the provisions of legal acts are broadly interpreted, and state institutions are (mis)used as instruments of power to alter the political balance, the law ceases to serve as a source of stability and becomes a generator of insecurity.

International interventionism and the liberal state-building agenda proved necessary in the immediate post-conflict period, but their prolonged and unilateral implementation, without the consent of domestic actors, has led to deepened ethnic polarization and weakened institutional functionality. The research demonstrates that the sustainability of BiH's political system cannot be achieved through secessionist threats or the continuation of a neo-colonial approach to international interventionism. The alternative lies in returning to the original principles of the Dayton Peace Agreement and in strengthening internal political ownership, grounded in dialogue and the recognition of the legitimate interests of all constituent peoples. An inverse reading of the analytical framework of crisis suggests that crisis prevention requires precisely a balance of interests and consensus on fundamental structures, values, and norms. Only once such a consensus is established do threats to political and societal stability lose the potential to escalate into a crisis. This opens space for long-term legitimacy, security, and political development of BiH as a multiethnic community. The BiH case study also offers broader lessons: it confirms that a sustainable constitutional order in post-conflict societies does not emerge from external imposition but from political dialogue and the legitimacy of domestic processes.

REFERENCES

A. O. 2025. „Dodik opet poziva na dijalog: Bošnjacima poručujem da prihvate sporazum i dogovor." *Dnevni avaz*. 23. maj. 2025. https://avaz.ba/vijesti/bih/975530/dodik-opet-poziva-na-dijalog-bosnjacima-porucujem-da-prihvate-sporazum-i-dogovor

American Institutes for Research. 2023. "Reconciliation Assessment in Bosnia and Herzegovina: Peaceful Co-existence through Social and Behavioral Change (Final Report) - USAID Bosnia and Herzegovina, Monitoring and Evaluation Support Activity (MEASURE II)." *Measurebih.* May 2023. https://www.measurebih.com/uimages/USAID-MII-Reconciliation-Assessment-Report.pdf

Belloni, Roberto. 2008. *State Building and International Intervention in Bosnia.* London: Routledge.

Berdal, Mats. 2009. *Building Peace after War.* London: Routledge.

Blagojević, Milan. 2021. *Ustavnopravna odbrana Republike Srpske.* Banja Luka: Glas Srpske.

Boin, Arjen, Pol 't Hart, Erik Štern, and Ben Sandelijus [Boin *et al.*]. 2010. *Politika upravljanja krizama: Javno rukovođenje pod pritiskom.* Beograd: JP Službeni glasnik.

Bonifati, Lidia. 2022. "Constitutional Design v. Constitutional Degradation: Strengthening the Rule of Law in Bosnia-Herzegovina." In *Framing and Diagnosing Constitutional Degradation: A Comparative Perspective*, eds. Tania Groppi, Valentina Carlino and Giammaria Milani, 83–91. Roma: Consulta Online.

Bose, Sumantra. 2002. *Bosnia after Dayton: Nationalist Partition and International Intervention.* Oxford: Oxford University Press.

Braudel, Fernand. 1958. "Histoire et sciences sociales: La longue durée." *Annales Histoire, Sciences Sociales* 13 (4): 725–753. DOI: 10.3406/ahess.1958.2781

Buzan, Barry, Ole Wæver, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis.* Boulder: Lynne Rienner Publishers.

Call, Charles T., and Elizabeth M. Cousens. 2008. "Ending Wars and Building Peace: International Responses to War-torn Societies." *International Studies Perspectives* 9 (1): 1–21. DOI: 10.1111/j.1528-3585.2007.00313.x

Caplan, Richard. 2005. *International Governance of War-torn Territories: Rule and Reconstruction.* Oxford: Oxford University Press.

Chandler, David. 2000. *Bosnia: Faking Democracy after Dayton.* London: Pluto Press.

Chandler, David. 2006. *Empire in Denial: The Politics of State-Building.* London: Pluto Press.

Chesterman, Simon. 2004. *You, the People: The United Nations, Transitional Administration, and State-Building.* Oxford: Oxford University Press.

Court of Bosnia and Herzegovina [CBiH], Decision of the Court of Bosnia and Herzegovina S1 2 K 046070 23 Ko Milorad Dodik *et al*., Confirmation date: September 11, 2023, Final decision rendered on: June 12, 2025.

Croft, Stuart. 2012. "Constructing Ontological Insecurity: The Insecuritization of Britain's Muslims." *Contemporary Security Policy* 33 (2): 219–235. DOI:10.1080/13523260.2012.693776

Dobbins, James, John G. McGinn, Keith Crane, Seth G. Jones, Rollie Lal, Andrew Rathmell, Rachel M. Swanger, and Anga. R. Timilsina [Dobbins *et al*.]. 2003. *America's Role in Nation-Building: From Germany to Iraq.* Santa Monica: RAND Corporation.

Dodge, Toby. 2021. "Afghanistan and the failure of liberal peacebuilding." *Survival* 63 (5): 47–58. DOI: 10.1080/00396338.2021.1982197

Downes, Alexander B. 2004. "The Problem with Negotiated Settlements to Ethnic Civil Wars." *Security Studies* 13 (4): 230–279. DOI: 10.1080/09636410490945893

Doyle, Michael W., and Nicholas Sambanis. 2006. *Making War and Building Peace: United Nations Peace Operations.* Princeton: Princeton University Press.

Ejdus, Filip. 2020. *Crisis and Ontological Insecurity: Serbia's Anxiety over Kosovo's Secession.* London and New York: Palgrave Macmillan.

Ejdus, Filip. 2024. *Međunarodna bezbednost: teorije, sektori i nivoi.* Beograd: Clio.

Eriksen, Stein Sundstøl. 2009. "The Liberal Peace is Neither: Peacebuilding, State building and the Reproduction of Conflict in the Democratic Republic of Congo." *International Peacekeeping* 16 (5): 652–666. DOI: 10.1080/13533310903303289

Fukuyama, Francis. 2004. *State-Building: Governance and World Order in the 21st Century.* Ithaca: Cornell University Press.

Fund for Peace. 2024. "Fragile States Index 2024: A World Adrift." *Fragile States Index*. February 18, 2025. https://fragilestatesindex.org/2025/02/18/https-fragilestatesindex-org-wp-content-uploads-2025-02-fsi-2024-report-a-world-adrift-2-pdf/

Galtung, Johan. 1969. "Violence, Peace, and Peace Research." *Journal of Peace Research* 6 (3): 167–191. DOI: 10.1177/002234336900600301

Giddens, Anthony. 1991. *Modernity and Self-Identity: Self and Society in the Late Modern Age.* Stanford: Stanford University Press.

Graziadei, Stefan. 2017. "The Strasbourg Court and Challenges to the Constitutional Architecture of Post-conflict Federalism in Bosnia-Herzegovina and Beyond." *Review of Central and East European Law* 42 (2–3): 169–214. DOI: 10.1163/15730352-04202001

Güven, İbrahim Fevzi, Hamza Preljević, and Alpaslan Özerdem. 2023. "International Intervention and Security Challenges: Has Local Ownership in Bosnia and Herzegovina Proven Successful?" *Connections: The Quarterly Journal* 22 (4): 85–104. DOI: 10.11610/Connections.22.4.05

Huseinović, Samir. 2025a. „Milorad Dodik nepravosnažno osuđen na godinu dana zatvora." *DW*. 26. februar 2025. https://www.dw.com/sr/milorad-dodik-nepravosna%C5%BEno-osu%C4%91en-na-godinu-dana-zatvora/a-71758041

Huseinović, Samir. 2025b. „Kallas u BiH, dok se traži asistencija EUFOR-a." *DW*. 9. April 2025. https://www.dw.com/hr/kallas-u-bih-dok-se-tra%C5%BEi-asistencija-eufor-a/a-72180520

Kasapović, Mirjana. 2005. *Bosna i Hercegovina: podijeljeno društvo i nestabilna država.* Zagreb: Politička kultura.

Knežević, Slaven. 2024. "The High Representative and the constitutional crisis in Bosnia and Herzegovina." *Journal of Social Sciences and Humanities Svarog* 28: 139–161.

Krstić, Milan. 2022. "Continuity and changes in the U.S. foreign policy towards the Western Balkans during the first year of Biden's presidency: Third Obama's or second Trump's term?" *Politika nacionalne bezbednosti* 21 (2): 175–200. DOI: 10.22182/pnb.2122021.9

Lalić, Velibor. 2021. *Identitet, konflikt, bezbjednost – Zločini iz mržnje u Bosni i Hercegovini.* Banja Luka: Fakultet bezbjednosnih nauka, Univerzitet u Banjoj Luci.

Mitzen, Jennifer. 2006. "Ontological Security in World Politics: State Identity and the Security Dilemma." *European Journal of International Relations* 12 (3): 341–370. DOI: 10.1177/1354066106067346

Mrduljaš, Saša. 2014. „Uzroci međunarodne neučinkovitosti u Bosni i Hercegovini (1992–2014)." *Suvremene teme: Međunarodni časopis za društvene i humanističke znanosti* 7 (1): 96–110.

Mrduljaš, Saša. 2019. „Određenje Bosne i Hercegovine po Ustavu iz 1974. godine i ideja 'građanske Bosne i Hercegovine'." U *Europski ustav za Bosnu i Hercegovinu: Znanstveno-stručni skup s međunarodnim sudjelovanjem*, ur. Ivica Musić, 291–310. Mostar: Sveučilište u Mostaru.

Office of the High Representative [OHR]. 2023a. "Decision Enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina." July 1, 2023. https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-criminal-code-of-bosnia-and-herzegovina/

Office of the High Representative [OHR]. 2023b. „Odluke Ustavnog suda BiH u vezi s pitanjem državne imovine u Bosni i Hercegovini." 17. jul 2023. https://www.ohr.int/odluke-ustavnog-suda-bih-3/

Paris, Roland. 2004. *At War's End: Building Peace after Civil Conflict.* Cambridge: Cambridge University Press.

Petrušić, Dijana. 2025. „Dodik se obratio u Narodnoj skupštini RS, posebno se zahvalio Stanivukoviću." *Nezavisne novine*. 14. maj 2025. https://www.nezavisne.com/novosti/bih/Dodik-se-obratio-u-Narodnoj-skupstini-RS-posebno-se-zahvalio-Stanivukovicu/904643

Pilipović, Milan. 2025. „Odnos Aneksa IV i Aneksa X Dejtonskog mirovnog sporazuma u svjetlu djelovanja Ustavnog suda BiH." U *Dejtonski mirovni sporazum – 30 godina mira i stabilnosti,* ur. Dragan Dakić, 43–55. Banja Luka: Centar za društvena i politička istraživanja Republike Srpske.

Predsjedništvo Bosne i Hercegovine. 2025. „Saopćenje iz Kabineta člana Predsjedništva BiH dr. Denisa Bećirovića." 28. januar 2025. https://www.predsjednistvobih.ba/saop/default.aspx?id=104678&langTag=bs-BA

Radio Slobodna Evropa. 2023. „Tužiteljstvo ne istražuje neprovođenje odluka Ustavnog suda BiH, kaže Galić." 13. juni 2023. https://www.slobodnaevropa.org/a/ustavni-sud-tuziteljstvo-bosna-hercegovina/32457157.html

Ristić, Brankica. 2025. „Na Evropskom sudu će morati da objasne kako su presudili Dodiku za delo koje nije postojalo." *Sputnik*. 4. avgust 2025. https://sputnikportal.rs/20250804/na-evropskom-sud-ce-morati-da-objasne-kako-su-presudili-dodiku-za-krivicno-delo-koje-nije-postojalo-1188536535.html

Rotberg, Robert I. 2004. "The Failure and Collapse of Nation States: Breakdown, Prevention, and Repair." In *When States Fail: Causes and Consequences*, ed. Robert I. Rotberg, 1–50. Princeton: Princeton University Press.

Sahadžić, Maja. 2021. „Ustavna kriza u Bosni i Hercegovini: Ovog puta je drugačije?" *Osservatorio Balcani e Caucaso Transeuropa.* 23. decembar 2021. https://www.balcanicaucaso.org/bhs/zone/Bosna-i-Hercegovina/Ustavna-kriza-u-Bosni-i-Hercegovini-Ovog-puta-je-drugacije-214710

Savanović, Aleksandar, Aleksandar Vranješ, Nenad Vranješ, i Željko Budimir [Savanović i dr.]. 2020. „Izvori, geneza i priroda secesionističke retorike u Republici Srpskoj." *Politička misao* 57 (1): 93–126. DOI: 10.20901/pm.57.1.05

Steele, Brent J. 2008. *Ontological Security in International Relations: Self-Identity and the IR State.* London: Routledge.

Subotić, Jelena. 2016. "Narrative, Ontological Security, and Foreign Policy Change." *Foreign Policy Analysis* 12 (4): 610–627. DOI: 10.1111/fpa.12089

Subotić, Milovan. 2020. „Geopolitički aspekti redefinisane državne moći na primerima EU i Balkana." *Politika nacionalne bezbednosti* 19 (2): 89–111. DOI: 10.22182/pnb.1922020.4

Subotić, Momčilo. 2021. „Republika Srpska u borbi za državnost." *Politička revija* 70 (4): 105–127. DOI: 10.22182/pr.7042021.6

Šajinović, Dejan. 2025. „Soreka: Brisel i EUFOR ne mogu riješiti krizu – to moraju domaće institucije." *Nezavisne novine*. 17. maj 2025. https://www.nezavisne.com/novosti/intervju/Luidji-Soreka-za-Nezavisne-Krizu-u-BiH-ne-mogu-rijesiti-ni-Brisel-ni-EUFOR/905073

Šolaja, Miloš. 2010. "International Community and BiH in Relation to Geopolitical Position of Serbia at the Beginning of 21st Century." In

Srbija u savremenom geostrateškom okruženju, eds. Milan Jazbec, Lutz Kober, Duško Dimitrijević, Milan Zarić, Katarina Štrbac, and Tanja Ristić, 107–120. Beograd: Medija centar „Odbrana“; Institut za međunarodnu politiku i privredu; Ministarstvo odbrane Republike Srbije; Institut za strategijska istraživanja.

Šušnjić, Đuro. 1993. „Ideologija”. U *Enciklopedija političke kulture,* ur. Milan Matić, 373–381. Beograd: Savremena administracija.

United Nations Security Council [UNSC], S/RES/1031 (1995), Resolution 1031 (1995), Adopted by the Security Council at its 3607th meeting, on 15 December 1995.

United Nations Security Council [UNSC], S/RES/1575 (2004), Resolution 1575 (2004), Adopted by the Security Council at its 5085th meeting, on 22 November 2004.

Vellani, Karim H. 2006. *Strategic Security Management: A Risk Assessment Guide for Decision Makers.* Oxford: Elsevier.

Vienna Convention on the Law of Treaties [VCLT], 23 May 1969, UNTS 1155, I-18232.

Vranješ, Aleksandar, i Željko Budimir. 2023. „Bosna i Hercegovina između međunarodnih intervencija i raspada.” *Napredak – časopis za političku teoriju i praksu* 4 (3): 7–34. DOI: 10.5937/napredak4-48072

Waters, Timothy W. 2004. “Contemplating Failure and Creating Alternatives in the Balkans: Bosnia’s Peoples, Democracy, and the Shape of Self-Determination.” *Yale International Law Journal* 29: 423–475.

Велибор Лалић*
Факултет безбједносних наука,
Универзитет у Бањој Луци

БЕЗБЕДНОСНЕ ИМПЛИКАЦИЈЕ УСТАВНЕ КРИЗЕ У БОСНИ И ХЕРЦЕГОВИНИ: ИЗМЕЂУ ДЕЈТОНСКОГ УСТАВНОГ ОКВИРА И МЕЂУНАРОДНОГ ИНТЕРВЕНЦИОНИЗМА

Резиме

Уставна криза у Босни и Херцеговини (БиХ) представља сложен случај правне и политичке дестабилизације у постконфликтном контексту. У раду се анализирају безбедносне импликације уставне кризе кроз призму унутрашњих политичких сукобљавања и међународног интервенционизма. Разматрају се два доминантна теоријска приступа: легалистички, који узроке кризе види у непоштовању устава, и политичко-структурални, који наглашава дисфункционалност система и улогу међународног интервенционизма. У раду се заступа овај други приступ, тврдећи да међународни актери, посебно високи представник (OHP), кроз законодавне интервенције мењају политички баланс успостављен Дејтонским мировним споразумом, чиме генеришу нове изворе политичке и безбедносне нестабилности. Анализа показује да је политички систем БиХ обележен дубоким етничким поделама и супротстављеним визијама државног уређења: централизације насупрот децентрализације. Одсуство консензуса између конститутивних народа додатно је продубљено међународним интервенционизмом, који често делује без унутрашње легитимности. Као резултат, институције постају мање функционалне, а политички сукоби интензивнији, што се манифестује кроз блокаде, оспоравање одлука Уставног суда и радикализацију политичке реторике. У безбедносном смислу, криза првенствено погађа политички сектор безбедности, односно организациону стабилност државе. Иако постоје изражене претње (нпр. сецесионистичка реторика и институционални сукоби),

* Имејл: velibor.lalic@fbn.unibl.org; ORCID: 0000-0001-8633-0470

закључује се да ситуација још увек не испуњава све критеријуме класичне безбедносне кризе, јер недостају елементи временског притиска и високе неизвесности. Уместо тога, БиХ карактерише „хронична криза" – стање дуготрајне нестабилности које је постало предвидљиво и на одређени начин нормализовано. Посебно се наглашава да претње долазе и изнутра (етничке тензије и политичко надметање) и споља (међународни интервенционизам са идеолошком агендом). Таква двострука угроженост додатно слаби суверенитет државе и подстиче политичке поделе. БиХ се у том контексту класификује као слаба држава са ограниченим капацитетом да одговори на унутрашње и спољне изазове. У завршном делу рада закључује се да ни сецесионизам, нити наставак интензивног међународног интервенционизма не представљају одржива решења. Као могући излаз из кризе предлаже се повратак изворним принципима Дејтонског споразума и јачање „унутрашњег политичког власништва" кроз дијалог и консензус домаћих актера. Кључна поука рада јесте да дугорочна стабилност и безбедност у постконфликтним друштвима не могу бити наметане споља, већ морају проистећи из легитимног и инклузивног политичког процеса.

Кључне речи: уставна криза, Канцеларија високог представника, изградња државе, интервенционизам, Босна и Херцеговина

* This manuscript was submitted on November 13, 2025, and accepted by the Editorial Board for publishing on May 12, 2026.

ESSAYS AND STUDIES

UDC 355.1:351.86(497.11)"20"
DOI: 10.5937/spm97-65407
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 151-173

Dragan Stanar*

Strategic Research Institute, University of Defence, Belgrade

KEY ETHICAL CHALLENGES OF THE TOTAL DEFENCE CONCEPT IMPLEMENTATION IN THE REPUBLIC OF SERBIA**

Abstract

The author analyses the key ethical challenges of implementing the concept of total defense in the Republic of Serbia, starting from the assumption that normatively unresolved dilemmas may undermine its functional and moral sustainability. After conceptually defining total defense as a model that entails the comprehensive participation of all societal actors in the defense of the state, the author examines three central ethical issues: the ethical nature and grounding of the duty to participate in defense, the implications of fulfilling this duty during armed conflict, and the question of responsibility for failing to fulfil it. The duty of defense is interpreted as an imperative arising from the very ontology of the state and collective freedom, rather than as a matter of voluntariness. At the same time, attention is drawn to the challenges

* E-mail: dragan.stanar@va.mod.gov.rs; ORCID: 0000-0003-0759-5652

** This paper is a result of the Strategic Research Institute, University of Defence in Belgrade's research project „Претпоставке оптималне имплементације концепта тоталне одбране у Републици Србији" [Assumptions of Optimal Implementation of the Concept of Total Defence in The Republic of Serbia] (ДХ/ИСИ/1/26-28).

of its internalization within the context of a contemporary "rights-based society." Particular focus is given to the problem of crossing the threshold of "direct participation in hostilities," which may result in the loss of civilian immunity and the blurring of the distinction between legitimate and illegitimate targets, especially under the conditions of modern warfare. Finally, the author analyses the issue of legal and moral responsibility for the failure to fulfil this duty, warning of the dangers of arbitrary and ideologically motivated post-war sanctions. The conclusion is that the optimal implementation of the concept of total defense requires precise normative regulation, clearly defined limits of duty, and proportionate sanctions, in order for the concept to be not only effective, but also morally legitimate and sustainable in the long term.

Keywords: total defence concept, duty, responsibility, moral, ethics, war, collaboration, legitimacy of targets

INTRODUCTION

Strategic thinking in any context is necessarily burdened with the attributes of long-term orientation, foresight, comprehensiveness, multilayeredness, complexity, and holism. When it comes to strategic thinking in the proverbially complex and all-encompassing domain of national defense, all of these attributes further increase in scope, intensity, and impact, thereby granting strategic thinking about national defense a dimension of ultimate and unparalleled complexity. It is therefore hardly surprising that the concept of total defense, as a product of profound and responsible strategic thinking on the national defense of the Republic of Serbia, has brought with it numerous significant dilemmas, challenges, and obstacles to its optimal implementation at the national level. The conceptualization of "totality" within the vital undertaking of national defense inevitably entails a pronounced need for more precise and higher-quality definitions of economic, legal, industrial, organizational, social, cultural, educational, and virtually all other mechanisms and instruments necessary for the optimal realization of total defense. One of the particularly important spheres in which the challenges of implementing the concept of total defense in the Republic of Serbia must be carefully analysed is the ethical domain.

By identifying and analysing the key ethical challenges of implementing the concept of total defense in Serbia, a crucial contribution is made to optimizing this process in the future, given that the normatively unresolved – or even suboptimally and arbitrarily defined – status of the phenomena addressed in this study poses a significant threat not only to implementation, but also to the very utilitarian essence of the concept of total defense. The fundamental ethical perspective is reflected in questioning the sources, nature, and limits of the imperative *duty* of all citizens and institutions in the Republic of Serbia to actively participate in defense. From this duty, a number of highly theoretically intriguing and practically vital *implications of acting out of duty* are derived, primarily manifesting in the domain of the legitimacy and illegitimacy of targets during the conduct of combat operations against the Republic of Serbia. Finally, but by no means less importantly, careful and detailed ethical considerations of *responsibility for failing to fulfil this duty*, as well as the definition of its limits, complete the coherence of the approach to this issue. Scholarly reflection on these three key ethical dilemmas in the context of implementing the concept of total defense provides a strong and necessary foundation for the normative and legislative regulation of the duties and obligations of citizens of the Republic of Serbia in potential future armed conflicts in which they may be involved. Therefore, the ethical analysis of these dilemmas naturally and logically precedes their optimal legal codification, aimed at the effective implementation of the concept of total defense in the Republic of Serbia – an objective that represents a vital interest of all citizens and institutions of our country.

CONCEPT OF TOTAL DEFENSE

Despite its multi-year presence in the political and security discourse of the Republic of Serbia, the concept of total defense still appears insufficiently clarified and delineated in relation to other similar notions. Given the complexity and high degree of integrative capacity of this concept, the existence of conceptual ambiguity is expected and not at all surprising. Nevertheless, it is necessary to at least minimally define its meaning in order to build a logically grounded argument regarding the ethical dilemmas that inevitably arise from its implementation in practice. The essence of the concept of total defense stems from the

clear conviction that the defense of the Republic of Serbia, as well as of other countries that have adopted some form of total or comprehensive defense, is possible only through the engagement of the entire society and all of its segments. Specifically, in the case of the Republic of Serbia, "the commitment to the implementation of the concept of total defense derives from the international position of the Republic of Serbia, security challenges and threats relevant to defense, human and material potential, defense capabilities and capacities, historical legacy, experiences from liberation and defensive wars, and the decision on military neutrality" (Stojković and Radović 2024, 3).

The Defence Strategy of the Republic of Serbia (Ministarstvo odbrane Republike Srbije [MORS] 2020, 41) stipulates that the strategic concept of defense "is based on the model of total defense, as a comprehensive response of the defense system to challenges, risks, and threats to security relevant for the defense of the Republic of Serbia," which is planned, organized, and implemented in peacetime, states of emergency, and war, relying on its own forces and resources. According to the official Summary of the Total Defense Concept (Stojković and Radović 2024), publicly available on the website of the Ministry of Defence of the Republic of Serbia, total defense consists of two components – military and civil defense – and is based on fourteen principles: comprehensiveness, unity, prevention, timeliness, sustainability, continuity, entirety, multidimensionality, dynamism, resilience, adaptability, mass participation, cooperation, and the determination of main effort. With regard to the actors of defense, the military dimension is implemented through the engagement of the Serbian Armed Forces and other armed forces necessarily placed under its command, while the civilian dimension is carried out by other, non-military entities, i.e., civilian defense forces. In its essence, therefore, the concept of total defense is grounded in the premise of comprehensive participation of all citizens and institutions of the Republic of Serbia in the defense of the country, thereby creating a highly specific situation in which the objects of defense simultaneously become its subjects.

Although the concept of total defense, as a "system" or "model," has appeared in strategic discourse since 2009 and the first Defence Strategy of the Republic of Serbia (Milkovski i Božić 2023, 14), its underlying essence is neither new in the states where Serbs have lived, nor is it endemic to this region. On the contrary, the well-known concept of "general people's defense and social self-protection" (*ONO* and *DSZ*)

represents nothing other than the "operationalization of the idea of total defense" (Milkovski i Božić 2023, 10) in the Socialist Federal Republic of Yugoslavia in the period following the Second World War. Moreover, several authors identify the realities and experiences of the Second World War precisely as the point of departure for the conceptualization of total defense in a number of European countries – Switzerland, Finland, Sweden, Austria, Yugoslavia, etc. (Đukić i Vuletić 2023, 624; Milkovski i Božić 2023, 9; Berzina 2020, 1; Salminen 2011, 1; Bohlin 2025, 2; Ljungkvist 2024, 542). Likewise, the idea of total defense continues to be operationalized today through various conceptualizations in several European countries, such as Finland, Sweden, and Switzerland, as well as in non-European countries such as Singapore and Israel. However, taking into account the specificities of each of these countries, as well as of each historical era in which total defense is planned and implemented, this research will focus exclusively on the particular context in which this concept is being optimized in the Republic of Serbia from 2026 onward – more precisely, on the ethical challenges of its optimal implementation.

ETHICAL CHALLENGES OF IMPLEMENTATION OF THE CONCEPT OF TOTAL DEFENCE

The implementation of the described concept, which entails the mobilization of all social forces and actors for the purposes of deterrence and defense in the event of aggression, necessarily brings with it certain challenges that lie within the realm of ethical reflection. Serious consideration and thorough analysis of these challenges, as well as the formulation of precise normative-ethical conclusions derived from such analysis, are necessary for several reasons. Primarily, this is required in order to regulate the field of defense within a legal-normative framework, ensuring a clear and accurate definition of obligations, as well as equally precise and non-arbitrary sanctions for violations of norms that mandate the participation of all citizens and institutions in the defense of the country. Secondly, though no less importantly, it is necessary to anticipate and adequately assess the serious implications of universal civic participation in national defense. Finally, it is essential to draw as clearly as possible the lines of distinction between what constitutes the expected minimum level of participation in defense and what represents an unreasonable normative expectation. In order to fulfil this task, it is

necessary to briefly analyse three fundamental ethical challenges related to the implementation of the concept of total defense in the Republic of Serbia: the nature and grounding of the duty of all citizens to participate in defense; the concrete normative implications of fulfilling this duty during armed conflict; and the question of responsibility for failing to fulfil this duty.

NATURE AND FOUNDATION OF THE DUTY TO DEFEND ONE'S COUNTRY

The concept of total defense rests on the premise of the participation of all aforementioned actors in deterrence and the defense of the country. When considering this premise, the problem may be formulated in two seemingly similar, yet ethically fundamentally distinct ways: the problem of the will to participate in defense, and the problem of the duty to participate in defense. Without in any way diminishing the cardinal importance of citizens' willingness to contribute to defense, the notion of duty is nevertheless incomparably more appropriate in the context of examining the moral dimension of national defense. Put simply, the defense of the country cannot and must not be viewed through the prism of mere willingness on the part of citizens – although this dimension should certainly be systematically and thoroughly cultivated – but rather exclusively through the postulation and proper justification of their duty to defend what is theirs. What, then, is the nature of such a duty, and where is its foundation to be found?

It seems that the timeless insight of one of the greatest minds of the twentieth century, Antonio Gramsci, provides an ideal starting point for considering the duty of national defense in our own century: "one of the most widespread prejudices consists in the belief that everything that exists is 'natural' in its existence."[1] As this great Italian Marxist philosopher observed more than a century ago, the idea that everything in existence is simply a given – something "natural" – has been embedded in our civilization for generations. Unfortunately, this understanding extends as well to everything that exists owing to the freedom and

[1] This, today still highly relevant, idea appears in Gramsci "Prison Notebooks" written at the beginning of the previous century. It is cited by Diego Fusaro in his critique of one-mindedness (Fuzaro 2020, 115).

independence of a state and its people – that is, to the sustainable and acceptable peace within which everyday life unfolds. Such a perception of these conditions as merely "natural" implies that there is no duty to build, defend, maintain, or continuously sustain that peace. However, as scholars who reflect on the ontology of war and peace have thoroughly elaborated (Stanar 2021), the existence of a people's freedom, as well as the peace within which that freedom is stably and predictably articulated through the organization of collective life under its own laws, is by no means a "natural" given, nor a fact that exists independently of the active participation of certain segments of society in its continual constitution.

Everything that makes life free and dignified for a people depends on the existence of a peace within which such a life can be articulated; such peace must be continuously built and "produced" on a daily basis, relying on means of deterrence, and ultimately on war when peace is practically disrupted. From this it follows that every member of society who benefits daily from the existence of conditions that enable a "normal" life – and all the advantages that come with living in a state governed by freely adopted laws, allowing life in accordance with collective identity, collective freedom, and the ability to plan for the future grounded in such freedom, predictability, and stability – also has a duty to defend such a state of affairs. For this reason, the military, as the bearer of defense, represents "the locus in which collective freedom is concentrated, that freedom from which the state emerges as a lasting and ordered expression of collective life," and defense is essentially the concern and duty of all those who are "interested in the continuation of a life defined by valid law" (Babić 2021, 6), since such a life is not a "natural" given but a constructed (and defended) system of freedom and sovereignty in self-determination. This is, in fact, as Babić further observes, also the very foundation for the application and enforcement of law, because a state "that is not prepared to defend itself and its laws has no right to apply and enforce those laws" (Babić 2021, 7), that is, to regulate collective life in accordance with the will of those who constitute the collective. Moreover, as Spencer Terry rightly concludes, "the refusal of citizens to defend their state may potentially culminate in the disappearance of the state" (Spencer Terry 2024, 31); to this, it should be added, not only in the disappearance of the state, but also in the loss of the very right to its existence. From this, it clearly follows that the defense of collective life, which is, in essence, the defense of collective

identity,[2] is not and must not be a matter of will or voluntariness, but exclusively a matter of general duty, a notion that is strongly reflected in the very essence of the concept of total defense.

Nevertheless, it should be noted that it would be naïve to ignore the context of the contemporary postmodern moment of our civilization, which renders the understanding and internalization of this, as well as all other duties, highly challenging and complex within the general population. The spirit of the mature postmodern age, in which our generation resides, is burdened with those inherent characteristics of this articulation of social reality that complicate and directly hinder a proper understanding of duty. It is entirely expected that any form of individual duty toward the state, the nation, a group, or any collective entity that transcends the quasi-divinized status of the individual in postmodernity will be called into question in an era where the values of individualism, hedonism, egoism, epistemological pluralism, axiological relativism, and the unrestrained denial of even the possibility that anything could be more important than the individual – or more enduring than the span of one's life – constitute the dominant social values shaping individual consciousness. As Starčević and Stanar explain in their work on the challenges faced by the military in the era of "rights-claimers," the very understanding of duty has undergone a radical transformation (Starčević i Stanar 2022). The formation of civil society and the departure from the legacies of feudalism were, to a certain extent, grounded in a reconceptualization of the relationship between the individual and society, structured in civil societies through a balance of duties and rights. This represented "a kind of political transformation, a transition from subjecthood to a new, active concept of political consciousness and social action" (Starčević i Stanar 2022, 156), in which citizens fulfill their duties while the state guarantees their rights. The Italian sociologist

[2] The general function of collective defense, in its essence, is as a rule always the defense of collective identity rather than territory or even "bare" life itself. Drawing on Agamben's idea of the categorical differentiation of the meaning of life as *bios* and as *zoē* (Agamben 2018), Stanar identifies the superiority of "participation in the life of the identity-based collective," through which what is understood as a "good life and a life worth living" is realized – and which constitutes the *differentia specifica* that distinguishes humans from animals – over mere biological functioning, that is, "bare" life (Stanar 2023, 131–133). It is therefore not surprising that the duty to defend collective identity emerges as a duty that entails the necessity of defense even at the cost of risking "bare" life.

Giovanni Sartori identifies this rights–duties formula – namely, the logic whereby rights inherently entail obligations – as the logical foundation of the relationship between citizens and the state, that is, between the individual and society (Sartori 2001, 311–312). Over time, this logic evolved into a balance between rights and duties, only to be ultimately dismantled in the postmodern era through the transformation of society into a profoundly unbalanced and unsustainable "rights-claiming society," in which every duty and obligation is neglected, while all rights are vigorously asserted as an a priori given (Sartori 2001, 311–312).

The unsustainability and imbalance of this model of neglecting duty are "most evident when it comes to the defense of freedom," since a "rights-claiming society undermines the capacity for defense" (Starčević i Stanar 2022, 160). For this reason, the question of the duty to defend the country, within the context of the concept of total defense, must be viewed through the prism of the current postmodern social moment of our civilization. Accordingly, it is necessary to reflect on potential measures and approaches for overcoming the problem of achieving an optimal understanding and internalization of the nature and grounding of this *duty* within the broader population. If one seeks to remain in touch with reality, it must not be overlooked that the element of the duty of defense stands in "stark contrast to the inherent voluntariness commonly associated with the logic of responsibility in neoliberal governance" (Spencer Terry 2024, 32). For the purpose of optimal implementation of this concept, it appears inevitable to think and act toward strengthening awareness of this duty and fostering its internalization, which would lead to a form of internal discipline and a certain degree of voluntariness in fulfilling it, through channels such as mass communication, education, and similar means.

IMPLICATION OF DUTY TO DEFEND ONE'S COUNTRY IN ARMED CONFLICT

The fact that the duty to participate in the defense of the country is grounded in the very nature of the state as an articulation of collective life does not, unfortunately, mean that fulfilling this duty within the framework of the concept of total defense does not entail certain problematic and highly challenging implications, particularly in the context of the conduct of armed operations. From a specific ethical perspective, more precisely, from the perspective of the ethics of war

as a field of applied ethics and a central component of military ethics – the key implication that must be thoroughly examined and practically addressed is the one that allows for the possibility that civilian participation in national defense during armed conflict may cross the threshold known in the ethics of war and international humanitarian law as "direct participation in hostilities." This threshold represents the line of demarcation between legitimate and illegitimate targets in war.

Despite the frequent – and often cynically insidious – invocation of the maxim *inter arma silent leges* in attempts to justify crimes in war, scholars who have devoted their lives to studying this destructive phenomenon largely agree that "normative views about what is permissible in war appear in almost every culture and in every era" (Rengger 2008, 33). The ethics of war and international law, as well as the religious norms of all major religions, draw a relatively precise line between what is permissible and what is absolutely prohibited in war, delineating a boundary that must not be crossed even in the context of mass violence.[3] The key and most significant principle by which this boundary is drawn is the principle of discrimination or distinction,[4] which differentiates between legitimate and illegitimate targets in war.[5] From a highly simplified, *prima facie* perspective, these categories tend to align with the dichotomies soldier/civilian or combatant/non-combatant. However, such a view is not entirely accurate, as legitimate targets are in fact all those "involved in the chain of mediation of perceived aggression… which does not necessarily require the wearing of a uniform or bearing arms" (Coady 2008, 156), but rather the crossing of the threshold of direct participation in hostilities, something "supported by the very laws of war" (Steinhoff 2007, 43). In order to avoid overly broad and arbitrary interpretations, direct participation in hostilities is understood in a narrow sense, namely as contributing to the activity of

[3] More on limitations set by International Humanitarian Law and *Jus in Bello* in Stanar 2019, 63–75.

[4] Principles of proportionality, military necessity and supreme emergency are also present, alongside the principle of discrimination (Patterson 2023, 106–125).

[5] The ethics of war, as well as international humanitarian law, do not explicitly prohibit civilian participation in war, nor do they explicitly define a right to such participation; however, they do relatively clearly define the "consequences arising from such participation," most notably through the loss of the status of "innocence" in war – that is, the loss of protection from being considered a legitimate target (Radončić and Stanley-Ryan 2024, 904).

warfare itself, rather than to the general functioning of society during wartime. Authors such as Michael Walzer further refine this distinction by differentiating between civilians who produce what soldiers need to fight and those who produce what they need to live (Volzer 2010, 191). Accordingly, civilians engaged in the production of weapons and ammunition may be considered legitimate targets, whereas those producing uniforms or food are not. As Thomas Nagel similarly argues, those who "contribute to weapons and logistics contribute to the threat itself and are thus legitimate targets; those who contribute merely to the existence of soldiers as human beings are not" (Nagel 1979, 71). Viewed from the standpoint of the duty to participate in national defense – upon which the concept of total defense relies – this framework reveals a certain theoretical tension with regard to the notion of direct participation in hostilities during armed conflict.

The concept of total defense does not represent a paradigmatic shift in terms of the civilianization of war – that is, the inclusion of civilians in the war effort – since this has been a growing trend for more than a century (Barros and Thomas 2018; Crawford 2015). According to available research, civilians accounted for only 5% of total casualties in the First World War, while in the Second World War, that figure rose to over 66%, and today it is estimated that civilian casualties may reach as high as 90% in contemporary armed conflicts (Hobzbaum 2010, 97). In this light, the increasingly ominous view of certain authors – that civilian immunity in modern warfare has become nothing more than an outdated "medieval paradigm" – appears ever more accurate (Steinhoff 2007, 47). Although the concept of total defense is not unprecedented in this respect, it clearly contributes to an even deeper and more comprehensive involvement of citizens in the war effort, which is a striking feature of contemporary armed conflicts (Radončić and Stanley-Ryan 2024, 898). This is particularly evident in light of the new dimensions of contribution to the war effort – and the further civilianization of war – enabled by emerging technologies and artificial intelligence.

Despite the fact that the concept of total defense presupposes unarmed participation of citizens in the "defense of the Republic of Serbia by non-military means," through the sphere defined as "civil defense," this sphere – also operative in wartime – ultimately aims, *inter alia*, at the "fulfillment of the needs of the defense forces," the "execution of military, labor, and material obligations, as well as mobilization and the conduct of unarmed struggle and resistance" (Stojković i Radović

2024, 7). In certain situations, this may give rise to the perception that the problematic threshold has been crossed. It may reasonably be assumed that the perception of direct participation in hostilities – which, in turn, legitimizes the use of force – could be grounded in various forms of civilian involvement, such as participation in supply chains for weapons and equipment, the provision of logistical services, IT support to the military in cyber operations and warfare, involvement in identifying enemy positions, directing fire against the enemy, and a wide range of other activities that could be operationalized within the implementation of the concept of total defense.

A valuable practical insight into this issue is provided by recent experiences from the Ukrainian battlefield, which have demonstrated the depth of the ethical challenges arising from the participation of the entire society in resistance. Although Ukraine has not formally adopted an explicit concept of total defense[6] – unlike the closely related Baltic former Soviet republics and Nordic countries – comprehensive societal participation in resistance has been operationalized through the concept of "national resistance," which forms part of the "Ukrainian comprehensive defense system" (Ministry of Defence of Ukraine 2025). This concept aims to "consolidate the efforts of the military, civilian authorities, and citizens in the struggle for Ukrainian independence," during which "all citizens of Ukraine have a duty to contribute to the defense forces," including the obligation – within resistance movements in areas where Ukrainian sovereignty is suspended – to participate in "information operations as well as in providing direct physical resistance to the occupier" (Ministry of Defence of Ukraine 2025). Since the entry into force of the *Law of Ukraine "On the Fundamentals of National Resistance"* on January 1, 2022, Ukraine has undertaken a series of measures enabling the involvement of citizens in resistance and defense (Jones and Love 2022; Melnyk and Grygorenko 2022; Cherleniak and Tokar 2024; Khoma *et al*. 2025).

The Dutch author Peperkamp identifies several highly significant instruments for involving citizens in defense, which, according to

[6] It is noteworthy that Ukrainian authors take the position that the absence of a concept of total defense – and thus the lack of its optimal implementation – directly contributed to losses in both manpower and territory. In their view, the defense of the country would have been significantly more effective had "the doctrine of total defense been implemented in 2020" (Cherleniak and Tokar 2024, 8).

her, may "qualify their actions as direct participation of civilians in hostilities," thereby potentially rendering "the direct targeting of Ukrainian civilians participating in defense in this manner legally permissible" (Peperkamp 2024, 67). Specifically, she highlights the development and deployment of the *E-Enemy* application within the official Ukrainian government portal, which is otherwise used for e-governance,[7] through which citizens can upload photographs of enemy forces with geolocation data, report their positions and movements, and even flag "suspicious persons." She also refers to the *ePPO* application, which utilizes GPS and compass functions on citizens' smartphones to assist in intercepting Russian drones and missiles, as well as a series of chatbots launched by Ukrainian authorities through which citizens report the positions and movements of Russian troops (Peperkamp 2024, 65–66). As an illustration of the effectiveness of these tools, Peperkamp cites the case of a Ukrainian civilian who used a *Telegram* chatbot service and Google Maps to upload images and data on the movement of a Russian convoy, which was subsequently targeted and destroyed by the Ukrainian military within half an hour on the basis of that information (Peperkamp 2024, 65–66).

The outcome of the aforementioned example clearly indicates that technology further deepens the civilianization of war, while also suggesting that such activities may directly transform participating citizens into legitimate targets, thereby blurring the line of distinction between combatants and non-combatants. This is particularly the case insofar as at least some of these activities cross the threshold of direct participation in hostilities, thereby endangering the lives of enemy combatants. Moreover, empirical evidence points to a discernible trend of deliberate targeting of civilians in war precisely on the basis of suspicion that they have crossed this threshold through their own actions – even in situations where, upon reasonable assessment, that threshold has not in fact been reached (Mačak 2023). The optimal implementation of the concept of total defense, therefore, requires careful consideration of this implication, as well as a cautious and responsible weighing of the potential costs of involving civilians in activities that could be perceived as crossing this threshold – beyond which the duty to participate in defense becomes a basis for the attribution of legitimacy in war.

[7] Requests for issuing ID cards and passports, scheduling appointments in various government institutions, etc.

Additionally, an important dimension of this issue lies in the existence of a "duty to inform citizens about the implications of their participation in conflict" (Radončić and Stanley-Ryan 2024, 908). In this regard, it is also necessary to consider the potential normative regulation of refusal to fulfil this duty on such grounds, or others, which brings us to the third ethical challenge: the responsibility of citizens for failing to fulfil their duty within the framework of the concept of total defense.

RESPONSIBILITY AND SANCTIONS FOR FAILING TO FULLFIL ONE'S DUTY

Since the moral duty of all citizens to defend their country possesses normative force – as elaborated in the first part of the analysis of the ethical challenges of implementing the concept of total defense – it necessarily implies the existence of a certain form of responsibility and sanction for non-compliance, that is, for the violation of a moral norm. After all, this is, by definition, the very essence of all norms: the disposition that prescribes behavior and the sanction that punishes its violation together constitute the core of every norm and every duty (Lukić 1976, 12). In the context of considering responsibility for failing to fulfill the duty envisaged by the concept of total defense, it is equally important to provide a clear and precise answer to the question of how this duty should be codified prior to armed conflict so that it remains within the bounds of reason, as well as how citizens should be "judged" and sanctioned for potential non-compliance once the war has ended. Historical experience and lessons from active war zones underscore the imperative importance of resolving this ethical and legal[8] challenge in a proper and well-founded manner.

In order for the duty of all citizens to participate in the defense of the country to possess normative meaning and practical value, it is necessary to formulate and codify through legislation sanctions for non-compliance. This aspect appears somewhat less problematic and challenging in the period of preparation for war, that is, during the phase of deterrence, when in peacetime it is relatively feasible, without strong

[8] Experiences from Ukraine demonstrate the danger of the existence of "a legal formulation [of the duty, D.S.] that is overly broad, as citizens do not have a clear understanding of where the boundary lies between permissible behavior that is tolerated and criminal conduct [treason, D.S.]" (Pysmenskyy and Hola 2026, 93).

emotional bias, to sanction a certain number of citizens and institutions that fail to fulfil their duties in this process – such as those who do not respond to training exercises or who fail to participate in mandatory activities envisaged by an implementation plan. However, the question of assessing the reasonable degree of fulfilment or non-fulfilment of this duty during wartime, and subsequently imposing appropriate and proportionate sanctions, typically presents significant challenges and requires the utmost caution. If one were to approach this issue in a manner characteristic of wartime reasoning – namely, through a Manichaean lens – one would be confronted with a stark dichotomy in which the concept of resistance stands on one side and that of collaboration on the other. Consequently, any assessment that determines an insufficient level of resistance on the part of citizens – that is, a failure to fulfil the duty upon which the concept of total defense is grounded – could, unfortunately, lead to the highly sensitive and potentially catastrophic conclusion of collaboration with the enemy during wartime.

This logic has, unfortunately, always been present in judgments about citizens' conduct in war, regardless of whether or not a concept grounded in the duty of resistance exists. Painful historical lessons from the aftermath of the Second World War – including those from the Yugoslav context – confirm this tragic *post-bellum* dimension of "settling accounts" through lustrations/purges, (special) criminal prosecutions, and at times even extrajudicial measures, which not infrequently involved profoundly uncivilized practices (Pysmenskyy and Hola 2026, 86). At the same time, we are now witnessing in real time a nearly identical process of "settling the accounts" or "reckoning"[9] with citizens deemed to have failed to fulfil their duty of resistance (or to have done so insufficiently) in Ukraine. There, the prosecution of individuals suspected of collaboration is reportedly carried out with "violations of fundamental principles of criminal law, such as legal certainty, proportionality, and equality," (Pysmenskyy and Hola 2026, 101) as not only those who actively assisted the enemy's war effort are condemned as "traitors," but also "teachers, doctors, local government officials, or even garbage collectors who continued to perform their

[9] Even the terms "settling accounts" and "reckoning" are, in fact, highly euphemistic, given the "brutal implications of viewing an individual as a collaborator with the enemy, which have been well documented by experts in international law" (Radončić and Stanley-Ryan 2024, 903).

duties under occupation" (Pysmenskyy and Hola 2026, 85). Despite the passage of half a century, such claims strongly evoke the memory of the Yugoslav post-war experience in the first years following liberation.

The existence of the concept of total defense further underscores the importance of precisely resolving this ethical challenge, given that the codification of duty would also entail a legal basis for post-war sanctioning.[10] The concept of total defense itself presupposes "that society as a whole will necessarily resist the aggressor" (Spencer Terry 2024, 29) until victory, and accordingly that any "refusal of a subject to act in accordance with this duty may potentially result in being labeled a traitor, carrying legal consequences and imprisonment" (Spencer Terry 2024, 31). The Constitution of Finland, specifically Article 127, provides that "every Finnish citizen is obligated to participate in or assist in national defense," and that "refusal to contribute in any form is not permitted" (Spencer Terry 2024, 37). A similar logic is present in the Swedish concept of total defense,[11] where "refusal to fulfil defense obligations may result in penalties of up to four years of imprisonment" (Spencer Terry 2024, 39). Precision in the legal regulation of the duty to participate in national defense, as well as in the sanctioning of non-compliance, must therefore be an imperative of future normative efforts in the Republic of Serbia aimed at enabling the optimal implementation of the concept of total defense. The cost of arbitrary judgments regarding "collaboration" and the failure to fulfil the duty of defense during armed conflict and occupation has already once been paid in blood by the Serbian people.

CONCLUSION

The concept of total defense in the Republic of Serbia represents a responsible and prudent strategic choice, grounded in the strategic culture

[10] We must never allow ourselves to forget the tragic practical consequences that arose from the formulation of the 1974 Constitution of the SFRY, which "prohibited the capitulation of Yugoslavia under the threat of the death penalty," as this provision effectively "destroyed the command capacity of the Yugoslav People's Army" (Babić 2021, 6).

[11] It is noteworthy that in Sweden the obligation of defense extends to all those who live in the country and enjoy its benefits – not only to those who hold Swedish citizenship, but also to migrants, visitors, asylum seekers, and others (Spencer Terry 2024, 41).

of the Serbian people (Vračar i Stanojević 2019), the specific relationship between the military and society (Stanar i Starčević 2024), and the current security and political situation in Serbia's strategic environment (Živanović i Radojević 2024). However, it should not be overlooked that this concept constitutes a highly ambitious and normatively demanding undertaking, one that raises numerous questions and entails a wide range of challenges in order to ensure its optimal implementation. The ethical challenges associated with implementing the concept of total defense are among the most significant, and therefore necessarily require thorough and serious consideration of the nature, limits, and implications of the duty of all citizens to participate in the defense of the country.

The nature of the duty to participate in the defense of the country is such that it does not regard defense as a matter of mere will or voluntariness, but rather as an imperative obligation derived from the very ontology of the state as an articulation of collective freedom – freedom to live in accordance with shared identity-based premises. Freedom, accepted laws, and stable peace are not "natural givens," but the result of historically constructed and continuously defended state institutions. Therefore, all citizens who enjoy the benefits of collective freedom also bear a moral obligation to contribute to its protection. However, within the context of the postmodern "rights-claiming society," in which duties are often marginalized in favor of individual entitlements, the internalization of this duty represents a serious challenge. For this reason, the optimal implementation of the concept of total defense presupposes systematic efforts in education, communication, and the strengthening of awareness regarding the balance between rights and obligations.

The primary ethically challenging implication of fulfilling the duty of citizens to participate in defense during armed conflict is that it raises the question of the threshold of "direct participation in hostilities," the crossing of which, in the ethics of war and international humanitarian law, marks the boundary between legitimate and illegitimate targets. Contemporary technologies and new forms of supporting military efforts – as clearly demonstrated in the case of the war in Ukraine – further blur an already sufficiently ambiguous line. The issue of adequately informing citizens about this implication, which directly affects their status in wartime, represents a significant challenge for the future implementation of the concept of total defense.

Finally, the existence of any duty logically entails the existence of responsibility and sanctions for its non-fulfilment. When it comes

to responsibility for failing to fulfil the duty to participate in national defense, tragic historical experiences, as well as lessons from the ongoing war between Russia and Ukraine, call for the utmost caution due to the risk of arbitrary and ideologically motivated judgments against those deemed to have "insufficiently resisted the enemy," and thus to be responsible for collaboration. If the obligation of total resistance – implying the necessary participation of every citizen – is to be normatively established, it is essential to simultaneously ensure legal certainty, precision, and proportionality of sanctions, in order to prevent post-war abuses, collective stigmatization, and violations of fundamental principles of criminal law. The concept of total defense must not become a basis for a Manichaean polarization of society into orthodox patriots and "traitors" after the war, but must instead rest on clear, previously defined, and legally sustainable criteria.

If we seek to ground the implementation of the concept of total defense on sound moral foundations, it is necessary to devote significant effort to clarifying the aforementioned ethical dilemmas and subsequently to precisely defining, in normative terms, the duty itself, the implications of acting in accordance with that duty, and the responsibility for failing to do so. In this way, the concept of total defense will not only be optimally implemented, but also morally legitimate, and therefore ethically sustainable over the long-term strategic horizon.

REFERENCES

Agamben, Đorđo. 2018. *Homo Sacer – Suverena moć i goli život.* Beograd: Karpos.

Babić, Jovan. 2021. „Vojska, zakon i suverenitet." *Vojno delo* 73 (3): 2–8. DOI: 10.5937/vojdelo2103002B

Barros, Andrew, and Martin Thomas. 2018. *The Civilization of War: The Changing Civil-Military Divide, 1914–2014.* Cambridge: Cambridge University Press.

Berzina, Ieva. 2020. "From 'total' defence to 'comprehensive' national defence: the development of the concept in Europe." *Journal of Baltic Security* 6 (2): 7–15. DOI: 10.2478/jobs-2020-0006

Bohlin, Jasper. 2025. *The Swedish Total Defence Concept – A Whole of Society Approach to Resilience.* Hamburg: German Institute for Defence and Strategic Studies.

Cherleniak, Ivan, and Marian Tokar. 2024. "Effective governance and the doctrine of 'total defence' as factors of state stability in wartime." *Democratic Governance* 17 (1): 5–17. DOI: 10.23939/dg2024.05

Coady, C.A.J. 2008. "The Status of Combatants." In *Just and Unjust Warriors: The Moral and Legal Status of Soldiers,* eds. David Rodin and Henry Shue, 153–175. Oxford: Oxford University Press.

Crawford, Emily. 2015. *Identifying the Enemy: Civilian Participation in Armed Conflict.* Oxford: Oxford University Press.

Đukić, Anđelija, i Dejan Vuletić. 2023. „Organizacija sistema odbrane prema konceptu totalne odbrane na primeru Švajcarske, Švedske i Srbije." *Međunarodni problemi* 75 (4): 621–647. DOI: 10.2298/MEDJP2304621D

Fuzaro, Diego. 2020. *Misliti drugačije.* Beograd: Clio.

Hobzbaum, Erik. 2010. „Budućnost rata i mira." U *Etika rata - hrestomatija,* ur. Dragana Dulić i Branko Romčević, 95–105. Beograd: Fakultet bezbednosti.

Jones, Derek, and J. Bryant Love. 2022. "Resilience and Resistance 2.0: initial lessons of Ukraine and the implications of resilience and resistance efforts to deter and respond to invasion and occupation by revisionist powers." *Security Theory and Practice* 48 (3): 21–40. DOI: 10.48269/2451-0718-btip-2022-3-001

Khoma, Natalia, Iryna Kresina, Oleksandr Nikolaiev, and Valerii Patalakha [Khoma *et al*.]. 2025. "National Resilience of Ukraine: Content and Security Strategy in the Context of a War and Post-War Recovery." *European Journal of Law Discourse* 12 (3): 41–52. DOI: 10.46340/eppd.2025.12.3.4

Lukić, Radomir. 1976. *Sociologija morala.* Beograd: Naučna knjiga.

Ljungkvist, Kristin. 2024. "The military-strategic rationality of hybrid warfare: Everyday total defence under strategic non-peace in the case of Sweden." *European Journal of International Studies* 9 (4): 533–552. DOI: 10.1017/eis.2024.18

Mačak, Kubo. 2023. "Will the centre hold? Countering the erosion of the principle of distinction on the digital battlefield." *International Review of the Red Cross* 105 (923): 965–991. DOI: 10.1017/S1816383123000152

Melnyk, Serhii, and Yevhen Grygorenko. 2022. "The Law of Ukraine 'on the Fundamentals of National Resistance' in the system of defence legislation of Ukraine." *The Journal of*

V.N. Karazin Kharkiv National University 34: 153–160. DOI: 10.26565/2075-1834-2022-34-19

Milkovski, Vangel, i Sandra Božić. 2023. „Koncept totalne odbrane u strategiji odvraćanja Republike Srbije." *Srpska politička misao* 80 (2): 7–32. DOI: 10.5937/spm80–44249

Ministarstvo odbrane Republike Srbije [MORS]. 2020. *Strategija odbrane Republike Srbije*. Beograd: Ministarstvo odbrane Republike Srbije.

Ministry of Defence of Ukraine. 2025. "National Resistance: An Overview of the Ukrainian Comprehensive Defence System." February 4, 2025. https://mod.gov.ua/en/news/national-resistance-an-overview-of-the-ukrainian-comprehensive-defense-system

Nagel, Thomas. 1979. *Mortal Questions.* Cambridge: Cambridge University Press.

Patterson, Eric. 2023. "Military Necessity, Proportionality and Discrimination – the case of Veracruz." In *The Ethics of Urban Warfare,* eds. Dragan Stanar and Kristina Tonn, 106–125. DOI: 10.1163/9789004522404_008

Peperkamp, Lonneke. 2024. "Technology and Civilianization of Warfare." *Ethics & International Affairs* 38 (1): 64–74. DOI: 10.1017/S0892679424000121

Pysmenskyy, Yevhen, and Barbora Hola. 2026. "Exploring criminalization and prosecution of wartime collaboration – The case of Ukraine." *European Journal of Criminology* 23 (1): 84–109. DOI: 10.1177/14773708251388357

Radončić, Mina, and Ashley Stanley-Ryan. 2024. "*Pro Patria mori:* When States encourage civilian involvement in armed conflict." *International Review of the Red Cross* 106 (926): 897–930. DOI: 10.1017/S1816383124000468

Rengger, Nicholas. 2008. "The *Jus in Bello* in Historical and Philosophical Perspective." In *War: Essays in Political Philosophy,* ed. Larry May, 30–46. Cambridge: Cambridge University Press.

Salminen, Pertti. 2011. "Finland's Comprehensive and Military Defence doctrines responding to Emerging threats and new technologies." *OSCE*. May 25, 2011. https://cdn.osce.org/sites/default/files/f/documents/0/3/78104.pdf

Sartori, Đovani. 2001. *Demokratija, šta je to?* Podgorica: CID.

Spencer Terry, George. 2024. "Responsibilising Total Defence: Interrogating Resistance, Resilience, and Agency in Finland,

Sweden, and Lithuania." *Journal of Baltic Security* 10 (2): 26–51. DOI: 10.57767/jobs_2024_012

Stanar, Dragan. 2019. *Pravedan rat – između apologije i obuzdavanja rata.* Beograd: Dobrotoljublje.

Stanar, Dragan. 2021. „Mir kao svrha vojske." *Vojno delo* 73 (3): 36–47. DOI: 10.5937/vojdelo2103036S

Stanar, Dragan. 2023. „Kosovski zavet – odbrana identiteta kao funkcija vojske." U *Kosovo i Metohija kroz činjenice, tumačenja i simbole – knjiga 3,* ur. Dragan Tančić, Milena Vidosavljević i Marina Mijatović, 125–139. Leposavić: Institut za srpsku kulturu Priština.

Stanar, Dragan, i Srđan Starčević. 2024. „Vojna obaveza kao deo srpskog etosa." *Sociološki pregled* 58 (2): 505–525. DOI: 10.5937/socpreg58-49221

Starčević, Srđan, i Dragan Stanar. 2022. "Society of Right-Claiming and Transformation of War and Military at the end of the 20th and beginning of the 21st Century." *Human Rights Protection Yearbook,* ed. Zoran Pavlović, 153–167. Novi Sad: Pokrajinski ombudsman.

Steinhoff, Uwe. 2007. "Civilians and Soldiers." In *Civilian Immunity in War*, ed. Igor Primoratz, 42–61. Oxford: Oxford University Press.

Stojković, Dejan, i Blažo Radović. 2024. *Koncept totalne odbrane – sažetak.* Beograd: MC Odbrana.

Volzer, Majkl. 2010. *Pravedni i nepravedni ratovi.* Beograd: Službeni glasnik.

Vračar, Milinko, i Goran Stanojević. 2019. „Strateška kultura i koncept totalne odbrane." *Vojno delo* 71 (8): 294–315. DOI: 10.5937/vojdelo1908294V

Živanović, Vukojica, i Slobodan Radojević. 2024. „Politika odbrane zasnovana na konceptu totalne odbrane." *Politika nacionalne bezbednosti* 26 (1): 165–188. DOI: 10.5937/pnb26-50355

Драган Станар[*]
Институт за стратегијска истраживања,
Универзитет одбране, Београд

КЉУЧНИ ЕТИЧКИ ИЗАЗОВИ ИМПЛЕМЕНТАЦИЈЕ КОНЦЕПТА ТОТАЛНЕ ОДБРАНЕ У РЕПУБЛИЦИ СРБИЈИ[**]

Резиме

Аутор у раду анализира кључне етичке изазове имплементације концепта тоталне одбране у Републици Србији, полазећи од претпоставке да нормативно неразјашњене дилеме могу угрозити његову функционалну и моралну одрживост. Након појмовног одређења концепта тоталне одбране као модела који подразумева свеобухватно учешће свих друштвених актера у одбрани државе, аутор разматра три централна етичка проблема – етичку природу и утемељење дужности учешћа у одбрани, импликације испуњавања те дужности током оружаних дејстава и питање одговорности за њено неиспуњавање. Дужност одбране тумачи се као императив који произлази из саме онтологије државе и колективне слободе, а не као ствар добровољности. Истовремено, указује се на изазове њене интернализације у контексту савременог „друштва полагања права". Посебна пажња посвећена је проблему преласка прага „директног учешћа у непријатељствима", што може довести до губитка цивилног имунитета и замагљивања границе између легитимних и нелегитимних мета, нарочито у условима савременог ратовања. Коначно, аутор анализира и питање правне и моралне одговорности за неиспуњавање дужности, уз упозорење на опасност од арбитрарног и идеолошки мотивисаног пост-ратног санкционисања. Закључује се да оптимална имплементација концепта тоталне одбране захтева прецизно нормативно уређење,

[*] Имејл: dragan.stanar@va.mod.gov.rs; ORCID: 0000-0003-0759-5652

[**] Овај рад је резултат рада на пројекту Војне академије Универзитета одбране у Београду „Претпоставке оптималне имплементације концепта тоталне одбране у Републици Србији" (ДХ/ИСИ/1/26-28).

јасно дефинисане границе дужности и пропорционалне санкције, како би концепт био не само ефикасан, већ и морално легитиман и дугорочно одржив.

Кључне речи: концепт тоталне одбране, дужност, одговорност, морал, етика, рат, колаборација, легитимност мета

* This manuscript was submitted on March 4, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

UDC 327:316.42
DOI: 10.5937/spm97-66964
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 175-195

Dragan Simeunović*
Faculty of Political Sciences, University of Belgrade

GLOBALIZATION AND INTERNATIONAL RELATIONS**

Abstract

To understand the relation between globalization and international relations, it is necessary to propaedeutically differentiate notions of new world order, globalism, and globalization that are often used without much theoretical understanding, sometimes even as synonyms, which creates terminological confusion. These are three different terms that are related because they refer to intertwined phenomena. Globalism is an ideology, globalization is a process of implementing the ideological premises of globalism, and the new world order is a political- legal system of an emerging world. Concept and practice of globalization include radical change in the modern world in favour of one centre of power and thus imply drastic change in international relations. Globalization implies that contemporary international relations should be characterized by: informal government of the world from one centre of power by controlling and guiding global political, economic, and financial flows; democratization of all world countries by introducing Euro-Atlantic model of democracy as the only valid one; negation of national sovereignty and overcoming national identity; diminished role of the UN and of all international organizations and institutions where proponents of globalizations are not decision makers; 'managerial'

* E-mail: dragan.simeun@gmail.com; ORCID: 0009-0003-6455-5769

** The paper was previously presented under the same title as an introductory lecture at the scientific conference Serbian Philosophical Symposium Sophos in Trebinje, which was held on 29.06–02.07.2023.

instead of mediating diplomacy; exclusivity of the right of globalists to use force in international relations; favoring humanitarian interventions as a type of armed conflicts; attempt to direct migrant flows and their intensity; deprivation of rights to progress to all non-globalized countries, even more stronger ones such as Russia and China; putting international relations directly into service of satisfying interests of multinational companies. The proponents of globalization have had only limited success in these efforts due to various types of resistance. Globalization has been mostly achieved at the international economic level, and much less at the international political and international security levels. Although the beginning of globalization announced a fast end to the national state, its sovereignty, and consequently a nation as its basis, this has not happened. Almost everything that has had a national prefix resisted globalization to a greater or lesser extent in the name of the right of the individual to exist as much as the general, and this is the main reason why globalists see the national as the greatest threat. The time of great migrations, as well as the war between Russia and Ukraine, fueled by arms, funds, and logistics of the Western forces, brought new, great, and consequently still unfathomable challenges not only to globalization as a process, but to globalism as an ideology and new world order as a projected political-legal construction of a global system. Russia has announced the new concept of a new world order, and many countries, some of which are EU members, have stood up against global models, thus pivoting strongly towards their national interests, restoration of their national sovereignty, and strengthening of their national values, although it seemed up until recently that these countries had completely merged into supranational unity. It is becoming more obvious that the war and migrations were just a reason for a reiterative renewal of the concept of a national state as an important heritage and its greater independence, and not only on the territory of Europe, indicating a process of re-sovereignisation in globalized areas as a more widespread phenomenon. This, as well as other current processes of using and distributing power among states at a global level, will undoubtedly strongly affect the profiling of international relations in the near future.

Keywords: globalization, international relations, sovereignty, national state, migrations, armed conflicts, re-sovereignisation

We wanted capitalism, so let's endure the victory!
Momo Kapor

In the pursuit of harmony that includes his own good, man has always strived to arrange the world around him in the way he thinks is best for him. The problem is that we do not all have the same vision of harmony, and that what is best for one person, often is not best for another. This human aspiration, and at the same time the problem related to it, is also evident in the institutional efforts of powerful states to organize the world according to their own model and will, which always means, according to their own interests and with the greatest possible benefits for themselves.

Until the present moment in the recorded history of civilization, no endeavor has been made to establish a comprehensive political framework that would be, if not more favorable to others than for its founders, then at least a framework of fairness regarding the aspirations of all, and in terms of advantages for all whom it embraces (Simeunović 2014). "This was the main problems of all previous concepts of the new world orders in history," and it was also the main reason for their incompleteness and collapses (Simeunović 2014, 108). "Even the so-called communist political order, which advertised itself as an order of absolute equality, was nothing more than a specific attempt to establish a new world, a 'red' order, and did not at all meet these conditions" (Simeunović 2014, 108). Not solely did it, in both theoretical and ideological terms, privilege a single social stratum – namely the proletariat – by granting it an unfounded entitlement to govern all other classes, but in practical implementation, it was a different stratum, the political bureaucracy, that emerged as the primary beneficiary. Within that political framework, this bureaucracy was the sole group that succeeded in realizing nearly all of its own interests, including the exercise of governance in the name of the working class (Simeunović 2014). "Obviously, communist and all the other political orders in the world were based on the principle of *vis dominandi*. Precisely for this reason, this trap set for others, which was, in fact, the cause of the downfall of globally imagined orders, could not avoid even communism, that was nothing more than the concept and practice of attempting to achieve such a world order in which the working class, or more precisely its political representatives, would have a dominant position, and in which their interests and benefits would be the most important" (Simeunović 2014, 108).

Furthermore, a profound flaw inherent in incomplete global political systems resides in their endeavor to transpose the centralized power model of their own nation-state onto a framework for governing the entire world. This conceptual oversight arose from the circumstance that nation-states entail a particular form of consensus, as well as a specific entitlement – and indeed an obligation – to organize the life of their own collective entity, including the family, from the apex of authority, in an optimal manner, even employing a measure of compulsion. Nevertheless, identity-based collectives – ranging from the family unit to the nation – generally comprehend and acquiesce to this dynamic that it is not about "making people happy by force."[1] Given these circumstances, "in this increased benefit from an ordered, Ours, lies the meaning of social unity and voluntary involvement in every collective, especially the one that has the most potential to accomplish our good due to its possession of political as the greatest of powers" (Simeunović 2014, 108–109).

In all remaining instances where a collective identity is absent, the inherent seed of alterity and opposition to the outsider yields "bear far greater fruit" (Simeunović 2014, 109). This engenders a rise in diversity, which carries with it an elevated potential for fragmentation. Every empire in history has been multiethnic, multicultural, and often multi-religious. The attempt to avoid the danger of disintegration by equating the national and religious has produced variable and rarely lasting results. The enforcement of a particular kind of order as a universal paradigm of governance was better accepted when that order proved effective within the sphere of its utility for everyone, and consequently was more broadly tolerable, or at a minimum, did not provoke widespread uprisings (Simeunović 2014).

"As a dominant contemporary political, economic, and military phenomenon, globalism is inexorably based on related historical experiences of humankind. In terms of ideological basis, it serves as an illustration of how a specific ideology emerges from the general ideology" (Simeunović 2009, 138). It is merely a branch of liberalism, specifically the variant commonly described as the economic dimension of neoliberalism, and which, since the seventh decade of the 20th century, has been heavily oriented toward utilizing political principles

[1] According to Immanuel Kant, making people happy by force is the greatest possible form of despotism.

that secure economic benefits, or more specifically, profit (Simeunović 2009). "Globalism is actually neoliberalism on a mission" (Simeunović 2009, 138).

Although each ideology seeks to realize its own principles in actuality, globalism distinguishes itself from the rest in its pronounced focus on utility and pragmatism in accordance with the maxim: "Politically good is something that is economically beneficial in the end" (Simeunović 2009, 138). While this ideology endeavors to function across numerous domains, its primary objective remains the economy. Its foremost objective is to create a world devoid of barriers (or at a minimum, devoid of rigid frontiers), in order to facilitate the unimpeded movement of commodities, thereby converting the entire globe into a single vast free market, within which large transnational enterprises will wield primary influence, and all other actors will possess the right to compete against them, albeit with little prospect of prevailing over them. Globalism, in essence, actually represents the ideology of these corporations, which are its main supporters, so that even large countries, such as the USA and Great Britain (from where globalism originated), sometimes give the impression of being their implementers only (Simeunović 2009, 139). "The political order of a world structured in this way should be a new world, in neoliberal order, because what ensures dominance and gives advantage in every system is the power of determining the rules of the game (see: Simeunović 1994). Therefore, the aim is not only to create a world market free from impenetrable national-state borders, but also to organize this market on liberal principles" (Simeunović 2009, 139).

As an ideology "rooted in the West, globalism entails a substantial infiltration of Western values into other regions of the world, particularly the East (Simeunović 2009, 139); thus, within the international relations theory, this phenomenon is known as Westernization. However, the frequent criticism claiming that the West, through its transnational corporations, has flooded the world with fast food and unhealthy beverage brands, must take into account the fact that there is also a response from the East, not only in the form of the massive spread of its own types of food in the West, such as Chinese cuisine, but also in "the form of cheap, low-standard products that have poured into the West, including the USA, a process labeled as Easternization" (Simeunović 2009, 139). In the view of globalism's critics, this has led to a poor-

quality products exchange, wherein both sides make profits, and only consumers are dissatisfied, but have no other choice possible.

What globalism finds fundamental intolerance lies in the firm stance of particular states on their national, or more exactly, state sovereignty, which stands as a serious obstruction to globalization. That is the reason globalism proclaims an epoch of post-sovereignty wherein states will be deprived of their role as guardians of their nations and religions, while the duty for this is to be shifted to the international community (Simeunović 2009).

Globalism endeavors to eradicate the apprehension of the small and the vulnerable by introducing the principle of all kinds (including violent) of international protection for different minorities, in the sense of protecting the uniqueness of ethnic, religious, cultural, gender, and even sexual orientation, provided that they do not stand in the way of achieving its global political and economic interests. This likewise legitimizes the deployment and application of military power across the globe by the nations that serve as the carriers of globalization (Simeunović 2009). "Globalism sees nationalism and the nation-state as its main opponents, which are not guided by universal, but by their national interest, and tend to confine their nations to their borders, with their tariffs and regulations that hinder the movement of goods and reduce the profits of large multinational corporations" (Simeunović 2009, 139).

A significant challenge for globalization emerges in the shape of informal transnational opposition to it. Nation-states are not the actors that would be capable, either individually or at least on their own, to halt the offensive of globalization, simply because they represent, at least for the time being, a lesser force than that embodied by the nations that serve as the carriers of globalization. Globalization encounters a challenge, largely produced by ethnic and religious extremists, who position themselves as defenders of creed and nation, utilizing violence, chiefly in the form of political radicalism and terrorism, which has itself, to a certain extent, become globalized, and has rendered the progress of globalization neither smooth nor rapid, while necessitating arduous and expensive covert as well as overt conflicts (Simeunović 2009).

While certain regions of the globe, particularly Asia and Africa, demonstrate considerable resistance to globalization as an ideological framework, the phenomenon seems inexorable, at least in economic terms. In other spheres, nonetheless, the matter of its acceptance depends

on the ability to overcome markedly different impediments, including opposing faiths (Islam, for example), or the tradition of a self-contained political order such as China's (Simeunović 2009).

Across the annals of history, the establishment of a cohesive global order has eluded all attempts. This failure stems partly from the world's profound diversity and its inherently unstable nature, which presents constant challenges and fosters new dreams. Such dynamism is, of course, a direct expression of the human spirit itself (Simeunović 2014). "We will see whether the world of neoliberalism will succeed in this" (Simeunović 2014, 106). It possessed a viable prospect at the close of the 20th century, for never before had a single power exercised such dominance over the remainder of the world as the United States did at that time, and this remains true today, because it presents an order that is sufficiently appealing not only in economic but also in political terms to numerous countries – more precisely, to their political and economic elites – to the degree that they embrace it of their own accord (Simeunović 2014).

This is actually a hidden exchange. The political elites of these states follow the principle of subsidiarity, which implies transferring their powers, and therefore the responsibility for managing the country and its economy, to those more powerful than themselves, and in exchange for this, they renounce, without any pressure, both their sovereignty and their political independence (Simeunović 2014, 106).

"Every individual is a human being that dominates, because he is a human being that is frightened" (Simeunović 2014, 107). Fear attends us from the moment of our birth, endures through our years in countless guises, and finally accompanies us to our dying breath. Of all living beings, the human newborn is the most helpless, tormented from the outset of its life by a piercing realization of its own feebleness. To defend against this dread, human beings gradually establish control over their environment and, more significantly, develop an excess of authority. Such an accretion, regardless of whether it is consciously pursued, inevitably generates dominance over others. Our fundamental need for power stems from self-preservation. Yet, once we quickly grasp its additional benefits, we deliberately overlook the burdens it entails. As a phenomenon, power presents at least two critical issues. First, it proves more addictive than any narcotic. Second, it belongs to the category of *apeiron* – the boundless realm of the immeasurable. It possesses no definitive limits, no genuine ethical boundaries, and lacks adequate

internal restraints once it becomes ingrained within us (Simeunović 2014). "In his desire to acquire as many powers as possible, human beings have created various systems of supremacy, formally primarily for their own protection, and in reality, for the purpose of domination over others. The transfer of these systems from the microsocial to the macrosocial plan has always been a matter of technique, tools, and the ability to implement plans and illusions of general and eternal domination over others" (Simeunović 2014, 107).

Since ancient times, the idea of establishing a "world order" has appeared in states that had an outstanding military dominance compared to their wider environment. It was not just a mere military-conquering concept, but also an effort to establish one's own model of political and economic order in conquered countries as universal, of which some written traces remained (Simeunović 2014, 110). One of the first recorded attempts of that kind shows absolute similarity to the present time, so it is quite appropriate to mention it.

The Persian, or rather Achaemenid, ruler Darius (*Darayavush*), famous in many ways, sought, through his conquests, to achieve *Arta*, "the true order of the world,"[2] which would be based on pure, divinely-known "truth." The truth consisted, to begin with, of the fact that the rulers of other, primarily surrounding countries, were not rulers, but "impostors" and "rebels against Darius" since he did not recognize them as rulers, and the condition of recognizing them could not be fulfilled because Darius firmly held the position that only he could govern their countries and that the world should be "ruled by one ruler only." The reason for this, Darius found in a completely ideological ethical premise that as the ruler of the most powerful state, he was obliged to establish and implement justice, since he was given a mission by the god Ahura Mazda and the forefathers to know what justice and truth were and to implement them. Hence, Arta, as an "order built on truth," in addition to its enlightening function, had a distinct corrective function when it came to socio-political issues of the other communities: "What was incorrect, I made correct" (Spasojević 2006, 135). Along with this, went the introduction of the Persian religion as the only correct one and the prohibition of all other religions as demonic.

[2] "Arta or asha, one of those big words of archaic humanity that are difficult to translate. Its meaning is: the true order of the world, an order built on truth" (Spasojević 2006, 135).

Darius introduced his "true world order," or Arta, to 23 conquered countries, about which he left numerous records, and his son Xerxes raised that number to 29 countries. Darius's international military performance was, quantitatively speaking, truly impressive. In just one year, he waged and won 19 wars, while executing nine defeated rulers. The years that followed were also years of his military victories. Darius made records of them on high rocks by the roads,[3] on palaces, tombs, but also on clay and metal tablets, measuring stones, and on animal skins and vases, that he sent to all conquered and many unconquered regions, so that everyone would be informed about his power and invincibility. As the rumor about him was heard in advance, so did the fear grow, and the will to resist diminished, which resulted in the surrender of the enemy or at least made Darius's next victory much easier. It is clear that Darius, as the bearer of the "world order," knew how to economize on force and use war marketing better than many rulers of today.

Darius found the motive for conquering foreign territories and incorporating them into the "world order" in the need to prevent any injustice, and especially to prevent any violence that would be committed by a rebellious ruler over a weaker one. The world order promised harmony, and there could be no harmony if many had the right to use self-willed force. Violence was allowed only to one, the strongest among all the rulers, following his convictions about justice and truth: "I do not want the powerful to commit violence against the weak" (Spasojević 2006, 106). No resistance was possible because "I also do not like the right of the powerful to be violated by the actions of the weak" (Spasojević 2006, 106), he says. Here we come to Darius' understanding that superiority is the basis of the right to treat other peoples and countries, which remained characteristic of all future concepts of world orders as the principle of their international relations regulation.

It would be wrong to conclude that this "king of a country with races of all kinds" relied solely on force. There are many facts in his writings that testify that he achieved a lot in gaining supporters in foreign countries, who were impressed not only by his military power, but also motivated by various rewards, from financial to political, after

[3] The inscription of King Darayavush on Mount Bisotun is the largest stone inscription in the world. It is written at a height of 75 meters and consists of 414 lines arranged in 5 columns, each four meters high and two meters wide.

the conquest of their countries: "To everyone who cooperates, I give a reward that is worth his labor" (Spasojević 2006, 106).

The order was treated as something sacred; even more, it was elevated to the level of worship equal to that expressed towards God, and in this way was celebrated. Not only that it was celebrated and glorified as the best possible order by the Persians who introduced Arta, as the order of the world in numerous countries, but it had to be celebrated and "accepted with the heart" by all those peoples who were actually conquered, regardless of whether they were annexed to the empire by war, or by surrendering the power to Darius after their own rulers were overthrown due to fear that Darius might attack their countries. The fear of Darius' military superiority was not only the fear of the destruction of the country, but also the fear of the nobles that Darius would label them as supporters of the disobedient ruler because he treated such a person cruelly. After defeating rebellious rulers and their supporters, they would first be publicly humiliated, tortured, and mutilated for a long time before being killed in a brutal manner, thus sending a message to the rest of the people. Long before the advent of mass media, Darius achieved complete awareness of his political and legal principles, although in a morbid way by forcing all adult males of the defeated people to watch the scene of the humiliation, condemnation, and destruction of their former ruler: "I cut off his nose, ears, and tongue and gouged out one eye. He was kept tied hand and foot at my door, and all the people looked at him. Then I hanged him in Hamedan, and I hanged his most prominent supporters in the fortress (underlined by DS)" (Spasojević 2006, 85). Non-acceptance of the "world order" by any nation, or even by an individual in the conquered territories, was out of the question because it violated the principle of absolute domination that was the core of that order, and for the purpose of its general acceptance, not only violence was used, but also the mass propagation of the norms of the new, as the true world order: "do not allow anyone to remain uninstructed in respecting order and the commandments of the law" (Spasojević 2006, 8). "Also, Darius was of the opinion that the world order was best propagated through great construction works, not only by building temples, but also by implementing economically very useful projects, even such grandiose ones as the Suez Canal, which was built during his reign"[4] (Darius' inscription on the Suez Canal panel

[4] "I gave the order to dig this canal, from the flowing water called the Nile, which

in: Simeunović 2014, 114). That not much has changed to this day is evidenced by the number of dead, arrested, and fugitive current rulers who were disobedient to the contemporary bearers of the "new world order," from Saddam Hussein to Milosevic and Gaddafi (Simeunović 2014, 114)

As one of the medieval conquerors of the world, the Mongol Khan Tamerlane, laconically defined it: the world is too small to have two rulers. For him, any, even the slightest, resistance was equal to the greatest military defeat, and therefore, no resistance was allowed on the territory he ruled. This goal was always achieved only through cruelty and the ruthless use of military force. The Byzantine historian Ducas noted that where Tamerlane's army passed, "neither the barking of dogs, nor the crowing of roosters, nor the crying of children could be heard afterward" (Simeunović 2014, 114).

None of the great conquerors wanted to stop, and each wanted more of what he had already conquered. In the 15th century, the Byzantine historian Laonik Halkokondil described in detail Tamerlane's plans to conquer China, the entire Mediterranean, and the Christian world. Like many other strongmen such as Alexander the Great, Caesar, and Dusan the Great, he was prevented from expanding his empire by a sudden death.

Henry Kissinger may be incorrect in his assertion that in "every century" there arises "a country that possesses the power and will, as well as the intellectual and moral strength to shape the entire international order in accordance with its own system of values" (Kisindžer 1999, 5), yet he is entirely accurate that such a phenomenon does occur. While no fixed pattern governs the appearance of this occurrence – wherein a nation consistently perceives itself as the architect of a "new world order" – there has perpetually existed a "will to power" among the most powerful states, or at minimum those that regarded themselves as such, along with their ambitions to structure the world according to their own perspectives, requirements, and concerns. This historical reality was constructed through the military, political, and cultural supremacy of the ancient Persians, Greeks, Romans, and others, and was validated by the blades of their commanders, beginning with Alexander

flows in Egypt, to the sea that comes from Persia. This canal was dug as I ordered, and ships passed through it from Egypt to Persia as I intended" (see Darius' inscription on the Suez Canal panel in: Simeunović 2014, 114).

the Great and subsequent "first conquerors of the world" (Simeunović 2014, 115) followed by Caesar and later Attila, Tamerlane or Napoleon, continuing all the way to contemporary leaders – distinct in character yet fundamentally identical as carriers of unchecked supremacy (Simeunović 2014).

The current preeminent global power, the United States, has its own ambitions and intentions. Mirroring hegemonic powers of the past, it possesses its own network of allies, adherents, and adversaries. The opponents of a dominant power seldom openly identify themselves as such, primarily out of apprehension regarding retaliation from the prevailing force. Conversely, numerous allies of the dominant state are not genuinely committed to its cause; rather, they fundamentally align themselves with whichever entity holds supremacy, viewing this as the most effective strategy to advance their own objectives. This phenomenon is deeply rooted in human nature, which has historically gravitated toward and revered the victorious (Simeunović 2014).

The endeavors of the United States and the nations aligned with it through official and unofficial means are currently described using various labels, among which the following three appear most frequently: "globalism, globalization, and the new world order" (Simeunović 2014, 116). These terms are often employed without adequate comprehension, sometimes even interchangeably, leading to conceptual ambiguity. Therefore, it is vital to emphasize that these are three different terms that all refer to phenomena that are intertwined. Their meanings are similar, but they do not completely coincide; they only intersect (Simeunović 2014).

What is commonly referred to as the phrase "new world order," laden with unwarranted negative connotations or primal apprehension, denotes the creation of uncontested political, economic, and military supremacy by the United States alongside a collection of highly advanced industrial nations from the West. These countries are united within or in association with various international bodies of an economic, political, or military character, exercising dominance over nearly all remaining states across the globe. This supremacy is exhibited through efforts to advance their strategic military, political, and economic objectives, along with those of their partners, by conducting foreign policy predominantly from a standpoint of strength and by meddling in the domestic matters of sovereign nations. This interference occurs not only via the traditionally "controlled" military, economic, and political frameworks

and international bodies, but also by exploiting organizations such as the UN. These institutions, prior to the initial phases of instituting the "new world order," were designed for the collective advantage of all member states and operated in that manner to a considerable extent, and more or less functioned in that way (Simeunović 2014).

"Since the basic principle of implementing this domination is the expression of all kinds of superiority, it is natural that the functionality of the "new world order" is mainly reduced to the use of a position of force, especially in international relations, which can also explain the behavior of a group of dominant countries in the "new world order," which is increasingly characterized, not only by disrespect but also by flagrant violation of the norms of international law" (Simeunović 2014, 117). It is obvious that these countries treat the currently valid norms of international law as a historically outdated international legal expression of the former two blocks' balance of power, with the disappearance of which the need for respecting most of these norms also disappears.

"It is too early to speak of a 'new world order' as fully conceived, and especially as a materialized concept, due to the lack of a clear and definitive profile of the concept`s content, despite the fact that there are clear indications of the goals and methods of establishing a "new world order" (Simeunović 2014, 118). Whether the establishment of a new order, which has been bombastically announced many times in history before, will come about, and, in particular, whether this establishment will be carried out in the form that now seems inevitable to many, remains to be seen. In the view of Vladeta Jerotić, the "new world order" is simply another example of the many never-ending eschatological undertakings (Jerotić 2000, 30). After all, the future, as a descendant of history and of the present time, mostly takes after its ancestors and always looks a lot like something new, itself as it is and itself as the future present.

Therefore, for the time being, we cannot speak of the establishment of a "new world order," but only of the efforts to establish it, as well as the results of these efforts. For this reason, it is quite rational to mark this term with quotation marks, which does not, in the least, diminish its importance as a subject of observation.

"For this topic, it is important that the establishment of a "new world order" only at first glance manifests itself as the establishment of an order of global domination made by a single center of collective power, a single state, a single ideology" (Simeunović 2014, 119). Precisely,

there is a clear expression of continental and regional dominance of the emerging world powers with a tendency to increase all their power resources, which are increasingly not subordinated to the formal center of global domination.

In economic, political, and even military terms, and even before unification,[5] Germany stands as the indisputably strongest country in Europe. An equivalent level of continental dominance is progressively being established in the Far East by China, displacing Japan from that position. These countries, in their novel and, for the moment, enduring growing, do not yet declare loudly their aspiration to elevate their status into line with the top and the global scale of the dominance of the "new world order," but it is to be expected, according to all indicators, that in a relatively short period of time, in less than two decades, these countries will grow stronger, proportionally "to the extent that the growth of the economic, and thus political and military power of the USA will decline, and that, similar to the law of connected vessels, the now narrowly concentrated power of the strongest will have to spread over at least to the three points which, admittedly, at first, will be very interdependent on each other and not entirely and identically structured in the resource domains of power. In this race for prestige, which will at that point become public, it cannot be decisive that some of them will be stronger only in a particular field, like military or economic" (Simeunović 2014, 120).

The essential element in their competitiveness is determined by both their total capacity and the level of interdependence among the most powerful nations – a dynamic that has never been more critical,

[5] European predictions from the early 1990s regarding the political, economic, and military outcomes of German reunification turned out to be remarkably precise. For instance, 43% of the French population believed that achieving political cohesion within Europe would become more challenging, while 37% anticipated that France's standing on the continent would diminish. Even prior to reunification, the French acknowledged Germany's economic and political dominance, though they raised questions about its democratic credentials. This skepticism helps explain the growing apprehension regarding Germany's economic strength, which rose from 39% of French respondents in 1987 to 42% in 1989. Interestingly, despite these concerns, 48% of the French considered West Germany to be France's closest ally, a figure that climbed to 54% by October 1988. In Germany, 77% of citizens viewed the United States as their foremost partner in 1983, but by 1988, this affection had notably declined, with surveys indicating that 67% of Germans regarded France as their most trusted friend (SOFRES 1991, 82–86).

given their technological, monetary, and economic development. This phase of the formulation and construction of the "new world order" will be a phase of equalization in power and multilateral domination of the world until one of the mentioned states is able to significantly expand the sphere of its influence in the pursuit of economic, political, and military interests on "foreign" terrain, without jeopardizing its previous position in the division of dominance. In the meantime, it is reasonable to anticipate that Germany and Japan will keep expanding principally the economic, fiscal, and political components of their influence, while the United States will continue to augment its military and political assets, although we should not forget, not already mentioned fact that Germany, even before its unification, almost unnoticed, became the strongest military power in Western Europe, but also that Japan has just as quietly, in the last half century, renewed and significantly strengthened its military potential to the extent that it makes its neighbors think about it seriously (Simeunović 2014).

"However, military power is no longer, nor is it likely to be, the sole determining factor of prestige on a global scale" (Simeunović 2014, 121). This is confirmed by the example of Russia, whose military power is undoubtedly very impressive due to its nuclear potential, but its economic power is not sufficient to make it a leading world power. "The balance in economic power as the basis of the total power of the three, already existing, economic and technological centers of the world (the USA, the EU headed by Germany and China, India and Japan as moderators of the economic outlook and power of the Far East), will decide whether the USA will retain, in not so distant future, the throne of the supreme position in the global hierarchy or it will have to co-share it, and eventually abandon it" (Simeunović 2014, 121). Their current supreme position in military strength will hold little value without preserving economic might as the foundation of general supremacy. Similarly, a strong military today would not be worth much to either Russia, together with the Commonwealth of Independent States (CIS), nor China if they had not economically strengthened, the first one less, the second one more, but both countries have clearly strengthened enough to dare to claim their share of the throne of world power (Simeunović 2014).

It is a logical to assume that Germany and Japan, despite increasing their military potential It is to be expected that powers such as Germany and Japan, despite increasing their military power, will

not in the future strive to implement their interests through the use of military force on the international stage, and the least of all by using their own forces, except at the request of "the big brother," but will strive to do so through channels of economic and, especially, technological and financial influence with the extensive use of multilateral institutions. This explains the persistence of Germany and Japan, as well as some other regional powers, in their efforts to join the UN Security Council as soon as possible and, as permanent members, gain as much of the political power and global influence as possible, and the strong opposition to this from the USA, but also from France and England, which are already second-rate powers that derive their political power to the greatest extent precisely from possessing this positional advantage in relation to Germany and Japan. Indeed, America currently enjoys "greater co-optive power than other" (Nye 1991, 2–7) countries, due to its privileged position in the world's most influential international forums and structures (UN, IMF, GATT, OECD, NATO). However, although this position of the USA has been shaped and acquired by historical forces, it is, unlike the position of Great Britain and France, whose political power lays heavily in the historical position as the permanent membership in the UN Security Council is, not primarily contained only in some historical right to power, but, on the contrary, it is one and a very clear expression of the current general and enormous political, economic and military power that the USA has (Simeunović 2014).

This "fight" over the entry into the UN Security Council appears all the more logical in the light of the fact that the "new world order" is expected to be elitist, expressed in the possibility of possessing and using exclusive positions of power. By taking advantage of the global tendency to shift the center of gravity of power from the legislative to the executive, the designers of the "new world order" have transformed the UN General Assembly, formerly the main body, into a body of second-class importance, and the UN Security Council into a body of first-class importance, and even into a kind of seed of a world government, justifying this by the reasons of swiftness of decision-making as a critical element in the process of providing assistance to "endangered" countries and peoples. As a result of this change, which has enabled the nearly complete dominance of the USA in the UN agenda, the organization is progressively becoming a, while legally constituted, yet increasingly questionable instrument. It is used to advance the strategic military,

political, and commercial objectives of the world's most economically and politically dominant nations. These nations aspire to institutionalize a "new world order" as a perpetual condition of their own hegemony within the global community, disregarding the desires and necessities of other states. This often occurs in direct opposition to the wishes and, specifically, the well-being of the majority of UN members categorized as developing nations (Simeunović 2014).

The growth of the power of Japan and Germany, which positions them on the map of global great powers, should not obscure our view of the great power bases for activities on this global plane by the Russian Federation. We must also include the geopolitical space of the Commonwealth of Independent States. Behind them, an even greater global power is on the rise, China, which is not only an economic and political giant but also an unavoidable military factor. We should not lose sight of the fact that the spheres of influence of these global players are still the same ones in which periods of conflict and cooperation with Germany and Japan alternated, as if they were also spaces of various forms of state closeness.

The new rise of Russia began during the reign of Vladimir Putin. However, this time, this rise is not based on nationally based federal units, as during the Soviet Union, when these national creations were necessarily directed towards insincere mutual declarations of solidarity. Also, it is not about the creation of a new nation-state, but rather the restoration of an empire without an emperor. Starting from the fact that empires could never be mononational, if we bear in mind the empire's need to control large geographical areas, but that they therefore always had to be multinational, then we can logically conclude why this state restoration could not rely only on the Russian nation. To make the demographic, national asymmetry even more striking, we will recall that millions of Russians remained to live outside the current borders of the Russian Federation, and after the collapse of the Soviet Union. This was led by the catastrophic Soviet model of forming republics. This model was the same in the USSR as in the FPRJ, and later in the SFRY, and was characterized by the fact that state engineering insisted that federal units be tailored to the needs of small nations. These needs were satisfied primarily through the imperative that all members of a smaller nation be included in a federal unit, to the detriment of a larger nation, and especially to the detriment of the largest nation, such as the Russians in the USSR or the Serbians in the FPRJ and SFRY.

Considering the fact that any Russian reconquest that would aim to return any territory with a majority Russian population would be doomed to political and military difficulties, it remains logical that the restoration of the "empire" is limited primarily to the existing internationally recognized territory of the Russian Federation. The return of any Russian territory that remained in other states, in addition to being very challenging, does not seem to be an overly useful undertaking, considering the risks. However, over time, with the strengthening of the state space of the Russian Federation, the reintegration of Belarus, Ukraine, and Kazakhstan would be attempted. The new state community thus created would be the core of a broader military-political connection in which states close in religion and culture, such as Serbia and Bulgaria, but also the Slavic Czech Republic and Poland, despite religious differences, could find their place. The geopolitical entity thus created would later be strengthened by alliances in the East through which the Eurasian Union would be created, primarily through cooperation with North Korea and China. Of course, this Eurasian connection would imply closer integration with the members of the Shanghai Cooperation Organization (SCO). Such geopolitical integration of Eurasia would enable the redistribution of world power. All of Russia's efforts in this direction imply the return of military power, which declined sharply in the years of the collapse of the USSR and remained at a low level during the last decade of the 20th century. Until this long-term process takes off, Russia can only achieve a balance between the military power of the US and NATO through the competitiveness of its vast strategic and tactical arsenal. The Russian-Ukrainian war shows that Russia is determined on its path to restoring the empire. In these aspirations, the fact that Russia is ready to enter into open conflict with NATO for parts of the old empire, such as Crimea and Sevastopol, which would not exclude the use of nuclear weapons, is striking. Without access to the southern coasts that territories such as Crimea provide, Russia would remain a regional power (Simeunović 2014).

REFERENCES

Jerotić, Vladeta. 2000. *Vera i nacija*. Beograd: Ars Libri, Izdavački fond Arhiepiskopije beogradsko-karlovačke.

Kisindžer, Henri. 1999. *Diplomatija I*. Beograd: VERZALpress.

Nye, Joseph S. 1991. "Transformation of World Power." *Review* (253): 2–7.

Simeunović, Dragan. 1994. *Novi svetski poredak i nacionalna država*. Beograd: Ferko.

Simeunović, Dragan. 2009. *Uvod u političku teoriju. Beograd: Institut za političke studije.*

Simeunović, Dragan. 2014. *Nacija i globalizacija.* Beograd: Prosveta.

SOFRES. 1991. *L'état de l'opinion 1991*. Paris: Editions du Seuil.

Spasojević, Dejan. 2006. *Hahamanešidski kraljevski natpisi – arijevsko ili staro persijsko pismo*. Beograd: Liber & CPS.

Драган Симеуновић[*]
Факултет политичких наука, Универзитет у Београду

ГЛОБАЛИЗАЦИЈА И МЕЂУНАРОДНИ ОДНОСИ[**]

Резиме

Да би се разумео однос између глобализације и међународних односа, неопходно је пропедевтички разликовати појмове новог светског поретка, глобализма и глобализације који се често користе без много теоријског разумевања, понекад чак и као синоними, што ствара терминолошку забуну. То су три различита термина која су повезана јер се односе на испреплетене феномене. Глобализам је идеологија, глобализација је процес имплементације идеолошких премиса глобализма, а нови светски поредак је политичко-правни систем света у настајању. Концепт и пракса глобализације укључују радикалне промене у савременом свету у корист једног центра моћи и стога подразумевају драстичне промене у међународним односима. Глобализација подразумева да савремене међународне односе треба да карактерише: неформално управљање светом из једног центра моћи контролисањем и вођењем глобалних политичких, економских и финансијских токова; демократизација свих земаља света увођењем евроатлантског модела демократије као јединог валидног; негација националног суверенитета и превазилажење националног идентитета; смањена улога УН и свих међународних организација и институција где заговорници глобализације нису доносиоци одлука; „менаџерска" уместо посредничке дипломатије; ексклузивност права глобалиста да користе силу у међународним односима; фаворизовање хуманитарних интервенција као врсте оружаних сукоба; покушај усмеравања токова миграната и њиховог интензитета; ускраћивање права на напредак свим неглобализованим земљама, чак и оним јачим попут Русије и Кине; стављање међународних односа директно у службу задовољавања интереса

[*] Имејл: dragan.simeun@gmail.com; ORCID: 0009-0003-6455-5769

[**] Овај рад је раније представљен под истим насловом као уводно предавање на научној конференцији Српски филозофски симпозијум Sophos, која је одржана у Требињу од 29. јуна до 6. јула 2023. године.

мултинационалних компанија. Заговорници глобализације имали су само ограничен успех у овим напорима због различитих врста отпора. Глобализација је углавном постигнута на међународном економском нивоу, а много мање на међународном политичком и међународно-безбедносном нивоу. Иако је почетак глобализације најавио брз крај националне државе, њеног суверенитета, а самим тим и нације као њене основе, то се није догодило. Готово све што је имало национални префикс опирало се глобализацији у већој или мањој мери у име права појединца да постоји колико и опште, и то је главни разлог зашто глобалисти национално виде као највећу претњу. Време великих миграција, као и рат између Русије и Украјине, подстакнут оружјем, средствима и логистиком западних сила, донео је нове, велике и последично још увек несхватљиве изазове не само глобализацији као процесу, већ и глобализму као идеологији и новом светском поретку као пројектованој политичко-правној конструкцији глобалног система. Русија је објавила нови концепт новог светског поретка, а многе земље, од којих су неке чланице ЕУ, устале су против глобалних модела, снажно се окрећући ка својим националним интересима, обнови свог националног суверенитета и јачању својих националних вредности, иако се донедавно чинило да су се те земље потпуно стопиле у наднационално јединство. Све је очигледније да су рат и миграције били само повод за поновно обнављање концепта националне државе као важног наслеђа и њене веће независности, и то не само на територији Европе, што указује на процес ресуверенизације у глобализованим подручјима као распрострањенији феномен. Ово, као и други актуелни процеси коришћења и расподеле моћи међу државама на глобалном нивоу, несумњиво ће снажно утицати на профилисање међународних односа у блиској будућности.

Кључне речи: глобализација, међународни односи, суверенитет, национална држава, миграције, оружани сукоби, ресуверенизација

* This manuscript was submitted on May 3, 2026, and accepted by the Editorial Board for publishing on May 21, 2026.

UDC 327(497.11:497.4)"1941/1944"
DOI: 10.5937/spm97-66019
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 197-216

Zoran M. Jovanović*

Faculty of Philosophy, University of Priština
with temporary seat in Kosovska Mitrovica

ON THE SUPPRESSED TOPICS IN THE HISTORY OF SERBO-SLOVENIAN RELATIONS OR ON THE PROLOGUE TO THEIR CLOSENESS DURING THE SECOND WORLD WAR

Abstract

The text presents certain evidence of Slovenian–Serbian closeness during the Second World War, which, due to so-called higher interests – national/political/religious/ecclesiastical – has been neglected to such an extent that it now seems never to have existed. Thus, from the creation of communist/socialist Yugoslavia to the present day, Slovenia has carefully selected the topics through which it reveals its 20th-century history. In that process, one of the casualties was the history of Serbian–Slovenian ties during the Second World War, as confirmed in various spheres: from the joint struggle against the occupier and under the flag of the Yugoslav Army in the Homeland, to the suffering caused by the ideologues and defenders of the ethnocidal/genocidal Independent State of Croatia. The text also recovers from controlled oblivion the memory of the mass demonstrations held at the end of March 1941 in Belgrade and Ljubljana against the protocol on Yugoslavia's accession to the Tripartite Pact. These events undoubtedly shaped the future of the Slovenian and Serbian peoples during the Second World War, yet Yugoslav historiography carefully avoided them, only for them to become anachronistic in the

* E-mail: zmjovan@orion.rs; ORCID: 0000-0003-3684-8823

contemporary era – due to new higher interests. The closest neighbors of the Republic of Serbia and the Republic of Slovenia have also benefited from this, protecting their own interests, including shaping the terms of confronting their own Second World War legacy.

Keywords: Slovenia, Serbia, Slovenian–Serbian relations, Independent State of Croatia, Second World War, Yugoslavia

INTRODUCTION

Among scholars and interpreters of history, there have always been so-called small and large historical topics, classified according to various criteria, mostly as a consequence of the spirit of the time (*Zeitgeist*) and the spirit of the place (*Genius loci*). Ideological starting points, as well as the so-called capacity for experience, have often remained the main points of reference in their evaluation.

Of course, the typology of topics also depends on whether they are international or local in character, although many are, by their nature, glocal. Their significance may nevertheless be diminished for various reasons, especially when they are perceived as a threat to the higher interests of a particular community or group (political, national, religious, ecclesiastical, or state). When this is combined with malignant assumptions according to which everything good is "Us" and everything bad is "Others," as well as the tendentious channeling of the culture of memory, many topics can become undesirable, no matter how justified by the creators of collective representations of good and bad: of "friends" and "enemies," and thereby, consequently, of *friendly and hostile topics*.

All of the above are among the reasons why, until now, the characteristics of Serbian–Slovenian/Slovenian–Serbian ties during the Second World War, as well as their diverse interconnections, similarities, and closeness, have not been brought to the forefront of public attention. One reason for this injustice may also be found in the fact that in Slovenia, the events of the, officially, last world war are "often observed without taking into account the Yugoslav framework, as well as without placing them in a broader international context" (Godeša 2007, 174). At the same time, the impression is that a more comprehensive engagement by Slovenian historians with the Second World War began only after the breakup of communist/socialist Yugoslavia, that is, after

Slovenia matured as an independent state (1991). Until then, according to the same premise, it was not desirable to address certain segments of their own past. When this is intertwined with contemporary Slovenia's aspiration for good-neighbourly relations with states belonging to the same geostrategic formation, within which the religious/confessional element also exerts influence, the silencing of the truth seems to have become part of a compromise made in the name of higher interests. Thus, everything that might call the controlled past into question was suppressed, which suited a third party very well. For, however it may seem, Slovenian–Serbian closeness could also be understood as a danger to an objective understanding of the legacy of their closest neighbors – today the independent and sovereign Republic of Croatia (to which Slovenia has, for several reasons, grown closer in relation to the state of "primitive schismatics," as Serbia and the Serbian Orthodox Church were characterised in the Independent State of Croatia [hereinafter NDH], as well as in the years immediately preceding its creation (cf. Jovanović 2025)).

ON EXAMPLES OF CONTROLLED HISTORICAL (UN)AWARENESS OF THE SERBIAN AND SLOVENIAN PEOPLES AND OF THEIR CLOSE TIES IN THE SECOND WORLD WAR

In that context, the claim that the Catholic Church in Slovenia during the Second World War had better relations with Belgrade than with Zagreb, the principal centre of the NDH, deserves separate and more detailed elaboration (Griesser Pečar and Dolinar 1996, 60).[1] In support of this claim, many Slovenian–Serbian connections established at that time bear witness. Among the evidence is the fact that certain Slovenian priests acted as couriers between Serbia, Rome/Vatican, and London, as the seat of the Yugoslav government-in-exile. At the same time, they spread news about the systematic killing of the Serbian people in the NDH, which may be noted here only briefly by a remark that both the Slovenian and Serbian publics were duly informed of it. The reasons for the silence are to be found not only in ignorance

[1] This view is particularly significant because the Slovenian historian in question was assessed as having "a pronounced inclination toward the counterrevolutionary side defeated in the war" (Godeša 2007, 181).

and prejudice. Moreover, even the appeal of Slovenian priests of the Archdiocese of Belgrade for their pastor, Josip Ujčić, to appeal to the Vatican for the Serbian people to be saved from the Ustaša pogrom in the NDH has been neglected, although he did so several times. (The clergy's letter, written in Slovenian, is today preserved in the Archive of the Ordinariate of the Archdiocese of Belgrade, and bears no registry number. Slovenian historiography contains no reference or discussion of the letter's content.)

Chronologically speaking, *controlled memory* among Slovenes and Serbs – with the *imposition of oblivion* and the *prohibition of remembrance* – was, after the postwar agitprop period, followed in historiography by an environment in which topics important for a more dignified understanding of the Second World War were only partially researched (Stanković and Dimić 1996). Fortunately, since the end of the last century, the concept of "collaboration" has increasingly come into focus among Serbian and Slovenian historians (Pleterski 1991, 215–219; Petranović 1993, 207–215; Mlakar 2001, 113–122; Griesser Pečar and Dolinar 1996, 27–36; Griesser Pečar 2004; Čepič, Guštin, i Troha 2017, 226–238; Stojanović 2021, 385–405), along with a more frequent – more or less pronounced – acknowledgement of the existence of two liberation movements among the Yugoslav peoples, and not only of the victorious one led by the communists under Josip Broz Tito, the head of the so-called revolutionary camp. The other movement, however, was distinctly anti-revolutionary and anti-communist. It rallied under the flag of the Kingdom of Yugoslavia and was initially composed of officers of the Army of the South Slavic monarchy, led by Dragoljub Draža Mihailović, whom the Allied powers regarded in the first years of the war as the only legitimate leader of resistance – a fact that historiography of the so-called left political provenance readily forgets. This would be superfluous to mention were it not for the strong ties between the Serbian and Slovenian peoples, precisely within that defeated Army, for whose *fate* responsibility also lies with the West, that is, with the division of the world into spheres of interest among the Allied countries, realised no later than 1943 (Nikolić 2018).

In fact, the prologue to the uncovering and *liberation of truth* in the Slovenian public sphere was the documentation of mass graves of the so-called "enemies of the people," scattered across Upper and Lower Carniola, as a consequence of the summary executions of the so-called Red Terror of 1945 (Hančić 2015; Možina 2021; see: Bobič 2024) (with

the unavoidable observation that Serbian historians have still shown no stronger interest in studying the fate of Serbs who were killed "in the name of the people" and then thrown into pits throughout Slovenia, thus finding themselves among the many thousands of murdered Slovenes). Still more striking is the complete ignoring of the existence of one of *Draža's cells,* located in the building of the Ordinariate of the Archdiocese of Belgrade itself. They were all arrested by the Gestapo, and then part of the Slovenes, who made up that cell, were executed in 1942 and buried in mass graves in Jajinci near Belgrade (Jovanović 2022, 302–303).

Thus, among the topics that still need to be brought together are those that point to the diverse affinities between the Slovenian and Serbian peoples during the Second World War, linking many thousands of similar life stories (personal histories), often marked by similar or identical suffering in combat, in prisons and camps, or as civilian hostages of the Nazis. This was also the case in Kraljevo, where, in October 1941, as part of Nazi reprisals. several dozen Slovenes were executed together with about 2,300 Serbs and around twenty Croats and Bosniaks (Jovanović 2015, 57, 59, 71–74). However, this fact has not received a worthy analysis by Slovenian historians or has been placed within interpretative frameworks close to the communist regime. Such interpretations were also unfavourable toward the memories of Slovenian and Serbian intellectuals who, fleeing the advancing Bolshevisation of Yugoslavia, entered political emigration. Although they left testimonies to the extent to which Slovenian–Serbian relations were fraternally intertwined, these accounts too have, by no means accidentally, been neglected.

In fact, these relations were mentioned under the auspices of the Communist Party of Yugoslavia only within a rigid ideological context, as was also the case with Metod Mikuž (Mikuž 1956) in the book *Overview of the Development of the National Liberation Struggle in Slovenia*. Mikuž's approach might have been somewhat more understandable/acceptable had his work not been published as many as eleven years after the end of the war and – according to him – the "victory of the revolution," thereby openly appropriating the character of the National Liberation Struggle (which is untrue, since that struggle also included those – most likely the overwhelming majority – for whom communist manifestos meant nothing, but for whom only freedom mattered).

At the same time, it is indicative that Mikuž never provided an account of wartime events in the area between Ljubljana and Belgrade, as if the NDH had never existed. This, too, may be understood as harmful to the very people to whom he belonged, since he remained silent about their agony. Simultaneously, he minimised the scope of the organised killing of non-Croats throughout the NDH on an ethnocidal/genocidal basis (primarily the Serbian, Jewish, and Roma populations). This too was part of the price paid for constructing the "brotherhood and unity" of the peoples and nationalities of Tito's Yugoslavia, which exploded during its bloody disintegration at the end of the 20th century as a result of decades-long suppression of memory, that is, of *unsettled accounts* (to which none other than the Yugoslav communists contributed, above all the salon communists, alienated from those to whom they preached about an *earthly kingdom*).

A similar reserve in addressing events in the NDH and its relationship toward Slovenia and the Slovenes can also be found in the work of Mikuž's compatriot Zdravko Klanjšček. In his work *The National Liberation War in Slovenia 1941–1945*, first published in the 1980s, he states only that "in neighboring Croatia a quisling Ustaša state entity was created," and that "the position of Slovenia, although fundamentally identical to the position of other Yugoslav peoples and nationalities who also lost their freedom, was […] nevertheless different precisely because of the proximity of the mother states of the main aggressors against Yugoslavia" (Klanjšček 1984, 33). In doing so, Klanjšček neither addresses the existence nor the actual nature of the NDH nor notes that Slovenes were also killed within that entity under accusations of belonging to the anti-Nazi/anti-fascist movement, i.e., of being opposed to the Ustaša state. (In the same work, not a single concentration camp in the NDH is mentioned, in which Slovenes were also killed, primarily in Jasenovac, whereas Italian and German camps are listed, to which – it follows from Klanjšček's account – almost exclusively partisans, i.e., communists, were taken, which is also verifiably untrue.)

Regarding March 27, 1941, as a turning point among the Yugoslav peoples, Metod Mikuž states that "the popular masses, under the leadership of the Party," on that day gave it "its true content as soon as the bourgeois coup was carried out in Belgrade […]" (Mikuž 1956, 47). If it is taken into account that Mikuž – symptomatically – refers to the NDH simply as "Croatia," the question arises why some

historians to this day persistent in using that designation as a synonym for the Ustaša entity, created through the war enterprise of Hitler and Mussolini and also supported by the so-called Church among the Croats, led by the Archbishop of Zagreb Alojzije Stepinac (today a candidate for canonisation, which is more than debatable based on our insight into the process and testimonies of several Slovenian priests. This should also be taken into account when considering the neglect of Slovenian–Serbian closeness during the Second World War, encouraged by the organisers of Stepinac's beatification and canonisation (Jovanović 2025).

The aforementioned authors belong to a series of historians in whose works there is no mention of the fact that in Slovenian settlements occupied by the NDH a "planned Croatisation" was carried out (Možina 2021, 47, 51; Ferenc 1979, 405; Škiljan 2014, 284, with sources in notes 803–805), along with the sending of priests under Stepinac's jurisdiction to preach about *heavenly justice*. All in all, it has been necessary to wait for the awareness of these issues to emerge in the Slovenian public sphere as well. If this trajectory continues, "it may be possible to anticipate that, in biblical terminology, the "fullness of time" for bringing together all topics related to Slovenian–Serbian closeness is now approaching, closeness which should be traced from March 27, 1941, followed by the April War and the dismemberment of Yugoslavia. (Far from insignificant is also the fact that this closeness had already developed strongly in the interwar period, when Belgrade became an important *hub for many Slovenians* as well (Jovanović 2022).

*

The present day has finally brought Slovenian and Serbian historians together around a position which, with regard to the collapse of monarchical Yugoslavia, is expressed by Jože Možina as follows: "In addition to the overwhelming superiority of Germany, Italy, and the satellite states, the Kingdom of Yugoslavia was also confronted with Pavelić's, i.e., the Croatian stab in the back" (Možina 2021, 38, with source in note no. 111; cf. p. 42; cf. Godeša 2011, 171, 183), along with Croatian aspirations toward Slovenian territories. It is worth noting that said territories were considerably larger than those occupied, which, indicatively, has only recently been discussed in a TV report "Five Slovenian Villages that Survived the Second World War under the NDH" (Svenšek 2019), and in the even more strikingly titled article "'The NDH

Occupied Slovenian Villages': Will Slovenia Demand War Reparations from Croatia?" (Zore 2011). For the sake of accuracy, Možina's phrase "Croatian stab in the back" is also found in the *Proclamation of the Central Committee of the Communist Party of Slovenia* from April 1941, addressed to the Slovenian people, which stated: "Faithful to the treacherous tradition of the Croatian nobility, the Croatian capitalist gentlemen opened the doors to foreign conquerors and thus stabbed the peoples of Yugoslavia in the back"[2] (CCKPS 1941). Thus, the *Slovenian core territory* was further condemned to all kinds of suffering, torn apart between the forces gathered around Germany and Italy, and with the creation of the NDH prevented from remaining part of Yugoslavia and thereby from resisting the enemy – the future occupiers (at the same time Slovenian politicians were drawn into attempts to reach agreements with Hitler, alongside the futile self-proclamation of an independent Slovenia, which – like the establishment of the NDH – was assessed as a betrayal of Yugoslavia (cf. Petranović 1993, 207–211), although the Ustaša entity represented a long-prepared project that was ultimately brought to fruition).

ON THE PROLOGUE OF THE SHARED SUFFERING OF THE SERBIAN AND SLOVENIAN PEOPLES IN THE SECOND WORLD WAR

The extent to which the Slovenian and Serbian peoples were predestined to suffer in the Second World War is also evidenced by the fact that they were, each in their own way, entangled in the military coup of March 27, 1941 in Belgrade, which followed Yugoslavia's accession to the Tripartite Pact two days earlier (see: Janjetović 2006, 1021; Radić 2008, 72, with note no. 7). That pact allegedly "guaranteed

[2] The following was also stated: "Alongside the Belgrade čaršija and the treacherous Croatian gentry, the greatest responsibility for the national misfortune that befell the peoples of Yugoslavia is borne by the Slovenian capitalist gentry. These gentlemen, led by clerical leadership, have for years participated in a disastrous anti-people, anti-national policy. The Slovenian clerical gentry stood, with poisonous hatred, at the head of the entire anti-Soviet campaign and did everything to prevent a closer rapprochement between Yugoslavia and the Soviet Union. These gentlemen participated in the unfortunate accession of Yugoslavia to the Tripartite Pact and ultimately placed their stamp on the treacherous 'National Council'[…]" (CCKPS 1941).

that during the war Germany and Italy would not seek the passage or transport of their troops across Yugoslav territory," confirming "their decision that they would always respect the sovereignty and territorial integrity of Yugoslavia" (*Politika* 1941).[3] However much the communists appropriated March 27, and its legacy (cf. Timofejev 2011, 234–237), they *quickly forgot* not only that in April 1941 they celebrated Stalin's system of government and his non-aggression pact with Hitler (1939), but also that they had held pro-Nazi positions (Radić 2008, 72, with note 7), *reinforced* by years of Comintern stipends (it remains unclear why Yugoslav communists would have sought war against the Reich if such a course had run counter to Stalin's pact with Hitler, which remained in force until June 22, 1941, when Germany attacked the USSR).

It would be unfair to overlook how, on March 27, the Yugoslav capital, in the largest mass gathering it had ever witnessed, echoed with the cry "Better the grave than a slave," after which, on April 6, the first attack by German aviation followed. Alongside Minister Fran Kulovec, the first Slovenian victim of the Second World War, nearly three thousand residents of Belgrade were killed, along with a significantly larger number of wounded. (As a *nota bene*, it needs to be pointed out that in certain parts of Yugoslavia, there was no publicly expressed empathy for the suffering of its capital, and thus of its multi-ethnic population. Even in present-day literature published outside Serbia, the event is often reduced to the generalised phrase "the bombing of Belgrade," without any indication of the catastrophic consequences of that act.) Recalling the aforementioned slogan would be superfluous if not for the similarity with a verse by France Prešeren, written in 1835 in the poem *The Baptism on the Savica*: "Less terrible is the night in the bosom of black earth than under the bright sun the days of slavery." According to our knowledge, this is the first time a connection between the two has

[3] The title and subtitle of the text are cited. Branko Petranović and Nikola Žutić emphasise that the funds given to Yugoslav politicians before the coup were not bribes for action but a means to strengthen propaganda against Germany. Based on certain sources, they state that money was handed to some Serbian politicians, as well as to members of the Slovene People's Party ("Slovenian clericals") (Petranović i Žutić 1990, 89, with source in note no. 2); see also: Stafford 1977, 399–419; cf. Vodušek Starič 2002; Godeša 2011, 156–157; 178). On the activities of the so-called Catholic political circle immediately before the April War and the occupation of the Kingdom of Yugoslavia, see Barker 1981, 7–28; Godeša 2006, 152–187; Godeša 2006, 209–215.

been suggested. If further research confirms that Prešeren's words were indeed used, this would be a valuable contribution to historiography (one that could disrupt the official version of history not only of the Serbian and Slovenian peoples).

It is worth recalling that the echo of this libertarian cry quickly spread to Ljubljana as well. This fact has also remained little known. More precisely, it has been consigned to oblivion because it has not been insisted upon. Fortunately, Bojan Godeša has recently provided details of multiple significance for understanding the history of the constituent peoples of the Kingdom of Serbs, Croats, and Slovenes/ Kingdom of Yugoslavia. According to him, Slovenian public opinion – unlike the Croatian, for example – did not welcome Yugoslavia's accession to the Tripartite Pact. This became particularly evident after March 27, 1941, when demonstrations were also held in Ljubljana, as they were in Belgrade. According to Godeša, the student demonstrations against accession to the pact were attended by supporters of all political groupings: "After the coup, supporters of the Slovenian People's Party and the Ljotićevci [sympathisers of Dimitrije Ljotić] also joined the general mood. Through the organisational secretary of the banovina committee of the Yugoslav Radical Union, Franc Kasa, Snoja called on Catholic youth to take to the streets […] Thus, the whole of Ljubljana became one enormous manifestation for the new government. People embraced and kissed, shouted and sang. At almost every corner, gatherings with patriotic speeches were held. Around ten o'clock, the new government's list was announced. All traditional parties were represented […]" (Godeša 2011, 160–161).

(For the sake of truth, it should be noted that in Ljubljana, some feared the consequences of the coup, which is difficult to address properly without fuller examination, especially if one takes into account the rapidly shifting political currents that prevailed from April 1941 onward, together with attempts to defend national interests, as was also the case in Serbia.)

The similarity of the events conveyed by Godeša with one of the descriptions of simultaneous demonstrations in Belgrade seems unreal: "[…] As early as six in the morning, the streets were crowded with people, peasants in festive attire who kept arriving from surrounding villages, workers, intellectuals, pupils, and citizens, old and young, all had come out to give vent to their joy; all embraced one another, cried,

sang, and cheered. That day the greeting was 'Long live the King, long live Yugoslavia' […]" (Ristović 1997, 183).

To most contemporaries today, it would probably sound anachronistic, if not misplaced, that the Ljubljana Slovenec, on the occasion of the coup, was filled with news under headlines: "Ljubljana and all Slovenia demonstrate for the King and Yugoslavia" (*Ljubljana in vsa Slovenija manifestira za kralja in Jugoslavijo*), "Slovenian Catholic Academics to King Peter II" (*Slovenski katoliški akademiki kralju Petru II*), "Patriotic manifestation of Catholic educational organisations in Union" (*Domoljubna manifestacija kat. prosvetnih organizacij v Unionu*), "Carinthian fighters to His Majesty King Peter II" (*Koroški borci Njegovemu Veličanstvu kralju Petru II*), "War volunteers of the 'District Organisation of the Association of War Volunteers of the Kingdom of Yugoslavia' in Ljubljana" (*Vojni dobrovoljci 'Sreske organizacije Saveza ratnih dobrovoljaca Kraljevine Jugoslavije' v Ljubljani*), "Association of Reserve Non-Commissioned Officers of the Kingdom of Yugoslavia, Ljubljana Subcommittee" (*Oklic rezervnih podčastnikov. Združenje rezervnih podoficirjev kraljevine Jugoslavije, pododbor Ljubljana*) (*Slovenec* 1941, 2–4).

However, to what extent even the cited material can be placed in entirely different frameworks is confirmed by a claim published in 2018, according to which the coup in Belgrade aimed at the "overthrow of the Banovina of Croatia," and by which "supporters of Greater-Serbian policy wanted to destroy it with a coup d'état" (Batelja 2018, 17).[4] Thereby deliberately neglecting that the coup was accepted by four Croats and two Slovenes who were members of the coup government. Unfortunately, only those well-versed in history, as well as those familiar with the present-day realities in the territory of the former Yugoslavia, can fully understand the aims of the cited statement, regardless of the characteristics of the coup itself. The coup has been differently evaluated among Serbian intellectuals, even *portrayed in the darkest terms*, yet with an almost unanimous view that the West had already betrayed the Serbs before the coup (Živojinović 2011, 514), and that Yugoslavia became a sacrificed ally of London and Washington. It is also indicative that it was long suppressed that the Soviet Union did not object to Hitler,

[4] For the sake of fairness, one should not turn a blind eye to what Franc Kulovec allegedly said in resignation on April 2, namely that "the Serbs did not [alone] create Yugoslavia, but they destroyed it" (Rahten 2022, with source in note no. 85).

then its ally, attacking Yugoslavia, even though it knew of plans for its dismemberment.[5] (There were likewise no comments on the *killing of God* in Stalin's empire, nor on pro-Soviet territorial ambitions, expressed even when the Soviet Union attacked Poland, dividing it with Hitler [1939], and then killing thousands of Poles.)

For the sake of truth, the consequences of the March cry, also assessed as a "symbolic and hopeless defense of honor" (Janjetović 2006, 1021), were such that the living soon began to envy the dead, while the instigators of the coup, primarily in London, expected the struggle of Serbs and Slovenes against the Reich to be as lethal as possible, regardless of the cost it would entail. This was resisted by the Yugoslav government-in-exile and the Yugoslav Army in the Homeland (hereinafter: JVuO), led by General Draža Mihailović, who was unwilling to provoke reprisals against civilians (which made the movement led by Josip Broz Tito more useful to the Allies, especially the British). The same position was shared by members of the counterrevolutionary/anti-communist camp in Slovenia, who awaited the appropriate moment for more effective resistance in vain, because had the *cards been dealt differently* within the anti-Hitler coalition, the history of Yugoslavia would have been entirely different.

In Zagreb, however, German troops were greeted with enthusiasm; no one seemed troubled even by the fact that Nazism had already shown its most inhumane features. Archbishop Stepinac enthusiastically welcomed the establishment of the NDH on April 10, 1941, demanding from the clergy of his diocese, and thus from his flock, all forms of loyalty to the Ustaša regime (Circular of Archbishop Stepinac to the clergy of the archdiocese, April 28, 1941, according to: Krišto 1998, 34–36, doc. no. 10), regardless of the blasphemous nature of the Ustaša movement, to which he had, demonstrably, already shown considerable favour. Yugoslav historians of communist provenance also remained silent about this truth, while on the other hand wishing to "Yugoslavise" March 27, 1941 – they considered it expedient, as did Metod Mikuž, and Zdravko Klanjšček, who emphasised: "The Yugoslav peoples rose

[5] Almost at the same time that Germany attacked Yugoslavia on April 6, 1941, the Treaty of Friendship between the Soviet Union and Yugoslavia was signed in Moscow. However, due to the German attack, the Treaty was backdated, as Stalin did not want a war against the Reich, and he also cancelled the planned ceremony marking its signing (Nikolić 2014, 39; cf. Timofejev 2011, 236).

against that shameful Tripartite Pact," and a "wave of dissatisfaction swept the cities of Yugoslavia." He avoided saying what was happening in Zagreb at the time. Instead, he said that "Yugoslavia clearly made it known to the world that it would not accept fascism" (Klanjšček 1984, 25). It does not require much wisdom to realise why Yugoslavia was invoked.

Thus, there is no indication that during the collapse of Yugoslavia and the establishment of the NDH, the Ustaše captured Serbs and Slovenes exclusively, accompanied by the slogan "Long live Croatia!" (Dizdar 2007, 591; Petranović 1992, 109). Not a word is said about how the Ustaša authorities in the Jasenovac concentration camp regarded Slovenes as a kind of Alpine Croats, as indicated by the Latin letter "H," they had to wear as a sign of belonging to the Croatian national community (Deželak-Barič 2000, 158). Perhaps the reason for omitting this was not only the avoidance of Slovenian–Serbian unity even in suffering, but also the fact that this would have required mention of the orders issued by the Ustaša authorities for the Serbian population to wear white armbands (Vukčević i dr. 1993, 44),[6] blue (Jekić 2018, 30, with source in note no. 82; Šarac 2012, 70, note no. 139; Matković 2002, 180) or red bands (Kašić 1971, 183), marked with the letter "P" (for Orthodox faith) or with the inscription "Srbin – Serbe" (Živković i Kačavenda 1998, 98–99; Jelić-Butić 1977, 158–187; Tomasevich 2010, 433–440). (The public is, however, far more familiar with the fact that Jews in the NDH had to wear a yellow armband – with the letter "Ž" [Židovi], while they were also marked in other ways, something that could put even the quisling Serbia of the time to shame.)

INSTEAD OF A CONCLUSION

What has been presented so far could also be understood as the most concise selection of carefully chosen topics that point to the multifaceted affinity between the Slovenian and Serbian peoples, as manifested during the prologue to the Second World War on the territory of Yugoslavia and in the months that followed. At the same time, the examples provided are only some of the evidence of how important

[6] Order of the Ustaša Headquarters in Požega of May 12, 1941, to the Municipal Authority of Velika that Orthodox Christians must wear a white armband on their left arm with the Latin inscription "Orthodox."

topics in Yugoslav historiography were marginalised, only to be covered over time by an *ever-thickening sediment of oblivion*, accompanied by *controlled memory*, which was initially meant to be one of the cornerstones of the "brotherhood and unity" of the Second Yugoslavia. This was followed by a period in which many such topics fell victim to new, *higher interests*, primarily state, national, political, religious, and ecclesiastical ones. It will remain an enigma whether at least something would have been different in present-day history had the issues raised in this paper been more frequently emphasised.

REFERENCES

Barker, Elisabeth. 1981. „Državni udar u Beogradu i Britanci – Vojni puč 27. ožujka 1941." *Časopis za suvremenu povijest* 13 (1): 7–28.

Batelja, Juraj. 2018. *Blaženi Alojzije Stepinac i prognani slovenski svećenici u Drugome svjetskom ratu: u spomen na 120. obljetnicu rođenja i 20. obljetnicu proglašenja blaženim kardinala Alojzija Stepinca*. Zagreb: Postulatura blaženoga Alojzija Stepinca.

Bobič, Pavlina, ur. 2024. *Pragovi nasilja: Dolenjska in Bela krajina 1941–1943*. Ljubljana: Študijski center za narodno spravo; Novo mesto: Škofija.

CKKPS. 1952. „Proglas Centralnog komiteta Komunističke partije Slovenije od aprila 1941. godine slovenačkom narodu i vojnicima nemačke, italijanske i mađarske vojske." U *Zbornik dokumenata i podataka o narodnooslobodilačkom ratu jugoslovenskih naroda*, tom VI, knj. 1. Beograd: Vojni istorijski institut JNA.

Čepič, Zdenko, Guštin, Damijan i Nevenka Troha. 2017. *Slovenija v vojni: 1941–1945*, Ljubljana: Modrijan.

Deželak-Barič, Vida. 2000. „Spomini Slovencev na Jasenovac, Staro Gradiško in Lepoglavo. Zbral in uredil Jernej Borovnik-Bartol. Samozaložba, Šentjur 1998." *Prispevki za novejšo zgodovino* 2: 156 –159.

Dizdar, Zdravko. 2007. „Bjelovarski ustanak od 7. do 10. travnja 1941." *Časopis za suvremenu povijest* 39 (3): 581–609.

Ferenc, Tone. 1979. *Nacistička politika denacionalizacije u Sloveniji u godinama od 1941. do 1945*. Ljubljana, Beograd: Partizanska knjiga.

Godeša, Bojan. 2006. *Slovensko nacionalno vprašanje med drugo svetovno vprašanje*. Ljubljana: Inštitut za novejšo zgodovino.

Godeša, Bojan. 2007. „Historiografija Drugog svjetskog rata u Sloveniji između nauke i politike." U *Revizija prošlosti na prostorima bivše Jugoslavije*, ur. Vera Katz, 173–186. Sarajevo: Institut za istoriju.

Godeša, Bojan. 2011. *Čas odločitev: Katoliški tabor in začetek okupacije*. Ljubljana: Mladinska knjiga založba.

Griesser Pečar, Tamara, i France Martin Dolinar. 1996. *Rožmanov proces*. Ljubljana: Družina.

Griesser Pečar, Tamara. 2004. *Razdvojeni narod: Slovenija 1941–1945: okupacija, kolaboracija, državljanska vojna, revolucija*. Ljubljana: Mladinska knjiga.

Hančić, Damjan. 2015. *Revolucionarno nasilje v Ljubljani, 1941–1945*. Ljubljana: Študijski center za narodno spravo.

Janjetović, Zoran. 2006. „27. ožujak 1941.: uzroci, akteri, ideologija, posljedice." *Časopis za suvremenu povijest* 38 (3): 1013–1029.

Jekić, Zoran. 2018. „Požega i Požeška kotlina tijekom 1941. godine." Diplomski rad. Osijek: Filozofski fakultet Sveučilišta J. Strossmayera.

Jelić-Butić, Fikreta. 1977. *Ustaše i Nezavisna Država Hrvatska 1941–1945*. Zagreb: Sveučilišna naklada Liber.

Jovanović, Zoran M. 2015. *Istorija kraljevačke župe Sv. Mihaela Arkanđela – verna slika naše istorije*. Beograd: Beogradska nadbiskupija.

Jovanović, Zoran M. 2022. *O župi Krista Kralja – jednom od vernih odraza istorije Beograda*. Beograd: Beogradska nadbiskupija.

Jovanović, Zoran M. 2025. *Alojzije Stepinac između emocija i činjenica na osnovu hrvatskih i vatikanskih izvora*. Novi Sad: Akademska knjiga.

Kašić, Dušan LJ. 1971. „Srpska crkva u tzv. Nezavisnoj državi Hrvatskoj." U *Srpska pravoslavna crkva 1920–1970*, 183–204. Beograd: Sveti arhijerejski sinod Srpske pravoslavne crkve.

Klanjšček, Zdravko. 1984. *Narodnooslobodilački rat u Sloveniji 1941–1945*. Beograd: Vojnoistorijski institut.

Krišto, Jure. 1998. „Katolička crkva i Nezavisna Država Hrvatska: 1941.–1945." *Dokumenti*, Knj. II. Zagreb: Hrvatski institut za povijest: Dom i svijet.

Matković, Hrvoje. 2002. *Povijest Nezavisne Države Hrvatske*, drugo dopunjeno izdanje. Zagreb: Naklada P.I.P. Pavičić.

Mikuž, Metod. 1956. *Pregled razvoja NOB u Sloveniji 1*. Beograd: Vojnoizdavački zavod JNA.

Mlakar, Boris. 2001. „Upor ali kolaboracija – resnična dilema?" *Prispevki za novejšo zgodovino* 41 (2): 113–122.

Možina, Jože. 2021. *Slovenski razkol: okupacija, revolucija in začetki protirevolucionarnega upora*. Ljubljana: Medijske in raziskovalne storitve, J. Možina; Celje: Društvo Mohorjeva družba: Celjska Mohorjeva družba; v Celovcu: Mohorjeva družba; Gorica: Goriška Mohorjeva družba.

Nikolić, Kosta. 2014. *Istorija Ravnogorskog pokreta: 1941–1945, knj. 1, Protiv nacizma, fašizma i komunizma*. Beograd: Zavod za udžbenike.

Nikolić, Kosta. 2018. *Saveznici, četnici i partizani u Drugom svetskom ratu*. Beograd: Catena mundi.

Petranović, Branko, i Nikola Žutić. 1990. *27. mart 1941. Tematska zbirka dokumenata*. Beograd: NICOM.

Petranović, Branko. 1992. *Srbija u Drugom svetskom ratu: 1939–1945*. Beograd: Vojnoizdavački i novinski centar.

Petranović, Branko. 1993. „Pojam izdaje u Jugoslaviji – između proizvoljnosti, realizacije i naučne analize." *Istorija 20. veka* 11 (1–2): 207–215.

Pleterski, Janko. 1991. „Problemi součinkovanja narodne in socialne revolucije v nastopu Osvobodilne fronte in pojavov antikomunizma." In *Slovenski upor 1941: Osvobodilna fronta slovenskega naroda pred pol stoletja: zbornik referatov na znanstvenem posvetu v dneh 23. in 24. maja 1991 v Ljubljani*, ur. Ferdo Gestrin, Bogo Grafenauer, i Janko Pleterski, 215–219. Ljubljana: SAZU.

Politika, 26. 04. 1941.

Radić, Radmila. 2008. „Istorija i sećanje – primer 27. marta 1941." U *Kultura sjećanja: 1941. Povijesni lomovi i svladavanje prošlosti*, ur. Sulejman Bosto, Tihomir Cipek, Olivera Milosavljević, 69–81. Zagreb: Disput.

Rahten, Andrej. 2022. *Anton Korošec: slovenski državnik kraljeve Jugoslavije*. Ljubljana: Cankarjeva založba.

Ristović, Milan. 1997. „Izveštaj vrhovnog rabina Jugoslavije dr Isaka Alkalaja o događajima u Jugoslaviji od kraja marta do kraja juna 1941. godine." *Tokovi istorije* 15 (1–2): 177–195.

Slovenec, br. 72, 28. mart 1941.

Stafford, David A. T. 1977. "Soe and British Involvement in the Belgrade Coup d'Etat of March 1941." *Slavic Review* 36 (3): 399–419. DOI: 10.2307/2494975

Stanković, Đorđe, i Ljubodrag Dimić. 1996. *Istoriografija pod nadzorom. Prilozi istoriji istoriografije I*. Beograd: Službeni list SRJ.

Stojanović, Aleksandar. 2021. „Gradacija kolaboracije: različiti oblici i intenzitet saradnje sa okupatorom u Srbiji 1941–1944." U *Drugi svetski rat 75 godina kasnije*, tom 1, ur. Dalibor Denda, Bojan Dimitrijević i Dmitar Tasić, 385–405. Beograd: Institut za strategijska istraživanja, Institut za noviju istoriju Srbije, Institut za savremenu istoriju; Banja Luka: Univerzitet u Banjoj Luci.

Svenšek, Ana. 2019. „Pet slovenskih vasi, ki so 2. svetovno vojno preživele pod NDH-jem." *RTVSlo.* 27. septembar. Zadnji dostop 20. april 2026. https://www.rtvslo.si/zidovi/pet-slovenskih-vasi-ki-so-2-svetovno-vojno-prezivele-pod-ndh-jem/500655

Šarac, Ivica. 2012. *Kultura selektivnoga sjećanja: Hrvati Hercegovine i Nezavisna Država Hrvatska: od proklamacije NDH do talijanske reokupacije (travanj-rujan 1941.)*. Mostar: Crkva na kamenu.

Škiljan, Filip. 2014. *Organizirana prisilna iseljavanja Srba iz NDH*. Zagreb: Srpsko narodno vijeće.

Timofejev, Aleksej. 2011. *Rusi i Drugi svetski rat u Jugoslaviji. Uticaj SSSR-a i ruskih emigranata na događaje u Jugoslaviji 1941–1945*. Beograd: Institut za noviju istoriju Srbije.

Tomasevich, Jozo. 2010. *Rat i revolucija u Jugoslaviji 1941–1945. – okupacija i kolaboracija*. Zagreb: EPH Novi Liber.

Vodušek Starič, Jerca. 2002. *Slovenski špijoni in SOE 1938–1942*. Ljubljana: Samozaložba.

Vukčević, Slavko, Danica Milenković, Anka Radovanović, i Momčilo Todosijević [Vukčević i dr.], prir. 1993. „Naredba Ustaškog stana Požega od 12. maja 1941. Općinskom poglavarstvu Velika da pravoslavci moraju na levoj ruci nositi belu traku sa latiničnim natpisom pravoslavac." U *Zločini na jugoslovenskim prostorima u prvom i drugom svetskom ratu – zbornik dokumenata: Zločini Nezavisne države Hrvatske 1941.–1945.*, tom I, knj. 1. Beograd: Vojnoistorijski institut.

Zore, Janoš. 2011. „Bo Slovenija od Hrvaške zahtevala poplačilo vojne škode?" *Delo.* Zadnji dostop 20. april 2026. https://old.delo.si/

novice/politika/bo-slovenija-od-hrvaske-zahtevala-poplacilo-vojne-skode.html

Živković, Nikola, i Petar Kačavenda. 1998. *Srbi u Nezavisnoj Državi Hrvatskoj: izabrana dokumenta*. Beograd: Institut za savremenu istoriju.

Živojinović, Dragoljub. 2011. *Nadmeni saveznik i zanemareno srpstvo. Britansko-srpski odnosi (1875–1941).* Beograd: Albatros Plus.

Зоран М. Јовановић*
Филозофски факултет, Универзитет у Приштини
с привременим седиштем у Косовској Митровици

О ЗАТИРАНИМ ТЕМАМА ИЗ ИСТОРИЈЕ СРПСКО-СЛОВЕНАЧКИХ ВЕЗА ИЛИ О ПРОЛОГУ ЊИХОВЕ БЛИСКОСТИ ТОКОМ ДРУГОГ СВЕТСКОГ РАТА

Резиме

Код проучаваоца и тумача историје су одувек постојале тзв. мале и велике историјске теме, класификоване по различитим критеријумима, углавном као последице духа времена (*Zeitgeist*) и духа места (*Genius loci*). Типологија тема зависи и од тога да ли је међународног или локалног карактера, иако многе по својим својствима могу бити и глокалне. Међутим, такав значај им је услед различитих порива умањиван, а посебно када су схваћене као претња по више интересе одређене заједнице (политичке, националне, верске, црквене, државне). Све наведено су неки од повода због чега до сада у фокусу пажње јавности нису обједињене особености српско-словеначких веза током Другог светског рата, као и њихове разноврсне испреплетености, сличности и блискости. Срећом, недавно су створени услови и за став појединих словеначких историчара по којем је стварање Независне Државе Хрватске (НДХ) био издајнички поступак не само према Краљевини Југославији него и према матици словеначког народа (као што је био и према српском народу). Све се догодило распадом Југославије, узрокованог нападом нацистичке авијације на Београд 6. априла 1941. године. Пролог свему је био војни пуч у Београду, праћен масовним окупљањем грађана југословенске престонице 27. марта 1941, а поводом приступања Југославије Тројном пакту (25. марта). Тада је београдским улицама одзвањао усклик „Боље гроб него роб". У нашем контексту је важно не само то, већ и ово што је скоро непознато – у Љубљани је био масовни скуп, с истим поводом. До сада није наговештено да можда није случајност што споменути

* Имејл: zmjovan@orion.rs; ORCID: 0000-0003-3684-8823

усклик који се проламао Београдом наликује стиху словеначког песника Франца Прешерна, написаном 1835. године у песми Крст при Савици: „Мање је страшна ноћ у црне земље крилу него под светлим сунцем сужањски дани". Ако даља истраживања потврде да су уистину искоришћене Прешернове речи, биће то значајан допринос историографији, који би могао да поремети званичну верзију историје не само српског и словеначког народа. Када је реч о почетку рата на подручју Југославије, недовољно је познато да су приликом њеног распада априла 1941. године, тј. током стварања НДХ, на њеном подручју заробљавани искључиво Срби и Словенци – као припадници Војске Краљевине Југославије (јер су сматрани несигурним/непријатељским елементом, тј. противницима Трећег Рајха, а тиме и НДХ). У словеначкој литератури нема достојног слова ни о томе како су власти НДХ у исто време сматрале Словенце својеврсним алпским Хрватима, на шта је упућивало слово „X", које су Словенци носили у концентрационом логору Јасеновац (најчувенијем логору смрти у НДХ, као једном од доказа њене ентноцидне/геноцидне природе). Повод за прећуткивање и те чињенице је подстакнуто, намеће се утисак, намером за избегавањем словеначко-српског јединства и у патњи, потеклог од истог зла. Јер су власти НДХ наредиле српском живљу да око рукава носи траку с ознаком „П" (православна вера) или с натписом „Србин – Сербе". Те траке су биле обавезне на више подручја НДХ. Било је то у доба када су Словенци и Срби почели да се боре против нацистичке алијансе и под заставом Југословенске војске у отаџбини, предвођене Драгољубом Дражом Михаиловићем. Индикативно је што је тек у данашње доба тај покрет – поред партизанског/комунистичког – оцењен као ослободилачки. До сада наведено може бити схваћено искључиво као избор тема које се односе на почетак Другог светског рата, јер су словеначко-српске блискости с временом, током рата, постале сваковрсно богатије. Поводе због чега је о томе мало знано могуће је наслутити у уводном делу Резимеа.

Кључне речи: Словенија, Србија, словеначко-српски односи, Независна Држава Хрватска, Други светски рат, Југославија

* This manuscript was submitted on March 25, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

UDC 321:004.8(71)"20"
DOI: 10.5937/spm97-63886
Review article

Српска политичка мисао
(Serbian Political Thought)
No 3/2026.
Vol. 97
pp. 219-244

Marina Todorović[*]
Independent researcher, Belgrade
Milica Šljivančanin[**]
Independent researcher, Belgrade

POWER DIFFUSION AS THE THIRD DIMENSION OF COMPLEX INTERDEPENDENCE: CALIFORNIA AND *OPENAI* AS CASE STUDIES

Abstract

This paper analyzes the diffusion of power as the third dimension of complex interdependence (the first dimension being military and the second economic), a concept developed and later refined by American scholars Robert Keohane and Joseph Nye. By examining diffusion, or the dispersal of power, as one of the phenomena of international relations, the research focuses on subnational and transnational actors. Through two case studies – the U.S. state of California and the organization *OpenAI* – the paper investigates how economic, technological, and educational resources enable these actors to influence global power flows independently of the nation-state. The example of California demonstrates how a subnational entity can create innovative policies and set global standards in technology, education, and climate change. *OpenAI*, as a transnational private actor, shows that innovations in artificial intelligence can redefine the distribution of power and impact international relations beyond state structures. The paper illustrates that

[*] E-mail: todormari@icloud.com; ORCID: 0009-0005-9340-5828
[**] E-mail: sljivancaninvmilica@gmail.com; ORCID: 0009-0002-5194-9585

power diffusion is a dynamic process arising from the interaction of various actors, rather than a static state that can be "possessed". This process, however, is sometimes conditioned by ethical considerations and almost always by political and commercial constraints. At the same time, the role of subnational and transnational actors, in this interaction, points to a transformation in the nature of influence within the contemporary global order.

Keywords: diffusion of power, process, complex interdependence, subnational actors, transnational actors, California, *OpenAI*

INTRODUCTION

International relations theorists, both modern and traditional, regardless of the considerable number and quality of arguments each possesses, still lack a comprehensive and fully adequate conceptual framework for understanding global interdependence.[1] The previous statement reflects one of the conclusions from the fourth edition of the book *Power and Interdependence* (2011) by Princeton political scientist Robert O. Keohane and Harvard political scientist Joseph S. Nye. The authors argue that the "modernists" correctly identify fundamental changes taking place but largely assume – without sufficiently detailed analysis – that advances in technology and increases in social and economic transactions will lead to a *new world* in which states and their control over force will no longer be significant (Keohane and Nye 2011, 1–10). On the other hand, Keohane and Nye note that the "traditionalists" are skilled at highlighting the shortcomings of the modernist vision, emphasizing the continued relevance of military interdependence, but they find it very difficult to accurately interpret today's multidimensional economic, social, and ecological interdependence (Keohane and Nye 2011, 10–20).

[1] *Power and Interdependence* (Keohane and Nye 1977; 2011). This book was first published in 1977, in which the authors, Keohane and Nye, for the first time elaborate their theory of complex interdependence. They point out that it is a concept in international relations that takes into account the multiple ways in which states and non-state actors are interconnected through political, economic, social, and various other ties. The book argues that in an increasingly globalized world, military power becomes less significant compared to other forms of power.

The concept of complex interdependence, over the years, since it was first introduced in 1977, has undergone modifications and refinements in accordance with changes occurring in realpolitik. Already by 1997, in the second edition of the book *Understanding International Conflicts*, Nye described the distribution of power using the phrase "layered interdependence/interdependence at multiple levels," arguing that no existing single hierarchy of power adequately captures the dynamics of world politics (Nye 1997, 190). At that time, the author claimed that world politics resembled a *three-dimensional chess game/ board* (Nye 1997, 191). This cross-cutting game of power (*jeu croisé des pouvoirs*) was further elaborated in the fifth edition of *Understanding International Conflicts*, where Nye reiterates almost the same statement about a complex, three-dimensional chessboard, but adds that this interplay, as described in that edition, operates both horizontally and vertically (Naj 2006, 335). According to this theorist, who, in one sense, expressed his views on the distribution of power literally, but who, over time, also adapted them to the factual conditions of practical politics, he explains in a 2012, in his work: "At the top, on the first chessboard, military power is largely unipolar, and the United States will maintain its primacy for a certain period. On the middle chessboard, power is multipolar, as it has been for more than a decade, with major 'players' and others gaining significance. The lower chessboard is the domain of transnational and transgovernmental relations, which lie beyond state control and include actors such as transnational corporations, various investment funds, hackers threatening cyberspace, terrorists (and other groups and individuals). Here, power is highly *dispersed/diffused,* and it makes no sense to speak of polarity, whether unipolarity, bipolarity or multipolarity" (Nye 2012). From these premises, one can conclude that power has a multidimensional character and structure, in which military power constitutes the first dimension, economic power the second, and diffusion represents the third dimension of power. Keohane and Nye, in their most recent co-authored work, point out that global processes are increasingly shaped by phenomena such as cyberattacks, climate change, and the actions of terrorist networks, which they designate as "problems without passports" (Keohane and Nye 2025).

The question of power and its distribution in international relations is enveloped in a pluralism of perspectives, and there is no consensus among scholars addressing this issue, neither in the present time nor, likely, in the future, as noted by the authors of the article

Different Conceptions of Power in International Relations after the Cold War [*Različita viđenja rasporeda moći u međunarodnim odnosima posle Hladnog rata*], Prof. Dr. Dragan R. Simić and Dragan Živojinović (Simić i Živojinović 2013).

In this context, it is also necessary to consider some recently analyzed strategic conceptions and understandings of power. In a 2024 scholarly article titled *The United States' Grand Strategy – Is It Time for Offshore Balancing?* [*Velika strategija Sjedinjenih Država – da li je kucnuo čas za uravnotežavanje s obale?*] Stevan Nedeljković (whose stated aim is "to contribute to the academic debate through an analysis of offshore balancing, a grand strategy proposal emerging from the neorealist academic camp" (Nedeljković 2024, 475)) emphasizes that: "The history and nature of international relations lead to the conclusion that the American footprint in the world will decrease, but that moment has not yet arrived. Unfortunately, as usual, international relations are not particularly adept at predicting when that moment will come. Nevertheless, when it does, offshore balancing will be the most suitable strategy to protect American interests. Until then, Washington's best hope is a grand strategy of selective engagement – conserving rather than skimping, displaying muscle, but without engaging in unnecessary battles" (Nedeljković 2024, 493).

Given the already emphasized diversity of perspectives on the nature of power and its distribution in international relations, this study will, for the sake of scope, focus on complex interdependence, or interdependence at multiple levels, as a framework of power distribution (as developed by American scholars Keohane and Nye), with a particular focus on the third dimension of this concept – diffusion or the *dispersal of power*. For the purposes of this study, *power diffusion*[2] is understood as a process through which influence becomes dispersed across different levels of governance, so that the ability to shape outcomes no longer rests solely with states, but emerges through interactions among subnational, transnational, and state actors. Unlike related concepts, power diffusion does not refer to decentralization or delegation of authority, nor to multipolarity among states. Rather, it captures informal and often indirect forms of influence, especially those operating through

[2] For the purposes of this paper, the terms "power diffusion" and "diffusion of power" are used interchangeably. Although "power diffusion" is preferred for consistency, both terms are present in the literature and denote the same analytical concept.

norms, innovation, and regulatory practices. In this sense, diffusion can be observed in patterns such as the spread of standards, the replication of policy models, and the wider adoption of technological and institutional practices across different actors. These patterns can be understood as indicative dimensions of power diffusion, enabling its identification across different empirical contexts.

In this century, as Nye emphasizes in his book *Is the American Century Over?*, two processes or shifts in power are taking place: the first is a partial transition of power from the West to the East, and the second is the diffusion of power (*power diffusion*), which describes how power is transmitted and shared among governments and non-state actors. The emphasis is on the dynamics of interaction rather than a linear "transfer" of power (Nye 2015, 85).

In this study, the two selected case studies are the 31st U.S. state, located on the West Coast, California[3] and *OpenAI*, Inc., an American artificial intelligence organization headquartered in San Francisco, California. Although both entities share the same location, or spatial setting, except that in these cases, California represents a broader spatial context, the reasons for their selection are different. Considering that Keohane and Nye, both jointly and individually, in their books and articles, highlighted the rise of non-state and transnational actors – including various international organizations and corporations – that extend their influence through information flows in the "global information age" (Nye 2012), these case studies were chosen to address the research question**:** *How is the role of the subnational actor California and the transnational actor OpenAI manifested in the diffusion of power, as the third dimension of the concept of complex interdependence?* The starting point is to attempt to answer how these actors contribute to the transformation of traditional understandings of power in international relations and how their actions illuminate the procedural nature of *power diffusion.*

California was selected because, although it is a subnational administrative unit (Duran 2011),[4] California possesses economic and

[3] California ranks third among U.S. states in terms of land area and first in terms of population.

[4] The author claims that: "This article argues that the emergence of subnational entities on the international stage has transformed our thinking about the international environment and diplomacy. It also contributes to the literature on paradiplomacy by analyzing the diplomacy of the French region Provence-Alpes-

regulatory power that extends beyond the scope of its formal authority (both at the inter-state and federal levels) and enables it to exert global influence in areas such as climate and technology policy. *OpenAI*, as a transnational private actor, represents an example of how technological advancement and private innovations in the field of artificial intelligence become new levers of power and shape international relations beyond strictly state-based structures.

On this basis, by combining the cases of California and *OpenAI*, this paper examines how contemporary power is being redefined and dispersed across different levels of action and forms of influence. Methodologically, it adopts a qualitative approach based on content analysis and a comparative case study design. The selected cases represent analytically relevant examples of subnational and transnational actors whose influence extends beyond formal state authority, enabling an examination of the mechanisms through which power diffusion operates. The comparative design allows for the identification of both convergences and divergences in how diffusion manifests across different domains of governance.

In this study, *power diffusion* is defined as a process through which influence becomes increasingly dispersed across multiple and interconnected levels of governance, such that the capacity to shape outcomes is no longer monopolized by states, but emerges through interactions among state, subnational, and transnational actors. This approach moves beyond a purely descriptive use of the concept by treating power diffusion as an analytically traceable process whose effects are identified through cross-level alignment in regulatory, technological, and institutional domains.

Unlike decentralization or delegation of authority, power diffusion does not necessarily imply the formal transfer of competencies, nor does it refer to the distribution of capabilities among states within a multipolar system. Instead, it captures indirect and often informal mechanisms of influence operating through norms, technologies, regulatory practices, and institutional models. It is therefore understood as an empirically

Côte d'Azur. By focusing on the region's international activities and defining subnational diplomacy as a means of managing relations between itself and others, this article aims to gain a better understanding of the essence of paradiplomacy" (Duran 2011, 339). Following this line of thought, California was selected as a type of subnational entity, or administrative unit, within the U.S. federal system.

observable pattern of shifting influence across governance levels. Within this framework, the analysis focuses on how such influence is exercised, transmitted, and reconfigured in practice, rather than on its quantification.

CALIFORNIA AS A SUBNATIONAL ACTOR

California, with its economic strength, positioning as a leader in the fight against climate change, and technological innovation, represents one of the most significant subnational actors with global influence (Dias 2023). This positions California as a subnational actor whose influence operates through multi-level governance structures rather than formal sovereignty.

The state is headed by the Governor from the Democratic Party, Gavin Newsom. California's GDP accounts for approximately 14% of the U.S. GDP, and its economy ranks among the largest in the world (Governor Gavin Newsom 2025). This economic scale enables California to exercise forms of external influence that extend beyond its formal constitutional competencies. When compared to other national economies, according to measurements in the second quarter of 2025 (2025Q2) and reports from the National Bureau of Economic Research (NBER) and the International Monetary Fund (IMF), it ranked immediately behind Germany (Governor Gavin Newsom 2025). Its dominance is reflected not only through economic performance but also through its capacity to operate within the context of *power diffusion* – exerting influence over international flows independently of the U.S. federal government (Meckling and Trachtman 2024, 889–893). Examples of this include initiatives in climate standards and education, which California develops independently, establishing models that are subsequently followed by other subnational units, as well as international actors and nation-states (Baldassare 2023).

Educational Policy in California and Global Influence

California's universities – primarily *Stanford*, *UC Berkeley (UCB)*, and the *University of California, Los Angeles (UCLA)* – serve as global centers attracting talented students, including a significant number of Chinese nationals (Schelenz 2025). Data from the *Institute*

of International Education indicate that over 1.1 million international students, more than half of whom were Chinese or Indian nationals, were enrolled in undergraduate, master's, or doctoral programs in the U.S. in 2023 and 2024, representing a 7% increase compared to 2022 (Kaleem 2024). The largest proportion of these international students attended institutions in California, with standout universities including the *University of Southern California (USC)*, the oldest private university in California, located in Los Angeles, *UC Berkeley (UCB)*, *UC San Diego*, and *UCLA*. Among these, Chinese students significantly outnumbered Indian students (Kaleem 2024). Another illustrative example is that in 2019, Berkeley hosted over 1,200 Chinese students in STEM programs (Kaleem 2024), making it one of the primary destinations for Chinese academics in the U.S. (Feldgoise and Zwetsloot 2020). This growth trend has slowed due to restrictive federal visa policies under the Trump administration (Bhatia and Fan 2025). In this sense, higher education functions as a channel of transnational knowledge circulation, contributing to the diffusion of human capital and innovation across borders.

Beyond enrollment numbers, the influence of California's universities is also reflected in their production of globally competitive talent and innovators (*Boston Brand Media Education* 2025). Many students later participate in technological development in Silicon Valley and international companies (Delany 2025). San Francisco and the broader *Silicon Valley* region became a technological hub thanks to a combination of early innovations in semiconductor manufacturing, proximity to leading universities like Stanford, and a prosperous venture capital ecosystem that supported and invested in technology companies from the mid-20th century onward (Delany 2025). This illustrates how innovation ecosystems can generate network-based forms of influence that are not territorially confined.

California's educational policy, in line with these perspectives, does not function merely as an instrument for attracting international students but also as a mechanism through which knowledge, innovation, and human capital are transferred across national borders. This dynamic of exchange illustrates the essence of power diffusion – where decision-making is not concentrated solely in formal state institutions, but spreads through a network of universities, companies, and individuals. In this way, California operates as a subnational actor that "embodies" the third dimension of complex interdependence, with education serving as

a *bridge* between universities, companies, and global knowledge flows, thereby contributing to the transformation of decision-making centers. As noted, California's universities function as catalysts for innovation hubs, linking scientific research with the private sector, as well as other governmental and national initiatives.

Technology and Innovation

California, as previously mentioned, is globally renowned for Silicon Valley, the epicenter of technological innovation in sectors such as artificial intelligence, electric vehicles, and renewable energy (*Joint Venture Silicon Valley* 2022). In line with this, it is noteworthy that Tesla, headquartered in Palo Alto, California, announced in 2024 that it would open a battery manufacturing facility in Nevada using equipment from the Chinese company *Contemporary Amperex Technology Co., Ltd. (CATL),* further strengthening the technological supply chain connected to California's Silicon Valley (Coppola and Ludlow 2024).

Companies such as China's *CATL* are investing globally in the battery and electric vehicle sectors. The U.S. federal government's response to this issue has been inconsistent – while initial investments are permitted, subsequent restrictions and regulatory mechanisms controlling foreign investments in critical technologies have been introduced (*Reuters* 2024). Beyond Silicon Valley, California is developing regional innovation hubs in various sectors. San Francisco focuses on the creative industries and digital media, while the state capital, Sacramento, has become a center for climate innovation and policy regulation. These innovation centers not only enable technological advancement but also establish standards and implementation models with broad influence.

In 2021, the city of Sacramento adopted the Electric Vehicle Charging Infrastructure Ordinance, which mandates that new buildings include a specified number of outlets and charging infrastructure for electric vehicles (EVs) (City of Sacramento 2021). The Sacramento High-Speed Electric Vehicle Charging Hub project (2021) is one of the largest EV charging hubs in the state and serves as a model for other regions of the country (Federal Highway Administration [FHWA] 2021). Building on such local-level initiatives, California has established statewide legislative standards for EV infrastructure and chargers that other states and cities study and adopt, including permits, building codes, and pre-wiring standards for "smart homes." This illustrates how

subnational regulatory frameworks can be replicated and used as models in other jurisdictions.

Climate Policy and International Initiatives

The State of California is recognized as a leader in climate policy, both within the United States and globally, leveraging its economic and technological strength to influence international standards. Visits by the Governor of California to China between 2017 and 2019 resulted in bilateral agreements on *green energy*. Edmund Gerald "Jerry" Brown, Governor of California from 2011 to 2019, met in 2017 with the President of the People's Republic of China, Xi Jinping, and numerous other Chinese officials, signing memoranda on joint climate initiatives and technology exchange (Office of Governor Edmund G. Brown Jr. 2017a). Governor Brown also met with China's Minister of Science and Technology, Wan Gang, signing an agreement on behalf of California that built upon earlier subnational agreements with the provinces of *Sichuan* and *Jiangsu* (Office of Governor Edmund G. Brown Jr. 2017a). Specifically, this agreement expanded cooperation in advancing low-carbon technologies, renewable energy, and energy efficiency, including zero-emission vehicles (Office of Governor Edmund G. Brown Jr. 2017a).

His successor, Gavin Christopher Newsom, the current Governor, continued this practice. During his visit to China in 2023, he signed agreements with Guangdong Province and the city of Shanghai (with provincial status) on cooperation in clean energy, electric vehicles, and climate change initiatives (Governor Gavin Newsom 2023). These agreements enabled the implementation of California standards in China through the establishment of regulatory norms. Governor Newsom emphasized the importance of partnership with China in nearly all areas, particularly climate, stating, "When it comes to climate, it's a G2 issue. The United States and China account for 42% of global emissions. We cannot take climate change seriously without working together. We are here to make our climate ambitions clear and to ensure that silence is not the loudest sound either side hears" (Governor Gavin Newsom 2023). He further stressed, "Divorce is not an option. I do not want to see this relationship deteriorate – it serves no one. We are better when we collaborate and compete, not when we treat each other coldly" (Governor Gavin Newsom 2023).

California's legislative framework, including former *AB 32 Air Pollution* (Assembly Bill No. 32) and the more recent *2021 SB 100 Joint Agency Report,* aims to reduce greenhouse gas emissions and achieve a complete transition to renewable energy by 2045 (Gill, Gutierrez, and Weeks 2021). Implementation of these and similar policies in public and private projects creates replicable models that California uses as tools of *subnational diplomacy/paradiplomacy* and technology standardization.

California is the only U.S. state authorized to set its own vehicle emissions standards (Center for Climate and Energy Solutions [C2ES] n.d.). The state was granted an exemption under the *Clean Air Act* because it had already implemented standards in 1966 to address smog issues and established the *California Air Resources Board (CARB)* to oversee compliance. The *Clean Air Act* specifies that the Environmental Protection Agency (EPA) may grant an exemption if California's standards are necessary to meet compelling circumstances and are at least as stringent as federal standards. Other states may choose to adopt California's vehicle emissions standards without EPA approval. Seventeen states and the District of Columbia, representing approximately 40% of U.S. vehicle sales, comply with at least some of California's standards (C2ES n.d.).

California also benchmarks its climate policies against the European Union and other U.S. states. While the EU relies primarily on regulatory standards for emissions and renewable energy, California combines innovation with market-based instruments, such as the *Cap-and-Trade* program (Kynett 2024). Launched in 2013, this market-based program for limiting and trading greenhouse gas (GHG) emissions exemplifies a policy model adopted and implemented in the United States. Insights into the design and outcomes of California's *Cap-and-Trade* program can inform federal policymakers considering market-based climate policies. Additionally, Congress may be interested in specific aspects of the program, such as the state *Greenhouse Gas Reduction Fund* (*GGRF*) or the state offsets program. Policy designers in California describe the historical role of the state *Cap-and-Trade* program as a "backstop" for other climate policies, providing assurance that the state can meet its greenhouse gas emission targets. The program also creates financial incentives for entities to identify and implement cost-effective emission reductions and signals the market to transition toward a lower-emission economy. According to policymakers, the program's role may evolve as the state progresses toward its 2030 and 2045 greenhouse

gas reduction targets (Kynett 2024). This California regulatory model demonstrates how a subnational actor can create normative standards that provide a valuable reference framework for potential global norm-setting, illustrating in this case the complex interdependence and its third dimension – diffusion of power through the spillover of regulatory practices and technological innovation.

California's Interaction with the U.S. Federal Government and the Global Context

The Golden State leverages its economic strength, innovation, and educational resources to shape federal decisions and international policies, often independently of Washington. During the administration of Barack Obama (2009–2017), California played a key role in shaping federal vehicle emissions standards. Through collaboration with federal authorities, California succeeded in implementing stricter greenhouse gas emission standards than those initially proposed by the federal government. As a result, California, as previously mentioned, became a leader in environmental protection, and its standards served as a model for other U.S. states and international regulations (C2ES n.d.). California contributed to the development of federal vehicle emissions standards, using the outcomes of its climate and technological innovations as a model for national regulations. This serves as an example of how a subnational actor can indirectly influence federal policy through its own expertise (C2ES n.d.).

Given the political nature of policy and its competitive dimension, as well as the fact that the functioning of the 31 U.S. states often depends on whether Democrats or Republicans are in power, California has at times clashed with the federal government. Tensions were particularly pronounced between 2017 and 2021, during Donald Trump's first term, when the United States withdrew from the *Paris Climate Agreement*. In June 2017, the governors of California, New York, and Washington formed the *U.S. Climate Alliance* in response to President Trump's decision to withdraw the U.S. from the Paris Agreement (Office of Governor Edmund G. Brown Jr. 2017b). At the time, Governor Jerry Brown traveled to the United Nations headquarters in New York, attended the UN Climate Change Conference in Paris, visited the Vatican, and participated in the Climate Summit in Toronto, urging other leaders to join California in combating climate change. These efforts

built upon a series of other international climate agreements with leaders from Mexico, China, Japan, the Czech Republic, the Netherlands, Sweden, Israel, Peru, Chile, Australia, and Scotland. They aligned with Governor Brown's goal of bringing together world-renowned researchers and scientists around a groundbreaking call to action, the "*Consensus Statement,*" which translated key scientific climate findings from various fields into a single comprehensive document (Office of Governor Edmund G. Brown Jr. 2017b).

A statement from the European Union Commissioner for Climate Action and Energy at the time, Miguel Arias Cañete, aptly illustrates California's global role: "The EU and California are natural partners in the fight against climate change and were pioneers in the early years of carbon markets and clean mobility. Today, we have agreed to strengthen our cooperation to remain leaders in these areas – both of which will be key to achieving the goals of *the Paris Climate Agreement*" (Directorate-General for Climate Action 2017).

These findings confirm that subnational actors actively leverage the procedural dimension of power diffusion, employing *paradiplomacy* to circumvent federal policy constraints and, in this case, contribute to the preservation of the multilateral order, which was threatened by Trump's unilateral withdrawal from the Paris Agreement. Consistent with these observations, it is evident that California distinguishes itself through a combination of educational, technological, innovative, and climate capacities, enabling it to exert global influence that exceeds the usual scope of subnational actors.

Limitations and Scope of California's Subnational Action

California represents one of the clearest examples of a subnational actor whose activities illuminate the process of power diffusion, demonstrating how economic strength, innovation, and educational institutions contribute to shaping global influence independently of direct federal action. Through the development of high-tech hubs and climate initiatives, California serves as an example of how subnational actors can extend their influence beyond the traditional boundaries of state authority.

However, the process of power diffusion, even in this case, faces inherent limitations. Federal policies, international tensions, geopolitical risks, and competition from other technological centers can constrain

the reach of this process. The future trajectory of power diffusion within the most populous U.S. state will depend on California's ability to align its innovative potential with regulatory challenges, international partnerships, and domestic economic pressures.

This case study confirms the analytical value of power diffusion and provides rich empirical insight into the ways subnational actors, through interaction with global, national, and transnational structures, contribute to shaping a *new* pattern of complex interdependence. The use of the term *new*, in the context of interdependence is significant because, as noted earlier, American political scientist Nye did not focus on subnational actors. The inclusion of subnational actors within the framework of interdependence and the analysis of their role in the process of power diffusion, expand Nye's concept of complex/multidimensional interdependence.

OPENAI AS A TRANSNATIONAL ACTOR

OpenAI was founded in 2015 as a nonprofit organization with the goal of developing artificial intelligence (AI) in the public interest, explicitly aiming to avoid the concentration of power in the hands of individual states or corporations (*OpenAI* 2015). The Chief Scientist at *OpenAI* is Ilya Sutskever (*Toronto.edu* n.d.), one of the world's leading experts in machine learning. The founders, including Elon Musk, Sam Altman and Greg Brockman[5] emphasized a commitment to advancing artificial intelligence in a way that benefits humanity as a whole and ensures that its benefits are broadly and evenly distributed (*OpenAI* 2015). These findings indicate that *OpenAI* has pursued a global agenda and objectives from its inception.

Over the years, *OpenAI* has evolved into a hybrid model, combining nonprofit goals with commercial partnerships, most notably with *Microsoft*, which has invested billions of dollars in development and infrastructure (Endicott 2023). *Microsoft* is not formally considered a "minority owner," but rather an external partner with a "minority

[5] At the time of writing, more recent developments regarding the legal and corporate dispute between Elon Musk and *OpenAI* have also been reported, including escalating rhetoric ahead of trial proceedings (Howley 2026). However, due to the limited scope of this paper, it is not possible to fully account for all ongoing and rapidly evolving information.

economic interest," and its role within *OpenAI* remains only partially formalized (Endicott 2023). At the same time, *Microsoft* continues to develop its own AI models, partly in order to reduce dependency on *OpenAI* technologies (*CNN Business* 2025).

Sources of Influence, Regulatory Mechanisms, and Actor Interactions

OpenAI participates in the process of *power diffusion* through its technological expertise and innovations in AI. Its influence stems from informal authority within the industry, ownership of patents, research outcomes, and control over access to "advanced" AI models. Unlike subnational actors, *OpenAI* does not possess formal legal power, but operates through self-regulation and internal standards. An example is the restricted access to its *Application Programming Interface (API)* models and the introduction of "safety responsibility" principles for partners and researchers, thereby contributing to the formation of global norms and ethical frameworks in AI development (*OpenAI Developers* 2023). In the context of *OpenAI*, API models are AI systems accessible via a software interface, where users can send data to the model and receive responses without needing to deploy or *host* the model on their own servers.

Access restrictions to API models protect the system from misuse and overload. *OpenAI* implements *rate limits* to prevent individual users from overwhelming the API with requests, ensuring fair access and maintaining stable and reliable service operation (*OpenAI Developers* 2023). In its policy "Our Approach to AI Safety", *OpenAI* describes rigorous testing, engagement with external experts, and a staged, controlled rollout before releasing any new system to broader use (*OpenAI* 2023). Historically, however, the concept of "superintelligence" and its associated ethical dilemmas are not new. Irving John Good, who served as chief statistician in Alan Turing's team during World War II, may have been the first to outline essential aspects of potential AI scenarios. As he noted in 1965, "Let an *ultraintelligent* machine be defined as a machine that can far surpass all the intellectual activities of any human being, however clever. Since designing machines is itself an intellectual activity, an *ultraintelligent* machine could design even better machines; there would then unquestionably occur an 'intelligence explosion' and the human intellect would be left far behind. Thus, the

first *ultraintelligent* machine is the last invention that man need ever make." (Bostrom 2014, 5).

OpenAI operates within a transnational framework, indirectly influencing state regulations and decisions, thereby participating in the process of power diffusion. Its partnership with *Microsoft*, despite the aforementioned normative disagreements, provides access to global infrastructure and financial resources, but simultaneously creates dependence on economic interests and market dynamics (Novet 2023).

As one of the leading AI research centers, *OpenAI* engages in consultations with the European Union on the ethical application of AI, contributing to the Code of Practice for *General-Purpose AI*, providing feedback on draft versions of the EU AI Act, and participating in public consultations conducted by the EU AI Office (*OpenAI* 2025b). This involvement demonstrates how *OpenAI* participates in power diffusion, shaping norms that are reflected in international regulations.

More broadly, maintaining analytical distance is necessary. While *OpenAI* emphasizes openness and safety (*OpenAI* 2023), scholarly debates point to potential risks, including concentration of power, unequal access, and regulatory uncertainty (Bostrom 2014; OECD 2019). These considerations suggest that power diffusion in the technological domain may coexist with emerging forms of power concentration, highlighting the complex and uneven nature of this process.

Results and Normative Influence

OpenAI has contributed to the establishment of emerging global standards in AI ethics, safe development, and technology distribution. Its practice of "controlled model release," where advanced models are gradually deployed, influences how the industry and researchers approach AI systems and their applications. A recent publication on *OpenAI*'s website highlights the company's interaction with governments and its global objectives: "*OpenAI for Countries* helps our allies and partners build AI infrastructure based on democratic values. By providing these models to governments, we support the global construction of AI on rails led by the United States – enabling nations to harness AI-driven economic growth, innovation, and opportunities. For unstable or *swing states*, access to powerful open-weight models will encourage the development of democratic AI rather than autocratic AI" (*OpenAI* 2025a).

This example demonstrates how *OpenAI*, through the gradual opening of its innovative models and collaboration with States, influences how AI is developed and used, participating in a *complex transnational process* where technology, policy, and economic opportunities intersect to shape new patterns of AI application. At the same time, *OpenAI*'s increasing role in shaping global AI governance raises concerns in the broader literature regarding the concentration of advanced technological capabilities, computational resources, and access to frontier AI systems, as well as resulting asymmetries in global access.

Limitations and Constraints

Despite its influence, *OpenAI* faces several limitations:

- *Regulatory uncertainty*: internal guidelines do not guarantee global adoption or *a priori* acceptance by states or international bodies.
- *Dependence on partners and investments:* strategic partnerships (e.g., *Microsoft*) provide resources but also create economic dependence.
- *Ethics and control:* challenges related to *AI alignment*, potential misuse, biases, and safety concerns demonstrate that normative power does not equate to full control over global technological outcomes.

OpenAI represents a clear example of how transnational actors, even without formal negotiating status, can shape norms, markets, and technological development on a global scale. Its influence is dynamic and transformative, shaping technological and policy flows, yet it remains conditioned by economic, regulatory, and ethical frameworks (MIT Technology Review Insights 2024).

CONCLUSION

California and *OpenAI* represent two distinct types of actors exemplifying the concept of power diffusion, but through different mechanisms and contexts. California, as a subnational government, utilizes formal instruments of power through laws, regulations, and political initiatives, which often "spill over" to other states and regions. Its *Cap-and-Trade* program for reducing carbon emissions and *Low Emission Vehicle* (*LEV*) standards not only regulate the domestic

market but also serve as reference frameworks for other actors, such as the European Union and Canada, in formulating their own climate policies. Its *Cap-and-Trade* program for reducing carbon emissions and *LEV* standards not only regulate the domestic market but also serve as reference frameworks for other actors, such as the European Union and Canada, in formulating their own climate policies. The EU considered California's models when defining CO_2 testing standards and limits, while China's *pilot* emissions trading programs incorporate elements of California's approach at the provincial level.

California also develops renewable energy standards that influence global technology companies and foster innovation in environmentally sustainable technologies. Its subnational character allows regulatory experimentation, but its normative power is partially constrained by federal policy, economic conditions, and social challenges, particularly in low-income and minority communities.

OpenAI, as a transnational private actor, operates differently. Its normative power, which can also be understood as attractiveness, is not institutional but stems from technological expertise, innovation, and business partnerships (e.g., *Microsoft*). *OpenAI* shapes internal standards for AI development, including access to its models, in ways that establish global norms in the tech sector before states can react. Its normative power is *informal*, relying on reputation and innovation capacity.

Differences in sources of influence lead to distinct challenges and limitations. California must balance ambitious climate goals with economic sustainability, with its normative power partially dependent on federal policy and international cooperation. *OpenAI* has the agility to set standards rapidly, but is exposed to regulatory uncertainty, reliance on market partners, and ethical concerns, including bias and potential misuse. While California applies formal mechanisms to negotiate and collaborate with *nation-states* and other international actors and institutions, *OpenAI* influences state decisions indirectly, through technological impact and *normative spillover* in the industry.

Similarities also exist. Both demonstrate that power can be diffused, decentralized and that its effectiveness arises from interactions rather than exclusively from state authority. Both subnational and transnational actors can shape global norms, promote innovation, and influence markets. Limitations of power diffusion include technical, administrative, regulatory, and ethical barriers, illustrating that power is not static.

However, no matter how diffuse, power may be, it is not absolute. California shows how subnational actors can extend influence through legal mechanisms and international cooperation, whereas *OpenAI* illustrates how technologically innovative actors can shape global norms "from the bottom up." Both possess forms of economic, technological, and normative power that allow them to influence flows and norms in the global system.

Yet, diffused power cannot be "possessed"; it represents a process of redistribution through interactions between subnational, transnational, and state actors. In this sense, the role of these actors lies in participating in and shaping the process, rather than controlling the phenomenon of power diffusion itself. Ultimately, these findings reinforce the argument that power diffusion is not a static condition, but a dynamic and context-dependent process, shaped by interactions, constraints, and the evolving roles of diverse actors in the global system.

REFERENCES

Assembly Bill No. 32, California Global Warming Solutions Act of 2006. Regular Session. Chapter 488, Statutes of 2006. Approved September 27, 2006. Accessed April 23, 2026. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32

Baldassare, Mark. 2023. "California Is a Model for Climate Change Action When International Efforts Fall Short." *Carnegie Endowment for International Peace*. July 20, 2023. Last accessed on October 1, 2025. https://carnegieendowment.org/posts/2023/07/california-is-a-model-for-climate-change-action-when-international-efforts-fall-short?lang=en

Bhatia, Aatish, and Amy Fan. 2025. "Nearly 20 Percent Fewer International Students Traveled to the U.S. in August." *The New York Times*. Last accessed on October 4, 2025. https://www.nytimes.com/interactive/2025/10/06/upshot/us-international-student-travel.html

Boston Brand Media Education. 2025. "The Role of International Students in Global Innovation." June 8, 2025. Last accessed on October 5, 2025. https://www.bostonbrandmedia.com/news/the-role-of-international-students-in-global-innovation

Bostrom, Nick. 2014. *Superintelligence, Paths, Dangers, Strategies*. Oxford; New York: Oxford University Press.

Center for Climate and Energy Solutions [C2ES]. n.d. "Federal Vehicle Standards." Last accessed on October 3, 2025. https://www.c2es.org/content/regulating-transportation-sector-carbon-emissions/

City of Sacramento. 2021. "New Building Electrification Ordinance." August 18, 2021. Last accessed on October 2, 2025. https://www.cityofsacramento.gov/content/dam/portal/cdd/Planning/Major-Projects/Electrification-of-New-Construction/Electrification-QA--REVISED-81821.pdf

CNN Business. 2025. "Microsoft and OpenAI reach non-binding deal to allow OpenAI to restructure." September 12, 2025. Last accessed on October 5, 2025. https://edition.cnn.com/2025/09/11/tech/microsoft-openai-restructure

Coppola, Gabrielle, and Edward Ludlow. 2024. "Tesla to Open US Battery Plant with Equipment from China's CATL." *Bloomberg*. January 31, 2024. Last accessed on October 2, 2025. https://www.bloomberg.com/news/articles/2024-01-31/tesla-to-open-new-us-battery-plant-with-equipment-from-catl

Delany, Crystal. 2025. "The heart of tech: where data meets innovation in Silicon Valley." *Digital Realty.* June 18, 2025. Last accessed on October 2, 2025. https://www.digitalrealty.com/resources/articles/silicon-valley-data-centers

Dias, Ana. 2023. "Affirming Subnational Diplomacy via Paris: California's Climate Leadership." *USC Center on Public Diplomacy (CPD)*. December 1, 2023. Last accessed on October 1, 2025. https://uscpublicdiplomacy.org/blog/affirming-subnational-diplomacy-paris-california%E2%80%99s-climate-leadership#:~:text=An%20illustration%20of%20this%20reality,)%20network%2C%20among%20other%20initiatives

Directorate-General for Climate Action. 2017. "EU and California in joint climate push, boost cooperation." *European Commission*. November 7, 2017. Last accessed on October 3, 2025. https://climate.ec.europa.eu/news-other-reads/news/eu-and-california-joint-climate-push-boost-cooperation-2017-11-07_en

Duran, Manuel. 2011. "French regions as diplomatic actors: The case of Provence-Alpes-Côte d'Azur." *French Politics* (9) 4: 339–363. DOI:10.1057/fp.2011.16

Endicott, Sean. 2023. "OpenAI sneaks out website update, no longer lists Microsoft as minority owner." *Windows Central*. December 19, 2023. Last accessed on October 5, 2025. https://www.windowscentral.com/microsoft/openai-sneaks-out-website-update-no-longer-lists-microsoft-as-minority-owner

Federal Highway Administration [FHWA]. 2021. "Project Profile: Sacramento High-Speed Electric Vehicle Charging Hub Project, California." *U.S. Department of Transportation, Federal Highway Administration*. Last accessed on October 2, 2025. https://www.fhwa.dot.gov/ipd/project_profiles/ca_sacramento_high_speed_ev_hub.aspx

Feldgoise, Jacob, and Remco Zwetsloot. 2020. "Estimating the Number of Chinese STEM Students in the United States, CSET Issue Brief." *Center for Security and Emerging Technology (CSET)*. DOI: 10.51593/20200023

Gill, Liz, Aleecia Gutierrez, and Terra Weeks. 2021. "2021 SB 100 Joint Agency Report, Achieving 100 Percent Clean Electricity in California: An Initial Assessment." *California Energy Commission*. September 3, 2021. Last accessed on October 3, 2025. https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity

Governor Gavin Newsom. 2023. "What Governor Newsom's Trip to China Accomplished." October 30, 2023. Last accessed on October 3, 2025. https://www.gov.ca.gov/2023/10/30/what-governor-newsoms-trip-to-china-accomplished/

Governor Gavin Newsom. 2025. "California is now the 4th largest economy in the world." April 23, 2025. Last accessed on October 1, 2025. https://www.gov.ca.gov/2025/04/23/california-is-now-the-4th-largest-economy-in-the-world/

Howley, Daniel. 2026. "Musk threatened to turn OpenAI's Altman and Brockman into 'most hated men in America' ahead of trial." *Yahoo Finance*. May 4, 2026. Last accessed on May 5, 2026. https://finance.yahoo.com/sectors/technology/article/musk-threatened-to-turn-openais-altman-and-brockman-into-most-hated-men-in-america-ahead-of-trial-180609792.html

Joint Venture Silicon Valley. 2022. "The 2022 Silicon Valley Index." Last accessed on October 2, 2025. https://jointventure.org/download-the-2022-index

Kaleem, Jaweed. 2024. "California retains No. 1 ranking for international student enrollment as concerns grow over Trump." *Los Angeles Times*. November 17, 2024. Last accessed on October 2, 2025. https://www.latimes.com/california/story/2024-11-17/california-international-students-open-doors-report

Keohane, Robert O., and Joseph S. Nye. 1977. *Power and Interdependence*, first edition. Boston; Toronto: Little, Brown and Company.

Keohane, Robert O., and Joseph S. Nye, Jr. 2011. *Power and Interdependence*, fourth edition. Boston: Pearson Longman.

Keohane, Robert O., and Joseph S. Nye, Jr. 2025. "The End of the Long American Century: Trump and the Sources of U.S. Power." *Foreign Affairs* 104 (2): 68–79.

Kynett, Kathryn G. 2024. "The California Cap-and-Trade Program: Overview and Considerations for Congress." *Congress.gov.* December 18, 2024. Last accessed on October 4, 2025. https://www.congress.gov/crs-product/R48314

Meckling, Jonas, and Samuel Trachtman. 2024. "The home state effect: How subnational governments shape climate coalitions." *Governance* (37) 3: 889–893 DOI: 10.1111/gove.12809

MIT Technology Review Insights. 2024. "Responsible technology use in the AI age." *MIT Technology Review*. February 15, 2024. Last accessed on October 5, 2025. https://www.technologyreview.com/2024/02/15/1087815/responsible-technology-use-in-the-ai-age/

Naj, Džozef S. 2006. *Kako razumevati međunarodne sukobe*, peto izdanje. Beograd: Stubovi kulture.

Nedeljković, Stevan. 2024. „Velika strategija Sjedinjenih Država – da li je kucnuo čas za uravnotežavanje s obale?" *Međunarodni problemi* 76 (3): 475–496. DOI: 10.2298/MEDJP2403475N

Novet, Jordan. 2023. "Microsoft's $13 billion bet on OpenAI carries huge potential along with plenty of uncertainty." *CNBC*. April 8, 2023. Last accessed on October 5, 2025. https://www.cnbc.com/2023/04/08/microsofts-complex-bet-on-openai-brings-potential-and-uncertainty.html

Nye, Joseph S. 1997. *Understanding international conflicts An Introduction to Theory and History*, second edition. Boston: Longman.

Nye, Joseph S. 2012. "The Twenty-First Century Will Not Be a 'Post-American World'." *International Studies Quarterly* 56 (1): 215–217. DOI: 10.1111/j.1468-2478.2011.00698.x

Nye, Joseph S., Jr. 2015. *Is the American Century over?*. Cambridge: Polity Press.

OECD. 2019. "Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449." *OECD Legal Instruments*. Last accessed on May 6, 2026. https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449

Office of Governor Edmund G. Brown Jr. 2017a. "Governor Brown to Expand California's Climate Partnership with China in Chengdu, Nanjing and Beijing." June 2, 2017. Last accessed on October 3, 2025. https://archive.gov.ca.gov/archive/gov39/2017/06/02/news19821/index.html

Office of Governor Edmund G. Brown Jr. 2017b. "U.S. Climate Alliance Adds 10 New Members to Coalition Committed to Upholding the Paris Accord." June 5, 2017. Last accessed on October 4, 2025 https://archive.gov.ca.gov/archive/gov39/2017/06/05/news19831/index.html

OpenAI. 2015. "Introducing OpenAI." December 11 2015. Last accessed on October 4, 2025. https://openai.com/index/introducing-openai/

OpenAI. 2023. "Our approach to AI safety." April 5, 2023. Last accessed on October 5, 2025. https://openai.com/index/our-approach-to-ai-safety

OpenAI. 2025a. "Open weights and AI for all." August 5, 2025. Last accessed on October 5, 2025. https://openai.com/global-affairs/open-weights-and-ai-for-all/

OpenAI. 2025b. "The EU Code of Practice and future of AI in Europe." Global Affairs. July 11, 2025. Last accessed on October 5, 2025. https://openai.com/global-affairs/eu-code-of-practice/

OpenAI Developers. 2023. "Rate limits, Understand API rate limits and restrictions." Last accessed on October 10, 2025. https://developers.openai.com/api/docs/guides/rate-limits

Reuters. 2024. "Exclusive: China battery giant CATL would build US plant if Trump allows it." November 13, 2024. Last accessed on October 2, 2025. https://www.reuters.com/business/autos-transportation/china-battery-giant-catl-would-build-us-plant-if-trump-allows-it-2024-11-13/

Schelenz, Robyn. 2025. "UC leads American public research universities in global impact, new rankings show." *University of California*. June 26, 2025. Last accessed on October 2, 2025. https://www.universityofcalifornia.edu/news/uc-leads-american-public-research-universities-global-impact-new-rankings-show#:~:text=All%2010%20UC%20campuses%20are%20among%20the,ranking%20from%20U.S.%20News%20&%20World%20Report

Simić, Dragan R., i Dragan Živojinović. 2013. „Različita viđenja rasporeda moći u međunarodnim odnosima posle Hladnog rata." U *Srbija u evropskom i globalnom kontekstu*, ur. Radmila Nakarada i Dragan Živojinović, 17–45. Beograd: Fakultet političkih nauka.

Toronto.edu. n.d. "Ilya Sutskever." Last accessed on October 5, 2025. https://www.cs.toronto.edu/~ilya/

Марина Тодоровић[*]
Независан истраживач, Београд
Милица Шљиванчанин[**]
Независан истраживач, Београд

ДИФУЗИЈА МОЋИ КАО ТРЕЋА ДИМЕНЗИЈА КОНЦЕПТА КОМПЛЕКСНЕ МЕЂУЗАВИСНОСТИ: КАЛИФОРНИЈА И ОпенАИ КАО СТУДИЈЕ СЛУЧАЈА

Резиме

Овај рад испитује дифузију моћи као трећу димензију комплексне међузависности (прва димензија је војна, а друга економска), концепт који су развили, а касније унапредили амерички научници Роберт Кохејн и Џозеф Нај. Посматрајући дифузију моћи, као једну од кључних феномена у међународним односима, истраживање се фокусира на субнационалне и транснационалне актере. Кроз две студије случаја, савезну државу Калифорнију и организацију ОпенАИ, рад анализира како економски, технолошки и образовни ресурси омогућавају овим актерима да утичу на глобалну динамику моћи независно од националних држава. Пример Калифорније показује како један субнационални ентитет може да осмишљава иновативне политике и поставља глобалне стандарде у областима технологије, образовања и климатских промена. ОпенАИ, као транснационални приватни актер, илуструје како иновације у области вештачке интелигенције могу да редефинишу расподелу моћи и обликују међународне односе изван државних структура. Рад показује да је дифузија моћи динамичан процес који настаје кроз интеракцију различитих актера, а не стање које се може „присвојити". Међутим, овај процес је повремено ограничен етичким, а готово увек политичким и комерцијалним лимитима. Истовремено, улога субнационалних и транснационалних актера у овој интеракцији указује на трансформацију саме природе моћи

[*] Имејл: todormari@icloud.com; ORCID: 0009-0005-9340-5828
[**] Имејл: sljivancaninvmilica@gmail.com; ORCID: 0009-0002-5194-9585

и утицаја у савременом глобалном поретку. Налази овог рада осветљавају аналитичку вредност и значај концепта дифузије моћи. Такође, уочава се да субнационални актери, делујући на пресеку глобалних, државних и транснационалних структура, постају важни чиниоци савремених облика међузависности. Њихово деловање упућује на *структурне промене* унутар међународног система и ограничења *државноцентричних приступа*. С обзиром на то да Џозеф Нај, у изворном концепту сложене међузависности, није разматрао субнационални ниво – укључивање у рад и анализа улоге субнационалног актера у процесима дифузије моћи – доприносе теоријском проширењу појма комплексне (вишедимензионалне/сложене) међузависности и, тим путем, обогаћују научну дебату; постављајући нови основ за даља, интердисциплинарна истраживања.

Кључне речи: дифузија моћи, процес, комплексна међузависност, субнационални актери, транснационални актери, Калифорнија, ОпенАИ

* This manuscript was submitted on January 4, 2026, and accepted by the Editorial Board for publishing on May 12, 2026.

AUTHOR GUIDELINES

The academic journal *Serbian Political Thought* publishes articles that result from the latest theoretical and empirical research in the field of political science. Authors should refer mainly to the results of scientific research published in academic journals, primarily in political science journals.

Manuscripts should be submitted in Serbian (Cyrillic script) with a mandatory English translation, or in English.

The journal is published six times a year. The deadlines for submitting the manuscripts are February 1st, April 1st, June 1st, August 1st, October 1st, and December 1st.

Two consecutive issues cannot contain articles written by the same author, whether single-authored or co-authored.

Papers are submitted to the Editorial Board by uploading them to the CEON platform using the following link: https://aseestant.ceon.rs/index.php/spm/login.

Authors are obliged to submit a signed and scanned declaration of authorship when submitting their works. The declaration form can be downloaded from the journal's website: https://www.ips.ac.rs/en/magazines/srpska-politicka-misao/authors_directions/

All submitted manuscripts are checked for plagiarism or auto-plagiarism. Various forms of chat boxes and other artificial intelligence software cannot be (co)authors of the papers under consideration. These tools can only be used for stylistic language editing, not for writing sections of the paper, and authors who use them are obliged to specify the purpose of using such tools at the point where they are used.

Authors are required to provide their ORCID numbers along with their (preferably) institutional email addresses, which they include in the manuscript text in a footnote alongside their names and surnames.

Research articles can have up to 40,000 characters with spaces, including footnotes. When counting the characters leave out the reference list. Exceptionally, a monographic study can be larger in scope in accordance with the provisions of *the Rulebook on procedure, method of evaluation, and quantitative presentation of scientific research results.*

Reviews can have up to 15,000 characters with spaces.

Book reviews can have up to 10,000 characters with spaces.

CITING AND REFERENCING

The journal *Serbian Political Thought* uses a partially modified Chicago style of citation (17th edition of the *Chicago Manual of Style*), which implies specifying bibliographic parentheses (brackets) according to the author-date system in the text, as well as a list of references with full bibliographic data after the text of the paper.

Data in bibliographic parentheses and the list of references should be written in Latin script.

Below are the rules and examples for citing the bibliographic information in the reference list and in the text. For each type of source, a citation rule is given first, followed by an example of citation in the reference list and bibliographic parenthesis.

The bibliographic parenthesis is usually set off at the end of the sentence, before the punctuation mark. It contains the author's surname, the year of publication, and page numbers pointing to a specifically contextual page or range of pages, as in the following example: (Mearsheimer 2001, 15–17).

Books

Books with one author

Surname, Name. Year of publication. *Title*. Place of publication: Publisher.

Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics*. New York: W. W. Norton & Company.

(Mearsheimer 2001)

Books with two or three authors

Surname, Name, and Name Surname. Year of publication. *Title*. Place of publication: Publisher.

Brady, Henry E., and David Collier. 2010. *Rethinking Social Inquiry: Diverse Tools, Shared Standards*. Lanham: Rowman & Littlefield Publishers.

(Brady and Collier 2010, 211)

Pollitt, Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

(Pollitt, Birchal and Putman 1998)

Books with four or more authors

Surname, Name, Name and Surname, Name and Surname, and Name and Surname. Year of publication. *Title*. Place of publication: Publisher.

> Pollitt, Christopher, Colin Talbot, Janice Caulfield, and Amanda Smullen [Pollitt *et al.*]. 2005. *Agencies: How Governments do Things Through Semi-Autonomous Organizations*. New York: Palgrave Macmillan.
>
> (Pollitt *et al.* 2005)

Editor(s) or translator(s) in place of the author(s)

Surname, Name, Name and Surname, ed. Year of publication. *Title*. Place of publication: Publisher.

> Kaltwasser, Cristobal Rovira, Paul Taggart, Paulina Ochoa Espejo, and Pierre Ostigoy [Kaltwasser *et al.*], eds. 2017. *The Oxford Handbook of Populism.* New York: Oxford University Press.
>
> (Kaltwasser *et al.* 2017)

Chapter in an edited book

Surname, Name. Year of publication. "Title of the chapter." In *Title*, ed. Name Surname, pages range. Place of publication: Publisher.

> Lošonc, Alpar. 2019. "Discursive dependence of politics with the confrontation between republicanism and neoliberalism." In *Discourse and Politics*, eds. Dejana M. Vukasović and Petar Matić, 23?46. Belgrade: Institute for Political Studies.
>
> (Lošonc 2019)

Journal Articles

Regular issue

Surname, Name. Year of publication. "Title of the article." *Journal* Volume, if available (issue): page range. DOI.

> Ellwood, David W. 2018. "Will Brexit Make or Break Great Britain?" *Serbian Political Thought* 18 (2): 5?14. DOI: 10.22182/spt.18212018.1.
>
> (Ellwood 2018)

Newspapers and magazines

Signed articles

Surname, Name. Year of publication. "Title of the article." *Newspaper/ Magazine* Date: page range.

> Clark, Phil. 2018. "Rwanda's Recovery: When Remembrance is Official Policy." *Foreign Affairs*, January/February 2018: 35–41.
>
> (Clark 2018)

Unsigned articles

Title of the newspaper/magazine. Year of publication. "Title of the article." Date: page range.

> *New York Times*. 2002. "In Texas, Ad Heats Up Race for Governor." July 30, 2002.
>
> (*New York Times* 2002)

Corporate Author

Name of the corporate author [acronym if needed]. Year of publication. *Title of the publication*. Place of publication: Publisher.

> International Organization for Standardization ?ISO?. 2019. *Moving from ISO 9001:2008 to ISO 9001:2015*. Geneva: International Organization for Standardization.
>
> (International Organization for Standardization ?ISO? 2019) – *The first in-text citation*
>
> (ISO 2019) – *Second and all subsequent citations*

Legal and Public Documents

Sections, articles, or paragraphs can be cited in the parentheses. They should be appropriately abbreviated.

Constitutions and laws

The title of the legislative act [acronym if needed], "Official Gazette of the state" and the number of the official gazette, or the webpage and the date of last access.

> The Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/06.
>
> (The Constitution of the Republic of Serbia, Art. 33)

The Law on Foreign Affairs [LFA], "Official Gazette of the Republic of Serbia", No. 116/2007, 126/2007, and 41/2009.

(LFA 2009, Art. 17)

Succession Act [SA], "Official Gazette of the Republic of Croatia", No. 48/03, 163/03, 35/05, 127/13, and 33/15 and 14/19.

(SA 2019, Art. 3)

An Act to make provision for and in connection with offences relating to offensive weapons [Offensive Weapons Act], 16th May 2019, www.legislation.gov.uk/ukpga/2019/17/pdfs/ukpga_20190017_en.pdf, last accessed 20 December 2019.

(Offensive Weapons Act 2019)

Legislative acts of the European Union

The title of the legislative act, the number of the official gazette, the publication date, and the number of the page in the same format as on the *EUR-lex* website: https://eur-lex.europa.eu/homepage.html.

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18.

(Regulation 182/2011, Art. 3)

Web sources

Surname, Name, or name of the corporate author [acronym]. Year of publication or n.d. – if the year of publication cannot be determined. "The name of the web page." *The name of the website*. Date of creation, modification, or the last access to the web page, if the date cannot be determined from the source. URL.

Bilefsky, Dan, and Ian Austen. 2019. "Trudeau Re-election Reveals Intensified Divisions in Canada." *The New York Times*. https://www.nytimes.com/2019/10/22/world/canada/trudeau-re-elected.html.

(Bilefsky and Austen 2019)

Institute for Political Studies [IPS]. n.d. "The 5th International Economic Forum on Reform, Transition and Growth." *Institute for Political Studies*. Last accessed 7 December 2019. http://www.ips.ac.rs/en/news/the-5th-international-economic-forum-on-reform-transition-and-growth/.

(Institute for Political Studies [IPS] n.d.) – *First in-text citation*

(IPS n.d.) – *Second and every subsequent citation*

Associated Press [AP]. 2019. "AP to present VoteCast results at AAPOR pooling conference." May 14, 2019. https://www.ap.org/press-releases/2019/ap-to-present-votecast-results-at-aapor-polling-conference.

(AP 2019)

Special cases of referencing

Citing editions other than the first

Surname, Name. Year of publication. *Title*, edition number. Place of publication: Publisher.

Bull, Hedley. 2012. *The Anarchical Society: A Study of Order in World Politics*, 4th edition. New York: Columbia University Press.

(Bull 2012)

Multiple sources of the same author

1) *Multiple sources by the same author* should be arranged chronologically by year of publication in ascending order.

Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics*. New York: W. W. Norton & Company.

Mearsheimer, John J. 2010. "The Gathering Storm: China's Challenge to US Power in Asia." *The Chinese Journal of International Politics* 3 (4): 381–396. DOI: 10.1093/cjip/poq016.

2) *Multiple sources by the same author from the same year* should be alphabetized by title, with lowercase letters attached to the year. Those letters should be used in parenthetical citations as well.

Walt, Stephen M. 2018a. *The Hell of Good Intentions: America's Foreign Policy Elite and the Decline of U.S. Primacy*. New York: Farrar, Straus and Giroux.

(Walt 2018a)

Walt, Stephen M. 2018b. "Rising Powers and the Risk of War: A Realist View of Sino-American Relations." In *Will China's Rise be Peaceful: Security, Stability and Legitimacy*, ed. Asle Toje. 13–32. New York: Oxford University Press.

(Walt 2018b)

3) *Single-authored sources precede multiauthored sources beginning with the same surname* or written by the same person.

> Pollitt, Christopher. 2001. "Clarifying convergence. Striking similarities and durable differences in public management reform." *Public Management Review* 3 (4): 471–492. DOI: 10.1080/14616670110071847.
>
> Pollit, Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.

4) *Multiauthored sources with the same name and surname* as the first author should continue to be alphabetized by the second author's surname.

> Pollitt Christopher, Johnston Birchall, and Keith Putman. 1998. *Decentralising Public Service Management*. London: Macmillan Press.
>
> Pollitt Christopher, Colin Talbot, Janice Caulfield, and Amanda Smullen. 2005. *Agencies: How Governments do Things Through Semi-Autonomous Organizations*. New York: Palgrave Macmillan.

Special cases of parenthetical citation

Exceptions to the rule of placing the parenthetical citation at the end of a sentence

1) If the *author is mentioned in the text*, even if used in a possessive form, the year must follow in parenthesis, and page numbers should be put in the brackets at the end of the sentence.

> For the assessment, see Kaltwasser *et al*. (2017) ... (112).
>
> According to Ellwood (2018) … (7).

2) When *quoting directly*, if the name of the author precedes the quotation, the year and page numbers must follow in parenthesis.

> Mearsheimer (2001, 28) claims that: "...".

3) When *using the same source multiple times in one paragraph*, the parenthetical citation should be placed either after the last reference (or at the end of the paragraph, preceding the final period) if the same page (or page range) is cited more than once, or at the first reference, whereas the subsequent citations should only include page numbers.

Do not use *ibid* or *op. cit.* with repeated citations.

Using brief phrases such as "see", "compare" etc.

Those phrases should be enclosed within the parenthesis.

(see: Ellwood 2018)

Using secondary source

When using a secondary source, the original source should be cited in parenthesis, followed by "quoted/cited in" and the secondary source. The reference list should only include the secondary source.

"Its authority was greatly expanded by the constitutional revision of 1988, and the Court of Arbitration can now be regarded as a 'genuine constitutional court'" (De Winter and Dumont 2009, 109 cited in: Lijphart 2012, 39–40).

Lijphart, Arend. 2012. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, 2nd edition. New Haven & London: Yale University Press.

Multiple sources within the same parentheses

1) When *multiple sources* are cited, they should be separated by semicolons.

(Mearsheimer 2001, 34; Ellwood 2018, 7)

2) When *multiple sources by the same author*, but published in different years are cited, the name of the author is cited only the first time. The different years are separated by commas or by semicolons where page numbers are cited.

(Mearsheimer 2001, 2010) or (Mearsheimer 2001, 15–17; 2010, 390)

3) When *different authors share the same surname*, include the first initial in the parenthesis.

(M. Chiti 2004, 40), (E. Chiti 2004, 223)

Chiti, Edoardo. 2004. "Administrative Proceedings Involving European Agencies." *Law and Contemporary Problems* 68 (1): 219–236.

Chiti, Mario. 2004. "Forms of European Administrative Action." *Law and Contemporary Problems* 68 (1): 37–57.

TEXT FORMATTING

General guidelines for writing the manuscript

The manuscript should be written in Word, in the following manner:

- Paper size: A4;
- Margins: Normal 2.54 cm;
- Use Times New Roman font (plain letters) to write the text, unless specified otherwise;
- Line spacing: 1.5;
- Footnote line spacing: 1;
- Title font size: 14 pt;
- Subtitles font size: 12 pt;
- Text font size: 12 pt;
- Footnote font size: 10 pt;
- Tables, charts and figures font size: 10 pt;
- Use Paragraph/Special/First line at 1.27 cm;
- Text alignment: Justify;
- Font color: Automatic;
- Page numbering: Arabian numerals in lower right corner;
- Do not break the words manually by inserting hyphens to continue the word in the next line;
- Save the manuscript in the .doc format.

Research article manuscript preparation

The manuscript should be prepared in the following manner:

Name and surname of the first author*

* Footnote: E-mail address: The institutional e-mail address is strongly recommended. ORCID:

Affiliation

Name and surname of the second author**

** Footnote: E-mail address: The institutional e-mail address is strongly recommended. ORCID:

Affiliation

TITLE OF THE PAPER***

*** Footnote: if necessary, specify one of the following (or similar) data: 1) the name and number of the project; 2) the proceeding where the manuscript was presented under the same or similar title; 3) statements of gratitude.

Abstract

Abstract, within 100–250 words range, contains the subject, aim, theoretical and methodological approach, results and conclusions of the paper.

Keywords: Below the abstract, five to ten **key words** should be written. Key words should be written in roman font and separated by commas.

The manuscript can have maximally three levels of subtitles. **Subtitles** should not be numbered. They should be used in the following manner:

FIRST LEVEL SUBTITLE

Second level subtitle

Third level subtitle

Tables, charts, and figures should be inserted in the following manner:

- Above the table/chart/figure, center the name of the Table, Chart or Figure, an Arabic numeral, and the title in Times New Roman font;
- Below the table/chart/figure, the source should be cited in the following manner: 1) if the table/chart/figure is taken from another source, write down *Source:* and include the parenthetical citation information of the source; or 2) if the table/chart/figure is not taken from another source, write down *Source: Author*.

Use in-text references according to *Citing and referencing*.

Use the footnotes solely to provide remarks or broader explanations.

REFERENCES

References should be listed after the text of the paper, before the Resume in the following manner:

- the first line of each reference should be left indented, and the remaining lines should be placed as hanging by 1.27 cm using the option Paragraph/Special/Hanging;
- all the references should be listed together, without separating legal acts of archives;
- the references should not be numbered;
- list only the references used in the text.

After the reference list, write the name and surname of the author, the tile of the paper and resume in Serbian in the following manner:

Име и презиме првог аутора*

* Фуснота: Имејл-адреса аутора: Препоручује се навођење институционалне имејл-адресе аутора. ORCID:

Установа запослења

Име и презиме другог аутора**

** Фуснота: Имејл-адреса аутора: Препоручује се навођење институционалне имејл-адресе аутора. ORCID:

Установа запослења

НАСЛОВ РАДА***

*** Фуснота: по потреби, навести један од следећих (или сличних) података: 1) назив и број пројекта у оквиру кога је чланак написан; 2) да је рад претходно изложен на научном скупу у виду усменог саопштења под истим или сличним називом 3) исказ захвалности.

Резиме

Resume (Резиме) up to 1/10 length of the paper contains the results and conclusions of the paper which are presented in greater scope than in the abstract.

Keywords (Кључне речи): Keywords should be written in Times New Roman font and separated by commas.

Review preparation

A review should be prepared in the same manner as the research article, but leaving out the abstract, keywords, resume, or book cover.

Book review preparation

When writing book reviews, split the text into **two columns**. Book reviews should be prepared in the following manner:

Name and surname of the author*

* In the footnote: E-mail address: The institutional e-mail address is strongly recommended. ORCID:

Affiliation

TITLE OF THE BOOK REVIEW***

*** Footnote: if necessary, specify one of the following (or similar) data: 1) the name and number of the project; 2) the proceeding where the manuscript was presented under the same or similar title; 3) statements of gratitude.

Below the title **place the image of the front cover**;

Below the image of the front cover list the book details according to the following rule:

Name and surname of the author. Year of publication. *Title of the book*. Place of publication: Publisher, total number of pages.

The text of the book review should be prepared following the guidelines of the research article preparation.

REVIEWERS' GUIDELINES

The role of reviewers is to contribute to maintaining the high quality of our journal. All submitted manuscripts undergo a double-blind peer review, ensuring anonymity in both directions.

Requests for peer review are submitted through the SCIndeks Assistant system. The deadline for accepting or declining the review request is seven days from receipt, while the review itself must be completed within two weeks of receiving the request. The content of the review is confidential and must not be disclosed to individuals outside the journal's Editorial board. If, at any point, a reviewer becomes aware of any conflict of interest related to the manuscript under review, they are required to inform the Editorial board as soon as possible.

When reviewing a manuscript, the reviewer is required to complete the attached review form:

Title of the manuscript:

Relevance, social, and scientific significance of the topic under consideration:

To what extent has the author clearly outlined the theoretical and methodological approach in the manuscript?

Is the manuscript based on contemporary and relevant literature, particularly in terms of the author's use of the latest research published in scientific journals and conference proceedings (especially in political science journals and proceedings)?

Scientific and social contribution of the manuscript. General comments on the quality of the manuscript:

Suggestions for the author on how to improve the quality of the manuscript, if necessary:

Please select one of the recommendations for categorizing the manuscript:

1. Original research article
2. Review article
3. Scientific critique, polemic, or commentary

Please select one of the recommendations regarding the publication of this manuscript:

1. Publish without revision
2. Publish with minor revisions

3. After revision, submit for a new round of review
4. Reject

Additional comments for the editor regarding ethical concerns (e.g., plagiarism, fraud) or other aspects of the article that may assist in making a final decision on its status.

Date of review:

Reviewer's name, surname, and academic title:

The use of chatbots and other artificial intelligence software is strictly prohibited in the preparation of reviews.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

32

СРПСКА политичка мисао = Serbian Political Thought / главни и одговорни уредник Миша Стојадиновић. - Vol. 1, бр. 1/4 (1994)- . - Београд : Институт за политичке студије, 1994- (Инђија : Комазец). - 23 cm

Двомесечно. - Текст на срп. и енгл. језику. - Преузео је: Serbian Political Thought = ISSN 1450-5460. - Друго издање на другом медијуму: Српска политичка мисао (CD-ROM изд.) =

ISSN 1452-3108

ISSN 0354-5989 = Српска политичка мисао

COBISS.SR-ID 102782215

1994

СРПСКА

ПОЛИТИЧКА МИСАО

SERBIAN POLITICAL THOUGHT

ISSN 0354-5989 UDC 32 year XXXIII vol. 97 No. 3/2026.