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Petar Georgiev Hristov

Son the actual status of the "right for security" problem

Summary
The article presents a review of the current state of the problem about the right for security in Bulgaria. The modern democratic countries have adopted the French model which has been historically imposed. In this model, personal security has been regarded as supreme value guaranteed by the state. The legal definition adopted in Bulgaria in 2015 deviates from that line and goes another direction where "national security" is regarded as alternative to the "legal order" category.

Keywords: security, personal security, right for security, national security, legal order

The modern understanding of the security problem goes back to the era of the bourgeois-democratic revolutions in 17th–18th centuries. Regardless of the nuances that the representatives of the humanistic direction of the world political thought add to the process of clarification of the meaning of the "security" term, the focus falls on the "human peace of mind" (Montesquieu), "man who's been saved in perspective from a sudden attempt on his person or property" (A. Smith). (Quote from Мухаев)

T. Hobbes for the first time (1651) regards the social phenomenon of "security" as unity and interrelation between security of person, society and state. The purpose of the state, according to him, is to control the natural state of man and to impose order. In order to protect the security of the population, the state power should have the relevant rights: to punish offenders of the law; to declare war and make peace; to provide the required amount of armed forces and resources to wage war; to protect in court every citizen from the injustice of another; to create subordinate bodies and structures; to prohibit harmful doctrines and propaganda leading to breach of peace.

The state, according to Hobbes, cannot implement the above rights without the respective legal institutes, state bodies, specialized forces and means. Really, in the centuries to come, protection of security has been regarded exceptionally as activity to be performed by the state. Fundamental political and legal acts which have remained from that era are authoritative evidence of that. The English Bill of Rights (1689) sets security in line with unity, peace, human peace of mind and welfare of the state. The American Declaration of Independence (1776) is distinguished in that the creation of guarantee for personal security has been declared both as right and obligation of the people, and the task of the authorities is to provide security and happiness for the people.

Modern democratic states follow in general the model which historically belongs to France. In the Declaration of the Rights of Man and of the Citizen (1789) it has been noted that: "The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression" (Art. II). Further on, it stipulates that the guarantee of the rights of man and of the citizen necessitates a public force (Art. XII). For the maintenance of the public force and for the expenditures of administration, a common contribution is indispensable; it must be equally distributed to all the citizens (Art. XIII), which necessitates public taxation (Art. XIV).

In the variant of the Declaration from 1793 (Art. XVIII), a special definition has been given: "Security consists in the protection afforded by society to each of its members for the preservation of his person, his rights, and his property". Mon-Gilbert who in the same year wrote one of the most profound studies on this topic, noted that: "Security consists in opposing the pressure to protect your

person and your rights against any arbitrary and unlawful action". (Теоретични проблеми на правата на човека, София, 1998)

From the quoted texts, as well as from Mon-Gilbert's interpretation it becomes clear that what they mean is personal security. Its protection, however, is a function of the capability of the state to neutralize any resistance to the action of the law, as well as any violence against state officials empowered with law enforcement duties. "Man having once entered the society, i.e. the citizen – writes on this topic J. Buino – could request the society to recognize his natural rights and protect them through its political, legal and administrative organization". (Теоретични проблеми на правата на човека, София, 1998)

The ideas contained in the Declaration of the Rights of Man and of the Citizen from 1789 are stipulated in the Preamble to the Constitution of the French republic from 1946 where it has been indicated that the nation provides the person and the family with the necessary conditions for their development. The two acts indicated above – Declaration of the Rights of Man and of the Citizen from 1789 and the Preamble to the Constitution from 1946, in their part concerning the rights of man and of the citizen and the national sovereignty, have been declared fundamental principles of the current Constitution of the French republic (from 4th October 1958).

The solution of the problem in the Constitution of USA is similar, as is in the constitutions of most countries of the European Union. Without any conditions, clearly and precisely, the person has been declared as the supreme value which has to be protected. The protection of the territorial integrity, independence and sovereignty of the states has been regarded as conditions under which the function of the Constitution can be secured together with the rights of man and of the citizen guaranteed by it.

In the Preamble to the Constitution of Republic of Bulgaria it has also been indicated that the rights of the person, his dignity and security are declared as supreme principle. However, the observance of this principle has been questioned because the "national security" term has been used in the provisions for restriction of citizens' constitutional rights, while providing no definition of what this term implies.

In the first place, as per the Constitution, the protection of the national security serves as a reason to limit the right of anyone to choose freely his place of residence, to move freely along the territory of the country and to leave its boundaries (Art. 35, par.1), as well as limiting the right of inviolability of one's privacy (Art. 32).

Secondly, in the laws adopted based on the Constitution, the "national security" term is included in the reasons for limitation of the right for inviolability of personal home (Art. 33, par.1), of the right for freedom and privacy of correspondence and other communications (Art. 34, par.1), as well as limiting the right

of foreigners residing in the country on a legal basis not to be expelled from it or handed over to other countries against their will (Art. 27, par. 1).

As per the Ministry of Interior Law (Art. 163, par. 1, pkt. 6, 8, 9, 10, 11), the limitation of the indicated constitutional rights is implemented in the frame of the operative and investigating activities, via use of special intelligence means and other specific methods and means. Presence of a threat to the national security is one of the reasons to conduct operative and investigating activities.

The Special Intelligence Means Act requires the authorization to use special intelligence means to be issued by a judge. However, Art. 161 of the Ministry of Interior Law where the objective of the operative an investigating activity has been set, stipulates that it's the judge who will determine at his own discretion whether certain activities, other than crimes or other breaches of law, pose a "threat to the national security". This allows the judge to make a decision based on criteria beyond the legal ones which is in direct conflict with Art. 117, par. 2 of the Constitution which stipulates that the judge when performing his functions is obeying the law and the law only.

Other examples may be demonstrated where the use of "national security" term in various laws opens the door for administrative arbitrariness. In the Law for Control of Foreign Trade Activity with Arms, Commodities and Technologies with a Possible Dual Use (art. 2), it has been indicated, for example, that the said foreign trade activity is subject to control by the state for protection of the national security. This control is implemented via a special procedure which includes issuance of licenses and permits following a certain order and conditions. However, in the additional provisions it has been indicated that the Council of Ministers in exceptional cases where risk for the national security may arise has the right to ban the deal, regardless of the license and permit already issued.

The Law for Control and Functioning of the National Security System has become effective as of 1th November 2015. (Published in the State Gazette, issue 61, dated 11th August 2015). Its Article 2 reads: "National security is a dynamic state of society and state in which territorial integrity, sovereignty and constitutional order of the country are protected and the democratic functioning of the institutions and the principle rights and freedoms of the citizens are guaranteed, in a result of which the nation increases its welfare and progresses, as well as when the country successfully protects its national interests and realizes its national priorities".

The adoption of such a law for the national security providing also a legal definition is undoubtedly an important step. The question is – is this step in the right direction? There are grounds for reasonable doubts.

The most serious of them is that the legal definition of the national security has not been prepared in the field of legal science. This is manifested by the obvious deficits in the process of its creation: first – of legal culture, secondly – of knowled-

ge about the effective legislation and the principles on which the structure of the national legal system is based, and in the third place – of theoretical knowledge about the subject of legal regulation.

Legal culture guarantees compliance with the circumstance that the mechanisms of legal regulation set in the norms are constructed via legal means – legal norms, presumptions, legal facts, legal stimuli, limitations, bans, etc. On the other hand, the legal means themselves are not directly observed phenomena – they are ideal creations, achieved via theoretical abstraction. That's why the legal norms, together with the rest of the legal means would have remained ephemeral had they not been fixed by means of legal terminology. If required, the content of specific terms acquires verbal expression via legal definitions. In the modern world, if there is no definition of legal notions, in practice it is impossible for the state to express its will "concisely, clearly and precisely" to impose obligations, to provide possibilities for implementation of rights and legal interests and to impose limitations and bans. The practical unsuitability of the legal definition in question to accomplish its purpose can be seen with the naked eye, if in any provision of the effective Bulgarian legislation, regulating the limitation of rights and freedoms of Bulgarian citizens, the "national security" term is replaced by its legal definition.

But this is not all, because having been once defined, the legal notions begin to fulfill the responsible task of completing the construction and development of the legal system. From the point of view of the systematic approach, the legal definitions are the "code" required to identify these legal norms, normative acts, legal relations and legal subjects which can be suitably connected into a sub-system. The efficiency of the legal acts, as well as the efficiency of the activity related to their application and the reliability of the guarantees for their legal soundness depend on the degree of synergy that has been obtained.

The inexhaustible variety of forms of social phenomena, processes and relations provides broad possibilities for their study in the frame of philosophy, sociology, political science, theory and history of international relations and other social sciences. Often, the results from these studies are not suited for use in lawmaking, because the social relations in them are not structured by criteria related to the possibilities of the legal system to subject them to legal regulation. Here, in addition to legal culture, more profound knowledge of the principles set in the structure of the legal system is required.

The American researcher E. Rothschild reveals in a convincing way that regardless of the way in which the ideas about the essence of security have been changing in historical plan, including during all changes of the "political understanding" of its meaning, it has always been a state or goals that have built relations between individuals and states or societies (Rothschild). In other words, from the point of view of political science, security in all of its manifestations is a social

phenomenon which is realized via emerging, development, regulation and protection of a certain scope of social relations.

According to one of the successful definitions made in the legal theory, social relations are regulated via non-biological regulators, relations between people which emerge and develop in their mutual activity and coexistence (Hesina). The emergence, at a certain stage of the evolution of the civilization, of the right as one of the non-biological regulators and of the state which has the necessary tools to realize the normative requirements, creates the legal order (means) for regulation of social relations. As far as it has been implemented where and when the normative prescriptions have been adhered to, the legal order is an essential feature of the state with a rule of law. The structure of the space of legal regulation corresponds completely to the four main types of common human activities: 1) legal order in the social sphere – education, healthcare; 2) legal order in the material and production sphere – industry, agriculture, trade; 3) legal order in the spiritual sphere – art, culture, science, religion; 4) legal order in the organizational sphere – management in various spheres of social life, including defense, social order and security. By virtue of this logic, even ancient Greek philosophers and Roman lawmakers have defined the purpose of state power – to create and uphold such legal order that will guarantee the welfare and security of the people.

An alternative way has been foreseen in the Law for Control and Functioning of the National Security System via which the state power is to fulfill its goal, creating conditions for the nation to "preserve and increase its welfare and to progress". This alternative is the replacement of the legal order with a multi-component dynamic state, the content of which is revealed in Art 2 of the above indicated law to legally define the "national security" term. So far, this fact has not been paid attention to. It can quite easily be ignored as the next in line "legislative paradox" of the "reforms" which have been flooding us with the persistence of sea waves for over a quarter of a century. But when we are speaking about the right for security we cannot ignore the circumstance that on the occasion of a similar understanding of national security, Harold Laswell and his followers have some convincing and substantiated concerns about a possible transformation of such a state - from a state with the rule of law into a garrison state, governed by specialists in violence.

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Right to security in the context of the theory of social deviance

Summary

The article is dedicated to the problem of security in the context of the theory of social deviance. In the analysis attention is focused on the legal- sociological aspect of the problem, inasmuch as the purely legal and criminological aspects of fighting crime have traditionally been set apart. Legal-sociological analysis, having many points in common with the criminological approach, offers after all the possibility, even though as a matter of convention in scientific classification, to delimit more clearly the three basic research spheres: law, criminology and sociology of law.

Keywords: Security, Justice, Legal Consciousness, Legislation, Social deviance

The problems of connection between security and social deviance as a social phenomenon have always been in the focus of attention of all civilized societies. In modern societies social deviance and crime have attained global dimensions and are taxing the resistance capacity of politicians, legislators, and specialized state organs alike. The emergence of new forms of criminal behavior at the end of the 20th and beginning of the 21st century has even provoked changes in the terminology of specialists in criminology [1] and has raised the need for uniting efforts in the search for adequate methods of counteracting this particularly dangerous social phenomenon. In theory and practice adequate clarity is still lacking as to whether it is for law alone that the new forms of social deviance (especially terrorism, cyber attacks, corruption and corruption-related crime) are a specific object of research, and, hence, of a practical strategy for restriction. Many and various problems are related to crime, which is indisputably a social phenomenon that until recently remained outside the field of vision of pure legal science (theory and legislature).

In the following analysis attention is focused on the legal- sociological aspect of the problem, inasmuch as the purely legal and criminological aspects of fighting crime and ensuring the security of citizens have traditionally been set apart. We have nowise attempted to set in contrast the positivistic-legal and the legal--sociological method of study; the aim has been to find common points of contact in the conceptual and practical applied aspects of the matter. Nor will we envisage a "complementary" (as laymen in the field of sociology of law might see it) empirical analysis of data from concrete research; instead, this is a conceptual presentation of a scientific thesis in the context of theoretical legal-sociological analysis. More specifically, crime and its concrete forms are viewed within the framework of the theory of the social structure of society, together with its particular set of categories, which are at times quite different from that of legal positivism. Moreover, legal-sociological analysis, having many points in common with the criminological approach, offers after all the possibility, even though as a matter of convention in scientific classification, to delimit more clearly the three basic research spheres: law (the legal approach), criminology (the criminological approach), and legal sociology (the legal-sociological approach). Such an approach is also needed for identifying and distinguishing the basic forms of counteraction against crime and other forms of social deviance. In this sense legal-sociological analysis is indisputably the widest conceptual framework for encompassing various social phenomena, including the phenomenon of crime. Criminology predominantly studies the conditions and causes of crime; as for law (criminal and criminal procedure), here the issue can be reduced to the finding of adequate legislative solutions, inasmuch as penal responsibility is indeed a very important, but certainly not the only possibility for fighting crime.

1. Legal-sociological conception of social deviance

The analysis of contemporary forms of social deviance requires a preliminary brief overview of the emergence of the notion of social deviance in legal-sociological theory and practice. The representatives of legal-sociological and criminological science usually indicate Emile Durkheim as the founder of the general conception of social pathology and social deviance. It is precisely in the framework of this conception that new elements were later included, such as "corruption", "organized crime", "Mafia", "money-laundering", etc. Durkheim introduced the concept of "anomie", meaning by it a situation in which the varied functions within the social structure do not work synchronically. This concept, first presented in De la division du travail social [2], in its first variant referred to the social division of labor, which does not produce social solidarity but manifests the rise of conflict between various functions (or organs). In his later studies Durkheim described anomie as a condition of society where norms are lacking. In seeking the causes of social anomie, Durkheim looked to the very structure of society: he tried to identify and classify various social phenomena within it as "normal" or "pathological". In fact, by applying his well-known "rules of sociological method" precisely to the sphere of law as a basic social fact, Durkheim succeeded in discovering adequate explanations for the social origin of deviant behavior. Proceeding from the belief that law (which he called a social fact) is indeed the phenomenon with the most intense social impact, Durkheim reached the conclusion that legal norms could serve as criteria for classifying behavior (which he referred to in his terminology as "the state of things") as normal or deviant [3, pp. 58–61].

Merton's model of deviant behavior is almost entirely based on Durkheim's conception of anomie, but further develops and enriches it in view of contemporary characteristics of social structure. Merton agreed that there are situations where individuals or social groups regard the value and obligatory characteristics of norms with a decreased degree of respect. Together with this, he indicated social structure as the factor determining the motivation of human behavior. According to Merton there are two main elements of this structure that exercise pressure or determine the concrete orientations in the sphere of behavior. These are the culturally determined (in sociological terms) goals, and the institutionalized means for goal attainment.

E. Lemert made a critical analysis of Merton's theory and indicated that the model proposed by Merton oversimplified the complex process of choice. Lemert pointed out that individuals in modern society operate with a great amount of values and norms, which tend to clash with one another. Moreover, the individual, being simultaneously a member of several groups with separate value systems, is under constant pressure due to these differences between values and

norms. This contradiction between interests, values and norms (including legal norms) can be a source of deviance. Individual behavior (whether conforming or deviant) is, according to Lemert, a chance result of the total pressure of the various groups and their norms. When in a pressure situation, a personal rarely resorts to a plainly deviant course of behavior. Instead individuals tend to follow a line of behavior that holds a potential risk of deviance [4]. A. Cohen, who is a proponent of the broad view that social deviance is any divergence from social norms, attempts to distinguish between social deviance (a divergence form social norms) and crime (a divergence from legal norms). He defines social deviance in the context of legal-sociological and criminological categories, which inevitably reduce the analysis to the problem of a distorted legal and moral consciousness [5]. In his studies of the sub-culture of criminals, Cohen stresses the connection 'social inadaptability – frustration – aggression – deviant behavior'. Unlike Merton in his model, Cohen tries to come down to the empirical level and present a wide schema of different forms of deviant behavior: he includes the legal factor as a component among the mechanisms that form attitudes and motives of deviant behavior.

The theory of social deviance is equally attentive to the importance of the legal factor in the general context of social structure in which the causes of deviant behavior are rooted. In this perspective the theory of social disorganization is drawn closer to the model whereby it is possible to distinguish more accurately between deviant behavior and violation of the law, between social pathology and crime, between concrete criminal deeds and some new forms of social pathology, which undoubtedly possess juridical characteristics, but the explanation of which cannot fit into the framework of purely juridical analysis.

2. The legal factor and social deviance

Social conformity is broader than legal conformity. Deviations from certain social norms are social deviance, but legal conformity is not always equal to social conformity. At the legal-sociological level it is important to ascertain the mutual connection between the "legal factor" and the concrete socially measurable parameters of the phenomenon. Schematically, this model can be represented thus:

A. Forms of deviance that indisputably hold a higher degree of threat to the public and for which there is no doubt that the traditional legal responsibility is of a penal kind;

B. Forms of deviance regarding which lawmakers periodically change their views, moving between tolerant and rigorist attitudes.

C. Forms of deviation of a disputable kind, to which the classical schema applies of reprehensibility in the perspective of other normative systems (ethics, religion, customs), but for which the application of penal responsibility is not the most effective method of counteraction.

Legal-sociological research is focused chiefly on identifying the specific characteristics of those forms of social deviance for which clear and unequivocal criteria for legal definition have not yet been established and hence an adequate strategy for counteraction against their most dangerous form, crime, has not yet been devised.

3. Social disorganization and pathology of institutions

The theory of criminal behaviour, as part of the theory of social disorganization, varies within a rather wide range. It is at a much later stage that the theory came to focus on the problem of the connection between law and the different manifestations of crimes against security.We speak of pathology of institutions in cases when the social disorganization and social deviance have penetrated into certain government structures, when the holders of power positions in the different branches (legislative, executive, and judiciary) are a source or a channel of deviant behavior. Moreover the scope may vary: ranging from bureaucracy, to which Weber was the first to draw attention, passing through white-collar crime [6, pp. 19–29], and encompassing forms of deviance like corruption, organized crime (Mafia-type organizations), which is a conglomerate of institutional and non-institutional forms of social behavior, "woven" into the social structure in such a way that pathology becomes the norm and the right to security is impaired.

It was not very long ago that the pathology of institutions became the object of both theoretical and empirical analysis. It was not studied earlier, because in general the functioning of institutions has always contained a bureaucratic element that can hardly be placed in the category of anomie. Besides, even if the construction 'individual-oriented ethics – group-oriented ethics' is assumed as an initial scheme, it would be hard to find an objective criterion for determining whether the functioning of a given institution is normal (corresponding to commonly accepted values such as security) or pathological. It is important to ascertain how legal institutions (in the broadest sense) can become a source of social deviance or else how they themselves can contain an element of dysfunction, which leads to growing social deviance in the legal sphere. But the question remains open regarding the social characteristics of exercising power. This element goes beyond the purely juridical analysis of institutional activity.

4. Legal and extra-legal measures for counteracting social deviance and ensure the right to security

Social deviance is a characteristic marker of contemporary industrial society. It is not by accident that in legal-sociological and criminological literature the term "fight", "elimination", "overcoming", etc., have been forsaken with respect to crime and other forms of social deviance. Moreover the parameters of the phenomenon are constantly changing and legislation itself is faced with a complex dilemma: to criminalize or to de-criminalize. At the concrete juridical level things have an even more pragmatic dimension. Legislation in itself cannot restrict social deviation as if by waving a magic wand. What is worse, law itself can at times be a source of deviance: this may occur in periods of total change (for instance the transition from a centralized to a market economy), but also in periods of relative stability, when the clashes of values, hidden from the view of the large social structures, arise and come to the fore, so that even smoldering contradictions may lead to a breakdown of the whole social system. In such cases law is not able to prevent the larger conflict, which now becomes a secondary source of change; in its turn, change engenders new relationships and the need for a new legal regulation. Crime is not merely the accumulation of legally defined deeds in penal law. This is particularly true with regard to forms of crime like corruption (which is not simply the sum of passive and active bribery), international terrorism, mass suicides committed under the influence of religious sects, etc. This places lawmakers in a complicated situation: they have to find the distinguishing criterion for achieving a balance between legal and extra-legal sanctions. There are cases when a legislator changes his stand many times over regarding certain deeds. It is not by accident that in the latest research on social deviance, poverty is one of the most often discussed problems. In Durkheim's view, poverty is a normal social fact [7, pp. 48]. According to most of the major sociological doctrines, it is an element of the social structure, and social inequality is a condition of the existence of society. Opinions are divided in the legal-sociological doctrines. Poverty (social inequality) is in itself perceived by some as a pathological phenomenon. According to others poverty (social inequality) generates a secondary pathology: crime, alcohol abuse, aggressive behavior, etc [8; 9, pp. 17–37]. The thesis that economic factors (poverty in this case) are criminogenic can hardly be empirically refuted, but in any case research on the issue is continuing. Many studies focus on the connection between poverty and lack of security; it is considered that the poorer a society, the greater the risk of lack of security.

There are two ways in which legislation can have an impact on the process of restricting crime and social deviance: by striking the right balance of criminalization and through a wise application of penalties. It is well-known that the

weight of the penalty is not where the re-socializing effect lies.What does have great importance for stimulating or restricting social deviance is the moral norms and values established over the ages, but also current public opinion, the development of institutions of civil society, the attained degree of legal consciousness (that of the legislator as well as that of the people to whom legal norms are addressed).This is the point of connection between legal decisions, public opinion and the concrete social-political situation. There is one other essential element: the need for going beyond the framework of national legislation to the perspective of European standards. The public interest is considered to be a generally applicable criterion: this is a sufficiently reliable category when criminalizing certain deeds defined within the sociology of law as forms of social pathology.

The criminological aspect of restricting social deviance (especially the new forms of crime indicated above) has been quite well researched. In the legal--sociological perspective there are several crucial problems which indeed make up a relatively clear picture of the specifics of the sociological method in this sphere. Of course, there is no unbridgeable gap between the criminological and the legal-sociological methods, but they do present some differences.In this connection there is, first of all, the issue of the anticipating role of legal-sociological analysis for identifying the factors or trends which, at a given time, provoke a growth of social pathology, of which global crime is part;In second place, it is within the framework of legal-sociological analysis that the issue is set regarding the already well-established models used for analyzing society, models which can directly be projected onto modern methods of analyzing crime and other forms of deviance, or can be used in perfecting penal and penal procedure legislation;Thirdly, there is the classical issue of the role of public opinion as a specific manifestation of legal consciousness in assessing social deviance and ensure the right to security.

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Legal Security as a Principle in Lawmaking

Summary

Legal security is a philosophical concept of the modern thinking. Natural law theory, legal positivism and legal humanism design the notion of security in law. Contemporary meaning of the concept as a social security has been formulated by the german author Gustav Radbruch. Social security becomes legal security.

The concept of legal security in human right context consists of human security (security of person) and social security and security of legal system. As a principle legal security has specific normative function – to justify and to develop effective legislation. The main thesis is that legal security is a principle that generates systematisation and stability of legal order and guarantee human rights in the sense of human and social security.

Nowadays the idea of legal security extends its influence. It has become a principle inspiring the entire legal system. Contemporary legislator balances duties and freedoms taking into account the principle of legal security. Legisprudence as rational knowledge of law and Human Right theory are used in argumentation of the statement that security plays important (of principle) role in lawmaking. The article discusses the principle role of legal security in lawmaking, especially in legislative justification.

Keywords: legal security, lawmaking, human rights, legisprudence, legislative justification

Legal Security and Lawmaking

The definition of legal security is a difficult task, even impossible in a few pages. It`s necessary to summarise some main concepts in relation to put the conclusions on theoretical and objective base. I agree that legal security is a philosophical concept of the modern thinking. Natural law theory, positivism and legal humanism design the notion of security in law. Like every other law subject different approaches are relevant, but from the theoretical point of view two main aspects stand out – *legal security as a natural right and legal security as an element of legal system*. In both cases the idea of security plays important (of principle) role in lawmaking.

Natural law theory considers legal security as a natural right of security and establishes a connection between human rights and the idea of material justice. Hobbes is the author that understands security as the peace that arises from the social contract and citizens hand his security over to the Power [1, pp. 127–41]. Legal security is a guarantee for human rights in global context [2, pp. 145–151] and I think this is *human and social security*.

Positivist idea of legal security scrutinizes and defends procedures and techniques that ensure and imply guarantees for the citizen. Legal security is understood as formal or procedural justice, material justice is not law matter. Gregorio Martinez correctly notes that 'this implies reducing justice to validity, and is as refutable as the opposite idea, which validates justice for extreme iusnaturalistic reasons' [3, p. 130; 4, p. 1–17]. In that sense the basic idea of positivism presents legal security in close relation to the legal system – a systematic conception of law as a set of rules. Legal security cannot be understood without a legal system or legal order. Every legal system exists by a certain level of legal security. This is much more security of the legal system – *international, regional or national system*.

Philosophical and theoretical explanation underlines that legal security is a historical and cultural idea. But the relevant issue here is the contemporary meaning of the concept of legal security that has been formulated by the german author Gustav Radbruch. He defines law as a reality whose meaning lies in subserviencet o justice. Legal security is really possible in the social state as the content of the relationship between man and his social needs. He justifies the reason to bring together ideas of security and justice. Social rights and stable law system are the elements of legal security [4]. Social security becomes legal security, since it is established by law in the new relationship between law and freedom in the social state. That's means that legal security is more o less social security in contemporary and developed societies. It`s a new specific feature of the concept.

Rousseau writes about security as that protection which results in both order and certainty if we look at it from an objective point of view and as absence of fear and absence of doubt if we look at it from a subjective point of view. If we inter-

pret this statement in the meaning of different approaches, legal security can be analysed theoretically from objective and subjective point of view.

Nowadays the idea of legal security extends its influence in the sense of rule of law, constitutionalism and social state. It has become a 'principle inspiring the entire legal system' [5, p. 127]. Security is formal justice and material justice is freedom. Contemporary legislator balances duties and freedoms taking into account the principle of legal security. Lawmaking process organises freedom in society, social security and the stability of the law system. The conception of a generic legislation, unification of the sovereign, codification in law put forward the question of systematization in law and which is give rise to the normative basis of legal security. I have mainly focussed on the principle role of legal security in lawmaking, especially on legislative justification -rational and moral [6, 477–516].

Security as a Human Rights Principle

Universal Declaration on Human Rights establishes that everyone has the right to life, liberty and security of person (Article 3), right to social security as a member of society (Article 22) and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Convention for Protection of Human Rights and Fundamental Freedoms European Convention on Human Rights (ECHR) uses terms 'security of person' and 'national security'. Article 5 of ECHR introduces a rule that 'everyone has the right to liberty and security of person'. Tree times Convention introduces national security as a criterion for limit the right to fair trail, freedom of thought, conscience and religion and freedom of movement. For example Article 6 (3) of ECHR establishes that judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society.

The review of Case Law of European Courte of Human Rights shows that under discussions is mainly social security. Security of person (human security) is related to the right to liberty and security [7, pp. 112–156]. In the Judgement of the case of De Tommaso v. Italy from 23 February 2017 the Court interprets the notion of 'security' and accept the definition in judgment no. 2 of 1956 of The Constitutional Court of Italy. 'An interpretation of 'security' as concerning solely physical integrity must be rejected, as this would be too restrictive; it thus appears rational and in keeping with the spirit of the Constitution to interpret the term 'security' as meaning a situation in which the peaceful exercise of the rights and freedoms so forcefully safeguarded by the Constitution is secured to citizens to the greatest extent possible. Security therefore exists when citizens can carry on their lawful activities without facing threats to their physical and mental integrity.

'Living together in harmony' is undeniably the aim pursued by a free, democratic State based on the rule of law' [8, § 45].

In contemporary European legal systems security is associated with human and social security in which could be seen the influence of the principle of social state and the rule of law. The Constitution of Republic of Bulgaria holds in his Preamble 'as the highest principle the rights, dignity and *security of the individual*'. In the same part it proclaims 'democratic and social state, governed by the rule of law" and I think Bulgarian constitutional legislator understands security as a human right principle. Spanish Constitution mentions in the same meaning security in Preamble: 'The Spanish Nation, desiring to establish justice, liberty, and security and to promote the well-being of all its members...'

Another example of the meaning of security as social security is Hungarian Constitution. Article 70/E establishes that 'Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in cases of sickness, disability, or being widowed or orphaned, and in the case of unemployment through no fault of their own'.

The concept of legal security in human right context *consist human security (security of person) and social security*. Security is precondition, condition and protection of all rights and freedoms. It`s relevant to lawmaking and to justice. That's way security in human rights' subjects means more than a fundamental right or let`s define legal security as a *right-principle* that develops entire legal system and that 'generates that certainty, that absence of fear, that peace of mind that is the reflection in the individual of that objective situation, even though in some of its aspects, legal security also emerges as a human right' [9, p. 133].

Security of Legal System as a Principle in Lawmaking

The law is reasonable and it should be explained by rational arguments. It`s clear when we focus on judicial interpretation of valid legal norms. But it`s not so obvious in lawmaking as a part of political process while the argumentation concerns suggestions *de lege ferenda* (not valid law). Luc Wintgens sets out this idea in his work developing theoretical thinking in Legisprudence [10, pp. 1–7]. If we accept the rationality of law, we have to agree that the legislator is rational law actor and not only political one. Rational Legislator is obliged to „give" law but good law and it`s much more an obligation to justify suggestions *de lege ferenda* with rational arguments according to the principles of legislation than just to create legal norms.

As a principle legal security has specific normative function – generates systematisation and stability of legal order and I would like to focus my attention on legislative justification. There are legislative criterions that every lawmaker should

follow. It`s not only a question of procedures and techniques. Legisprudencial approach shows the importance of legislative justification as an element of security of legal system.

Legisprudence is a rational knowledge of legislation and regulation. It enlarges the field of legal studies with creation of law by the legislator [11, pp. 1–7]. Legisprudence can be compare with Jurisprudence that takes into account the application of law by the judge. Both, Legisprudence and Jurisprudence are prudential knowledge. They provide theoretical and practical tools for analysing the process of rational lawmaking. Legisprudence put the stress on the effectiveness, efficiency or acceptability of legislation – the core problem of lawmaking in contemporary democracies. The Law of European Union and all legal systems of European countries produce a huge amount of norms which decrease the systematicity of the legislation and his function to regulate effectively. It`s pretty much the issue of sociology of law, but the theory of law has specific role in the subject of legislative justification.

The contemporary Theory of legislation is developed based on legisprudential interpretation of the role of legislator – 'good legislator' who create rational norms and provide the public with reasons for them. From this broader point of view law aims to create security through guiding human behaviour and legislative justification is a condition for legal security. Lawmaking manages social and legal security trough all forms of normative systematization.

Legislative justification follows the principles of legislation that organise the legal system in terms of legal security. It`s enough to mention some of them to illustrate their importance to the issue. For example the *principle of alternatively* requires the ruler to justify the suggestions *de lege fereda* [12, pp. 313–314]. The *principle of subsidiarity* „requires the ruler to act on the lowest level possible" and not to interfere too much in the freedom of citizens and their possibilities of self-organisation. The *principle of prognosis* and *the principle of correction* require the ruler to formulate the expected results of new ruling. If the real effects are different from the expected effects, the legislation should be corrected [13, pp. 312–314]. Here could be mentioned another principles, but it`s not the core issue of the article. The principles of legislation secure the legal system in the meaning of his systematization and effectiveness of legal system. They are *objective elements of legal security in lawmaking*.

There is a tendency in theory of law and constitutional law of entailing an *obligation of public justification* on the part of lawmakers. There is an ongoing discussion in Germany among legal scholars and constitutional judges over the issue. The German Court has started to apply legisprudential criterion when reviewing parliamentary laws that affect fundamental rights and key constitutional norms such as the principles of proportionality and subsidiarity in order to secure legal system

[12, p. 1–19]. Other jurisdictions as the Court of Justice of the European Union and the European Court of Human Rights have similar approach [14, § 124].

Conclusions

Security concerns every aspect of the organisation of society and every fundamental right of citizens. It could be seen from objective point of view in relation with society systems – political system, legal system and even moral system. That`s the reason that under discussions are the notions of international security, regional security and national security. The organisational aspect is the main content of the security in terms of effectiveness. Legal security guarantees effectiveness of the normative function of the entire legal system – systematisation and stability of legal order.

Lawmaking process forms the political decisions in legal norms. Effectiveness of legal system depends on the level of implementation of the principles of legislation. On that level legal security contains fulfilment of the obligation to justify legal norm as a part of social and legal system.

From the point of view of individuals and their rights as citizens (subjective aspect) legal security guarantee human rights in the sense of human and social security. It`s more than a fundamental right – a human right principle (a security right principle).

Legal security is a principle that generates systematisation and stability of legal order and guarantee human rights in the sense of human and social security trough lawmaking and justice.

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Security zones

Summary

In the literature on security of social organization[1] there are many definitions of the concept of security. In most cases, they refer to certain aspects of security rather than to define it as an abstract scientific concept and suffer from some conceptual incompleteness. In order to solve the problem with the definition of security there is a requirement for its content to which we adhere in this study. The purpose of the report is to continue the study of the content of the concept of security in greater depth. To achieve this goal, concepts have been introduced defining the framework of different security areas and a conceptual description of the basic characteristics of the security areas thus defined and their limit parameters.

[1] Under *security*, we will further understand the security of the social organization. The social organization is regarded as a complex social system..

Keywords: security, security levels, organization

Аннотация

В литературата за сигурността на социалната организация[1] се срещат множество определения за понятието сигурност. В повечето случаи те се отнасят към определени аспекти на сигурността отколкото да я определят като абстрактно научно понятие и страдат от известна концептуална непълнота. За решаване на проблема с определението на понятието сигурност е изведено изискване за неговото съдържание към което се придържаме в настоящото изследване. Целта на доклада е да продължи изследването на съдържанието на понятието сигурност в по-голяма дълбочина. За постигане на тази цел са въведени понятия, чрез които са дефинирани рамките на различните зони за сигурност и е направено концептуално описание на основни характеристики на така дефинираните зони за сигурност и на техните гранични параметри.

[1] Под *сигурност* по-нататък ще разбираме сигурност на социалната организация. Социалната организация се разглежда като сложна социална система.

Ключевые слова: сигурност, нива на сигурност, организация

According to the requirements for the content of definition of security [1], it should include three basic elements: the first one is that security is a dynamic state; the second one is that it is at the required level when the organization operates in a scheduled (normal) mode; the third element of the requirement is what should happen in the organization when it enters a non-planned mode of work. These requirements are based on the application of the scientific approach and the organization theories known in science.

The task of this report is to broaden the field of reasoning and on this basis to create new knowledge of security as a concept in order to better understand this phenomenon. On the basis of the definition of security defined in the aforementioned requirement, three distinct areas of the security state of the organization can be outlined. This is justified by the fact that each area has a certain range and that the transition of the security state of the system from one area to another occurs when the security level reaches the limit of one area that is the initial limit of the next area. Security areas should be considered in descending order from the point of view of system security in each of them, i.e. from the area with the highest level of security to areas with lower security levels. For this purpose, a conceptual theoretical approach has been applied, with arguments for the principles for defining the limits of security areas. The application of this knowledge enables a scientifically grounded, conceptual, methodological approach to be taken in defining the specific limits of security areas when examining different aspects of it. The goal is the knowledge of security to approach as much as possible at the present stage of development of science the quantitative methods of its measurement. The rationale behind this is that qualitative research methods are largely ideologized to a degree that distinguishes them from scientific theories. The increase of the share of quantitative security measurements in security leads to more competent management.

Security is a dynamic state that must be understood as a sequence of changes on its level over a given time interval. It is understandable that the level of security is a momentary state in a dynamic process that is perceived and shared in the organization as a *normal* state that satisfies the organizational understanding of security, meets the organization's expectations, coincides with the accepted and shared value systems in it, has time interval of action and ultimately serves to ensure the achievement of organizational goals. In this reasoning there are the following key elements: 1) normal state; 2) security levels; 3) security areas in which the security level varies within a certain range for each of them; 4) time intervals in which security levels are within a certain security area.

Here are outlined the following tasks to be solved: 1) How to determine security areas? 2) How to determine the range of security levels within the range of each area?

The *normal state* of the organization is understood to be its ability to function according to the design organization-architectural-functional model and to produce the planned quantity with the planned quality of products or services. The attribute *normal* is derived from the noun *norm*. The latter means accepted and shared parameter values within which a state, activity, or phenomenon should fit. In the specific case of the organization, these are the values of the parameters in which its functionality must fit - these are the design parameters.

The *nominal values* of the parameters of the functional indicators of the system are the values of given parameters, which give the best practical results of its functioning. There may be a difference between the theoretical and practically normal and optimal values of the operating parameters of an organization. The reasons may be that it is impossible at a historical stage to reach the theoretical requirements of technological and managerial abilities. For research purposes, it is assumed that the difference between them is negligible, especially in the sphere of managerial abilities. Consequently, the *nominal values* of given organizational parameters are the values for which the system operates in *optimal terms* from the point of view of the quantity and quality of products and services produced that meet the requirements of the customer and meet the needs for which he agrees to pay.

The *nominal operating mode* of the organization is the mode in which the parameters of the indicators are within the range of the nominal values. The *optimal mode* of functioning of the organization is understood as the operating mode of the organization where the parameters of the indicators are within the range of the nominal values

It follows from the abovementioned definitions that, for the purpose of this study, the *nominal mode of operation of the system coincides with the optimal mode*.

A *security level* is the instantaneous magnitude of the probability of occurrence of an event that is undesirable for the organization, which may lead to a decrease in its nominal (optimal) performance. It is appropriate to measure it in percentage, assuming that it is theoretically impossible to achieve a 100% probability of security for the organization. This means that in the process of organizational design the nominal values of its functional parameters are set and realized in the organizational and architectural project of the organization. The security level is a complex indicator consisting of two sets of indicators of a probable nature – risks and threats. Risk events are more closely related to the organization, while threats are mainly associated with external factors. In this context, risk events cannot be avoided, but the likelihood of their occurrence, which corresponds to security, can be reduced. Threats can be avoided, but they also correspond to security.

The interval within which the current security level changes may be in certain normal (desired, planned) values of the parameters by which to measure security level or leave them. It is important to set these *limit values*. It is logical that the maximum and minimum security value, which determines the multitude

of its instantaneous possible values that it can accept, can be defined as a *security area*. Acceptance of these different security values takes place in the continuum of time and its crossing of the limit values is the passage of the security state into another security area. Therefore, each security area has important characteristics and defining features that distinguish it from one another. If this is the case, an important question arises: *How to define these characteristic features for the areas?* This is another task that needs to be solved. In addition, changes in security level (dimension) are not instantaneous. It is the result of multiple changes – at least in two main groups of parameters: internal and external to the organization. The larger an organization, the slower the processes of changing the level of security in it in comparison with a smaller organization, and vice versa – with smaller organizations, these changes are getting faster than in larger organizations. The logic of this statement is based on the laws of the systems applied to the organization's research [2, pp. 31–53]. The larger organization is a more complex system, consisting of multiple recursive systems, and in it the processes are quantitatively more multilevel than the smaller organization. Naturally, multiple stage processes require more time to change as compared to those with a lesser degree of system element interactions.

A *security area* is the interval in which the security level meets certain design requirements. Within the security area, the security level does not fall below the minimum area requirement for that area and does not exceed its maximum magnitude level for the same area. Passing the minimum level and lowering the level of security to the lower level than the limit for the area is seen as a new state of system security. It switches to another security area, which also has certain limits in which the security level varies within certain limits. This process is moving the system to a lower security area. Thus, the logic of the arrangement of the security areas is from the highest security area – the nominal area, the lower security areas – the emergency areas located on both sides of the nominal area, and the areas with an unsatisfactory level of security located away from emergency areas (Figure 1)

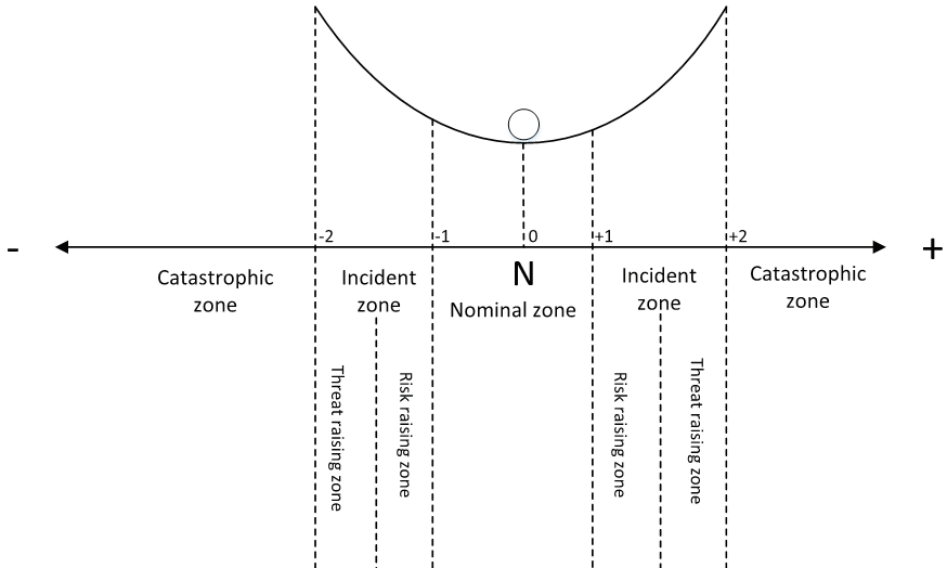

Fig. 1. Security zones

Therefore, three security zones – a maximum security area, two zones with intermediate security levels and two areas with the minimum security level are outlined. Each of the security areas has specific characteristics that distinguish it from the others. These characteristics determine the state of the system in terms of its security.

The area with the highest level of security is determined by a number of factors, the main one being to achieve the maximum possible and at the same time economically appropriate level of security for the organization. This is the area with the highest level of security of the organization. It is planned in the process of organizational design and depends on many factors. More important and limiting are the following:

- The main purpose for which the organization was created. In order for the organization to function as effectively as possible, four important conditions must be fulfilled at the same time: first, ensuring that the continuous supply of the necessary quantity and with the necessary quality of external resource at the entrance of the organization. This resource must provide the operating processes in the organization.
- The resources entered in the organization must be reworked in accordance with the defined and planned design and organization technological processes and algorithms to produce the desired result of the production process.
- The result of processing the input resources should be in the form of a product that has the specified qualities to satisfy the user's needs. The organization

must produce a certain amount of product for a certain time, with the required quality and quantity.

- In order to make the three processes mentioned above a reality, there must be a management system that controls the three groups of activities - acquiring and submitting in the organization of the input resources, running the planned technological and algorithmic internal organizational processes and producing the planned quantity and quality of production. This activity is carried out by the management system of the organization, which integrates the individual groups of activities into a unified system, monitors the observance of the algorithms and technological processes, the internal and external conditions of the organization and, if necessary, intervenes in order to prevent production of a product with parameters, different from the planned ones.

What determines the limits within which the system functions normally. This range is conceptually determined by the required quantity and quality of the product that the system should produce for a given time. This product is called a planned product. The parameters of the planned product are set by the user who agrees to pay for exactly that product. These user requirements become mandatory for designing of the operating parameters of the system. These parameters are called planned parameters or design parameters for the system's operating mode.

Each of these four groups of activities, shown above, is linked to the complex organization of multiple elements of subsystems. No mode of operation can be provided for any of the most elemental technological elements at strict optimal value of its projected design parameters. The reasons for this are many, but the most important one is that it is not possible to provide the necessary resources with parameters having a constant optimal value. These parameters vary within certain limits. Each system has certain limits of the temperature of the operating mode of operation, within which it is guaranteed with the necessary degree of certainty that it will produce a product with the set design parameters. Over time, all elements of the system are worn out and aged, and therefore change their design features. Their time and operational suitability is within certain limits. For this purpose, the principle of tolerances for the values of each parameter for each element of the system is introduced. The margin is the range within which the variation in the value of a parameter ensures the normal operation of the system and guarantees the planned quantities and qualities of the product produced. The most advantageous planned value of a given parameter is called a nominal value, or in short nominal. The acceptable magnitude of a value deviation of a given parameter from its nominal value is called tolerance. It is measured as a percentage of the nominal value with the same unit of measure as that of the nominal.

The above-mentioned most important principle positions for project parameters indicate that none of them can have a constant value in the continuum

of time. All system parameters are designed to have a nominal value and within the limits of the planned tolerances.

The nominal value is the value at which the system works best. Determining the nominal value of the parameters depends on many factors and conditions. Not always for nominal values can be accepted the theoretically derived values. In such cases, the principle is that the nominal design value of the parameter to be as close as possible to the optimum. Therefore, for the purpose of conceptual reasoning it can be assumed that the optimal and the nominal value of the design system parameters coincide. The tolerance is a deviation interval of the parameter values in which the manufacturing system produces a product that meets the prescribed design requirements. These requirements also deviate from the nominal within certain limits. Therefore, the nominal value and tolerances for each system parameter are important in terms of its design operation and can be used as reference points for the reliability (security) of its operation. How should they be defined from a conceptual theoretical point of view of security?

To answer to the last question, we use the knowledge of system theory. It is known that each system has the property of striving to maintain its state of equilibrium. It is logical when designing this equilibrium point to be set and set as the nominal value of each of the system elements. Therefore, the equilibrium point is a state of optimal functioning of the system. It can be assumed with practical enough accuracy that in real systems the point of their equilibrium operation coincides with the nominal value of the parameters, i.e. the nominal mode of operation matches the equilibrium mode of the system.

At the equilibrium (nominal) operating point of operation of the system, the highest reliability is obtained for its faultless operation, which means that we have the highest degree of security of system operation. At this point the quality of the manufactured product is highest and it can be assumed that its value is also at nominal level. For system security purposes, it can be summarized that when the system operates at the nominal values of the parameters of its elements, the operating mode can be called nominal. The nominal operating mode of the system is logical to be set in the project and implemented in the construction of the respective system. In this mode of operation, the system is at its equilibrium point. Summarized, the nominal mode of operation of the system is a mode of its equilibrium from the point of view of system theory. Therefore, this point, characterized by the nominal value of the individual parameter, also determines the system equilibrium point and should be chosen as a basic point to be considered for the security levels of the systems. This equilibrium point determines the highest theoretical and sufficient for the practice accuracy, systemic level of security. Any deviation of the parameter values of the system elements from the nominal will result in a decrease in the system's overall security level.

Once the nominal point has been determined, we should also define the limit points at which the values of the individual parameters and the aggregate nominal system parameter can deviate. Any deviation of the values of the parameters of the indicators of the system from the nominal value will take it into a mode of operation different from the steady state of equilibrium, where it has the highest level of security. This means we will have less quantity and quality of the products produced by the system. The deviation from the nominal values can be provisionally applied to the axis with a start "Nominal value" in which the system is in equilibrium (Figure 1). The deviation of the parameter values to the right of the nominal value is positive (with the "+" sign, and to the left for a negative value with the "–" sign.) The task is to determine to what deviations of the system parameters to the nominal (equilibrium point) mode of operation of the system will still provide a satisfactory quantity and quality output. Therefore, the maximum absolute value of a deviation of the parameter values from the nominal will be different for each subsystem unit, will be different for the whole system as a whole. Two important questions arise: What is the conceptual indicative limit absolute value of this permissible deviation from the nominal value? The second question is: How to determine it?

With each deviation of the mode of operation of the system, it has the intrinsic property to seek to return to its equilibrium point of functioning. This process of deviation from the nominal value is not unlimited. When the deviations increase, the operating conditions of the system deteriorate to the design ones, and therefore, at a certain deviation value, the system will not be able to return to a self-regulating mode, i.e. will not be under the influence of the law of striving for equilibrium. It is precisely this maximum absolute value of a deviation from the nominal value to be appropriate to be considered as a limit absolute value of deviation from the nominal. This is one reason. There is another consideration - in terms of the quantity and quality of the product produced by the system. It has been said above that by increasing the magnitude of a deviation from the nominal value, the operating conditions of the system elements deteriorate relative to the optimal, i. e. quality deteriorates and the amount of product produced is reduced. This deterioration of these two indicators may be acceptable to certain limits beyond which the product will not meet customer requirements. The minimum values of the indicators of quantity and quality of the product, where the minimum requirements of the customer for the product are not met, are called limit values. These limit values can be obtained before reaching the maximum values of the deviations from the nominal ones, where the system will not be able to attempt to return to the equilibrium (nominal) operating state itself. *Therefore, the maximum absolute limit deviation value of the parameters of the system elements and the system as a whole is that where the quality and quantity of a product does not meet the minimum requirements of the customer*. This means that during the

design of the system and its elements, the nominal values of their parameters and their maximum permissible absolute values of the deviations must be determined (calculated) i.e. their tolerances. For greater convenience in practice, the tolerance value is not stated in absolute value, but is given in permissible percentages of the nominal value of the respective parameter. This deviation is considered in both directions – positive, i.e. permissible value of increase above the nominal, and negative – the reduction value below the nominal value. These two limit values, in relation to the nominal value, determine the area, the set of values that the given parameter can receive, in which the system will operate in modes close to the equilibrium and the produced product will satisfy the requirements of the customer. Thus we answered the question of how to define the limits of the area of operation of the system with the highest security. This area simultaneously covers the range of changes in the values of the parameter indicators in the positive and negative directions relative to their nominal value taken into account from the equilibrium operating point of the system. This area shall be called the *nominal area*. Its most important features are: the system functions at its equilibrium point or near it; the quality and quantity of the product produced satisfies the customer; in the case of deviations of the parameter values within the tolerances the system tends itself, without any external intervention, to return to its equilibrium mode of operation.

We have to answer the question: How to define the limits of the next security area of the system? For this purpose, let us assume that the values of the deviations of the parameters of the indicators go through the absolute values of the end limits of the nominal zone, with the positive deviations leading to an even higher increase of the absolute values of the parameters of the indicators in relation to the maximum value of the nominal zone, and deviations in the negative direction decrease the absolute values of the parameters that become smaller than the minimum value of the nominal area. With these deviations, the system can still function, but already with deteriorating quality and decreasing the quantity of products. The greater the deviations are than the end values of the nominal area, the more the results get worse and the system‘s ability to return to its equilibrium point of operation becomes smaller. This can be considered the final, outer limit of these areas - located to the left and right of the nominal area (Figure 1). When parameter deviations increase, the time comes when the system reaches a limit mode of operation in which it is unable to function independently. At this point there are three possibilities for the system: 1) to reorganize; 2) to fall apart; 3) to return to the emergency area and then to the nominal mode of operation, but only by obtaining external resources for the system. According to the theory of crisis management [3, pp. 42-49], we can name these two areas, where the system operates in emergency mode *emergency areas* of security. Emergency areas are located to the left and right of the *nominal area of security*. In them, the system

operates under conditions of reduced level of security against its operation in the nominal area of security.

The system cannot operate outside the emergency area due to conditions of a high degree of uncertainty. The risks, threats and dangers of its existence are unbearable, that is why the system collapses. To overcome these risks, threats and dangers, external resources are needed to help the system return to more favorable modes of operation and prevent its collapse.

There are also specific areas within limit values of the areas, in which the risk rises and threats are constantly increasing by approaching the next lower security zones. This is also the subject of more in depth research.

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The new illusions of security

Summary
The most important thing nowadays is that the process of security modeling, security systems modeling and the conduction of security politics keep on being characterized with the presence of numerous illusions about the word, security and development. The comprehension of the illusions generation process, including the illusion of security, is a basic one and it serves as a condition for successful minimization of their presence in a contemporary individual's spiritual world and the limitation of the devastating impact of social illusions.

Keywords: security, truth, social illusions, the illusion of security, cultural identity

In our contemporary worls it is getting more and more difficult to apprehend what is happening around us and with us, and more and more frequently we turn out to be deceived and confused, victims of manipulation and we find it harder and harder to assemble the overall picture of the world.

Increasing the distance between illusions we live with and reality puts on the agenda the extremely significant question how to shorten that particular distance. That as if refers to a greater extent to the illusion of security, and its theoretical observation and practical limitation are definitely useful. The need for security, but also for self-expression makes people search for rational explanations of the world and models for meeting/satisfaction those and other needs they have, to hope and believe it is possible. The picture of our spiritual essence would not be complete unless we analyze people's illusions and one of the most significant and probably the most resistant one among them – the illusion of security.

By the term illusion I designate a certain part of our spiritual attitude (the cognitive and the values) towards the world and towards ourselves. Illusion is falsehood but such a falsehood that is assumed as a completely satisfactory explanation of existence and the existing. Knowledge is both a result and a premise for cognition as a process and its interpretation depends on the accent put. Truth and untruth are characteristics of this process. Therefore we can talk about veracity of cognition as well as veracity of knowledge.

The most important feature/characteristic of illusions is that we use them as a means of fixing our refusal from further searching of an alternative explanation. In this sense the main thing for every illusion is not so the truth-untruth opposition but the attempt to achieve personal and emotional balance, tranquillization, stability. We may say illusion results from non-knowledge, but mostly it is non-knowledge and untruth fixed as knowledge and truth.

Illusions may be divided in two large groups. I place in the first one those which not specifically/exactly but often are defined as illusions related to perception ("when senses lie to us") or with certain techniques ("somebody makes our senses perceive in a certain way objects from reality or their images"). Those illusions would not be a subject of the current analysis.

The second group includes the so called social illusions. Of course, there are reasons for their existence in everyday consciousness , including: not being familiar with processes taking place in society, the complexity of economical, social, political, etc. relations. In addition to the perception of desired as real, illusion obtains a classical finished state. Standing against the desired – real opposition, each individual has another option – to take the desired for real, not to be convinced but namely to assume in order to find tranquillization, a port in the storm of questions. Therefore we seldom break up with our illusions when listening to an argument; we break p with them in the actual process of living,

because our illusions crash together with a real catastrophe, which has objective personal and social dimensions.

The first condition to minimize illusions is to apprehend the most important illusion – the illusion for possible eternity of human existence. A human who accepts at ease the absurd never forgets about death but neither summons death nor hopes to postpone it for an indefinite time.

While during the Enlightenment period the thesis that people may not wish to understand the world and themselves was totally inacceptable, nowadays reflection of social processes in mass consciousness is not only far from what is typical for scientific cognition but it has its logic and consequences which are more likely to generate illusions rather than minimize them. However surprising this conclusion may be, it refers fully to information society, which by definition is related to development at the territory of knowledge.

The contemporary scientific assumption for security of course is innerly contradictory, but if there is anything relatively established, that is, security is no more interpreted as an ability for defense, just as a condition of the state, as a condition of lacking hazards, etc.

Even the slightest view over the development of the security concept and the national security concept in particular helps us get convinced in the dramatic change of the paradigm in which security has been explored. Briefly, in my opinion, however disputable the content of concepts like security and insecurity remains, yet their explanation would be as an end in itself unless we use it to describe contemporary society, changes taking place in it, and certainly changes affecting the main characters – people.

Instead of listing the immense amount of definitions the term "security" has, I will try to present my synthesis of the same definitions. The purpose of the following synthesis is to find out those key terms used to define the term "security" – "condition", "process", "system", "risk", "threat", "interest", "conflict", "power".

While searching for the objective side of security, we would like particularly to imply that security exists in a direct correlation with interest, interest, on its part, in the long run is a conscious need, and what else can be more objective than needs. Security is a dynamic state of society and humans where risks and threats for existence and development are met by a dependable system, i.e. there is the essential potential needed and organization for reflecting threats, civilians' rights and freedom are guaranteed as well as economical and social prosperity.

A common disadvantage of the theoretical interpretation of security, I think, is the excessive stress on the objective processes. Maybe it would be more specific to claim the objective approach by definition contains an analysis of security spiritual dimensions. In brief, in our overall spiritual attitude towards reality we also include we also include our attitude towards security. We have our views about this state (whether scientific or not), we have our feelings, because we, humans,

are those who are secure or insecure, threatened or safe, confident or unconfident. There is no security where a human being lives in dissatisfaction, anxiety, fear, even without serious reasons for them.

There is no way to understand illusions without concerning the spiritual aspects of security. The modern understanding of security (both national and international) is not only based on various economical interests, political goals and social consequences. Security also contains cultural integrity, and insecurity – the threat of identity and of our value attitude towards the world. Additionally, security is related to a society's ability to preserve its substantial character in changing conditions, to the resistance of the traditional models for language, culture, association, religious identity and customs, and it means that security "refers mostly to identity, the ability of a certain people to maintain their own culture, their own institutions and lifestyle" [1, p. 231]. Security refers to "situations in which societies consider threats in terms of identity" [2, p. 46].

The significance of cultural identity for the national security is obvious and as if it should not be specially reasoned. Usually the consequences from eventual erosion of cultural identity are examined, the accent is on the fact that destruction of identity is one of the risks for national security and serious and adequate precautions are needed, including on behalf of the state, in order to meet that risk.

The combination "cultural identity" is used to narrow and specify the content of identity, as acknowledgement, integration and identification with a certain type of culture. Cultural identity stays at the foundations of the individual human security and is a supporting point for every national security. The loss of cultural identity reflects on a nation's security and generates hostility towards the alien. When people lose their identity, they try to get the feeling of security back by finding a perpetrator for their condition. We should cope with the two contradictory threats: to save the exclusive cultural diversity created by humankind, and at the same time to feed up a mutual global culture. According to Claude Levi-Strauss creating diversity what should be saved, not the historical content that each époque has brought in and nether from the oncoming will be able to continue [3].

I would like especially to underline that the role of modern means for mass information in the formation of illusionary awareness is crucial, since, I think, they ought to be considered as powerful retranslators and illusion generators. I am aware that the use of technical terms such as "generators" and "retranslators" may lead to additional confusion but the main thesis I attempt to promote is that there is a difference between a deliberate and an organized process of creating illusions and their mass distribution.

Actually such a conditional distinction we may find in the whole human history. In my opinion the comprehension of the illusions generation process, including the illusion of security, is a basic one and it serves as a condition for successful minimization of their presence in a contemporary individual's spiritual world and the

limitation of the devastating impact of social illusions. Naturally, an individual who is not attracted by scientific analysis is very frequently unaware that fabricating illusions is in fact an organized and deliberate process having its own laws and rules.

In the archaic, traditional and even modern society the main illusionary systems generating illusions are mythology, religion and ideology. If it is suitable at all to talk about some idea or feeling of security in the mythological consciousness, it is the idea that the only person to be secure is the one who is completely merged with the tribe and the mass of people. According to mythological consciousness misfortune happen and nothing can be done about it, secret powers always manage people's destiny. It is understandable for the archaic times, but a peculiar renaissance of the mythological thinking may be detected in the modern world. This renaissance is related to media's enormous abilities to establish clichés and myths about various aspects of social life. Even in information society, and probably exactly in it, people agree easily with myths considering security and its guarantees, they aim at merging with the majority and thus they feel more secure.

Today we witness a global renaissance of religions in their complete and multifacial diversity. Samuel Huntington explains the reason for that renaissance is identical to the reason that had caused religion's death: the processes of social, economical and cultural modernization, which flood the world in the second half of the twentieth century. They (humans) need new sources of identity, new forms of stable community and a new system of moral principles which may give them a feeling for meaning and purpose [4].

However, if it is unacceptable to explain clashes among humans and the condition of insecurity only as irreconciability towards the alien religious model of the world, at this moment we should not underestimate the fact one of religion's key functions is to bring hope in our insecure world.

The main motive in formulating each ideology is the private interest to be represented as universal interest, the private viewpoint for the world as universal, a certain model of security as universal. An ideologically "dazzled" person could not stand the critical attitude of common sense, of science and philosophy towards the foundations of his ideology, however, he is most vulnerable to/against the security model he has assumed wholeheartedly.

Ideologists, and why not politicians as well, manifest the weakness to exaggerate the importance of specific aspects from social life and at the same time to keep others in the background – for example: "economy is more important than culture", "market cannot tolerate state regulations", "the more the security, the less the freedom", etc. The fabricated and assumed ideologemes are of high importance especially for the Bulgaria's transition, that are brilliantly analyzed by Vasil Prodanov. The following are the most substantial among them: "the democracy ideologeme", "the ideologeme for transition from a world of violence to a world

of nonviolence", as well as the manipulative schemes for overcoming the cognitive dissonance from the conflict between ideologemes and realities [5, pp. 608–697].

Consequently a lot of the illusions mentioned above can be defined as existing in both the traditional and the modern society, but they surely gain a new meaning and content in the information post-modern society.

I think the most important thing nowadays is that the process of security modeling, security systems modeling and the conduction of security politics keep on being characterized with the presence of numerous illusions about the word, security and development. All that illusiveness may be categorized, although it actually is symbolized with two stable and mutually incompatible illusions. One of them in brief can be summarized with the phrase – "only power can guarantee security" or, which is the same – "only those who are powerful can be secure", whilst the other – "only integration leads to security".

I presume to be exaggerating, although I think these illusions of security are structure determining in the whole modern security illusiveness. Power nowadays keeps on having a high importance in international relations and also in internal security maintenance. The state, despite functional and resource transformations, remains in being also as an institution having and using means of violence legitimately. The value attitude towards the relation power – security is changing slower than expected. On the other hand, the "security through integration" model obviously is not unfounded and it has vital significance in achieving a new national and international security level, but considering integration as a cure-all against insecurity is obviously groundless.

The reasons for originating new social illusions, including illusions of security, as a whole do not differ significantly from these presented in the current report so far, but what should be by all means remarked is the serious impact of the identities formed in Internet, which can also be determined as fabricated and unreal. Every consumer is both a director and an actor of their own identity. A consumer develops one or more characters and plays the corresponding roles simultaneously. People in information society start living in a (self) imposed partiality, even in a partial information eclipse leading directly to formation and distribution of illusions. Many researchers define this phenomenon as "democratic censorship". It neither deprives of nor prohibits information but it takes control or forces to juncture opinion through selection and disregard.

Modern social networks besides everything else may and should also be analyzed as illusion generators. It is not their most considerable characteristics for sure, nevertheless, it could not be interpreted as an accidental effect, a negligible role, let alone to be rejected. What is a social network? For most people the answer is obvious: "For example Facebook and Twitter", but that is not a definition. Networks are what form our societies' new social morphology, and network logic to a great extent influences the course and the results of the processes related to pro-

duction, everyday life, culture and power. Additionally, another important matter is which illusions are fabricated mostly in social networks, as well as those related to the role of social networks in society.

The first distinctly illusion is the concept and the recognition of social networks as social communities. Since each illusion is an alloy of truth and untruth, it is not necessary to give further arguments there is plenty of reasons to interpret social networks namely in network society as virtual (i.e. unreal) social communities. The problem is that a virtual community in its own meaning of the term suggests firstly a social particularism by status, interests, purposes, common activities and, afterwards or at least at the same time, its presence in social networks.

The second serious illusion generated by social networks and totally popularized by all media is the illusion of networks being the new type of civil community and, even more impressive, "the new civil society". It is symptomatic that such illusions are generated (of course, from the viewpoint of certain interests) mostly concerning the so called new democracies in Eastern Europe, Middle and Far East. In other words, at those areas where forming and development of civil society are not trouble-free at all. To avoid a partial interpretation of our understanding for this type of social illusions, we will specify that social networks surely provide plenty of new opportunities in this complex and contradictory process of civil society's development and recognition. Furthermore, long before the emerge of social networks the process of forming the so called virtual civil communities was noticed and analyzed. Their priorities are the involvement, the freedom of communicating and sharing ideas with people all over the world. According to the author, if the traditional type of community is determined based on ethnical, racial, linguistic, political, economical or gender differences, in virtual communities origin, gender, economical status or political beliefs are not so important. Is that the case though? Action is the most substantial component of the functioning of civil movements and civil society as a whole. Publicity does not reject self-defense, but it cares about the Self's autonomy, not about the Self's anonymousness. As Noam Chomsky remarks, "Citizens of the democratic societies should undertake a course of intellectual self-defense to protect themselves from manipulation and control and to lay the foundations of a more real democracy." [6, p. 10].

Another illusion generated by social networks is that in the hostile outside world a human is less defended than in front of his compute at home and in his network. Currently we merely do not have the opportunity to enter the exceptionally crucial matter about social isolation, about problems of communication in the real world, even the already proved psychological addictions. The question is whether we will protect ourselves from the inertia to impart to the new information technologies a meaning that could result in destructiveness and fragmentation of personal identity.

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Is Bulgaria's legislation up to the mark to the contemporary security environment

Summary

Legislation is among the major factors in building up the security system. Primary and secondary legislation in the area of security create the national security system, regulate its objectives, the powers of its competent authorities, the coordination and interaction between them. Most accepts assume that Republic of Bulgaria's security system does not function with adequate efficiency.

Keywords: security, security aspects, legislation, national security, doctrinal documents

Legislation is among the major factors in building up the security system. Primary and secondary legislation in the area of security create the national security system, regulate its objectives, the powers of its competent authorities, the coordination and interaction between them. Most accepts assume that Republic of Bulgaria's security system does not function with adequate efficiency.

The legislation relevant to the national security system is an extremely important element, especially in a democratic society. Presently, a number of documents regulating the interactions in the area of national security are enacted with a view to building up legislatively Bulgaria's security system. Analyzing the current issues in the area of legislation relevant to the security system, we reach the point of identification of problematic aspects in the system's functioning and evolution.

We are facing new, heretofore unknown risks associated with cybercrime, cyberterrorism, radicalization, issues in the Ukraine, the refugee crisis, Russia--EU relations, etc. Lest we forget, cybersecurity affects all security aspects. It is absolutely essential to take urgent steps to update the legislation and improve the mechanisms for interaction among institutions in the security sector, elaborate coordinated policies, and adopt a strategic conceptual framework in order to tackle the risks and threats to national security.

The system's doctrinal fundaments are the element, which has to define security as a dynamic term and put all other elements into interaction. Depending on the legal systems and case law, the individual countries have varying doctrinal documents, such as strategies, concepts, white papers, presidential reports, etc. Several doctrinal documents encompassing the security sector or individual elements thereof have been adopted in the course of Republic of Bulgaria's recent history. A National Security Concept was adopted in 1998, while the National Security Strategy was adopted in 2011, as well the strategic documents in the area of national defense – the Military Doctrine and the White Paper on Defense and the Armed Forces. The impression is that the significance of the doctrinal documents regulating the national security system is not sufficiently known to and recognized by politicians in Bulgaria. This is most often expressed through their belated adoption, lack of updates in documents already adopted, or the making of governance decisions, which often contradict or disavow the already approved strategic documents. What is observed in result from the above are inconsistency and inefficiency in the decisions made and policies implemented in the area of national security, chronic underfinancing and inefficient spending. There is a glaring lack of subordination and coordination in the actions of competent government authorities and the absence of ability to exercise control over the entire security sector.

The first strategic document in the area of security was the National Security Concept, as adopted in 1998. It defined the term of "national security" and outlined the principles, values, and objectives of the "national security" policy. Based

on the Concept, the building up and reform of the entire security sector was set into motion. The concept provided the direction of development for Bulgaria, the guarantee for its national security, and the country's focus on European values and upcoming membership in NATO.

Considering the dynamic nature of international relations and the extremely changed security environment, the National Security Concept had to be modified and supplemented or replaced by another strategic document but this never actually took place.

The National Security Strategy of Republic of Bulgaria was adopted in 2011, constituting a very in-depth review of the strategic security environment and providing action guidelines to ensure the required level of security in the country. Another fundamental document providing the development directions for the Bulgarian armed forces and the entire defense system was the White Paper on Defense, as adopted in October 2010 by the National Assembly, which is a guarantee for sustainability in the armed forces' development. The latter's time span was until 2014, nevertheless, no new plan was adopted, which would be adequate to the changed security environment and define the new development directions for the armed forces. A National Defense Strategy was adopted, as well as investment projects for the armed forces' development. The National Defense Strategy assessed the military-strategic environment, defined the country's defense objectives, and outlined the pathways for achieving said objectives. It revealed the activities associated with the maintenance, building-up, development, and use of the country's defense capabilities, meaning that all activities in the building-up of the armed forces, including any modernization plans, had to be in line with that strategy. This was not carried out in actual fact.

To conclude

A new vision for Republic of Bulgaria's role and position is required in line with the changing international situation, which in turn necessitates application of a broader framework for assessment and tackling of risks and threats. The search for efficient and innovative ways and adoption of new legislation to set out the objectives and priorities of Republic of Bulgaria's national security. The 2011 Strategy provides a good assessment of the risks and threats to security but as at 2017 it is obsolete. Change is urgently required to present a clear vision for Bulgaria's development on a national and global scale going forward. To achieve that objective, the strategy must provide unequivocal orientation of national policies in the context of our alliance commitments in NATO and EU. It is crucial to formulate Bulgaria's key interests and thence – the mechanisms for their realization. It is also necessary to create legislation, which would clarify the essence of terms like "security", "security system", etc.

Neglect for the doctrinal documents in the area of national security is not in line with a democratic country's legal norms and creates premises for abuse. All government bodies involved in the creation of a security policy must be familiarized in-depth with those document and sustainable practices must be put into place for the preparation and timely update of such documents, which in turn requires a new type of organizational and governmental culture.

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The mission of the state in the context of the international human right protection

Summary

The report looks at the intersection between modern international human rights law and the role of the state for their protection. The study is motivated by the fact that the state has a dual role. On the one hand, her mission is to protect the ethno-social substrate; On the other hand, the application of certain norms of international law puts it in the hypothesis of assuming security risks. The main conclusion that needs to be made is that the current international legal framework for this problem needs to be updated in the light of the changes in the security environment.

Аннотация

В доклада се търси пресечната точка между съвременната международноправна уредба на правата на човека и ролята на държавата за тяхната закрила. Изследването е мотивирано от обстоятелството, че на държавата се пада двойнствена роля. От една страна, нейната мисия е защитата на етно-социалния субстрат; от друга страна, прилагането на някои норми на международното право я поставя в хипотезата за поемане на рискове за сигурността. Основният извод, който се налага, е,че действащата към момента международноправна уредба на този проблем се нуждае от актуализация с оглед настъпилите промени в средата за сигурност.

Keywords: convention, individual, mission, rights, security, state

Ключевые слова: държава, конвенция, индивид, мисия, права, сигурност

The codification and progressive development of international human rights law is primarily based on the generally accepted principles of contemporary international law – the principle of equality and the prohibition of discrimination. The foundations of the international instruments devoted to this minimum of rights began to take place at the beginning of the World War II: the signing of the United Nations Declaration, the Moscow Conference of Foreign Ministers, The Dumbarton Oaks Conference, the Yalta Conference.

From 25 April to 26 June 1945, the International United Nations Conference was held in San Francisco, which resulted in the signing of the UN Charter on 26 June. Article 1 (3) states that one of the objectives of the organization is to develop cooperation between Member States on issues related to fundamental human rights and freedoms, without distinction of race, sex, language and religion. The Statute provides the individual with the so-called „international rights", which are protected not only by domestic law but also by international law. States that join the organization accept that respect for these rights is not solely within their jurisdiction and is subject to particular international protection. [1, 2]

In connection with the rights and freedoms proclaimed in the Charter, a number of conventions have been adopted. A fundamental act in this regard is the International Charter of Human Rights. It consists of 5 documents: The Universal Declaration of Human Rights; The International Covenant on Social, Economic and Cultural Rights; The International Covenant on Civil and Political Rights; two optional protocols. These documents contain four types of rights and freedoms: fundamental, civil, political rights and freedoms and economic, cultural and social rights. In general, they oblige signatory states to secure the right to life, freedom, privacy, thought, conscience and religion, active and passive electoral law, equal labor rights for men and women, social security and insurance, medical assistance, right to education and participation in cultural life, right to set up professional organizations, etc. In December 1950, a Convention on Women's Political Rights was signed in Rome. Several conventions are devoted to the prosecution and punishment of the most important international crimes related to the violation of fundamental rights - the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination (1960) The Convention on the Suppresion and Punishment of the Crime of Apartheid (1973) [3].

One of the fundamental human rights, proclaimed in the Universal Declaration of Human Rights, is the right to asylum. Art. 14 regulates the right to territorial protection. On July 28, 1951, the Convention relating to the Status of Refugees was adopted, creating the legal basis on which the work of the United Nations High Commissioner for Refugees was based. This is the first international treaty covering almost all fundamental aspects of refugee life. It defines the term „refugee" as a person „as a result of events occurring before 1 January 1951 and

owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" [4]. The Convention texts provide for two important limitations on its application – temporal and spatial. The first concerns people who have become refugees as a result of acts that have occurred since 1 January 1951. The second restriction concerns the ratification of the Convention by States granted the opportunity to restrict protection only to European refugees. This indicates the aspirations of states to maintain their sovereign right to grant permission to enter their territory. Other Convention texts outline refugee rights on issues such as occupation, housing, education, social security, personal documents, and freedom of movement. Most fundamental rights for the protection of refugees are also fundamental human rights, as proclaimed in the Universal Declaration of Human Rights of 1948.

The rights of refugees can be divided into two groups: common rights guaranteed by international human rights standards and rights that derive specifically from their refugee status and are governed by the national laws of the host country. Most of the fundamental rights related to the protection of refugees are part of the fundamental rights enshrined in the Universal Declaration of Human Rights. With the transformation of the refugee problem into a global one, it becomes obvious that the Convention needs improvement and strengthening. In 1967, the UN General Assembly adopted a Protocol on the Status of Refugees, abolishing the time and geographical constraints of the original 1951 document.

By granting territorial asylum, the host State admits the alien to its territory and places him (her) under protection. This leads to the emergence of two types of legal relationships. The first type of legal relationship is between the asylum seeker and the state from which he / she seeks asylum. This attitude has an internal character and is related to the national legislation of the state, built on the principle of independence and sovereignty. The second type of legal relationship arises between the state that granted asylum and the other countries[5].

The voluminous catalog of human rights corresponds to the obligation of the state to ensure their observance. When citizens are subject to these rights, within parliamentary democracy, there are enough mechanisms to fulfill this duty, stemming from people's sovereignty and public contract. In such a case, it is realized firstly on the basis of the domestic law of the state. Where the right-holders are foreign nationals seeking asylum, the host State shall apply international law as a matter of priority, even when it conflicts with national law. For example, under Article 31 (1) of the Geneva Convention, States undertake not to impose penalties for the illegal entry or residence on their territory of refugees who arrive

directly from a territory where their life and freedom have been threatened. In practice, the requirement to submit to the authorities *immediately* and to provide valid reasons for their illegal entry or *stay* on the territory of the country remains difficult to apply, because of the contradiction in the text of the Convention (the incompatibility between ‚immediate' and ‚stay'). According to section 2, the contracting states undertake not to impose restrictions on the movement of such refugees beyond what is necessary. Art. 32, section 1 obliges states not to expel a refugee, legally residing in their territory. Art. 33 prohibits the expulsion or refoulement of a refugee to the border of the territory where his or her life or freedom has been threatened by reason of his or her race, religion, nationality, belonging to a particular social group or political views. The refugee is extraditable because of, considerations of national security or public order' – art. 32, section 1.

Difficulties in the realization of the right to asylum increase when the subject of rights is foreign citizens, especially if foreign citizens have different cultural identities. The reasons for this are complex. The first is related to the emergence of a „new world order based on civilization", in which the enemy acquires a paramount importance especially for nations seeking their identity and rediscovering their ethnicity, and societies that have cultural similarities cooperate [6].

The other reason for the aggravation of the refugee problem is the result of the expulsion of the state and, accordingly, of the national legal order, in favor of international law, human rights and tolerance. Globalization, modern mobility of people and new forms of inter-state communication lead to the lifting of a number of restrictions in the implementation of economic and civil exchanges. This necessitates a corresponding adjustment of the legal order and deepens the bilateral dependence between national legal systems and the system of international law, triggering not only interaction and harmonization, but also contradictions. In addition to other objective factors, the changing attitude towards state sovereignty, which is a basic criterion for the limits of the law [7].

The changing attitude towards state sovereignty provokes a natural reaction in the opposite direction, based on rediscovery of identity and, respectively, of old enmities. This calls for recalling what is the „ethical purpose", the mission of the state. The state is a form of social grouping. The first forms of social collectivity arise naturally as a result of the inability of individuals to achieve their goals independently, i.e by the action of one of the basic social laws – the law of synergy. Predominant forms of social collectivity arise on the basis of the common interest that leads people to unite in order to acquire means of subsistence and survive.

The state is the last historically emerging kind of organized social community. All theories, seeking an explanation of the reasons for its existence, actually seek to answer the question of the „ethical capacity of the state". In his study of the early history of the state, R. Herzog assumed that „the state tasks are the true (if not the only) reasons, justifying the existence of the state." [8]. In view of this criterion,

he differentiates two types of states. The first type is the so-called «state of duty» arising from objective circumstances and the raison d›être of the state stems from food care for the population. The second type is so-called «states of power». In that case the state›s task is to protect against danger. This typology is relative and it is a transfusion and even reciprocal dependence between the two types: neither the «state of power» could develop without engaging the people, nor could the «state of duty» survive and develop, if it does not provide protection from external enemies.

Unlike the previous social collectivities, the mission of the state, that is, the meaning of its existence, is not limited to protection but also to the preservation of the community. The pursuit of preservation implies the existence of consciousness of community among its members, which speaks of the development of ethnic processes within the social organism.

The state is one of the organizational structures of society and brings all their common qualities. The nature, content and structure of society predetermine the universal organizational form of the state. In theory, it has long been likened or defined as a legal personality. Each social organization has the characteristics: social unity, power, rules, and is caused by the joint action of the people, in order to more easily achieve the basic purpose of the community. There are private and common interests in every organized community. Finding the optimal ratio between them is a prerequisite for successfully achieving the organization›s goals. The common interests are related to the mission of the organization and this necessitates the coordination and subordination, if necessary, of private interests. Based on the presence or absence of a mission, communities may be temporary or sustainable. Temporary organizations are disintegrated after the goal is attained, and sustainable ones continue to exist, and then, setting new objectives under the mission.

The objectives of human communities are achieved by reconciling the interests of individual members of the community, but they all derive from the mission of the community in which the common interest exists – the existence and preservation of the community. In the earlier forms of organization, the common interest is limited to survival, and consequently increasingly focuses on securing a common future.

That, what distinguishes the state from other forms of social collectivity, is power. Unlike any other authorities, the state power have mechanisms to secure coercion. The division of different strands into the definition of state goals leads to the question of its functions. The activities of the State in pursuit of its objectives are the connotation of various functions. According to the functions they perform, there are different types of states and each type has certain functions. Each state, regardless of its type, performs universal functions which are mandatory and portray its essence as a state organization. These functions are: protecting the population

and the territory; regulation of economic relations; affirmation and protection of property relations; resolving disputes between citizens or their institutions. The functions are determined by the social essence of the state and by the specific historical tasks it has to decide at a certain historical moment. Depending on the historical stage of its development, the state prioritises certain functions and, depending on the priority of one or another concept (eg, liberal, conservative, social democratic), the functions of the state are manifested with different intensity.

Regardless of its diversity and dependence on various factors, the functions of the state correspond to its objectives and tasks and express its essence and social purpose. More broadly, all state functions are subordinate to the mission of the state – the preservation of the ethno-social substrate – and correspond to the common interest of groups and individuals in the community. In the different historical periods, the common interest acquires different nuances, but it is always connected with the meaning of the existence of the state, with that what gave rise to its appearance as a social organization, with its «ethical purpose»: integrating the naturally free individuals with an organizational power, to ensure their existence, and then – their common future.

These arguments are intended to lead to several conclusions on the state›s social purpose, in the context of the human rights institution, in particular the right to asylum. The first one is based on the historical context in which the main corpus of international legal regulation relevant to this issue was adopted. In the years immediately after the World War II and during the Cold War, the values and principles proclaimed in it were a natural response to the mass suppression of human rights by the totalitarian state. This conclusion is made if we assume that in the dynamic system of international relations operates the «pendulum principle», the purpose of which is to preserve its homeostasis. Within this dynamic one pole is the state (understood as the embodiment of power), and on the other pole is the human individual whose purpose is to win and preserve its autonomous zone, which is untouchable to the intervention of the state. In this sense, the rediscovery of human rights after the war is reminiscent of the situation in which the ideas of liberalism originate – in response to royal absolutism. This reaction, however, led not only to the victory of the Great French Revolution but also to the guillotine. By virtue of the same regularity, the reaction to the ugly manifestations of the revolution has led to the shaping of conservatism as ideology and political practice - and so on.

Since the adoption of the UN Charter and the Universal Declaration of Human Rights have gone on for more than 70 years, and the last of them has seen dynamic changes in the security environment. Without neglecting the complex of reasons for these changes, it can reasonably be argued that the root cause is the radicalization of human rights [9] (of course, it also has its own reasons). In this context, it

is imperative to edit the international legal regulation of these rights in the direction of giving more power to the state. This conclusion is also due to the fact that the meaning of the existence of the state is to protect and secure the future of the ethno-social substrate. Without neglecting the norms of international law, it should be recalled that it is the State which is its main subject, and it is precisely that the state ensures its application through the rules of its domestic law.

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LEGAL-Philosophical PARAMETERS of the connection between JUSTICE AND SECURITY

Summary

The article is dedicated to the connection between justice and security in the context of the philosophical concept of fairness, equality and freedom. Philosophical-juridical discourse of justice brings forth the particular actuality of the topic given the context of the contemporary international standards and regulations that shape the institutional frame of modern legal policy.

Keywords: Security, Justice, Philosophy of Law, Legal Consciousness, Legislation

The issue of the connection between justice and security has its historical, politologicla and purely legal and legal-philosophical aspects. The analysis of that relationship needs a short philosophical and historical overview to be made, as well as to outline its contemporary aspects. At the same time it should be pointed out that there is not such ideal society where the justice and the security to be of equal value and in equal measure. Both security and justice are the values that are reflected in the legal consciousness of the people. In the legal-philosophical and sociological aspect it is necessary to establish what the role of legal and extra-legal mechanisms may be used for mastering and controlling the manifestations of social deviance that threaten the stability and integrity of society. Every society has some kind of legal system which, to various degrees, satisfies public expectations regarding order, justice, and the balancing of interests. To a great degree society, self-organized as a state, strives to sustain the principles of the supremacy of the Constitution and of law, and this serves as the chief guarantee that the sovereign (the people) possesses defense mechanisms against social anomie. In the context of its legal interpretation, the question seems elementary: as long as there are legitimate mechanisms for a likewise legitimate legislation, the risks of deviance are reduced to a minimum. But this is only seemingly so. Even in the best organized society, the legitimacy of law can be questioned by the very creators of law or by those who apply it. In a sociological aspect there are at least two possible directions for reasoning on the problem. On one hand the Constitution and the legislation based on it are factors guaranteeing the legitimate stability of society and avoidance of social anomie. On the other hand the realities of life produce ever new social relations, new systems of values, and hence, new forms of social disorganization and disintegration. Consequently, law can only "correct" the possible misbalance, and it does so either preventively or subsequently.

This a starting formulation is far from being new. For example, one of the most prominent philosophers of law – Gustav Radbruch (1878–1949), through all of his life, had struggled for the solution of the conflict between justice and legal certainty. The enduring significance of Radbruch's legal philosophy is chiefly based on his thesis on the relationship of justice, legal certainty and usefulness, which find their final expression in the "Radbruch's formula" of 1946. It states: "*The conflict between justice and legal certainty should be able to be solved because positive law secured by statutes and power even takes priority when its contents are unjust and inappropriate, unless the contradiction between positive law and justice reaches such an extent that law as „unjust legislation" gives way to justice. It is impossible to draw a sharper line between the cases of statutory injustice and the laws which still remain valid despite incorrect content; however another line can be drawn with more preciseness: where justice is not even aimed at, where equality, which is at the core of justice, is consciously repudiated when laying down positive law, then the law is not even only „incorrect law", but completely dispenses with the*

legal structure" [1, 2]. This is one of the most influential legal philosophical theses of the 20th century and can be summarised as: extreme injustice is not law. However, it has also been fiercely criticised. This discussion has a breadth unequalled by almost any other legal, philosophical debate.

If we go back into the history of philosophical thought we will discover many varieties of the debates on the relationship between justice and security. In the fundamental work „*Leviathan*" written during the English Civil War (1642–1651), Thomas Hobbes argues that „*Life in the natural state of humans is so solitary, poor, evil, brutal and short, that for them freedom always will be of secondary importance – a luxury that few can afford*" [3,4]. Therefore, according to Hobbes, people have volunteered to provide freedom and all the power of the sovereign (state). Since the natural state of human freedom is a „*constant war against each other*," Hobbs says that the main objective of management is the stability of the state and the security of its citizens, and individual rights and freedoms are secondary.

As opposed to Hobbes, his contemporary John Locke (1632–1704) first formulated some liberal conceptions of power. According to him the primary purpose, role and mission of the state is to protect citizens' rights to life, liberty and property and to work for the common good. Locke argues that this can be achieved only through legitimate political power and fair judges who equitable to resolve the disputes. Unlike Thomas Hobbes, Locke believed that human nature is characterised by reason and tolerance. In a natural state all people were equal and independent, and everyone had a natural right to defend his "*Life, Health, Liberty, or Possessions*"[5,6,8].Most scholars trace the phrase *life, liberty, and the pursuit of happiness* in the American Declaration of Independence, to Locke's theory of rights, though other origins have been suggested [7, p. 99].

In *"Philosophy of Law"* (*Grundlinien der Philosophie des Rechts*) Hegel points out that wisdom, knowledge and human experience have retrospective nature. So today no one can say what challenges and trials will be facing mankind tomorrow and what resources will be trying to deal with them [9, pp. 7–9]. Therefore, the dilemma of "*liberty, justice or security*" will stand over the next generations who, from the perspective of their experience, their values and concepts of law and morality, will be looking for its decision.

Nowadays, in the context of the liberal traditions of the oldest democracies the dilemma of *justice and security* sounds more like an oxymoron, given the dominant understanding that individual and public security are a function, depending on the degree of protection of fundamental rights and freedoms. Unfortunately, this concept is quite fragile and unstable. Any crisis caused by military conflicts, acts of terrorism and social conflict is a challenge to its persuasiveness and credibility. Confrontation of values „liberty or security" acquires new dimensions in terms of global terrorism, marked with their shade the early 21st century.In *A "Theory of Justice"*, Rawls argues that the concepts of freedom and equality (justice) on

the one hand, and security – on the other – are not mutually exclusive [10]. His assessment of the justice system leads him to conclude that for justice to be truly just, everyone must be afforded the same rights under the law. Rawls attempts to establish a reasoned account of social justice through the social contract approach. This approach holds that a society is in some sense an agreement among all those within that society. If a society were an agreement, Rawls asks, what kind of arrangement would everyone agree to? He states that the contract is a purely hypothetical one: He does not argue that people had existed outside the social state or had made agreements to establish a particular type of society.Rawls asks: if everyone were stripped of their privileges and social status and made entirely equal, what kind of justice system would they want to be subject to? He includes that the only logical choice is to pick a system that treats people equally, regardless of their race, class, gender, etc. He discusses how his theory of justice would affect institutions today. Without pointing fingers, he makes it clear that no one is living up to his standards.

Nowadays more than ever before the question of the relation between security and justice becomes relevant.The Lisbon Treaty attaches great importance to the creation of an area of freedom, security and justice. It introduced several important new features: a more efficient and more democratic decision-making procedure that comes in response to the abolition of the old pillar structure, bringing more accountability and legitimacy; increased powers for the Court of Justice of the European Union; and a new role for national parliaments. Basic rights are strengthened by a Charter of Fundamental Rights that is now legally binding on the EU and by the obligation on the EU to sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms.Therefore saferworld takes a much broader perspective, one that focuses on people's experiences of insecurity and injustice. This people-centred approach moves beyond just addressing immediate threats of violence and instead recognises that more traditionally developmental issues – such as access to adequate food, health, employment, education and housing – must also be discussed and provided if peace is to have a chance of being sustainable.There has been criticism that the EU's activities have been too focused on security and not on justice.For example, the EU created the European Arrest Warrant but no common rights for defendants arrested under it. With the strengthened powers under Lisbon, the second Barroso Commission created a dedicated commissioner for justice (previously combined with security under one portfolio) who is obliging member states to provide reports on their implementation of the Charter of Fundamental Rights. Furthermore, the Commission is putting forward proposals for common rights for defendants (such as interpretation), minimum standards for prison conditions and ensure that victims of crime are taken care of properly wherever they are in the EU. This is intended to create a common judicial area where each system

can be sure of trusting each other.The 2009 Treaty of Lisbon abolished the pillar structure, reuniting the areas separated at Amsterdam. The European Parliament and Court of Justice gained a say over the whole area while the Council changed to majority voting for the remaining PJCC matters. The Charter of Fundamental Rights also gained legal force and Europol was brought within the EU's legal framework. As the Treaty of Lisbon came into force, the European Council adopted the Stockholm Programme to provide EU action on developing the area over the following five years.

Article 3(2) TEU reads as follows: 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.' It should be noted that this article, which sets out the EU's key objectives, attaches greater importance to the creation of an area of freedom, security and justice (AFSJ) than the preceding Treaty of Nice, as this aim is now mentioned even before that of establishing an internal market.Most such efforts, however, are more concerned with redefining the policy agendas of nation-states than with the concept of security itself. Often, this takes the form of proposals for giving high priority to such issues as human rights, economics, the environment, drug traffic, epidemics, crime, or social injustice, in addition to the traditional concern with security from external military threats. Such proposals are usually buttressed with a mixture of normative arguments about which values of which people or groups of people should be protected, and empirical arguments as to the nature and magnitude of threats to those values. Relatively little attention is devoted to conceptual issues as such.

The objectives for the AFSJ are laid down in Article 67 TFEU:

1. 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.
5. Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ. Article 12 TEU and Protocols No 1 and No 2 lay down the role of the national parliaments in the EU.

In conclusion it can be said that the legal aspects of security are relatively well studied. However, mankind is faced with new challenges that put people before new trials. Dilemma *security* or *freedom* has various dimensions. From a philosophical perspective, it is important to establish how the legal consciousness of the legislators and of the citizens as well has been changing. In this respect particularly empirical legal and sociological studies are useful that provide information about the level of this legal awareness.

When we refer to law as a source of *social injustice*, we should have in mind multiple factors. The existence of a number of legal institutes or regulations (for instance in the field of tax legislation, regime of licensing, over-complicated regime of authorization etc.) are preeminent sources of corruption, tax evasion, or other deviant behaviour. This limits fairness and security as well. Sometimes the legislation limits fairness but gives greater security and vice versa. However, philosophy of law studies the role of legal coercion in the context of the general concept of social control through law in taking into account the perpetual modification of the principle *ubi societas ibi ius.* This brings to the fore the study of the dynamics of social relationships that engender the dynamics of the legal system.

Without a clear picture of the state of public and individual legal consciousness, without delineating the parameters of the connection 'power-realization of power – conformism – deviance', we cannot succeed in creating rational models of counteraction against those forms of social pathology which, once they become a norm of conduct, may lead to the total disruption of humanity's hierarchy of values (including justice and security), which serves as a backbone for society in general.

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About the conceptual core of security concept (some Bulgarian – Russian juxtapositions)

Summary

A concept is a basic unit in linguocultural studies. It is a category of mental nature and therefore its multi-dimensionality cannot be examined and presented by the means of customary units of measurement. The concept of "security" has not been the subject of extensive linguocultural studies. The present study aims to analyse numerous lexicographic sources – the basic material for the defining of the conceptual core of concepts and to identify some similarities and differences in its verbalisation in related languages such as Bulgarian and Russian.

Аннотация

Концептът е базова единица в лингвокултурологичните изследвания. Той е категория от ментално естество и поради това неговата многомерност не може да бъде изследвана и представена с помощта на обичайни мерни единици. Концептът „сигурност" не е бил предмет на обстойни лингвокултурологични изследвания. Настоящето проучване има за цел да направи анализ на многобройни лексикографски източници – основния материал за определяне на понятийното ядро на концепта и да установи някои прилики и разлики при вербализирането му в близкородствените български и руски език.

Keywords: concept of security, conceptual core, linguoculturology, verbalisation, Bulgarian lexicographic sources, Russian lexicographic sources

Ключевые слова: концепт сигурност, понятийно ядро, лингвокултурология, вербализиране, български лексикографски източници, руски лексикографски източници

A concept is a basic yet fundamental term in the categorical apparatus of the young science linguoculturology. It is a category in the sphere of thinking and therefore impossible to be immediately observed; it is not easy to be researched as well because it is not possible to be measured using trivial units of measurement. For this purpose, unambiguous criteria for analysis are needed. They are the subject of research by linguoculturologists. Among the carefully studied literature, we did not find a comprehensive linguocultural study of the concept of security. The purpose of this study is to be the first step in analysing the linguocultural aspects of the concept of security – to identify the basic features of its conceptual core.

The term *concept* has a history going back several centuries. Researchers do not have an absolutely identical view of its essence, but they are united in the assertion that a concept is a conventional mental structure. It has a definite cognitive nature and does not exist outside of thinking. The complexity of its determination originates from the bilateral relation between language and consciousness – the categories of consciousness are realised through language categories and at the same time are determined by them; culture determines concepts. In other words, a concept is the mental projection of the elements of culture. The correspondence between language and cultural phenomena is extremely complex, i.e. language is a part of culture and at the same time an external factor for it. Language and speech are spheres in which a concept finds its objective realisation. When notion finds its verbalisation, expressed by a word or word combination, it becomes a concept. A concept contains those meanings, images and ethno-specificity in the individual's perceptions he/she relies on in his/her experience, drawing from the treasury of the collective knowledge [1: 531–532].

Russian linguoculturologist V. Karasik outlines three components in the structure of the linguocultural concept as a multidimensional entity: a conceptual, figurative and value component [2: 3]. The conceptual essence of the linguistic concept is the foundation of its structure. It is mainly related to its lexicographic description, the analysis of its keyword semantics, its derivatives, contextual synonyms and antonyms as a part of its paradigm.

It is well known that a number of concepts related to important for human well-being and survival of individuals or a social group essence that occupy the central place in human consciousness – such as *time, water, home, love, family, world, truth, life, death*, etc. have been considered as constants. Notions such as those listed are at the base of every individual's picture of the world, and therefore occupy the central position in the human consciousness. That is why they represent "universal human notions" of the picture of the world of many peoples. These are concepts that have special cultural values and which exist for a constant or very long period of time. Such concepts are called constants by the Russian academician Stepanov [3]. In our view, the security concept can be rightly associated with the conceptual constants.

Security is a concept related to important existential aspects of both an individual's life and the one of a group. For this reason, it is one of the most commonly used and commented concepts; its use is becoming more and more prevalent in our times. "Security is a fundamental concept in the theories of social relations, without which it is impossible to build their basic constructions" [4]. It is therefore inexplicable why in a number of Bulgarian dictionaries from the beginning of the 20th century, the notion of security related to such an important indicator of the individual's or social group's existential minimum has not been regarded (with minor exceptions). There are also not numerous cases of the description of the term in lexicographical issues from the beginning of the 21st century either.

The lexeme *security* (Bg. *сигурност*) and others from its paradigmatic row such as *safety, danger* and *risk* (Bg. *безопасност, опасност, риск*) are not included in the Old Bulgarian Dictionary [5], which presents the vocabulary of the classical Old Bulgarian sources that came to us either in originals (epigraphic sources) or by transcripts from the 10th–11th century. The dictionary reflects the idea that the Old Bulgarian language is the language of the Bulgarian nationality of the 9th –11th centuries – a living, rich and fast developing language that has reached astonishing perfection at the dawn of its creation.

The notion of security (as well as the words from the paradigmatic row mentioned above – safety, danger, risk, protection) is missing in Nayden Gerov's Dictionary [6] – a dictionary of mixed type (spoken, dialectal, translational and synonymous) having historical significance for the Bulgarian language culture. In the issued in the same decade „Encyclopaedic Dictionary" (1905) the lexeme *security* (Bg. *Сигурност*, meaning – «confidence, fidelity, provide for») is included as a derivative of *сигурен* – "*sure*" (lat. – „confident, true"); another derivative of the latter word is mentioned as well – *сигурно* ("certainly „) [7].

One of the key features of the conceptual core of a concept is derived from the corresponding vocabulary in the explanatory dictionaries illustrating each word along with all its meanings, grammatical and stylistic notes. The Academic Dictionary of the Modern Bulgarian Literary Language in three volumes (1954–1959) considers security not as a basic concept, but as a derivative of the adjective *сигурен* ("sure": 1. Who does not doubt anything; *confident, convinced*. 2. Who can be relied on, who deserves trust; *reliable*. 3. Who is not endangered by any danger or failure. 4. Who shows firmness, confidence, unwaveringness. 5. Which will inevitably become, will happen; *inevitable, inescapable*. The meanings of the represented in the dictionary adverb *сигурно* ("surely, certainly") have close semantics: 1. Firm, confident, unwavering. 2. Undoubtedly, doubtless. 3. Perhaps, probably [8, vol. 3], but they do not contain any seme[1] correlating with such meanings as "safety, being defended" (Bg. "безопасност, защитеност").

[1] *Seme* – in linguistics, the minimum unit of the content plan, representing an elementary lexical or grammatical meaning.// The Great Soviet Encyclopedia, 3rd Edition (1970–1979).

The largest and most representative Academic Contemporary Explanatory Dictionary of Bulgarian Language has not published the volume containing words beginning with the *letter C* yet. The Explanatory Dictionary (1973) considers the lexeme *сигурност* ("security") as a „quality of security, confidence, positivity" (as in 8, vol.3) but as a second meaning it is pointed there „absence, eliminating danger of any kind, safety" (Bg. "липса, отстраняване на всякаква опасност, безопасност") [9, p. 920]. This second meaning of the lexeme is represented with a slight difference in the fourth edition of this dictionary «lack of danger; safety» (Bg. „*липса на опасност; безопасност*") [10, p. 881].

At the end of the 1980s, along with the synonymous meanings as „positivity, be definite, be confident", the notion of security was also noted with synonyms such as „safety, security" and „guarantee, pledge" (Bg. „*безопасност, защитеност*", „*гаранция, залог*") [11]. This is a step forward in the lexicographic description of the concept, having in mind that the Dictionary of Synonyms issued almost a decade earlier does not include concepts of the synonymous row *security-safety* at all (Bg. *сигурност – безопасност*) [12].

Here, the question about the «roots» of the two given in some lexicographical sources as synonyms notions *сигурност* и *безопасност* ("*security* and *safety*") arises. Both (as well as the notion *being defended*, bg. "защитеност") are not included as stand-alone lexemes in the Bulgarian Etymology Dictionary [13]. Semantically closest to the first of the commented lexemes is *сигур* ("sure") that has a remark showing that the word is an adjective belonging to the colloquial discourse: «No doubt, positively, indeed; perhaps « (Bg. без съмнение, положително, наистина; може би, навярно) and that it has derivatives *сигурен* – "*sure*" (true, trustworthy, confident, positive – Bg. верен, надежден; уверен, положителен ") and *сигурност* – "*security*" (with derivatives "insure, insurer, insurance"). The semantic tracking of these derivatives does not represent a seme within the concept of security, equivalent to "safety, protected" (Bg. „безопасност, защитеност"). On the other hand, the dictionary presents the etymology of the two lexemes used in the literary language *сигурен* и *сигурност* (*sure, confident* and *security*: from ital. Sicuro < lat. Securus " *sure, confident; safety*" through the mediation of the Balkan Romance languages (Rom. Sigur, newGr Σιγουρα – "*sure, confident*") [13, p. 638], which, although in part, contain the seme *safety*.

After studying some nomination mechanisms in some Slavic languages, it is interesting to note the similarity in the verbalisation of the notion of security among the Bulgarian language and another South Slavic language – the Croatian: *sigurnosti*, as well as the seme "without misfortune" contained in this notion in two other South Slavic languages–Serbian and Macedonian: *безбедност* (safety/ security; *literally* "without misfortune") – semantically close to "safety/safeness". The same seme "without danger/ misfortune is explicitly set in the Russian lexeme *безопасность* ("safety"). Here comes the reasonable question arising from the

centuries-old cultural exchange between the two Slavic peoples, having for its base the Cyrillo-Methodian language: which semes the conceptual core of the lexemes in the two languages include: *сигурност* (security) and its partly synonym *безопасност* ("safety") in the Bulgarian language and the lexeme *безопасность* in Russian (having in mind that there is not such a lexeme as „сигурност" in Russian despite the genetic kinship of the two languages).

For this purpose, we need to trace the semantics of the Bulgarian concept of safety (*безопасност*). Some of the first and complete data on the meaning of this lexeme (represented as an abstract noun from *безопасен* – "safe") are presented in the Academic edition of the Dictionary of the Bulgarian Literary Language, edited in the middle of the last century: «safe – 1. Who is not in danger; *protected*. 2. Who does not pose any danger to someone or something, *harmless*" [8, vol.1, p.46]. A half century later, in the explanatory dictionary the meaning „lack of danger; being defended, security") (Bg. "липса на опасност; *защитеност, сигурност*") [10, p. 52] is presented, which puts the concepts of safety and security (Bg. *безопасност* и *сигурност*) in close synonymous relations.

The analytical overview of the definitions gives us the reason to conclude that in Bulgarian safety (*безопасност*) is related to «being defended (not posed to danger); security and harmless». Here in the foreground the meaning of a situation /person who is harmless or not posed to any danger stands out (Bg. eg. безопасни храни, безопасни условия за живот, безопасност (=Б.) на труда, Б. на работното място, Б. на автомобила, Б. на машините, Б. на движението, Б. на пътниците, Б. на пациентите, Б. на ядрените централи, Б. на ски пистата etc.)[2]. Bulgarian notion *"сигурност"* (security) includes semes such as "confidence, definitiveness, reliability," "positivity," "safety," "being defended", "guaranty" (Bg, „увереност, категоричност, надеждност", „положителност", „безопасност", „защитеност", „гаранция": Bg. eg. сигурен отговор, сигурен отпор, сигурни взаимоотношения, национална сигурност (С.), международна С., енергийна С., информационна С., социална С., сигурна защита, С. на спирачната система)[3].

Does the availability of one only lexeme (безопасность – "safety") in Russian[4] mean that it is solely used in cases where the two above mentioned lexemes are used in the Bulgarian language? The precise translation of the Bulgarian word combinations with the basic word *безопасен/безопасност* indicates that in each of the above mentioned cases, they can be translated into Russian using the lexeme *безопасность*: «безопасные пищевые продукты, безопасные условия

[2] in En.: safe food, safe living conditions, occupational safety, vehicle safety, machine safety, traffic safety, passengers' safety, patients 's safety, safety of nuclear power plants, safety on the ski slopes.

[3] in En.: reliable answer, strong repulse, secure relationships, national security, international security, energy security, information security, social security, sure protection, active safety.

[4] in contrast to Bulgarian where there are two lexemes – безопасност, сигурност.

проживания, безопасность (=Б.) труда, Б. на рабочем месте, Б. автомобиля, Б. машин, Б. дорожного движения, Б. пассажиров, Б. пациента, Б. атомных электростанций, Б. лыжных трасс". This is not the case, however, with the translation of the other Bulgarian phrases having as a basic word the lexemes *сигурност/ сигурен*: „уверенный ответ, надежный отпор, надежные взаимоотношения, национальная безопасность, международная безопасность, энергетическая безопасность, информационная безопасность, социальная защита, надежная защита, надежность тормозной системы". Obviously, in such cases, in parallel to the conformity *сигурност (Bg.) – безопасность (Ru)*, another Russian lexeme stands out at the semantic background: *надежность* (which is not the only translation option in these cases because of the inherent in each language collocation of words, which is associated with purely grammatical phenomena such as morphology and syntax, as well with the semantic framework of creating and using a combination of different words in the context of a given meaning. The latter plays a particular role.). And here another question comes into being: how do *безопасность/ надежность* relate?

The review of the widely used Russian explanatory dictionaries presents the following semes of the lexeme *безопасность*: «lack of threat to danger [14,15]; protection from danger» [14]; «Lack of danger; prevention of danger» [16]. The electronic Russian synonymy dictionaries present «harmlessness» as the first synonymous seme (of a medical or chemical product); semes „not being dangerous „, „being defended „, „security", „sustainability" follow afterwards [17].

The semes of the lexeme *надежность* can be generalised to: «reliability, solidity; well-working system (надежность механизмов) [14,15,18], «trustworthy» [14, 15, 16, 17, 18], «ensuring the achievement of the goals; Faithful (надежное средство) [15, 16, 18]. This semantic differentiation justifies the use of such word combinations as „надежные взаимоотношения, надежный отпор, надежная защита, надежность тормозной системы". The conclusion concerning the interrelation of the lexemes *надежность/безопасность* is that *безопасность* includes circumstances that lack any danger – lack of danger or protection against a possible danger (coming from outside), as well as health-related situations/products regarding them as harmless. On the other hand, *надежность* is associated with impeccability and reliability of mechanisms and systems, as well as with stability /trustfulness in interpersonal and social relationships. This means that if the collocations allow both terms to be used for a car *надежность автомобиля* and *безопасность автомобиля*, the semantics of these word formations will matter different things: in the first case it will concern the active safety (type and reliability of the braking system), the stability of the car as you enter a bend, the stability of the car on a slippery road, etc. In the latter case the meaning is connected with the driver's and other people's safety, for example it is about the availability or non-availability of airbags, about the equipment of the car with new or old tires,

the warning autonomous function for adaptive braking to prevent the collision with the moving car in front or with an unexpectedly appeared pedestrian.

The extensive study of the conceptual core of a concept is impossible to be presented within a single article. It is necessary numerous lexicographical and other linguistic materials to be excerpted and thoroughly studied. It ought a comparative study of sources from the everyday discourse and different professional sources to be done (such as documents and word formations from the literary language among genetically related languages and those which are not) that are in constant touch and interaction, because they undergo the effect of reversing semantic impact. This is what we have tried to do in the present study, analyzing the conceptual differences in the concept *security* in the two genetically related languages – Bulgarian and Russian. In the case of non-genetically related languages, such as Bulgarian and English, it is important to trace the semantics of the respective lexemes both in the literary language and in the specialised linguistic practice, the latter imposing a strong imprint on the specialised uses from English to Bulgarian due to the fact that English (as well Russian, of course) is the language of mediation in the numerous cases of intercultural communication and a basis for harmonizing documents.

The insufficient for this purpose regulated volume of the article implies a further study focusing on the specialised uses of the concept of security (*сигурност*) in Bulgarian and Russian and its correlations with the lexemes *security / safety* in English.

The present study provides the basis for the following conclusions:

- The concept of security being associated with human well-being and personal security, occupies the central position in the mind of man and is one of the conceptual constants in the language picture of each social/ ethnic group.
- The analytical study of the lexicographic sources gives us the reason to conclude that in the Bulgarian language the concept of security (*сигурност*) has a semi-binary core and includes the subconcepts of proper security and safety (*собствено сигурност* and *безопасност*). The subconcepts of its close-to--core zone and close remote periphery can be determined by analyzing additional empirical material.
- The Bulgarian subconcept *безопасност* ("safety") is determined by two semes: "harmlessness" and "not being exposed to any danger".
- The Bulgarian subconcept *собствено сигурност* ("*proper security*") includes the following semes: "confidence, definitiveness, reliability," "positivity," "safety," "being defended," "guaranty".
- The extensive study of the verbalisation of the Bulgarian metaconcept *сигурност* ("security") through the means of Russian language indicates that there is a full compliance with the expression of the Bulgarian subconcept *безопасност* ("safety") by the Russian lexeme *безопасность* ("safety").

However, the Bulgarian word combinations with the base word *сигурност/ сигурен* ("security / sure") are presented unequivocally in Russian – along with the lexeme *безопасность* ("safety"), the security concept is represented at a high frequency by another Russian lexeme – *надежность* ("reliability") (in single cases by some other collocations that are not representative).

- The study of the usage of the Russian lexemes *надежность/безопасность* ("reliability/ safety") indicates that "safety" verbalises non-hazardous circumstances as well as health-related situations/products as harmless (covering the conceptual core of the Bulgarian subconcept *безопасност* – "safety"). The lexeme „надежность"(„reliability") is connected with the impeccable and stable functioning of the mechanisms and systems, as well as with the stability/ trustfulness in the interpersonal / social relations (semes covering the conceptual core of the Bulgarian subconcept *собствено сигурност* – "proper security").

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Changes in the administrative procedure code and principles of the complex administrative servicing

Summary

This report is aimed at studying legislative changes relating to the introduction of the provision of complex administrative services to citizens.

Keywords: Complex Administrative Servicing, Administration, Administrative Services, Administrative Procedure Code (APC)

While only 10% of Bulgaria's population in 2016 used the Internet to communicate with the administration, nearly 90% of the population of Estonia took advantage of the integrated electronically provided administrative services, having electronic ID cards by which they participate in the procedure for electronic voting and apply for electronic services. This puts Bulgaria among the last places out of the EU member states using the internet to communicate with the administration. It is not disputed that the future of communication between citizens and administrations will be based on information and communication technologies (ICT) without the need for physical contact between the parties. However, there is still a significant number of people without adequate computer literacy both among citizens and businesses and in administrations, which does not allow the administrative services to be provided entirely by electronic means. This is stated in the Report on Administrative services provided to citizens in Bulgaria.

After the repeal of the Administrative Services to Individuals and Legal Entities Act in 2006, there were no texts in the Administrative Procedure Code (APC) concerning the administrative servicing. By amending the APC, a new Art. 13a was created to obligate administrative authorities to apply the complex administrative servicing in providing administrative services to citizens. Based on the amendments in the Administrative Procedure Code of 2014, the complex servicing legal principles were, among other issues, laid down for the first time, namely: automatic collection of evidence by the administrative authority, provision of administrative services through various channels, as well as automation of processes for providing administrative services.

There were also stipulated the regulatory bodies that can provide complex administrative servicing, namely: administrative bodies, persons performing public functions, and organizations providing public services. Complex administrative servicing is such a servicing where the administrative service is provided by administrative bodies, by persons performing public functions, or by organizations providing public services, without requiring the applicant to provide information or evidence for which there are already data available, collected or created by the primary data controller performing the administrative service, irrespective of whether these data are maintained in electronic form or on paper. This means that public service providers are obligated to provide complex servicing and have the right to access data created or maintained by other authorities. The Ordinance on the administrative servicing stipulates the regulatory ways to apply for those services and respectively to get the individual administrative act, namely: by electronic means, through a licensed postal operator, via fax or otherwise, as notified by the body for being technically possible. Requests for the complex administrative servicing to the administrative bodies and the attachments thereto may be submitted electronically, through a licensed postal operator, via fax or otherwise, as notified by the body for being technically possible, and the individual admin-

istrative act should be obtained at the place where the application was submitted, at the exact address indicated in the application, in the case that a receipt through a licensed postal operator or by electronic means has been requested. The complex administrative servicing is aimed at facilitating the access to administrative services, reducing costs and deadlines for the administrative servicing, assuring its orientation to the needs of citizens and organizations, as well as reducing administrative burdens.

For this purpose, the integration and effective cooperation between administrations at central and local levels are required, where it is necessary to provide a specific administrative service. On the one hand, this requires a change in responsibilities and organization of work processes, and on the other hand, it is associated with the improvement of the administrative culture of both employees and their managers. But instead, the Report on the basic model of complex administrative servicing in 2013 showed that in terms of integration the administration has not achieved substantial progress: „The integration[1] and coordination between different administrative structures in providing services is weak. It was found that each administration provides its administrative services relatively independently. Actually, there are very few examples of complex provision of administrative services. All this shows how difficult is the integration and coordination of the work between different administrations regarding the provision of administrative services".

One important[2] stage in the process of introducing the complex administrative servicing is the creation of service centers where, at the one and the same place, services from different administrations may be requested. The possibility of establishing centers for complex administrative servicing is laid down in the Administration Act, the Public Administration Development Strategy and the Roadmap to the strategy. Centers should be involved in providing in one place services from many administrations and public service providers. The creation of the above would provide solutions to some of the main problems relating to the administrative servicing in the country, namely: the territorial remoteness of some of the administrations from the users of their services, the need for service users to provide information already available in the registers kept by other administrations, the lack of standardized procedures, deadlines and documents in the process of providing certain services by the municipal administrations and by the territorial central administration units, as well as the low usage of the announced electronic administrative services.

The Public Administration Development Strategy of 2014 showed that, despite available technological options, still no centers were established, where one can obtain a service for which another administration is responsible. The report also

[1] Basic Model of Complex Administrative Servicing.

[2] Report on the Administrative services provided to citizens in Bulgaria, Sofia, 2015.

cited data from the Administration status report for 2012, according to which only the National Revenue Agency and the Agency for Geodesy, Cartography and Cadastre have created the opportunity for filing applications, appeals and protests, warnings and proposals to them through the municipal administrations. This indicates the low level of interaction within the state administration, and it makes people feeling like no unity of government exists. To solve this problem it is necessary to introduce a new approach to the provision of services in one place by more than one administration, by allowing the establishment of unitary centers to provide services by regional and municipal administrations, central administration territorial units, and other public institutions. It is necessary to create at territorial level centers for the provision of information and services to citizens by both the municipalities and the regional offices of central government. The creation of such centers is provided for in the E-Governance Development Strategy in the Republic of Bulgaria 2014–2020, where the creation of single points for service provision is seen as a way to increase the use of e-services, as this will increase the access points thereto, will increase users awareness, and at the same time, will reduce the administrative services cost. The Government Programme for Sustainable Development of Bulgaria for the period 2014–2018 also provides for ensuring equal access to public services, by completing the plan for establishing Bulgarian Posts offices as external offices of the Bulgarian e-governance system, etc. Unfortunately, to date there are only good intentions in this respect. Instead, at that level a highly centralized provision of administrative services could be observed in Bulgaria, which requires users from smaller settlements to travel to municipal centers where municipal services are concentrated. With the exception of a few services relating to civil status, the outstanding range of more than 170 municipal services can only be requested in the respective municipal center. Services provided by the central administration are mainly requested at district level, and some of these services even at regional level.

In accordance with the APC, the Ordinance on the administrative servicing lays down the ways to request complex administrative services – by electronic means, through a licensed postal operator, via fax or otherwise, as notified by the body for being technically possible, as well as the ways to get the individual administrative act – either at the place where the application was submitted, or at the exact address indicated in the request, in the case that a receipt through a licensed postal operator or by electronic means has been requested, in compliance with the provisions of the Ordinance on the electronic administrative services. The interaction between administrative bodies in the provision of complex administrative servicing is also provided for, the procedure to submit the application for the complex administrative servicing is set out, an opportunity is provided to submit the application to any of the bodies involved in the complex administrative servicing, a ban is introduced on the request of already available information

or evidence, a deadline is determined to carry out the complex administrative servicing, and it is also specified who will bear the cost of sending the individual administrative act.

The obvious conclusion is as follows: The legal and normative basis for the complex administrative servicing in Bulgaria was laid down, however, a well--developed national infrastructure, including systems and components to support the e-government development, is missing. The creation of legislative and infrastructure frameworks, the ban on the request of documents and information from citizens where the same have already been collected by the same or another administration, the exchange free of charge of data and information through official channels, and the interoperability between information systems and registers, and most importantly, the existence of political will, are critical in introducing the complex administrative servicing in Bulgaria.

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Human rights in the context of counter-terrorism

Summary
On 15 December 2016 the Bulgarian Parliament adopted the Law on Counteraction Against Terrorism, which raised a number of questions during the discussions, related to the clarification of the precise balance between the rights of the individual person and the rights of society as a whole. Following a review of the interpretation of the protected rights by the European Convention on Human Rights (ECHR) within the judgments of the European Court of Human Rights (ECtHR) regarding terrorism, the report focuses on the main debatable issues provoking a discussion on the matters of the established competences of state authorities and their compliance with the standards on the protection of human rights and fundamental freedoms.

Keywords: terrorism, army, investigation, preventive measures, detention

I. Introduction

The increasingly frequent occurrence of terrorist acts[1] [1; 2; 3; 4; 5; 6] in recent years has logically directed public attention towards searching for the right balance between human rights and the interests of society as a whole[2], and, in this regard, towards the competences of state authorities in the sphere of counter-terrorism. In the context of globalization, advanced technologies and free movement of goods, capital, services and people, terrorism has become a global problem of modern society, and, undoubtedly, countering international terrorism cannot be a responsibility of a single country or a limited number of countries since it inevitably affects all humanity[3] [7]. This fact makes it imperative that actions should be taken to develop the so called 'global' legislation[4] [8]. The regulation of combating terrorism includes a series of acts both on an international level[5] [9;

1 For more details on the term 'terrorism' see: Гаврилин, Ю. В. и Смирнов, Л. В. Современный терроризм. Сущность, типология, проблемы противодействия. Москва, Книжный мир, 2003, с. 4–9; Eaten, Martin. Human Rights Standards and Framework Conditions for Anti-Terrorist Measures. European Standards and Procedures. – In: Benedek, Wolfgang, Alice Yotopoulos-Marangopoulos (Eds.). Anti-Terrorist Measures and Human Rights. Martinus Nijhoff Publishers, 2004, pp. 28–29; Марков, Румен. Наказателноправни аспекти на съвременния тероризъм. – Съвременно право, 2005, № 4, с. 22–31; Meisels, Tamar. The Trouble with Terror. Liberty, Security, and the Response to Terrorism. Cambridge University Press, 2008, pp. 7–29; Conte, Alex. Human Rights in the Prevention and Punishment of Terrorism. Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand. Springer, 2010, pp. 7–37; Кочои, С. М. Общеевропейское законодательство о борьбе с терроризмом и перспективы реформирования УК РФ. – Совершенствование законодательства, 2014, № 9, с. 1061–1069.

2 In regard to the adoption of a new European Union Directive on combating terrorism, the rapporteur in the European Parliament Monika Hohlmeier (EPP, Germany) points out: 'We need to stop the perpetrators before they commit these acts rather than regretting the fact that there have been attacks… We have struck a good balance between improving security and strictly upholding fundamental rights because there is no point in having security without rights.' (http://www.europarl.europa.eu/news/bg/news-room/20170210IPR61803).

3 Ромашев, Ю. С. Международное правоохранительное право. 2-е издание. Москва, Норма, 2015, с. 66.

4 Powell, C. H. The United Nations Security Council, terrorism and the rule of law. – In: Global Anti-Terrorism Law and Policy. Second edition. Edited by Victor V. Ramraj, Michael Hor, Kent Roach and George Williams. Cambridge University Press, 2012, p. 19–43.

5 See: Rabbat, Paul. J. The Role of the United Nations in the Prevention and Repression of International Terrorism. – In: Wade, Marianne, Almir Maljević (eds.). A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications. Springer, 2010, p. 81–106; Wahl, Tomas. The European Union as an Actor in the Fight Against Terrorism. – In: Wade, Marianne, Almir Maljević (eds.). A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications. Springer, 2010, p. 107–170; Sieber, Ulrich. Instruments of International Law: Against Terrorist Use of the Internet. – In: Wade, Marianne, Almir Maljević (eds.). A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications. Springer, 2010, p. 172–219.

10; 11], and also within separate regional organizations[6] [12]. In accordance with the trends in the development of this type of criminal activity, and the attempts at the establishment of an efficient legislative basis on an international, as well as on a regional scale – at the level of the European Union, on 15 December 2016 the Bulgarian Parliament adopted the Law on Counteraction Against Terrorism (LCAT) (State Gazette № 103 of 27 December 2016). The need for the adoption of this law is justified within the motives by the nature of terrorism being one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, respect for human rights and fundamental freedoms, and also one of the most serious violations of the principles of democracy and the state governed by the rule of law[7] [13], as well as by the conclusions for increased risk of terrorist attacks in the Republic of Bulgaria due to the country's participation in the world anti-terrorist coalition. This act has once again posed the question of the limits to which individual rights extend, and the rights of the remaining part of society begin.

II. The standards of the European Convention on Human Rights (ECHR)

The fundamental objectives of the Law on Counteraction Against Terrorism, in accordance with Art. 1, include the protection of the rights of citizens, legal persons, the state and society from terrorism, and as a main principle, applicable in carrying out the activities provided for by the act, Art. 2 states: 'respect for and guaranteeing human rights and fundamental freedoms'. Comparing the two texts, it becomes obvious that the LCAT regulates as *a fundamental principle* the values of the state governed by the rule of law[8] [14], and the basis of the *purpose* is 'the public interest doctrine'. The question is whether the end justifies the means. The Republic of Bulgaria, as a party to the European Convention on Human Rights, is obliged to guarantee the human rights and fundamental freedoms within the meaning and scope determined by the European Court of Human Rights (ECtHR).

[6] See: Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0625).

[7] As suggested by Kevin Boyle, 'In a democratic society the very purpose of emergency security measures is to protect people and their human rights and fundamental freedoms'. See: Boyle, Kevin. Terrorism, States of Emergency and Human Rights. – In: Benedek, Wolfgang, Alice Yotopoulos-Marangopoulos (Eds.). Anti-Terrorist Measures and Human Rights. Martinus Nijhoff Publishers, 2004, p. 101.

[8] Regarding the Canadian Bill, which established broad competences of the Prosecutor General in relation to combating terrorism, see Hamish, Stewart. Rule of Law or Executive Fiat? Bill C-36 and Public Interest Immunity. – In: The Security of Freedom: Essays on Canada's Anti-Terrorism Bill. Edited by Ronald J. Daniels, Patrick Macklem, and Kent Roach. University of Toronto Press, 2002, p. 217–237.

In a number of judgments, the ECtHR identifies the permissible limits of violation of human rights, including the cases where this is necessary for the protection of national security and public order. In regard to the application of Art. 3 of the ECHR, the ECtHR emphasizes that this provision proclaims one of the most fundamental values of a democratic society, and even in the hardest situations, as in combating terrorism and organized crime, the Convention *absolutely prohibits torture and inhuman and humiliating treatment or punishment* (judgments on the cases Labita v. Italy, Saadi v. Italy, Ireland v. the United Kingdom, Frérot v. France, Dikme v. Turkey, Chahal v. the United Kingdom, Jalloh v. Germany, Aksoy v. Turkey, Assenov and others v. Bulgaria, Ivan Vasilev v. Bulgaria, etc.). The requirements of the investigation and the indisputable difficulties typical for the fight against terrorism, cannot justify the limitation of the protection that must be ensured with regard to the physical integrity of individuals (judgments on the cases Ribitsch v. Austria, Dikme v. Turkey, Tomasi v. France, etc.). The statement of the ECtHR is categorical that, in contrast to most of the provisions of the Convention and of Protocols 1 and 4, Art. 3 does not contain exceptions and its violation is not allowed under Art. 15, § 2, even: (1) in the event of *a threat to the nation's existence* (in this sense are the judgments on the cases Labita v. Italy, Selmouni v. France, Jalloh v. Germany, Assenov and others v. Bulgaria, Ivan Vasilev v. Bulgaria, etc.); (2) depending on the victim's conduct (Labita v. Italy, Jalloh v. Germany, Chahal v. the United Kingdom, etc.); (3) depending on the character of the offence attributed to the person, with respect to which measures have been implemented in breach of the prohibition (Brogan and others v. the United Kingdom, Labita v. Italy). As a necessary guarantee for the rights proclaimed within the ECHR, the ECtHR considers the normative establishment and factual implementation of efficient control by the national courts in cases of detention by state authorities. The obstacles associated with the investigation of terrorism, including the large number of suspects who impact the completion of a police or judicial investigation, cannot serve as grounds for relieving the authorities of their obligation under Art. 5, It. 3 of the ECHR, and, where appropriate, the authorities should develop forms of judicial control that are adequate in the concrete circumstances, but also comply with the Convention (judgments on the cases Chahal v. the United Kingdom, Demir and others v. Turkey, Dikme v. Turkey).

In the context of Art. 3 of the ECHR, the imposition of death penalty after an unfair trial with the real possibility that the death sentence will be enforced, is considered inhuman treatment by the ECtHR on the case Öcalan v. Turkey, as the judgment focuses on several principal aspects: (1) the investigation of terrorist offences poses particular problems to authorities, however, *the investigating bodies have no freedom to arrest suspects for interrogation without effective control by the courts* each time the bodies state the issue is related to terrorism; (2) Art. 6 usually requires the provision of a lawyer as early as the initial stages of police

interrogation and the right of the accused to communicate with his or her lawyer, without their conversation being recorded, is a part of the basic requirements of a fair trial, and is derived from Art. 6, It. 3 (c) of the Convention; (3) *the right to a lawyer may be limited, if there are substantial reasons for that, and it is important whether, in the light of the proceedings as a whole, the restriction has deprived the accused of a fair hearing.*

Taking into account the need to protect the public interest, the ECtHR points out that countries enjoy the so-called 'wide margin of appreciation', i.e. a wide freedom of prioritization between the rights of individual persons and the interests of national security (Leander v. Sweden), but also that the fight against terrorism does not allow states the possibility for interference with the rights of persons located within their jurisdiction. In the event of an argument on violated rights under the ECHR, governments have to prove that the counter-terrorism measures undertaken by them, are justified by at least one of the grounds provided for in the Convention or in the interpretations the ECtHR formulates in its judgments.

The analysis of the practice of the ECtHR leads to the conclusion that, regardless of the difficulties related to the prevention and investigation of terrorist acts, any person suspected or accused of preparation or participation in a terrorist act should be guaranteed the right to a fair trial and, with respect to any such person, the prohibition of torture or inhuman or degrading treatment or punishment is fully effective. Sharing these democratic values of the state governed by the rule of law, is the most powerful prevention against the popularization of the radicalization of society, at the basis of which usually stays the marginalization of its individual members due to their perception of injustice.

III. The legal framework within the Law on Counteraction Against Terrorism

The adoption of a special act on counter-terrorism, which sets out specific rules and measures applicable to this type of anti-social behaviour, excluding the general rules of other laws regulating the fight against crime, logically focuses the attention on the compliance of these particular rules with the minimum standards in the field of human rights protection.

Granting competences to armed forces, which are generally not competent to safeguard public order and to investigate crimes, to carry out in peacetime a number of actions affecting fundamental rights and freedoms, raises doubts about their capability in two respects: (1) in connection to the lack of qualification and experience to perform the corresponding actions while observing the law, and (2) in relation to the practical assessment of the question of the availability of data indicating that a concrete person is involved in the preparation or execution of a terrorist act. The evaluation concerning the availability of data indicating that

a particular person is involved in the preparation or execution of a terrorist act has to be conducted in the following cases: (1) verification of the identity of a person unless the check is carried out at a control point or by the security of strategic sites or critical infrastructure sites; (2) detention of a person by a military service officer; (3) a search of a person, checking of personal belongings, luggage, vehicles, ships, aircraft, containers, and (4) checking of premises without the consent of the owner or occupant or in their absence. At the process of evaluation of these data, there are no guarantees typical of criminal proceedings (such as a court sanction), nor are any specific requirements regarding their contents present, which may result in arbitrariness[9]. Upon detention of a person, the LCAT provides for only two competences of the military service officers: to immediately notify the authorities of the Ministry of Interior (MI), and to hand over the person to them upon their arrival. There is no obligation for the military service officers to provide the detainee with the opportunity to contact a defence counsel, similar to Art. 72, para. 5 of the Ministry of Interior Act. This could also create prerequisites for a violation of fundamental rights and freedoms[10].

The preventive measures applicable to persons for whom data is available, on the basis of which a reasonable assumption can be made that they carry out activities constituting a terrorist threat, are within the competences of the authorities having the powers typical for the prevention and investigation of criminal offences – the Ministry of Interior and the State Agency for National Security (SANS).

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[9] There must be reasonable grounds to suspect someone of terrorism in order to justify his or her arrest. In its judgment on the case Fox, Campbell and Hartley v. the United Kingdom, the ECtHR notes, 'The fact that Mr Fox and Ms Campbell both have previous convictions for acts of terrorism… although it could reinforce a suspicion linking them to the commission of terrorist-type offences, cannot form the sole basis of a suspicion justifying their arrest in 1986…'. At the same time, the ECtHR recognizes the need not to interpret Art. 5, § 1 (c) in such a manner as to put disproportionate difficulties for national authorities in taking effective measures to counter terrorism (Murray v. the United Kingdom, O'Hara v. the United Kingdom, X, Sher and others v. the United Kingdom), and on the case Murray v. the United Kingdom the ECtHR states that '...the Contracting States cannot be asked to establish the reasonableness of the suspicion grounding the arrest of a suspected terrorist by disclosing the confidential sources of supporting information or even facts which would be susceptible of indicating such sources or their identity'. The conditions of extreme tension in which the arrests in Northern Ireland were carried out, were recognized by the ECtHR as a legitimate consideration justifying the manner of performing the entry and search of the applicants' home as well as the recording and storage of personal data of the arrested person and even of other persons present at the place and time of the arrest – these actions were not considered disproportionate to the intended purpose.

[10] In its judgment on the Emrullah Karagöz v. Turkey case, the ECtHR accepts that '...the applicant's transfer to the gendarmerie command after being placed in pre-trial detention escaped effective judicial review… handing a remand prisoner over to gendarmes for questioning amounts to circumventing the applicable legislation on the periods that may be spent in police custody… all the safeguards that should be provided during questioning, especially access to legal advice, were rendered inoperative'.

The legitimate purpose of the measures (prevention of a person's involvement in terrorism, or of the threat of committing a terrorist act) and the instruction of Art. 3 of the LCAT lead to the conclusion for regulation of preconditions for utilization by the respective bodies of means, proportionate to the objective pursued[11]. Given the nature of these measures[12], however, the question is raised whether the envisaged appeal of the acts through which measures are taken (orders of the Chairman of SANS and the Chief Secretary of the MI) before the Supreme Administrative Court, and the comparatively long period for the trial scheduling (14 days), are a sufficient guarantee for the timely resolution of the issues concerning the limitation of the rights of persons, as far as the measures are applied to 'a person for whom data is available, on the basis of which a reasonable assumption can be made that he or she carries out activities constituting a terrorist threat' (Art. 24, para. 1), i.e. a matter which is within the scope of criminal procedure, and it is criminal judges who can make the most accurate judgement. Observing the provisions of the ECHR depends both on the legal framework and on the possibility for an adequate factual assessment of the existence of a 'reasonable assumption' since the rights granted by the special anti-terrorist legislation to the police to stop and search persons without reasonable suspicions of crime, are recognized by the ECtHR as a violation of the applicants' right to privacy[13]. The discretion granted to national authorities must be accompanied by appropriate guarantees against abuse.

Only the main problematic issues related to the adopted Law on Counteraction Against Terrorism have been addressed above, due to the impossibility to analyse thoroughly all debatable matters within a single report. Some of them have been discussed by MPs who have adopted the act, but most of the concerns about the lack of sufficient guarantees for the fundamental rights and freedoms are related not only to the scarce legal framework on some issues, but also to problems that are entirely in the sphere of its practical implementation.

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11 In its judgment on the Klass and others v. Germany case, the ECtHR accepts that in a democratic society, under exceptional conditions, the legal competences of even secret tracking of correspondence and telecommunications, are necessary in the interests of national security and/or for the prevention of disorder or crime, and in the Uzun v. Germany case the ECtHR accepts that the surveillance of terrorist suspects via the Global Positioning System (GPS) is not a violation of the right to privacy under Art. 8.

12 According to the LCAT, the following measures can be applied: prohibition of change of the place of residence without authorization; prohibition of leaving the boundaries of the Republic of Bulgaria without authorization; prohibition of visiting certain locations, areas and sites without authorization; prohibition of leaving a particular settlement without authorization; prohibition of contacting certain persons without authorization; periodic attendance in a regional office of the Ministry of Interior and signing before a police officer; deprivation of passports or substitute documents and prohibition of issuing new ones.

13 Gillan and Quinton v. the United Kingdom.

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Use of psychological methods in the workplace and their legal aspects

Summary
In recent years, psychological methods in the workplace have become increasingly widespread. This report discusses two psychological methods for examination of employees for the purpose of internal investigation and the legal aspects of their use by the employer.

Keywords: security, staff, professional misconduct, right to security

Introduction

Security is a state of non-hazard [2], where there is satisfactory control by the defending party over the impacts on it. It involves calmness, confidence and protection [2]. Security is particularly important for business and is directly related to the development of the market and its participating businesses. Workplace security is a major component of employee attitudes and interests [12]. Security is also a fundamental right guaranteed in Article 5 of the European Convention for the Protection of Human Rights and Article 6 of the Charter of Fundamental Rights of the European Union.

When talking about corporate security it must be borne in mind that it is multi-faceted. It encompasses ensuring protection of the interests of the owners and as well as those of the customers. Its effective action implies continuity of key business processes in the company. It is engaged in activities such as keeping the security of cash flows and of material assets; information security (including working with confidential information and personal data), labor security, personnel security, physical security, security in crisis situations and a number of other activities. Some of the most important aspects of security are related to the prevention and detection of violations of labor and service staff retention.

Workforce is a risk asset. Practice shows that many of the company's risks are triggered by intentional or non-intentional acts of employees. These include financial abuse, leaking of company information, misuse of personal data, impairment to reputation and defamation and other series, which significantly increase the risk profile of each organization. This requires awareness of the need for different methods of prevention and detection of fraud by company personnel. In the recent years in corporate practice wider place is given to the prevention performed by using psychological methods and tools.

At the same time, it should be taken into account that the application of these methods should be consistent with the basic civil rights as well as with the labor rights of workers. Enterprise security should not be at the expense of the security of employees. Moreover, both have a common interest in the end, because the welfare of the enterprises depends directly on the work of the workers, and the welfare of the workers - on the economic performance of the enterprise.

1. Psychological methods of detecting infringements

In order to enable the prevention, identification and detection of risk related to the job abuse various methods and means can be employed. This work focuses on two psychological methods. The first one is developed by a Bulgarian team of criminal psychologists and is named Integrity Check [12].

The method is suitable for:

- Recruitment of people on executive positions in different organizations;
- Introducing programs and systems to increase loyalty;
- Reduction of theft and diversion of funds.

Integrity Check is a test designed to measure the loyalty of the people surveyed. Furthermore it takes into account the individual attitudes of the respondents and their willingness to comply with various social, moral or company rules. The test is able to identify job applicants or employees who tend to carry out infringements of the rules and discipline. It can be used in recruitment for work or in the evaluation of current employees. The questionnaire is based on the theory of moral development of L. Kohlberg and allows you to make certain links between counterproductive work behavior and the level of moral maturity of the employee. The methodology and the economic benefit of implementing it have been confirmed in various empirical studies. The test was developed on psychometry basis and has a high degree of accuracy. The scope of the test is 90 questions. Each question must be given a multiple-choice answer. The questions are divided into different fields which form the overall assessment of fidelity. The areas of study can be defined as:

- Counterproductive behaviors – accounts of the behavior of the tested person in the past.
- Estimates of the frequency of violations – an indirect indicator of tendencies towards counterproductive behavior.
- Ethical dilemmas – consists of short scenarios related to theft or disloyalty in the workplace.
- Counterproductive predispositions - measure the responses and judgments of the studied person to different common problems in the workplace.

Thus the managers of the respondents receive information about their workers' understanding and compliance with the rules and regulations; their honesty and attitudes in relation to theft and abuse; sustainable motivations; assessment of opportunities; discipline; respect to the others; tolerance; lack of counterproductive behavior in the past; expectations about the behavior of the others; attitudes towards work and rules.

In each of these groups of questions the tested person gets average grade, and ot the base thus obtained a score is formed. The scale of evaluation is divided into three level: low, medium and high. The respondents falling in the lower scale are classified as risky and prone to abuse. With an increase in assessment increases the reliability of the researched person. Any organization which administers the test determines the level of acceptability itself regarding the assessment at the individual groups and overall results in accordance with the nature of the work position.

The methodology for handling the Integrity Check test suggests the test to be held in the working environment within 40 minutes on a computer with the relevant software. After completing the test, on the basis of the chosen responses, the person is categorized after the results being calculated by correlations and combinatorics implemented in the test. Along with the overall evaluation, the program outputs those "embarrassing" responses given by the person, too. This is the basis for a subsequent clarifying conversation with the researched person. The test suggests keeping the personal data of the tested person confidential.

To enter into the essence of the research it is necessary to clarify the following. To achieve its goals, the questions in the test are of two types. The first are directly asked, as they uncover past actions and draw on the methods of questioning during polygraph tested. The second are aimed at displaying the personal profile of the tested person or the so-called psycho profile. These are questions revealing behavior, morality, fears, attitudes towards what is good and what is not, different judgments and others. On this basis, conclusions are drawn about the specifics of the studies person: if s\he would abuse his\her official position, to what extent is s\he reliable, to what degree of tension would s\he withstand and his\her appropriateness for a particular job position.

The test is intended for activities and positions with access to sensitive and/or classified information, risky activities, industries with identified high risk of abuse. At present, the method is applied at a number of commercial banks, consulting firms, government offices, fire stations, police, army and state administrations etc. and is held in countries such as Slovenia, Ukraine, Russia, Bulgaria, Chile, India, Kazakhstan and others. [12]

The second psychological method for detecting abuse in the carrying out Labor obligations and service is the polygraph examination. Polygraph examination in the business world is becoming more and more popular as a method of detecting lies and deceit. In many states polygraph examination is used by police departments in criminal investigations. Apart from that business undertakings are using as for internal investigation and the big business and industrial concerns in USA use the lie detector for checking the honesty of their employees [5].

The most widely it is used in companies whose nature of business implies high level of abuse: banking; companies engaged in transportation of valuables; companies working with classified information; security companies; hazardous industries in which loss or theft by employees is often observed, pharmaceutical industries and many others. The polygraph is an efficient device that helps many companies to periodically check the loyalty of their employees and to investigate the veracity of their explanations in cases of abuse or a number of problematic situations related to the integrity of the workers.

The modern "lie detector" is a compact, computerized device equipped with sensors and pickups that are placed all over the body of the tested person. These

sensors and pickups record changes in certain physiological processes, not subject to conscious control. During the polygraph examination changes are observed due to more than 20 physiological processes that are taken into account by the equipment. Thus obtained information is processed by software and is read by specially trained technicians. Sensors take into account any movement of the test person, too.

Normally, people are worried when subjected to the polygraph examination but contrary to popular belief - the distress does not affect the test results. Before the start of the instrumental part of the study, i.e. working with the very polygraph, a PRE interview is conducted. During the test itself there are no surprises – all issues have been discussed in advance so that the tested person can give unambiguous answers to each of them. During the study itself it is necessary to strictly follow the instructions namely, to answer only "Yes" or "No" and not make additional moves.

Polygraph examination is a scientific method with extremely high precision. "The lie detector" cannot be cheated, despite claims that there are people who are capable of it. The very nature of the polygraph test – recording the responses of the body that are subject to the autonomic nervous system is evidence of this. Even if someone would manage to control his\her behavior, one cannot control all the internal processes of the body. These reactions can be measured, and their power is increased by the spent mental and emotional energy [3]. Even if he can control external behavior, one cannot control the internal reactions of his or her organism. Therefore, it is believed that the polygraph may be cheated, but not the polygraph, as it "does not measure truth" The device records in an objective manner the smallest changes in the internal state of the body and the good specialist recognizes immediately any attempt at manipulation or obstructions that the tested person might undertake. Post-test of the polygraph examination is as important as the PRE test and instrumental one itself. It lays down the results and, if necessary, continuing talks with the tested person are held.

In polygraph tests there are no small or big lies – the tested person has either passed or failed the test. The anxiety is a normal part of the process, but experts are aware of this and the respective state of mind does not in any way affect the results [8].

2. Legal Aspects of Use of Psychological Methods in Labor Relations

Use of psychological methods in employment has two different sides. Psychological methods may be very effective for the employer. They can be used widely in employer-employee relation: in the process of screening of candidates, at the stage of work evaluation of employee's performance, for the purposes of judg-

ment of professional development, and also for the need of internal investigations of workers misconduct and termination of employment contract. On the other hand their misuse may result in work discrimination, breach of employee's privacy, wrongful termination of employment contract and even in psychological damages for the worker. Psychological methods have a relatively long history of usage in employer-employee relations. They have proved to be reliable and have high accuracy. For these and other reasons they have become more common nowadays, but there is essential lack of special legislation to regulate their use. The challenges of such laws are that they have to manage the conflict between the interest of the employer to apply such methods widely and employee's fundamental and labor rights to avoid it. As it was said above the employer may suffer monetary damages or damages of reputation as a result of employee's misconduct. On the other hand if no special protection is provided by law, the employee may be subject to discrimination, his right to security or other fundamental rights as personal privacy, freedom, dignity, etc. may be easily infringed by the employer. After all, the employer has the economic strength and occupies more powerful position in the relation where employee is more or less dependent on his employer.

It can be said that there are no special legal acts to regulate the use of psychological methods in labor relations. In some states statutory law has been adopted to govern different aspects of the polygraph exams. Courts have also ruled in such cases on grounds on Constitutional or labor law provisions. In 1988 the Congress of the USA adopted the Employee Polygraph Protection Act (EPPA). The Act established general prohibition to the employers to use polygraph. Its main purpose was "To prevent the denial of employment opportunities by prohibiting the use of detectors by employers involved in or affecting interstate commerce" (Employee Polygraph Protection). EPPA was a result of concerns that polygraph test were widely used, but often inaccurate [6]. The EPPA forbids to employers use of polygraph tests in pre-employment and during employment. It provides some exceptions for government use for certain national defense and security reasons and for ongoing workplace investigations, as well as for use by private employers engaged in security services and for investigation conducted by employers engaged in the manufacture and distribution of controlled substances.

In the lack of special legislative provisions courts have played essential role in drawing the line between lawful and prohibited use of polygraph testing by the employer. When courts rule on termination of employment based on results from polygraph test results they would strictly observe for any breach of employee's rights. In several decisions under the EPPA, US courts have judged in favor of the worker, for example when the contract was terminated partly on lie detector test, or after the employer had forced the worker to take a polygraph examination, as well as in a case where the employee has initially waved her procedural rights

under EPPA [1]. In several decisions Bulgarian High Administrative Court finds results from lie detector tests as insufficient for work dismissal [4]

One can ask if there is a need of passing special laws to regulate use of psychological methods in employment relations. Yet fundamental rights and freedoms such as right to security, right to privacy, right to dignity, right to non-discrimination, right to remain silent and others may continue to safeguard of employee's rights and interests. Moreover labor laws grant additional rights that can protect workers in such situation. This may be good enough if the use of such methods is viewed only from the perspective of protection of employee's rights. Psychology methods may be useful and beneficial to both employer and employee. It can help the employer in screening and in internal investigations, without breaching employee's rights and interests. A working model should encompass more than legislative measures [11].

Psychological methods used by employers should be limited to the examination of behavioral or personal aspects that are strictly related to the job or to the misconduct of the employee. Any method applied should be first validated and examination conducted by qualified and/or certified professional. On third place any and all results should be kept confidential. And lastly, but most important is to preserve the right of security of the employees by a special provision in law to prevent application of psychological examination methods in employer-employee relations and use of any results of such examination without previous written consent of the employee.

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Some authors suggest that an "ideal legal framework would have features of justification, test reliability and validity, confidentiality, and accountability." For more details see Elizabeth D. De Armond, To Cloak the Within: Protecting Employees From Personality Testing, Chicago-Kent College of Law Scholarly Commons @ IIT Chicago-Kent College of Law, 1-1-2012, pp. 1177–1184

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Methodology for evaluation of energy security

Summary
The report describes methodology for evaluation of the energy security through analysis and evaluation of the risks for the energy system and socio – economic relations.

Keywords: energy security, methodology, risk, identification, analysis, evaluation

Axiomatics of the energy security

The term energy security" appears and is being established in the last quarter of the 20th century, and continues to be an important item in the beginning of 21st century.

Several aspects are being considered:

- Operational and technical reliability of the energy system, of the equipment and personnel.
- Stability, reliability and continuity of deliveries of enery resources, in the required volumes.
- Effective, economically justified energy supply, on reasonable prices, etc.

The term gathers technical, political, economical, social, ecological and other aspects. National and international dimensions are formed as well. The term itself is now considered widely enough in economical and political aspect. It is a part of the widely acknowledged understanding of security, in which, along with the military and military – political aspects, we find economical, social, humanitarian, ecological, informational and other aspects as well. The representatives of the Copenhagen School (members of which are Barry Buzan, Ole Weaver, Jaap de Wilde, Lothar Brock, Marc Levi, Charles Schultz and others) have a great contribution to this. In theoretical elaborations the energy security is considered as a sub-type of the economical security.

For evaluating security, including energy security, different categories are being used, such as danger, threat, risk and vulnerability. There is no unified position in specialized literature and among experts, when it comes to the content of the terms. For the purposes of this report and with no claims for comprehensiveness, we will use the following terms.

Danger is the most general term, accepted as the negative feature of the living and non-living matter to cause harm to the people, environment and material property. [1]

When it comes to social and socio-economic systems, danger is considered as the deviation from the direction of movement, a change in the state; as a possible influence on an element or a connection between elements, capable of violating the current function of a system and its development [2 p. 34].

The high state of uncertainty and hypothetical influence on time and dimension are typical for the term.

Threat is considered in a more specific aspect, as realization of danger with concrete sources/carriers. Considering the given subject of this elaboration – the energy security, threats can be determined as events with short term or long term character, which destabilize the operation of the energy complex, limiting or violating the power supply, leading to breakdowns and/or other negative consequences on the energy sector, economics and society.

Vulnerability is a feature of objects – the ability to change their state as a result of a negative influence coming from a dangerous events/phenomena. In the risk theory vulnerability is connected to the "weakness" of the system, a shortage of resources, and lack of control on certain processes.

In general risk is considered as the possibility of occurrence of negative consequences /harm, losses/ as a result of the influence of negative (dangerous) events. In theory, it can be said that the risk connects danger/threat and the system's vulnerability, considering the uncertainty in realization of the negative influence and size of harm. [3, 4]

The complex character of energy security, which relates to different aspects of the existence and evolution of nations and international community, predetermines the different approaches for its evaluation. The specifics of energy as an economic branch, determine the usage quantity methods. The evaluation of energy security as a condition, that determines the realization of public and personal interests in the energy sector requires the application of quality methods as well. Because of the aforementioned, both quality and quantity methods are being used in the applied approaches, as the accent is on the latter.

Quantity methods for evaluation of energy security

At the base of mathematics – statistics methods we find the so called indicative approach, in which the following stages are achieved:

1. A system of references and relevant numeric indicators is developed.
2. Limit values of the indicators are determined.
3. The limit values are such values, the crossing of which (in increasing or decreasing direction) indicates the development of negative processes and dangers, which could result in harm of the energy system, and energy security respectively.
4. The ranges, defining the different conditions of the energy security are specified. The evaluation of the danger is based on how close to the limit values are the indicators positioned.

In its core, the indicative analysis is based on statistic data, relevant to past periods. Nevertheless the collecting of statistic information requires a considerable amount of time. In different countries different indicators are used, which limits the comparability of the results.

Risk evaluation in energy security

The increasing of uncertainty and the necessity of its calculation defines the broadening of methods for evaluation of energy security. One of the solutions is the usage of the theory for risk analysis and management.

In USA, the Index of U.S. Energy Security Risk is used, developed in 2010 by the Institute for 21st Century Energy to the US Chamber of Commerce. [5] In 2012 the International Index of Energy Security Risk is developed.[6]

A perspective methodology for evaluation of the energy security, combining the quantity and quality approaches, is the methodology, based on metric solutions for risk evaluation. Applied to the energy system, it includes the following stages.

(1) Risk identification

On this stage an expert evaluation is mainly used. Analysis of the situation is performed; the problematic areas in the energy system are being detected. On the basis of general knowledge of the risks, the specific risks for the energy security in the given moment are being determined.

There is a relatively stable understanding for the nature and type of the risks in an energy sector, which in general and as per different criteria, can be classified as:

- External and internal;
- Manufacturing, financial, commercial;
- Environmental, technical/technological, political and economical;
- Ecological, social;
- Persistent, periodical, one-time, etc.

(2) Risk analysis

The risk is considered as a function of the consequences (size of damage/harm) and probability of their occurrence. So, in accordance with Standard AS/NZS 4360:2004 [7]:

$$\text{Risk} = \text{Consequence} \times \text{Likelihood} \quad (R = C \times L)$$

A matrix approach is being used, in which a risk map is prepared.[8] One of the significant methodological problems with this approach is the selection of the size of the matrix. Three-stage (3X3) or five-stage (5X5) scales for two-dimensional matrix are used. In our opinion, the 5-stage scale allows a more detailed evaluation of the risk.

A specific meaning is set for each of the components, as follows:

Probability for occurrence of risk event:

1. Very low
2. Low
3. Medium
4. High

5. Very high

Value of damages/losses:

1. Minimal
2. Low
3. Medium
4. High
5. Maximum

A two-dimensional matrix is built, in which the values for probability of occurrence of risk events and values of potential losses/damages are combined. The relevant meanings are determined for each identified risk, as expert evaluation is used. As a result, the index for each risk is being determined.

Tab. 1. Risk map

L						
5	5	10	15	20	25	
4	4	8	12	16	20	
3	3	6	9	12	15	
2	2	4	6	8	10	
1	1	2	3	4	5	
	1	2	3	4		CC

(3) Risk evaluation

The evaluation is performed on the basis of the calculated indexes for each risk. In this operation we use pre-prepared criteria for the risk influence on the energy system and socio-economic relations and risk level from the standpoint of relations/reaction of the subject (of energy security) to it.

Tab. 2. Stages of risk influence

Stage of influence	Interval
1. Negligible	1–4
2. Insignificant	5–9
3. Mediocre	10–14
4. Considerable	15–19
5. Critical	20–25

Tab. 3. Risk level

Risk level	Interval
1. Acceptable	1–9
2. Justified	10–19
3. Unacceptable	20–25

The disclosure of the level of influence of each of the risks allows the evaluation of possible losses/damages in practice. The knowledge of the risk level and permissible (acceptable) limits contributes for determination of necessity of differential influence on the risks for the purpose of decreasing the negative outcome on the energy sector and socio-economic relations.

(4) Reaction to risk

On this stage strategies are being determined – preventive or influencing, as well as relevant methods for handling the energy risks depending on their dimensions.

The handling of risks is an activity, continuing in time. It suggests not only a "snap shot" but tracking processes in security area and specifically in the energy sector, through observation and analysis of changes.

Conclusion

The application of the risk theory gives the opportunity for obtaining a more detailed idea for the situation in the energy sector, mainly in the aspect of limiting of the negative processes in its function. The disclosure of uncertainties through identification, analysis and evaluation of risk dynamics is a prerequisite for a review of the energy policy and strategic activities for guaranteeing energy security.

In methodological aspect, this approach gives the opportunity for combining quantity and quality methods for analysis and evaluation. It is mainly based on evaluations of experts, which interpret the quantity parameters in the coordinate system of the security and realization of public and personal interests.

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Legal aspects of the health security in the Republic of Bulgaria

Summary

Health security has different dimensions. Health security may refer to the issues of personal health. Within this meaning the priority of the health system is the provision of healthcare for the individual. Health security is relevant to the public health issues and the hazards to the health of large groups of people. This study examines health security in the context of the individual health as well as the legal aspects of the policies for protection of the right to health.

Keywords: health security, public health, right to health

The concept for health security

For many decades the concept for security has been formed with a view to the possible conflict between the individual countries. The defense of security is related with armament and defense of the state borders. The report New Dimensions of Human Security [1] published by the United Nations Development Programme (UNDP) in 1994 gives a new point of view for security. Nowadays insecurity occurs rather from the concerns for the everyday life. Security at the workplace, security of income, health security, environmental safety, and crime prevention – these are threats about security that occur for the people all over the world.

The researchers [2] connect the launching of the concept for human security in the public space with the above mentioned report of UNDP. The report presents human security from the viewpoint of the individual security.

The idea for the human security [3] is a concept that occurred after the end of the Cold War. The individual security is required for the national, regional and global security.

From the long list with threats to human security, the report New Dimensions of Human Security defines seven key categories of threats: Economic security, Food security, Health security, Environmental security, Personal security, Community security, Political security.

Food, the lack of clean drinking water and the safe environment are the reason for the deaths of million people in the developing countries. Infectious and parasitic diseases, tuberculosis and acute respiratory diseases are also the reason for a huge number of deaths.

In the industrial countries, the main reasons for mortality are the diseases of the circulatory system, which is connected with the style of living and the diet. Oncological diseases also have a leading place and the main cause for them is the contaminated environment.

Mainly the poor layers of the society are exposed to the threats to the health security in the developing and industrial countries. Access to health services depends on the economic condition both of the country and of the individual. Both rich countries and rich people have much better access to health services. Inequalities for access to health services in industrial countries refer mainly to the operation of the security systems. In USA between 1989 and 1992, the number of people without health insurance increased from 35 million to 39 million.

Women also face health insecurity. More than three million women every year die for reasons connected with childbirth. Thus the miracle of life often becomes the nightmare of death only because the society has not provided support to women when they are health and socially vulnerable. Many of these deaths may be prevented if medical care is provided during pregnancy and delivery.

HIV and AIDS also pose serious threat to health security for both genders.

The mentioned report defines two important concepts connected with health security. Health expenditures – these are the expense for treatment, health insurance and family planning. Health services access is presented as the percentage of population that may reach the place of provision of the required health services on foot or with the local means of transport in less than one hour.

Health security is one of the key priorities of EU. The world health security covers wide circle of issues. It includes the readiness and the response to crisis affecting public health, pandemic influenza as well as threats caused (as a result of randomly or deliberately disseminated) chemical, radioactive and nuclear agents as well as from bioterrorism.

The Health Security Committee was established in 2001 for the purpose of developing the European health security policies. The committee has close relations with the competent authorities of the Member States for the improvement of the readiness and the development of particular actions for counteracting the threats to health security [4].

The mentioned documents show the two aspects of health security. The report New Dimensions of Human Security reviews the health security in personal aspect. The priority is the provision of healthcare to the individual. The EU documents examine health security in the context of public health and the threats to the health of large groups of people including cross-border threats.

This study examines health security in the context of individual health. The concept for health security is not explicitly established in the legislation of Republic of Bulgaria. The concept is used in a few texts, which have strategic character - the National Health Strategy 2020, the Concept for Better Healthcare. However a number of legal provisions settle the different aspects of health security in the meaning of the report New Dimensions of Human Security. These legal acts are subject to this analysis.

Universal Declaration of Human Rights

The human security is the security of the people – physical security, economic security and well-being, the protection of human rights and their key liberties [2]. The fundamental programme document in the area of human rights is the Universal Declaration of Human Rights, adopted by the General Assembly of UN on 10 December 1948.

The key human rights as proclaimed in the Universal Declaration of Human Rights are: The right of liberty (*every person is free*) and rejection of slavery; The right of the person not to be discriminated; the right to justice and fair legal process; Right of property and guaranteeing the property; the human right not to be tortured; the right of freedom of belief and expression of such belief; Right of religion and the right to change religion; Equality of genders; Right to work and right to rest. Article 25 of the Universal Declaration on Human Rights recognizes the

right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

The declaration has not binding legal force. But in the decision of the Constitutional Court of the Republic of Bulgaria on case 18/1997 is said "The key rights and liberties contained in the Universal Declaration on Human Rights is considered international standard for the national legal systems." Guaranteeing the right to a standard of living is connected with the ensuring of health and social security for the individual

World Health Organization

The purpose of the World Health Organization (WHO) is that all people enjoy the highest attainable standard of health. The preamble of the Constitution of the WHO[1] gives definition of the concept of health, which is quoted as a fundamental definition. According to the definition of WHO, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The right to health (the enjoyment of the highest attainable standard of health) is guaranteed for every human being without distinction of race, religion, political belief, economic or social condition. The defined right to health shall be guaranteed by the state. WHO considers that the governments are responsible for the health status of their people. This obligation requires that the states, through their national legislation, take appropriate measures of health and social character. Based on the idea of WHO, the Law on Health (art. 2) makes that protection of human health a national priority.

The constitutional bases of health security

The current Constitution of the Republic of Bulgaria has entered into force on 13.07.1991. In the preamble of the Constitution, the right of the person, his dignity and security are considered a paramount principle.

The right to health is not explicitly settled in the Constitution. The reason about that may be is the lack of traditions in the use of the combination of words «right to health» in the Bulgarian legal language. The lack of explicit formulation of «the right to health» in the Constitution and in the valid law however does not mean that it does not exist in the Bulgarian law. The particular dimensions of the right to health are contained in a number of legal norms, which review the human health as a supreme social value [5].

The right of protection of the health of the citizens

[1] The Constitution of WHO is applicable in Bulgaria since 09.06.1948.

The right of protection of the health of the citizens is laid down in art. 52, para. 3 of the Constitution of the Republic of Bulgaria. The Law on Health stipulates that the protection of health of the citizens is guaranteed by the state. Upon implementation of the state health policy apply principles such as: equality upon use of health services; provision of accessible and high quality medical care with priority for children, pregnant and mothers of children and adults with physical disabilities and mental disorders; prevention and mitigation of the risk for the health of the citizens from the unfavourable impact of the factors of the environment.

Protection of motherhood and children

Pursuant to art. 14, para. 2 of the Constitution of Republic of Bulgaria, motherhood and children are under the protection of the state and the society. Mothers enjoy special protection from the state, which ensures to them paid leave before and after child-birth, free assistance by midwives, labour relieve and other social benefits.

The declared constitutional rights, resp. obligations of the state, are realized through the legal options guaranteed in the Law on Health. For the provision of risk-free maternity, every woman has the right to access to medical activities intended to provision of optimal health status of the woman and the foetus from the moment of occurrence of pregnancy until the baby becomes 42 days old. The provision of access for all future mothers to the health system is guaranteed through provision of free assistance from midwives for all women without health insurance.

Children are entitled to special attention and care on the part of the country for the purpose of establishment of conditions for ensuring healthy living environment and normal physical and mental development. Children are entitled to special prophylactic medical and dental care for the purpose of early diagnostics of health problem and prevention and further worsening of the health of children.

Right to free of charge use of medical services.

Art. 52, para. 1 (2) of the Constitution of Republic of Bulgaria stipulates that to the citizens is guaranteed the right to free medical care under specific conditions. The term «free medical care» is quite unpretentious. The said medical care is free from the viewpoint of the patients but the rendered medical care is financed by another source – the Republican, municipal budgets, the budget for social insurance, etc. and not personally by the patient.

The Law on Health Insurance governs the right to access to medical care for health insured persons. Outside the scope of the compulsory health insurance, the person have the right, under certain conditions and order, to use free medical services connected with stationary mental care, provision of blood and blood products, organ transplantation, tissues and cells, drugs for specific disease (mental, oncological, HIV/ AIDS), medical transport.

All persons, without any restrictions, are entitled to prompt and free medical care in emergencies. Organization and financing of the system for medical care in emergencies is compulsory for the state.

Safety in healthcare

For the purpose of guaranteeing the health security of citizens according to art. 52, para. 5 of the Constitution of Republic of Bulgaria, the state has the obligation to carry out control on all health institutions as well as on the production of the medicinal products, biologic products and medical equipment and the trade with them. Medical activity of each medical institution is subject to control. Manufacture and trade in medicinal products and medical devices is also subject to state regulation and administrative control. The purpose of the special law is to ensure the marketing of medicinal products and medical devices, which does not pose threat to the health and life of patients.

The right to healthy and favourable environment

The right to health and favourable environment in compliance with the established standards and regulations is laid down in art. 55 of the Constitution of the Republic of Bulgaria.

The constitutional right to health and favourable environment is guaranteed with the defined by the Law on Health obligations of the state and all commercial subjects upon performance their activities for ensuring the protection of the living environment from the harmful impact on the human health of the biological, chemical, physical and social factors. Upon performance of their activities all subject shall abide by the established state health requirements. Special law settles the rules for protection of human health from the impact of ionizing radiation.

Right to healthy and safe conditions at work

Employees are entitled to health and safe conditions at work pursuant to art, 48, para. 5 of the Constitution of the Republic of Bulgaria. "Health and safety at work» means such labour conditions, which do not incur occupational diseases or occupational accidents and create preconditions for full physical, mental and social welfare of workers. The work conditions are subject to control by the state authorities.

Right to health insurance

The right to health insurance guaranteed accessible medical care is settled by art. 52, para. 1 (1) of the Constitution of the Republic of Bulgaria. The constitutional law to health insurance of the citizens includes their right to be included in the special insurance system established by the state (I. S.). The right to health insurance guarantees obtaining the required medical care in case of disease, injury, pregnancy and delivery. Health insurance in Republic of Bulgarian is compulsory and voluntary. The compulsory health insurance provides a basic package of health activities, which are financed by the budget of the National Health Insurance Fund.

Conclusion

Good health is an instrument to achieve human security. It is of essential significance because the protection, the case for human life underlies the human security. Diseases, injuries and death, which may be prevented, are critical threats to human security. Heath is objective physical condition of the organism as well as subjective psychosocial well-being and confidence in the future. Good health is an instrument to guarantee human dignity and human security. Achievement of good health is a result of the personal responsibility of people, the state health policy, the functioning of the health system, the financing of medical services. The conflict between the limited financial resources and the increasing health demands poses to the society and the law the need to seek those normative regulations, which will guarantee to the patients access to medical services and protection of their health security.

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The right to security of the child as legal consequence of its established parentage

Summary

The children profit from the protection of their rights and legal interests, recognized and guaranteed to them from the state through the legal rules, which settle the methods for establishment of the parent-child legal connection.

The purpose of the present research is to point the interconnection between the non/established parentage of a single person and its personal security.

Keywords: paternity, established parentage, family code, descent, child, security of the person

In the modern society, „security" term is one of the most widely used terms. It has a lot of meanings and is a subject to different definitions, each one coming from different researching goals. In the most common meaning, the term is explained as protection from danger or lack of danger, it is related with the necessity of the person of its necessity of social life, as well as with the possibility of a certain person or community to protect its values from danger. The security is also perceived as state of lack of threats and confidence of the single person, that its rights and legitimate interests are protected from possible dangers. In addition, in the theory, the security of the person is placed on first level, in line with the four remaining levels of security and is reviewed as equally important with the security of the group of persons, accordingly – of the state, of the community of states and of the security of the world.

With a view to these criteria, the security of the person can be reviewed as recognized and guaranteed by the state possibility of the person, to perform and protect its rights and interests.

The purpose of the present research is to point the interconnection between the non/established parentage of a single person and its personal security.

The necessity of the children to have established parentage comes from the rule of Art.47 of the Constitution of the Republic of Bulgaria (CRB), which fact from its side premises the performance of the obligation of their parents to bring up and educate them, with the help of the state. More over, it has no meaning if the children are born in or out of the marriage of their parents (Art. 47, par. 3 of CRB)

In particular, the parental obligation for care, education, support and supervision of the child are established in Chapter nine "Relations between parents and children"of Family Code of the Republic of Bulgaria (FCRB), mainly in Art. 125, as so as in Chapter ten "Support" of FCRB.

The parental rights and obligations arise from legal connection, established according to the law – from established parentage and from adoption.

The parentage of a child is stated in Chapter six of FCRB.

It is accepted, that the mother of the child is the woman, which gave birth to the child, also including the cases of assisted reproduction (by argument from Art. 60 of FCRB).

The parentage from the mother can also be established through fathering (by argument of art.64 of FCRB), possibly with claim for establishing of parentage, when the fathering is contested (by the order of Art. 66, par. 2 of FCRB), or with declaratory suit (under Art. 68 of FCRB). In the different hypothesis, the parentage from the mother are dependent or not from legally stipulated term. This way, the fathering can be performed before the birth of the child, in the moment of its birth or later, including after the death of the child, in the cases when it has left descending heirs.

In case of establishing of the parentage of the child in the hypothesis of Art. 66, par. 2 of FCRB, if the fathering is contested, the woman, which contested the child, is restricted with term of three months, counted since the day of receiving of the message for the contestation, in which term she has right to lay a claim for establishing of the maternity.

In case of the hypothesis of Art. 68 of FCRB, the establishment of the motherhood is not limited by any term. The claim can be laid by the mother, by the child or by the father.

The parentage from the father is established through the presumption of fathering, settled in different hypothesis in Art. 61 of FCRB, including in the cases of assisted reproduction.

The father is the husband of the mother, if the child is born during the marriage or not later than three hundred days of its ceasing, as long as the mother is not into new marriage. In that case, the new husband of the mother is accepted as a father of the child. In case of announced absence of the husband or in case of declared death of the husband, the three hundred days term is counted since the date of the last news from the husband, respectively – since the date of its supposed death. In this type of establishing of fatherhood, the husband of the mother is also father of the child when the child is conceived in the conditions of assisted reproduction, if the husband of the mother have given informed written agreement for its performance.

The fatherhood, as well as the motherhood, can be established through fathering of the child (by argument from Art. 64 of FCRB). For this type of establishing of parentage, the same rules, as for establishing of parentage through fathering from the mother, are into effect.

The fatherhood can also be established with claim under Art. 66, par. 2 of FCRB, when the fathering is contested. In this case, the rules are the same as the one, which are into effect for the mother.

The rule of Art. 69 of FCRB gives another possibility for establishing of parentage rom the father. In this case, the legislator envisaged different terms for the entitled persons to bring up that suite. When the claim is brought up by the mother, the term is three years since the day of birth of the child, and when the legal proceedings are made by the child, the term is up to three years from the day of reaching the age of majority. In both hypothesis, the term is counted since the day of birth of the child.

After the parentage of the child is established, the rights and the obligations, which follow from the rules of the Constitution, of the Family Code, and the other legal and sub-legal acts, which settle the family law matters, automatically arise for the mother and the father.

The security for protection of the legal rights and legal obligations arise for the child not only as an individual, but as a child of specified parents, which are

obliged to take the care for it, its education, and its support. Their responsibility in case of non-performance of their obligations is also settled – mainly through the penalties, envisaged in the Family code (through limitation or deprivation of parent rights).

The protection of the child is also settled in special law – Child Protection Act (CPA). The measures for child protection are pointed in Art. 4, par. 1 of this legal act.

The measures under Art. 4, par. 1, p. 1, 3, 9 and 13 are interest for the present research. They guarantee the child protection in cases of established parentage: for "cooperation, support and services in family environment" (p. 1), for "informing for the rights and obligations of the children and the parents" (p. 9), for "taking temporary measures for child protection in the cases and at the conditions of Art. 12 of Convention for the competence, the applicable law, recognizing, performance and cooperation in connection with the parentage responsibility and the measures for children protection, established in Hague on 19.10.1996 (ratified by law – SG, is. 9, dated 2006) (SG, iss. 15 dated 2007)" (p. 13). One of these measures also guarantee the taking of the care and the education of the child from adoptive parents, when the child has no established parentage, or when they are left without parents, through the measures for "adoption"(under p. 3).

Important note is, that regardless the established parentage of the child from its parents, the state also envisages and guarantees protection in other cases, which are not dependent of the created parent-child legal connection, including the cases of established parentage through some of the reviewed hypothesis, as well as in case of adoption.

Such are the measures for "placement in the family of kinsfolk or relatives" (p. 2) for "placement in foster family"(p. 4) , for "granting social services – resident type" (p. 5) , for "placement in specialized institution" (p. 6), for "special cares for disabled children"(p. 12).

The other measures for child protection under Art. 4, par. 1 of CPA, which accent on the security of the child, take special place in the present research: for "police protection" (p. 7), for "specialized protection on public places" (p. 8), for "providing preventive measures for security and protection of the child" (p. 10), as so as for "providing legal assistance from the state" (p. 11).

In fine, several conclusions can be made.

The children profit from the protection of their rights and legal interests, recognized and guaranteed to them from the state through the legal rules, which settle the methods for establishment of the parent-child legal connection.

That protection does not depend on if the child is born during the marriage of its parents or not, if its parents are established under Chapter six "Parentage", or under Chapter eight "Adoption" of FCRB.

It is also envisaged and guaranteed by the state when the child has no established parentage and is not adopted.

Therefore, the established parentage is not the ground for providing the security of the children, but is only one of the prerequisites for the protection of the child and for providing its security.

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Security of the information and deliveries upon award of public procurements

Summary

The award of public procurements in the fields of defence and security to a great extent follows the general rules, applicable for public contracting authorities, as in view of the specific requirements of the subject of these procurements, some of these rules are in conformity with the requirements of the national security. The specificity of the public procurements in the fields of defence and security very often forces upon their award part of the information, which shall be provided to the participants, to be with a certain extent of classification and the deliveries have requirements for security.

Keywords: public procurements, classified information, security

Classified information in cases of public procurements in the fields of defence and security

„Classified information" by virtue of the Public procurement act is any information or material regardless of the form, nature or way of transmission, for which is determined a level of classification or protection and which in the interest of the national security and according to the legislative, sub-legislative and administrative provisions, effective in the respective member state, require protection against misuse, destruction, elimination, disclosure, loss or learning from unauthorized persons or any other kind of harm.

This legal definition comprises in it the definition, envisaged in the Protection of the classified information act, according to which classified information appear the information, which is state or official secret.

State secret is the information, determined in the list, which is annex to the Protection of the classified information act, the illegal access to which would cause risk for or would affect the interests of Republic of Bulgaria, related to the national security, defence, foreign policy or protection of the constitutionally established order. This list comprises three groups of information:

I. group – Information, related to defence of the country
II. group – Information, related to the foreign policy and internal security of the country
III. group – Information, related to the economic security of the country

Official secret is the information, created or kept by the state authorities or the bodies of the local self-government, which is not a state secret, the illegal access tow which would unfavorable affect the interests of the state or would do harm to other legally protected interest. The information, subject of classification as official secret, is determined by the law. The head of the respective organization unit within the frameworks of the law makes announcement in a list of the categories of information, due to qualification as official secret for the field of activity of the organization unit.

The levels of classification for security of the information and their marking for security are:

1. "Top secret" – in the cases, when illegal access would threaten to extremely high extent the sovereignty, independence and territorial wholeness of Republic of Bulgaria or its foreign policy and international relations, related to the national security, or (it) would create a risk of arising of fatal or extremely major damages, or it could cause such damages in the field of the national security, defence, foreign policy or the protection of the constitutionally established order;

2. "Secret" – in the cases, when illegal access would threaten to a high extent the sovereignty, independence and territorial wholeness of Republic of Bulgaria or its foreign policy and international relations, related to the national security, or (it) would create a risk of arising of hardly repairable or major damages, or it could cause such damages in the field of the national security, defence, foreign policy or the protection of the constitutionally established order;
3. „Confidential" – in the cases when illegal access would threaten the sovereignty, independence and territorial wholeness of Republic of Bulgaria or its foreign policy and international relations, related to the national security, or (it) would create a risk of arising of damages or it could cause such damages in the field of the national security, defence, foreign policy or the protection of the constitutionally established order.;
4. "For official use" – the information, classified as official secret.

The variety of the awarded public procurements draws the conclusion the at each procurement, awarded in the fields of defence and security it may arise a condition for provision of classified information to the applicants and participants in the course of the procedure as well as to the selected contractor upon the implementation of the public procurement contract. `[4, 5]

The requirements, addressed to the applicants and participants (and the contractors), related to the protection of the classified information, can in no way be made in controversy with the principles for award of public procurements, envisaged in art. 2, para 2 PPA and in particular in controversy with the principle of publicity and transparency. The interests of the national and public security, the territorial wholeness, the prevention of disorders or crimes, the protection of health, moral, reputation or rights of the others, the prevention a secret information leakage and keeping the authority and objectivity of the justice are public values of a higher extent compared with the right to be obtained and spread information.

The requirement for the applicants and the participants to hold a certain level of access to classified information could restrict the participation of certain persons in the procedure. The principle of equality and non-admission of discrimination actually prohibits requirements to be imposed, which (to) unjustifiably restrict the participation in a certain procedure, but this does not mean, that the the contracting authority shall have no right to set conditions for participation, including specific ones, to the participants to hold particular qualification, capacity, certificate, license and others, when this is directly related and is required the subject of the procurement or it is required according to a special normative act. In such case these are justified. The contracting authority shall have the right to envisage further requirements to the participants in the procedure, insofar as these are not in controversy with the law, they appear in consistency with the

purpose of the public procurement and their aim is to guarantee its successful implementation.

Yet before the initiation of the procedure on award of public procurement in the fields „Defence" and „Security", the contracting authority shall be obliged to take into account the motivated written opinion of the respective competent authority under the protection of the classified information act as regards the existence of classified information. [4]

In case of a positive answer the Contracting authorities shall specify in the announcement whether the public procurement shall contain or require classified information. Information of the announcement, the disclosure of which shall appear in controversy with a law, including in the field of the defence and security, may not be published in „Official Gazette" of the European union and the Public procurement register (PPR).

In such case in the documentation, which shall provide together with the invitation for participation, the contracting authority shall set to the participants and their subcontractors requirements in order to protect the classified information. As taking into consideration the principles of the new Public procurement act, which requires for the civil procurements to be submitted European single procurement document for public procurements also by the third parties, whose resource shall be used by the participant, it would be logic for protection of the classified information, requirements to be set to the third parties too.

Under these circumstances the contracting authority may:

1. require permission, certificate or confirmation for access to classified information by virtue of the Protection of the classified information act, including for the opportunity for processing, preservation and transmission of such information on the level of protection, required by the contracting authority;
2. to require submission of permission, certificate or confirmation for access to classified information by virtue of the Protection of the classified information act for the selected subcontractors (in my opinion also for the third parties, if the participant shall use their capacity and there is a possibility classified information to reach these third parties);
3. to include in the draft contract clauses, which shall oblige the contractor:
   a) to submit the document under i. 2 also for the subcontractors, selected during the implementation of the procurement;
   b) to keep the classified information, which became known to him in the course of the procedure, at the time of and after completion of the procedure implementation;
   c) to envisage clauses under letter „b" for preservation of the classified information in the contracts with subcontractors, selected before or during the procurement implementation.

Upon provision of the technical specifications to the applicants or the participants in the procedures and upon execution of the contract for public procurement, the contracting authority may put requirements for protection of the information of a confidential nature or of classified information. The contracting authority may require by the applicants or the participants to guarantee the observance of these requirements by their subcontractors too. The applicants or the participants, including their subcontractors shall have no right to disclose such information.

The requirement for access to classified information shall be defined as a selection criterion. According to art. 158, para 2, i. 3 PPA, for proving the technical and/or professional capacities, the contracting authority may envisage further conditions and it may require from the applicants or the participants to submit permission, certificate or confirmation for access to classified information by virtue of the Protection of the classified information act, including for the capacity for processing, preservation and transmission of such information on the level of protection, required by the contracting authority – in cases of procurements, which contain or require classified information. The contracting authority may determine an additional term in the announcement, during which the persons, who do not hold permission, certificate or confirmation for access to classified information, to submit the respective document. Within the term for receipt of applications for participation the persons shall submit to the contracting authority written consent for conduction of procedure on investigation and shall enclose the required documents according to the Protection of the classified information act, which documents shall be sent from the contracting authority to the competent security service. This way the contracting authority shall hold an active position in the procedure on issuance of the respective document for access. When the contracting authority has defined such additional term, it shall wait the result from the investigation for access to classified information, as if necessary it shall be obliged to extend the additional term till completion of the investigation.

In cases of applicants and participants, who are foreign persons, the contracting authorities shall acknowledge the permissions for access to classified information, issued in accordance with the legislation of the member state, in which the applicant or the participant is incorporated, upon the existence of effective international treaty or bilateral agreement for the classified information protection, under which Republic of Bulgaria is a party. Under the conditions and order of the Protection of the classified information act, the contracting authority may require further investigations to be made in the respective member state. Under the same way it may require the national security authority in the state, in which the applicant is incorporated, to check the correspondence of the premises or the installations, which eventually would be used, the manufacturing or administrative pro-

cedures, which would be followed, the information management methods and/or the condition of the personnel, which could be hired for the implementation of the procurement.

Access to classified information with the relevant level should have the members of the commission of the contracting authority, for realization of the selection of the applicants and the participants, examination and evaluation of the bids and conduction of negotiations as well as the officials, who shall have access to the documentation for the public procurement and the bids. [1, 4, 7]

Not on the last place, upon challenge of procedure, under a process of award in the fields of defence and security, containing or requiring classified information, the appointed employees by the chair of the commission for protection of the competition by an order, who appear members of the commission for realization of investigation under the appeal, should hold permission for access to classified information to the respective level according to the requirements of the Protection of the classified information act. When the procurement shall contain or require classified information, the members of the commission for protection of the competition, who shall take participaton in the procedure on examination of the case, should also have permission for access to classified information to the respective level according to the Protection of the classified information act.

Per argumentum of the stronger grounds, upon existence of a classified information, the contracting authority shall also apply the confidentiality measures, envisaged in the law. [4]

Requirements for security of the deliveries

The requirements for security of the deliveries shall be specified by the contracting authority in the announcement for public procurement. In such case it may set requirements to the participants in the procedure and to the participant, chosen as a contractor.

To the participants in the procedure may be set requirements their bid to contain also:

a) licenses or other appropriate documents, issued in the respective member state, by which is proven that the participant shall be able to fulfill his obligations in relation to the export, transfer or transit of goods, related to the procurement;

b) specification of all restrictions, related to the disclosure, transfer or use of goods and services or the results of them, which arise from control of the export or from agreements in the field of defence;

c) evidence that the organization and location of the chain for deliveries of the participant shall allow observance of these requirements as well as a declara-

tion that possible changes in the chain for deliveries during the implementation of the procurement shall not cause an adverse impact;

d) any accompanying documentation, obtained by the national authorities of the participant as regards the implementation of additional needs, required by the contracting authority, arisen as a result of a crisis;

Requirements shall be set to the participant, chosen for a contractor, by inclusion into the draft contact of clauses, which shall oblige the participant:

a) to establish and/or maintain the capacity, required for meeting additional needs, required by the contracting authority as a result of a crisis, in accordance with agreed conditions and order;

b) to perform the maintenance, modernization or adjustment of the deliveries, which are comprised by the procurement;

c) to immediately notify the contracting authority for any change, arisen in its organization, the chain for deliveries or the industrial strategy, which (change) may affect the implementation of the procurement;

d) in case of termination of the manufacturing to provide the contracting authority with all special appurtenances, required for the production of spare parts, components, assembly elements and special testing equipment, including technical drawings, licenses and instruction for use, under conditions and order, agreed upon occurrence of the respective circumstance.

The contracting authority may not set to the participant requirements, which may cause controversies with the license criteria for export, transfer or transit of the respective member state.

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The security right of juvenile delinquents

Summary

The present report raises the question of the security right of juvenile delinquents in determining the correctional measures "placement into a socio-pedagogical boarding school" and "placement into a correctional boarding school". The security right is a right of guarantees against arbitrary deprivation of liberty within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, but it is also a security right of a person relevant the environment in which he lives. When the family environment is stable, the best interest of the juvenile delinquent is to remain in this environment and to perform a specialized correctional influence not instead of it, but together with it. This is essential to avoid the unfavorable consequences from the institutionalization of the delinquents and their stigmatization.

Keywords: security right, juvenile delinquents, stigmatization

Security right of juvenile delinquents[1]* is the main right according to Art. 5 of The European Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 6 of the Charter of Fundamental Rights of the EU. It is unlimited and consists of a ban on arbitrary deprivation of liberty for which guarantees are provided in the Convention (Art. 5 §§ 2–5). The adherence to these guarantees is of great importance to obstruction of eventual negative consequences of institutional treatment of the juvenile delinquents and the risk of their stigmatization.

Explaining the issue of providing the security right of juvenile delinquents in Bulgaria, firstly we have to describe the legal regime related to imprisonment. The operative legislation foresees three sanctions of imprisonment according to the Convention. These sanctions are: the punishment "deprivation of liberty" of a juvenile (Art. 62, Section 1 Penal code) and correctional measures "placement into a socio-pedagogical boarding school" and "placement into a correctional boarding school" (Art. 13, paragraph 1, section 11 and 13 of Law for fight against the anti-social acts of the minors and juveniles.

Particularly, these correctional measures concerned with the placement into a correctional boarding school correspond to the limitation according to Art. 5 § 1(d) of the Convention and represent freedom deprivation in order to provide educational supervision. The European Court of Human Rights adopted that they are legal according to the Art. 5 of the Convention (Decision of the case A. and other v. Bulgaria (application no. 51776/08), 29 November 2011). In the case D.L. v. Bulgaria (application no. 7472/14), 19 May 2016, the Court referred to that judgment as a precedent. At the same time the Court accepts that in the appeal regime of those measures, there is an infringement according to Art. 5 § 4 of the Convention (D.L. v. Bulgaria (application no. 7472/14), 19 May 2016; §§ 89–93) as "the applicable legislation did not authorise minors who were placed in an educational centre to apply to the courts for a review of their detention". Therefore, according to the European Court, the security right of juvenile delinquents is not fully guaranteed by the legislation.

The issue of the influence of this unconformity on the future criminal activity of juveniles is of great importance in clarifying the causes of juvenile`s crime. The results of the survey in 2016 made in Varna prison about "Stigmatization of the offenders and their criminal career" can give some insight into the consequences of this form of institutional treatment on the process of criminalization of the person. During the study are respected the requirements of anonymity and volunteering. 225 male people, who are serving prison sentences, are involved. By means of a standard interview is collected the information about the present and

[1] Juvenile delinquents in Bulgaria are the persons who haven`t attained 18: minors who have committed anti-social acts and juveniles who have committed anti-social acts and crimes.

previous criminality of the involved people, including their anti-social acts and crimes before the age of majority.

The data indicates that 45 people, who compose 20% of the interviewed, had been placed into correctional institutions (boarding school and/or correctional home – prison for juveniles) before they attain majority. For all these individuals, there is ongoing criminal activity, which tends to stability. The made one-factor disperse analysis ANOVA determines an important influence of the independent variable „placement into a boarding school/correctional home" on the dependent variable "sustainability on the criminal career" ($F = 11{,}970$, $p < 0{,}01$). From this it can be concluded that sanctions related to deprivation of liberty until the age of majority, have a definitely influence on the formation of the criminal career of the criminal.

The reasons that lead to the impossibility of these sanctions to realize their individual preventive effect on offenders date back in the separation of the child from his closest social environment. This experience, according to F. Tannenbaum "plays a greater role in making the criminal than perhaps any other experience" [6, p. 19.] The process can be illustrated by the case of the interviewed "S2". His anti-social activity began at a very early age – nine years old, when he was the first systematic escape from school and home, and was taken into report by an inspector at a children`s pedagogical room[2]. In clarifying the causes for the first deviation and the follow-up, still primary deviations, it has been established that they are connected with the friend's environment in which, along with anti-social acts and crimes against property, the use of alcohol was also spread. The family was stable, the relationships were not deformed. Nonetheless, the many anti-social acts have exhausted the possibilities of applying lighter educational measures and have led to a determined institutional reaction of attitude. It is related to placing the delinquent into a socio-pedagogical boarding school, where the stay lasted two years, subsequently into a correctional boarding school with a stay for a new two-year period, until comes to the application of punishment – deprivation of liberty for more than one year in corrective home (prison for juveniles). From the data provided, it is established the self-assessment of the personality regarding the exemption from criminal responsibility with the placement in a correctional boarding school in the past. The interviewed reports that he has „accepted the situation". In the assessment can`t be fount neither the desire of correction of the wrongdoer, nor for giving meaning of the type and severity of the sanction. This reaction of the institutional impact shows that somewhere at the moment of placing into a correctional boarding school, the person has already accepted his social status as a violator and adjusted his behavior further according to this status. At a later stage, the interviewed declared that he has acquired his criminal

[2] Children`s pedagogical room is a state institution in which are taken into report minor and juvenile delinquents committing anti-social acts and crimes.

experience during his imprisonment in the correctional home, and the majority of his close friendly environment already got such an experience. In conclusion, the investigated person has over thirty years of criminal careers, including reported unsolicited crimes against property to which he has developed a professional attitude. The process of such inappropriate institutional treatment of juveniles and the subsequent formation of criminal careers has been investigated already in the beginning of the last century in USA [4, p. 9–11].

Similar, although specific from the point of view of life circumstances is the case of the offender with a profile "P". Up to three years old he was placed in a home for children deprived of parental care, after which he was adopted and raised by a single parent – his mother. Despite the mother's efforts to educate him, the boy has fallen into a drug-addicted youth environment, which determined his future crimes related to drugs. He was placed into a boarding school at the age of ten, for the first time, where he stayed for two months and consequently he returned there 2 years later, when he stayed two years and six months. The aim of the educational measure was to complete basic education due to multiple escapes, including exclusion from school due to its behavior. The paradox in this case is that although the efforts of the state institutions to provide a family environment for raising the child, later it was the state which was forced to separate the child from this environment for a long period of time. Moreover, this separation from the family environment and institutional supervising did not in any way result separation from the negative friend`s environment. Namely, this was the main purpose of the correctional measures.

In such cases and in similar cases, the security right of juvenile delinquents can be examined not only as a right of guarantees against arbitrary deprivation of liberty, but also in a wider context – such as the security right of the person according to the environment in which he lives. When the family environment is stable, the best interest of the juvenile offender is to remain in this environment and to perform a specialized educational influence must be with, but not instead of it.

Next, it may be indicated the impossibility in accordance with the effective legislation of juvenile offenders to initiate proceedings under Art. 31 of Law for fight against the anti-social acts of the minors and juveniles, reviewing of the measure related to placing into a boarding school, after the start of its implementation. In practice, however, there is no obstacle to the delinquent's family to make approaches to the local commission for fight against the anti-social acts of the minors and juveniles, as it can refer to the court and bring an action. However, the lack of such exclusive statutory rule creates a certain element of legal insecurity. This may have a certain traumatic effect on the personality of the young offender. This effect may be expressed in the forming self-assessment in the person that he is labeled and has no legal opportunity to change its unfavorable social status. When as a result of all this is unlocked "a secondary deviation" [1, p. 76.] the justice sys-

tem would face the consequences of the recidivism. An example for such is the person with profile "F1". His family environment was divorced parents, his father was an alcoholic, and his mother was a prostitute. The child made his first escape from home when he was eleven and he was placed consecutively into a socio--pedagogical boarding school, where he stayed for three years, and into a correctional boarding school with a stay of one year and six months. During his stay in the correctional boarding school, the juvenile thought that the attitude to him was severe that is why he had escaped several times from the boarding school. During the last escape, he has committed a theft and has been sentenced to imprisonment for two years and two months, which he has served in a correctional home. At the age of nineteen, the interviewed has committed ten crimes against property and numerous anti-social acts when he was minor and juvenile. For his early years, he has not developed any other self-assessment of his behavior, except this one that his social status of the offender has been finally confirmed.

Another group of causes are connected with the risky environment in which live the children in respect of which the remedial measures in question are imposed. It is about children who commit anti-social acts without any features of crimes such as wandering, begging, prostitution, systematic escape from home or school, alcohol and drug use [5, p. 34]. The empirical analysis of Sv. Margaritova related to the legal action for imposing correctional measures "placing into a socio-pedagogical boarding school" and "placing into a correctional boarding school", shows a vicious practice using such institutions instead of taking measures for protection of children living in a risky environment [2, p. 136–137]. This data is also supported by the results of the Varna prison study, according to which the predominant part of the persons in the boarding schools lived in a risky family environment. Here are included the cases of: parents exercising violence (profiles "Q2", "N4", etc.); parents putting their children in a state of insanity (profiles B1, F4, V6, etc.); parents with mental diseases (profile "H3") or alcohol and drug abusers (profiles "O1", "A7", etc.), parents committing crimes (profile "S3"). This way the juvenile delinquent is sanctioned for his behavior directly linked to unstable family environment.

Especially, the case of „M" is more significant considering that the institutional reaction is not aimed at eliminating family inconsistencies, but in a practically unconscious child. The interviewed was in a family of divorced parents with a step-brother and step-father. From the age of nine he began to run systematically from home and school and wander. The mother has turned to an inspector at a children`s pedagogical room for placement into a socio-pedagogical boarding school. The minor was placed into the boarding school where he stayed for a year and six months, and later as a juvenile was accused of imprisonment with suspense of execution of the custodial sentence. At age twenty-two, the interviewed has three sentences, the last of which is for non-fulfillment of probation measures.

The court assesses the risk of relapse as high. A question may be asked why the sanction was directed against the child instead of taking measures to improve his security in the family environment, including the possibility of taking cares by other people.

In these and other cases, law enforcement difficulties are related to the identification of factors that determine behavioral deviations, rather than the type of sanctions. Properly assessing the causes that led to the commission of anti--social act and crimes by juvenile delinquents would greatly guarantee the security right of the offenders. This may lead to application of the deprivation of liberty in the form of a punishment or educational measure only as an exception.

In conclusion, there are preconditions for treating children with behavioral deviations in the context of the so-called „self – fulfilling prophecy", defined as "false definition of the situation evoking a new behavior which makes the originally false conception come true". [3, p. 195.]. They raise the issue of the security right of the young person in the circumstances of a disorganized society and strengthened institutional control. In this sense, it is necessary to take into account the recommendations of Section IV of the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990), which put the stress on the socialization and integration of children and young people in the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.

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Lax aspects in case of a property as a subject of taxation

Summary

A property tax is a levy on property that the owner is required to pay. The tax is levied by the governing authority of the jurisdiction in which the property is located; it may be paid to a national government, a federated state, a county or geographical region, or a municipality. Multiple jurisdictions may tax the same property. This is in contrast to a rent and mortgage tax, which is based on a percentage of the rent or mortgage value.

Keywords: property, taxation, subject and object of taxation

The notion of property constitutes one of the most ambiguous categories, differently defined and interpreted depending on a given field of science. Analyzing legal provisions of the EU countries which regulate the issues of tax accounting and tax law, we may determine the general properties of elements of property. These are:

- Ability to generate future economic benefits;
- Reference to transactions or other events realized in the past;
- Remaining under control of the managing unit, which allows to enter them into the accounting system of a given entity.

Taking into account legal provisions of accounting, there are two categories of property (asset) elements: fixed assets and current assets.

The difference between current assets and fixed assets is important for the possible establishment of the tax collection point for the taxes whose taxation base is related to the subject resource. It seems that potential application of property-related tribute requires for the object of taxation to be easily identifiable, thus demonstrating certain regularity of its taxation. The review of the existing models of property tax shows that as far as tributes imposing burden on real estate are concerned, there is the primacy of building or land real estate over other types of property. It seems essential that the material property and intangible and legal values, as essential production factors of an enterprise, should constitute the main elements of the fixed assets structure.

To describe the real estate, the basic element of property, we should not only use the presentation of various ways of defining the notion of real estate by the lawmakers, but also take into account their features.

Analyzing legal aspects concerning real estate in the EU countries we may differentiate four elements which need to be taken into account when considering the forms and structures of property taxation. First of all, it is the immovability of real estate in time and space. The value of the real estate largely depends on the attractiveness of its location and the type of its use. Secondly, variety, manifested in the fact that there no two identical real estates. The factors that differentiate real estate are especially its area, shape, type of development, allocation in the spatial development plan, soil conditions, water conditions, utilities, neighborhood. That explains why there might be considerable differences between similar, but hardly comparable real estates. Thirdly – capital and time consumption with reference to industrial developed real estate. Limited financial resources allocated for purchasing the real estate depend on the investor's own resources and availability of external (foreign) finance. The indicated difficulties related to such investment are compensated by the long-term nature of the real estate enjoyed by the owner. A general rule states also that large capital consumption of the real estate usually results in its increasing value. Fourthly, the ability to satisfy particular needs,

which means that entrepreneurs are able to generate economic benefits. Each type of real estate has certain functions attached to it. In case of residential real estate – this may be economic, education, cultural, religious activity that can be run there. With reference to undeveloped real estate – conducting trading activities (the marketplace), services (parking lots), agricultural activity (arable land) and forest activity (forest land). Another consequence of possessing a real estate and the right to use it is the ability to generate measurable benefits. The type of benefit depends on the way of using the real estate.

The concept of property has never been defined in the Polish law system. In its wide sense, it is understood as total assets and liabilities belonging to a particular entity. Such definition of property is opposed to its narrow term denoting the estate which entails only assets. In the latter definition, debts do not belong to property, but lower its economic value. Also in economics the property is understood exclusively as a sum of assets – property resources controlled by an individual and possessing reliably defined value. These assets are divided into fixed assets, composed of elements that are permanently engaged in a given unit, and current assets, composed of elements which constantly traded. In this understanding of property, liabilities are treated as means of its origin, and when we juxtapose them with assets, we will obtain a balance sheet[1]. In the legal sense, in the doctrine of civil law property has rather narrow meaning. This can be seen in the interpretation of the Civil Code provisions which use the concept of property – for example Article 863[2], 871[3], 875 concerning joint property of partners. The provision of Article 863 is absolutely binding and regulates the legal and material effects of gathering property on the basis of articles of association of a partnership. The regulation determining the regime of joint property of partners is applicable when such property is collected.

The establishment of a partnership as an obligation relationship is self-contained and does not depend on whether the joint property of partners was generated. The collection of such property may, but does not have to, be the consequence of establishing a partnership. The joint property is a derivative of the relationship of partnership, though not all articles of association have to evoke such legal and material effects. We may assume the existence of a civil partnership within which

[1] L. Etel, G. Liszewski, *Podatki majątkowe w Polsce – wybrane problemy*, Kancelaria Sejmu, Biuro Studiów i Ekspertyz, Report No 202, Warszawa 2002, p. 5.

[2] Compare S. Grzybowski [in:] *System prawa cywilnego*, volume III, part 2, p. 812; K. Pietrzykowski [in:] K. Pietrzykowski, *Komentarz*, volume II, 2004, p. 561). Quoted after: Kidyba A. (ed.) Gawlik Z., Janiak A., Kopaczyńska-Pieczniak K., Kozieł G., Niezbecka, E., Sokołowski T., *Kodeks cywilny. Komentarz. Volume III. Zobowiązania – cześć szczegółowa*. Opublikowano LEX 2010, komentarz do art. 863 k.c.

[3] Quoted after: Kidyba A. (ed.), Gawlik Z., Janiak A., Kopaczyńska-Pieczniak K., Kozieł G., Niezbecka E., Sokołowski T., *Kodeks cywilny. Komentarz. Tom III. Zobowiązania – cześć szczegółowa*. Opublikowano LEX 2010, komentarz do art. 871 k.c.

partners will oblige to act in a particular way, but none of them will be obliged to make any material contribution. Also the partnership activity will not generate any joint proprietary rights. Neither the establishment of the partnership nor its existence then is dependant, by the regulations, on the existence of joint property of partners. The provisions of Article 871 of the Civil Code determine the principles of settlement with a partner who leaves the partnership. They are applicable mostly when the partner leaves the partnership and withdraws their share observing the period of notice (Article 869 § 1 of the Civil Code) or not observing it (Article 869 § 2 of the Civil Code). Moreover, the principles of settlement provided in them are applicable in case of withdrawing one's share by a personal creditor of the partner on the basis of Article 870 of the Civil Code. It seems that unless the parties agree otherwise, also in case of articles of association of a partnership, on the basis of which a partner withdraws his share, the settlement with him should be conducted following the provisions of Article 871 of the Civil Code. In case of the partner's death, on the other hand, these provisions are used for settlement with their inheritors if they do not join the partnership in place of the late partner.

The provisions of the Civil Code do not regulate the principles of liquidating the partnership. However, activities undertaken after its dissolution, aimed at actually settling the partnership with its creditors and in relationship between partners, may, in some simplification, be treated as such. In commercial partnerships the appearance of the cause for liquidation in fact leads to opening the liquidation process, while the dissolution of a partnership becomes effective when the company is crossed out of the register following its liquidation. In case of civil partnerships, the order of events is different. The event that constitutes the cause for dissolving the partnership simultaneously causes its dissolution. On the other hand, the "liquidation" activities are conducted only after the termination (dissolution) of a partnership. The dissolution of a partnership is a legal event which needs to be analyzed in to major aspects. Most of all, the obligation relationship of a partnership expires. This means that all the rights and obligations of the partners as parties to the articles of association of this partnership also expire. Partners lose their status of partners as subjects of a legal relationship in the partnership. The second sphere in which partnership dissolution causes vital legal effects is the joint ownership referring to the joint property of partners. The joint ownership so far, at the moment of dissolving the partnership is by virtue of law transformed into ownership in parts. The provision of Article 875 § 1 of the Civil Code obliges us to apply to it the regulations concerning co-ownership in fractions, observing the provisions of Article 875 § 2 and 3 of the Civil Code. The dissolution of a partnership analyzed in these two aspects leads to a conclusion that the joint ownership in fractions, existing between former partners is self-contained. It exists in spite of the termination of a personal relationship (partnership relationship) between partners.

It is emphasized, though, that sometimes the lawmakers seem to be using the analyzed notion in its broad meaning – assuming that the inheritance is a kind of volume of estate, it should be admitted – following, for example, Article 922 of the Civil Code, that it consists of not only assets but also of many obligations the deceased person had (liabilities). Similarly, the wide understanding of "property" could also be seen in the interpretation of the provisions of Family and Guardianship Code concerning the management of a joint property of spouses. It is assumed though, that as a rule property is understood narrowly in Polish law.

The Civil Code regulates in Article 44 the term similar to "property", that is "possessions". The term is a collective name for all property rights (absolute and relative), both civil and other. The possessions thus are a subordinate (general) notion to particular property rights. Possessions cover only property rights (ownership and other property rights), that is the assets attributed to a particular entity. Therefore we should exclude from this term debts, that is liabilities which may only constitute a burden on possessions. The use of "ownership and other property rights" indicates the civil law rights. The ownership right is the broadest and the fullest civil right to things, other property rights are its derivatives. Thus the rights which are not of civil law nature, or the civil law rights of non-property nature, are located outside the scope of interest for Article 44 of the Civil Code, as they do not create possessions[4].

Property should be differentiated from possessions, though there are numerous inconsistencies in using these terms in the Civil Code. There is a broader and a narrower understanding of the concept of property[5]. In its broader meaning, property denotes all property rights and obligations of a legal subject. In its narrow definition, property is associated only with assets, that is property rights possessed by the subject; such identification allows us to use the concepts of property and possessions interchangeably. Property are the elements of possessions which can be singled out as a collection of assets (or liabilities) being the object of trade, inheriting, security for liabilities, basis of responsibility for obligations, etc.

Property denotes property rights of a subject in a particular legal activity or another legal event. This can be a joint property (for example in case of spouses or civil partnership) and separate property (of spouses, in a commercial company and its partners), personal property (for example used to perform a job or personal belongings), property objects (for example in the property of spouses), property management (in co-ownership), responsibility for obligations related to

[4] Kidyba A. (ed.), Gawlik Z., Janiak, A., Kopaczyńska-Pieczniak K., Kozieł G., Niezbecka E., Sokołowski T., *Kodeks cywilny. Komentarz. Volume III. Zobowiązania – część szczegółowa*. Opublikowano LEX 2010, komentarz do art. 44 k.c.

[5] Pyziak-Szafnicka M. (ed.), Giesen B., Katner W.J., Księżak P., Lewaszkiewicz-Petrykowska B., Majda R., Michniewicz-Broda E., Pajor T., Promińska U., Robaczyński W., Serwach M., Świderski Z., Wojewoda M., *Kodeks cywilny. Część ogólna. Komentarz*. Opublikowano LEX 2009.

property, using the property (*inter vivos* and *mortis causa*). The elements of property are not objects whose rights they concern, but these rights due to the objects (for example real estate, moveable things). Similar can be said of the belongings.

Justifying property taxation we may refer to the principle of equivalence, the principle of payment capacity and principles and political and social rules of population income redistribution. The principle of equivalence is based on an assumption that there is a relationship between the amount of tax burden and the value of public goods and services provided for the taxpayer. Property tax is a good example of applying this principle. The state takes on the responsibility of protecting ownership rights, incurs expenses related to developing and maintaining economic infrastructure, tries to preserve social peace favoring full and free use of one's ownership. Local authorities take care of the roads, water and sewage systems, green areas, provide light in streets and keep the town tidy. Such activities not only allow to fully use the possessed property but also increase its market value. Due to the fact that most of the above-listed expenses are incurred by local authorities, property taxes mostly credit local budgets[6].

On the other hand, the relationship between the amount of property taxes and payment capacity is mostly affected by the measures of wealth and related capacity to carry tax burden accepted by the society. Such a criterion can be the current income of a taxpayer, the level of their consumption expenses or gathered property, as thanks to the possessed property they may obtain higher current income. In contemporary tax structures it is usually income that is used as a measure of payment capacity. Both the structure and the amount of property tax rates depend on whether these taxes are treated as independent taxes, or as supplements to other taxes. Property taxes are usually treated as a supplement or correction of income tax in order to better reflect the taxpayer's payment capacity or to allow redistribution of incomes determined by social reasons. The economic effects of property taxation depend on the level of tax rates and on the object of taxation. Taxation of the property of individuals (for example cadastre tax, tax on estates and donations) performs mostly the redistribution function. Taxation of incomes from capital (dividends, interest on bonds, interest on bank deposits), apart from the redistributive function, also affects the willingness of capital owners to invest and save[7].

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[6] A. Krajewski, *Podatki. Unia Europejska, Polska, Kraje Nadbałtyckie*, PWE, Warszawa 2004, s. 112–113.

[7] A. Krajewska, *Podatki* …, op. cit., p. 114.

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Система оценки соответствия изделий в качестве инструмента экономической безопасности – основные нормативные предположения на примере Польши

Summary

The article presents the assessment model of the conformity of products with the binding requirements in Poland according to the EU regulations as an instrument which provides the economic security of the citizens and the state. The Conformity Assessment System is built by the rules stating the basic and specific requirements of the products as well as the provisions and norms specifying the activity of parties involved in the conformity assessment process. This system includes both the control of product compliance with among others the basic requirements and the way of conduct towards products which were brought in the market or put into service and are inconsistent with the basic requirements or others. Its goal is to provide bringing safe products to the market in order to protect consumers' health and life, protect the environment and important interests of the state.

Keywords: Security of products, Conformity Assessment System, economic security

Термин «оценка соответствия» в нормативном понимании является, прежде всего, категорией материального права. Согласно настоящей разработке – в перспективе задач администрации мер в экономике, можно понимать, однако этот термин в более широком смысле: процедурном и системно-правовом. Оценка соответствия – это акт применения права в качестве соответствия изделия определенным нормативным требованиям.Систему оценки соответствия создают правила, которые определяют основные и детальные требования, касающиеся изделий, а также правила и нормы, которые относятся к действиям субъектов принимающих участие в процессе оценки соответствия. Этот процесс является формой объяснения технической гармонизации. К этой системе относятся следующие элементы: контроль выполнения основных и других требований, процедура в области изделий, которые были введены в оборот или были переданы в эксплуатацию,зато не соответствовали основным или другим требованиям.

Наиболее важными правовыми актами в Польше, которые создают настоящие основы системы оценки соответствия, кроме того, гармонизируют польское законодательство с законодательством Европейского союза являются: Закон от 30 августа 2002 г. – О системе оценки соответствия[1] и Закон от 13 апреля 2016 г. – О системе оценки соответствия и надзора за рынком[2]. Данными актами были введены в правовой порядок Республики Польша директивы технической гармонизации нового подхода.

Система оценки соответствия изделия основным требованиям – это правовая конструкция, которая информирует о отношениях между продуктом и определенными правом требованиями в результате осуществления процесса сравнения свойств изделия с определенным эталоном[3]. Элементами, к которым сравниваются определенные критерии верификации являются – основные, особенные и другие требования, источником которых являются технические нормы. Соблюдение этих требований должно вести к эффективной защите общественного интереса с учетом нормативно выделенных критериев этой защиты, для гарантирования безопасности продуктов[4].

В системе оценки соответствия принимают участие: производители, их уполномочены представители, импортеры, органы по сертификации, органы по контролю, лаборатории.

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1 Дзенник Устав за 2010 г., № 138, п. 935 с изменениями

2 Дзенник Устав за 2016 г.

3 K. Kiczka, *Administracyjne akty kwalifikujące w działalności gospodarczej*, Wrocław 2006, s. 67.

4 L. Kieres, A. Borkowski, K. Kiczka, T. Kocowski, M. Guziński, M. Szydło, *Instrumenty administracyjnoprawne w systemie oceny zdolności, [w:] Instrumenty i formy prawne działania administracji gospodarczej*, (red.) B. Popowska, K. Kokocińska, Poznań 2009, s. 229-231.

Целями системы оценки соответствия являются:

- устранение опасностей для жизни и здоровья пользователей и потребителей, их имущества, а также опасностей для окружающей среды, которые создают изделия;
- устранение технических барьеров в торговле и облегчение международного товарооборота;
- создание условий для надежной оценки изделий и процессов их производства компетентными и независимыми субъектами.

Предметами оценки соответствия являются изделия, которые вводятся к оборот на внутреннем рынке. Категория изделия охватывает только движимые вещи, существенным условием осуществления ее является намерение ввести или введение в оборот продукт на территорию Европейского союза, не имеет значения происхождение изделия. Процедура проведения оценки изделия перед введением в оборот является обязанностей. Момент введения изделия в оборот или для использования имеет основное значение, как для предпринимателей, так и для органов надзора за рынком, потому что с этого момента органы имеют компетенцию осуществлять контрольные операции. Согласно статье № 3a Закона – о системе оценки соответствия и статье № 3 Закона – о системах оценки соответствия и надзора за рынком, процедура контроля относится к изделиям, которые были уже введены в оборот или были переданы для использования на территории Европейского союза. На этой основе функционирует ответственность за изделие, согласно статье № 45 Закона – О системе оценки соответствия, ответственность имеет лицо, которое вводит изделия в оборот или передает эти изделия для использования.

Согласно мнению Европейской комиссии процесс введения изделия в оборот происходит во время, когда будет первый общий доступ к изделию на территории Единого рынка. Существует мнение, что этот процесс происходит тогда, когда изделие после его производства передается или предлагается для передачи с целью распределения или применения в Европейском союзе. Охватывает физическую передачу изделия или передача права собственности. Понятие – «введение в оборот» относится к каждому индивидуальному изделию, зато не относится к виду данного изделия, несмотря даже на то, производится ли это изделие серийно или отдельно. «Передача для использования» является использованием изделия первый раз на территории Европейского союза. Согласно директивам, процедура оценки соответствия происходит перед введением в оборот или перед передачей изделия для использования. Большинство изделий перед передачей для использования находится в обороте – процедура оценки соответствия должна однако произойти перед введением изделия в оборот.

Некоторые изделия не находятся однако в обороте – они, на пример, производятся по заказу потребителя и доставляются непосредственно производителем. В данном случае, директивы уточняют, что процедура оценки соответствия должна быть проведена перед передачей изделия для использования[5].

Введение в оборот и передача для использования в отношении к новым продуктам являются первыми операциями в процессе доставки изделия на рынок Европейского союза. В тексте Закона — О системе оценки соответствия были соединены понятия «введение в оборот» и «передача для использования». В соответствии со статьей № 5, п. 2 закона следует отметить, что существует один термин – введение в оборот, относится к передачи производителем, его уполномоченным представителем или импортером: пользователю, потребителю или продавцу первый раз изделия. Определение охватывает, как доставку товара продавцу (в таком случае изделие будет введено в оборот), так и передачу пользователю (тогда изделие может не находится на рынке, только производитель непосредственно отправляет его пользователю, таким образом это изделие будет передано для использования).

Изделия, которые легально – после осуществления процедуры оценки соответствия, будут находятся на рынке любой страны Европейского союза, подлежат закону свободного передвижения согласно принципам, которые были упомянуты в статьях № 28 и 30 Договора о учреждении Европейского сообщества. Оценка соответствия охватывает также импортированные изделия из стран, которые не являются членами Евросоюза – перед тем, как эти изделия будут находятся на рынке – это касается новых и подержанных изделий. После того, как эти изделия будет можно ввести в оборот согласно таможенному праву, когда они получат статус товаров Сообщества, эти изделия имеют право на свободное передвижение[6].

Процедура оценки соответствия может быть осуществлена разным образом. Правила, согласно которым вводятся в польское законодательство отдельные директивы нового подхода определяют свойственные порядки следования. Согласно статье № 7 Закона – О системе оценки соответствия в польской системе существует несколько разных методов (модулей и их вариантов), которые базируют на трех основных процедурах:

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[5] *Przewodnik – wdrażanie dyrektyw opartych na koncepcji nowego i globalnego podejścia* – оригинальная версия, которая была разработана Европейской комиссией и опубликована в 2000 г. в Люксембурге Бюро официальных публикаций Европейского союза, опубликована в электронной версии по адресу: www.europa.eu.int/comm/enterprise/newapproach/newapproach.htm

[6] Дзенник Устав за 2010 г., № 138, п. 935 с изменениями.

- процедуру оценки соответствия осуществляет производитель или его уполномоченный представитель;
- нотифицированный субъект – независимо от поставщика и получателя, оценивает соответствие изделия основным требованиям;
- нотифицированный субъект по сертификации осуществляет сертификацию – выдает производителю или уполномоченному представителю сертификат соответствия.

Процедуры оценки соответствия могут относятся или к самому изделию, или даже к процессу проектирования и продукции, могут базировать на:

- внутреннем контроле проекта и продукции, которого выполняет производитель;
- исследованию вида с помощью третьего лица (нотифицированный субъект) вместе с осуществлением внутреннего контроля продукции производителем;
- исследованию вида и проекта с помощью третьего лица (нотифицированный субъект) вместе с утверждением изделия или систем гарантии качества продукции или вместе с верификацией изделия с помощью третьего лица;
- верификации проекта и продукта с помощью третьего лица;
- утверждении полной системы контроля качества с помощью третьего лица.

Совершение процедуры оценки соответствия изделия является обязанностей производителя. Производитель несет полную ответственность за свое изделие, таким образом, он обязан контролировать (посредственно или непосредственно) целый процесс изготовления изделия и гарантировать выполнение требований определенных правом. Производитель не может передать свою ответственность за дефектное или опасное изделие на субподрядчика или на нотифицированный субъект. Вид обязанностей производителя в области осуществления процедуры оценки соответствия изделия зависит, прежде всего, от модуля, который был использован. Процедура оценки соответствия сводится к следующим этапам, которые выполняет производитель. Во-первых, производитель обязан проверить, подлежит ли его продукт регулировкам минимум одной из директив нового подхода, кроме того, проверить основные требования, находящиеся в этой директиве. Во-вторых, должен сделать анализ риска, который может вызвать изделие, кроме того, он должен приготовить список основных требований для данного изделия, которые относятся к определенным рискам, а потом ознакомиться с европейскими гармонизированными нормами, относящимися к данному изделию. Третьим шагом является составление производителем технической документации, включающую в себе элементы, которые требу-

ет директива. Упомянутую документацию следует сохранять в большинстве случаев через 10 лет. Последним этапом является осуществление определенной процедуры оценки соответствия для данного изделия, а также подписание производителем декларации соответствия с маркировкой CE. Результатом этих действий является нанесение на продукт маркировки CE[7].

Следует сосредоточить внимание на факт, что в зависимости от продукта, существуют разные процедуры оценки соответствия. Может даже случиться, что к данному изделию может относится несколько директив и тогда необходимо применить несколько или все упомянутые процедуры[8].

Таб. № 1. Модули оценки соответствия изделий[9]

Название модуля	Порядок процедуры оценки соответствия
Модуль А	**Внутренний контроль продукции** Охватывает внутренний контроль проекта и продукции. Этот модуль не требует участия нотифицированного субъекта. Производитель самостоятельно осуществляет оценку соответствия изделия определенной директиве. Выдает декларацию соответствия и наносит маркировку CE на каждый экземпляр продукта.
Модуль Б	**Контроль вида** Охватывает этап проектирования. После модуля Б должен следовать модуль предусматривающий осуществление оценки на этапе производства. Нотифицированный субъект принимает участие в процедуре оценки и выдает свидетельство исследования вида Европейского союза.
Модуль В	**Соответствие виду** Охватывает этап продукции и следует за модулем Б. Этот модуль применяется с целью гарантирования соответствия изделия виду, который имеет свидетельство исследования вида Европейского, выдается согласно модулю Б.
Модуль Г	**Гарантирование качества продукции** Охватывает этап продукции и следует за модулем Б. Этот модуль базирует на нормах гарантии качества EN ISO 9002 и предусматривает участие нотифицированного субъекта, который утверждает и контролирует систему качества, касающуюся продукции, окончательного изделия и тестов, которого вводит производитель.
Модуль Д	**Гарантирование качества изделия** Охватывает этап продукции и следует за модулем Б. Этот модуль базирует на нормах гарантии качества EN ISO 9003 и предусматривает интервенцию нотифицированного субъекта, который утверждает и контролирует систему качества, касающуюся окончательного изделия и тестов, которого вводит производитель.
Модуль Е	**Верификация изделия** **Следует за модулем** Б. Нотифицированный субъект проверяет соответствие с видом определенным в свидетельстве исследования вида Европейского союза, выданным согласно с модулем Б, и выдает сертификат соответствия.
Модуль Ж	**Отдельная верификация** Охватывает этап проектирования и продукции. Каждый отдельный продукт подлежит исследованию нотифицированного субъекта, который выдает сертификат соответствия.

[7] Дзенник Устав за 2016 г.

[8] K. Kiczka, *Administracyjne akty kwalifikujące w działalności gospodarczej*, Wrocław 2006, s. 67.

[9] L. Kieres, A. Borkowski, K. Kiczka, T. Kocowski, M. Guziński, M. Szydło, *Instrumenty administracyjnoprawne w systemie oceny zdolności,* [w:] *Instrumenty i formy prawne działania administracji gospodarczej,* (red.) B. Popowska, K. Kokocińska, Poznań 2009, s. 229–231.

Модуль З	**Полная гарантия соответствия** Охватывает этап проектирования и продукции. Этот модуль базирует на норме EN ISO 9001, предусматривает вмешательство нотифицированного субъекта, который утверждает и контролирует систему качества, созданную производителем. Эта система качества функционирует на этапах проектирования, продукции, окончательного контроля и исследований изделия.

Модульные процедуры оценки соответствия изделий техническим директивам связаны с классификацией продуктов по угрозе безопасности и возможному возникновению ущерба. В рамках данной группы продуктов, которые относятся к регулировкам директив можно выделить несколько классов увеличивающегося риска возникновения ущерба. Производитель имеет право выбрать модуль, с целью применения его согласно виду изделия и степени угрозы безопасности. В случае высокого уровня риска – должен обладать системой гарантирования качества подтвержденной нотифицированным субъектом. Только модуль А считает возможной оценку производителя без участия нотифицированных субъектов, зато в случае применения следующих модулей имеем дело с интервенцией нотифицированных субъектов, которые осуществляют процедуру оценки соответствия и выдают сертификаты соответствия[10]. По поводу доминирующей роли нотифицированных субъектов в реализации оценки соответствия измерительных инструментов, необходимым является анализ аккредитации, авторизации и нотификации, прежде всего, что эта система в современной форме функционирует в Польше лишь с 2016 г.

Согласно действующим правилам статус нотифицированных субъектов могут иметь, как частные, так и общественные субъекты. Это может быть только субъект, который в результате проведенных процедур аккредитации, авторизации и нотификации был включен в систему оценки соответствия. Закон – О системах оценки соответствия и надзора за рынком предусматривает возможность включения субъектов в процесс оценки соответствия, который будет состоять из трех этапов. Этот процесс является длительным и сложным, неоднократно продолжается несколько месяцев. Процедуры аккредитации, авторизации и нотификации на основе системы оценки соответствия в польском правопорядке были существенно реформированы в 2016 г. на основании постановлений Закона – О системах оценки соответствия и надзора за рынком. Для того, чтобы отвечать требованиям законодательства Европейского союза[11] были введены требования, относящиеся к субъектам, которые хотели получить авторизацию. Требования касаются организационной структуры, беспристрастности и независимости, технических и персональных

[10] A. Cieśliński, K. Zymonik, *Wspólnotowe prawo gospodarcze, t. II,* (red.) A. Cieślińsk, Warszawa 2007, s. 293–294.

[11] Niebieski przewodnik….

компетенций, гарантии конфиденциальности и участия в операциях по нормализации, а также субъектов, которые координируют деятельность нотифицированных субъектов. Был введен ряд требований в области осуществления деятельности субъектов, которые получили авторизацию и нотификацию пользования услугами субподрядчиков, информационных обязанностей[12].

В первом этапе компетенцию субъекта подтверждает аккредитация, это обозначает одобрение аккредитационным органом компетенцию к реализации определенных операций. Не во всех странах Европейского союза право требует, чтобы нотифицированный субъект сначала получил аккредитацию, в Польше является она обязанностей – это первый этап введения субъектов в оценку соответствия. Согласно статье № 22 Закона – О системах оценки соответствия и надзора за рынком аккредитацию уделяет Польский центр аккредитации (в дальнейшем ПЦА) по заявлению субъекта. Этот центр оценивает соответствие, после оценки и после подтверждения, что данный субъект отвечает требованиям определенным в гармонизированной норме, а также в статьях № 13 и 14, п. 3 Регламента ЕС 765/2008[13]. Документом, который подтверждает предоставление аккредитации является сертификат аккредитации. Вторым этапом введения субъектов в оценку соответствия является авторизация. Авторизацию уделяет путем административного решения министр или начальник центрального учреждения, с учетом предмета оценки соответствия – чаще всего, это министр экономики или инфраструктуры. Авторизация обозначает введение субъекта в процесс нотификации. Третьем этапом квалификации субъекта к процессу оценки соответствия – это нотификация, которая является заявлением Европейской комиссии и Государствам-членам Европейского союза авторизованного субъекта к осуществлению операций определенных в рамках оценки соответствия. Соответствующим органом для осуществления нотификации в Европейской комиссии является соответствующий министр. Задачи органа по нотификации были переданы министру экономики, потому что у него ведущая роль в системе авторизации. Только вследствие получения нотификации, у субъекта появляется полномочие осуществить процедуру оценки соответствия согласно процедурам оценки соответствия определенным в гармонизированном законодательстве Европейского союза или в правилах, которые вводят гармонизированное законодательство Европейского союза.

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[12] Основание проекта закона о системах оценки соответствия и надзора за рынком.

[13] Регламент Европейского парламента и Совета № 765/2008 от 9 июля 2008 г. устанавливающий требования к аккредитации и надзору за рынком в отношении реализации продукции и отменяющий Регламент ЕЭС № 339/93 (Текст, который имеет значение для ЕЭЗ), Вестник Законов ЕС L 218/30.

Интересным явлением с научной точки зрения является орган по авторизации, который представляет собой непосредственный этап между аккредитацией и нотификацией, зато является вполне незначительным с точки зрения процедур Европейской комиссии, которые относятся к нотификации, зато имеет существенное значение для субъектов, которые хотят получить нотификацию. Авторизация является административным решением данного министра. Таким образом, субъекты получили судебно-административную защиту в случае отказа. Подытоживая, авторизация в качестве административного решения имеет деклараторный характер, зато полномочия для функционирования в качестве нотифицированного субъекта получает субъект, который оценивает соответствие в результате положительного осуществления процедуры по нотификации. Субъект может вести деятельность нотифицированного субъекта только, если Европейская комиссия и государства-члены не заметили возражений в течение двух недель после нотификации, зато в течение двух месяцев после нотификации – в случае субъектов, которые не имеют аккредитации. В случае, если были замечены какие-то возражения, тогда субъект, который оценивает соответствие может вести деятельность нотифицированного субъекта после показания его в списке нотифицированных субъектов, который выдает Комиссия.

Изложение

Статя является модель системы оценки соответствия производство с требованиями обязывающий в Польше на фоне регулирования ЕС как инструмент гарантирующий экономическую безопасность вас и граждан.

Систему оценки соответствия создают правила, которые определяют основные и детальные требования, касающиеся изделий, а также правила и нормы, которые относятся к действиям субъектов принимающих участие в процессе оценки соответствия. Этот процесс является формой объяснения технической гармонизации. К этой системе относятся следующие элементы: контроль выполнения основных и других требований, процедура в области изделий, которые были введены в оборот или были переданы в эксплуатацию, зато не соответствовали основным или другим требованиям.

Его цель – заверить вывождения на рынок безопасных продуктов чтобы заверить здравоохранение и жизнь потребителей, защиту естественной среды и важных дел государства.

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Ensuring security of pre-litigation proceedings bodies – forensic aspects

Summary
The report proves the importance of carried out forensic operations which ensure the security of pre-trial authorities and lead to a more complete implementation of basic principles of criminal proceedings – making decisions upon inner conviction and revealing the objective truth.

Keywords: forensic theory to counteract the investigation, administrative measures to ensure the security of pre-litigation proceedings bodies, forensic operations to ensure the security of pre-litigation proceedings bodies

Everyone who lives in a civilized society is entitled to have rights (respectively, responsibility to respect the rights of others) in order to exist in a normal and dignified manner. These rights have crystallized for centuries and found their expression in the Universal Declaration of Human Rights adopted by the United Nations General Assembly[1]. Each of these rights corresponds to an important human need.

1. One of the human needs of particular importance is ensuring life, liberty and personal security[2]. In this sense, Art. 3 of the Universal Declaration of Human Rights states that „everyone has the right to life, liberty and personal security." Such rights are also regulated by the Convention for the Protection of Human Rights and Fundamental Freedoms, applicable to the member states of the EU (Art. 5 – Right to liberty and security)[3]. Similarly, these rights are also defined in the EU Charter of the Fundamental Rights[4]. The Constitution of the Republic of Bulgaria states that „Everyone has the right to liberty and inviolability" (Art. 30, para. 1).

Thus defined human rights concerned need effective legal and other guarantees for their observation. The main guarantor is the state and its bodies, which with their activities must ensure full safety of every citizen in its territory. On the other hand, the guarantees consist in making every effort to quickly find, capture and organize prosecution against all individuals or groups who have violated these fundamental rights[5].

Ensuring the person's right to security is part of the wider security and risk issue[6]. According to P. Hristov, „The need for human security . belongs to the basic motivational mechanisms of human existence"[7].

In view of the issue under consideration, we will go into one of the aspects of the right to security – the right to personal safety. This right is usually linked to the state's protection from criminal offenses and other similar acts against the

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1 The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948.

2 In scientific literature A. Maslow's view of the hierarchy of human values is known as the so-called "Maslow's Pyramid" (1954). After satisfying physiological needs as a human necessity, A. Maslow put the need for security for the individual (shelter, safety, security).

3 The Convention was adopted in Rome, Italy, on 4 November 1950; in our country it is promulgated in State Gazette, No. 80 of 02.10.1992.

4 The EU Charter of Fundamental Rights – 2012 / C 326/02, was adopted in 2000, for the Republic of Bulgaria is mandatory since 2009.

5 In this sense, the text of Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms - Right to an effective legal remedy: "Everyone whose rights and freedoms are violated has the right to an effective remedy before the relevant national authorities ..."

6 P. Hristov. Risk Metathesis. "Albatros", S., 2010; D. Yonchev. Seeking Security (Security in the Concept of Presence). East-West, S., 2014; D. Yonchev. Levels of security. NBU, S., 2008; K. Kanev. The right to personal freedom and security. "Sibi", 2016.

7 P. Hristov. Risk Metathesis, p. 172.

person. The right to safety is seen as a state of protection of vital interests, including the right to pinviolability.

2. Like all other citizens, the right to personal safety is also exercised by persons acting in pre-litigation bodies (prosecutors and investigative bodies – investigators, investigating police officers, investigating customs inspectors). Undoubtedly, due to the important function that these bodies perform – namely the function of investigation in the criminal process – there is an increase in the possibilities of committing unlawful attacks against their personal safety. The increasing victimity of prosecutors and investigators is reported globally[8].

In fact, these illegal attacks are aimed at creating preconditions those bodies not to be able to carry out their assigned function or their motivation to commit unlawful actions (or inactions) – attacks against their professional safety.

3. Undoubtedly pre-litigation proceedings bodies should be provided with personal and professional security to perform normally and legally their duties. How does the state guarantee their security? Our study has shown that measures are being taken in several ways.

3.1. Criminal legal protection of pre-litigation proceedings bodies.

In the Penal Code of the Republic of Bulgaria in the Special section there are rules that create enhanced protection of pre-litigation proceedings bodies in criminal offenses against them aimed at non-performance of their assigned functions. In this respect, the following texts[9] may be cited: murder of a prosecutor, investigator, investigative policeman upon or in connection with the performance of his/her duties or functions – Art. 116, para. 2; causing bodily harm to a prosecutor, investigator, investigative policeman upon or in connection with the execution of his duties or functions - Art. 131, para. 2; the use of force or threats against a body in order to compel them to commit or omit anything in office or in connection with his function – Art. 269, para. 1; unlawful obstruction of a body to perform their obligations – Art. 270, para. 1; soliciting an official from the investigating bodies or from the prosecution or judicial bodies to breach an official duty in connection with the administration of justice – Art. 289; offering, promising or giving a gift or any benefit to an official in order to perform or not to perform an official duty – Art. 304, para. 1; mediation for committing such an act – Art. 305a.

3.2. Establishment of specialized units to ensure the security of pre-litigation proceeedings bodies.

In the Judicial System Act – Art. 391, para. 3, item 3, the General Directorate of Security at the Ministry of Justice is assigned to organize and provide security

[8] B. Stankov. Criminology. Theoretical foundations. V., 2008, p. 266–267.

[9] See in detail: A. Girginov. Criminal law of the Republic of Bulgaria - a special part. "Sophie-R, S., 2005, p. 369–375; 402–403; 415–421.

for prosecutors and investigators under the terms and conditions laid down in an ordinance[10].

4. We make a statement that forensic science should also contribute to ensuring the security of pre-litigation proceedings bodies. In support of this, the following reasons can be highlighted.

Plotting or taking of unlawful actions against pre-litigation bodies in a large number of cases is aimed at preventing pre-litigation proceedings in the presence of a legitimate reason and sufficient data, frustrating criminal proceedings already initiated, not taking certain procedural steps Or actions to investigate or commit them in an unlawful manner, re-qualification of criminal liability to a lighter formation, separation of criminal proceedings, etc. Such an impact must not cause a change in the general plan of the investigation in the manner in which these actions are carried out. Making recommendations in this direction is one of the tasks of forensic tactics as a section of forensic science. On the other hand, special investigative actions, procedural actions, operative and search measures and organizational actions directed directly at neutralizing the security threat to the pre-trial authorities should be planned.

In recent years, the fundamentals of private forensic theory have been extensively developed to overcome counter-crime investigations[11]. It is precisely in the framework of this private forensic theory that the issues of ensuring the protection of pre--litigation bodies in the performance of their functions should be developed.

5. The counteraction to the investigation can be defined as intentional activity of interested persons (including accused persons) in order to influence the course of pre-trial proceedings and ultimately to prevent the objective truth from being established. This creates obstacles to the lawful performance of the functions assigned to the pre-trial authorities and the execution of their powers.

R. Belkin classifies the counteraction of the investigation in two types: internal and external. Internal counteraction involves covering up the traces of a crime committed, its participants and its consequences. External counteraction is an activity aimed at preventing pre-trial proceedings by various individuals. It is clear that threatening the security of the pre-trial bodies is an element of the structure of the external counteraction.

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[10] Ordinance No. 1 (21.04.2011) of the Minister of Justice on the Terms and Procedure for Organization and Implementation of Security of Judges, Prosecutors and Investigators.

[11] One of the first forensic scientists to develop the foundations of the theory are: V. Karagodin. Overcoming counteraction to preliminary investigation. Sverdlovsk, 1992; R. Belkin. Counteraction to the investigation and ways to overcome it by forensic and operational-search means and methods. / / Forensic support of the criminal police and the bodies of preliminary investigation. M., 1997; The same author – Criminalistics, M. „Norma", 2001, Ch. 43; Tryapva and whitewash, and working and working on the interdisciplinary "Theory of safety for punishment processes" - see: A. Galuzin. On the fundamentals of the theory of the security of the criminal process // Black holes in Russian legislation. 2004, No. 1, p. 278.

5.1. External counteraction can be manifested in a variety of forms. Here we will try to present an exemplary classification of the basic forms:

- assault on life, bodily harm, kidnapping members of pre-trial bodies
- addressing direct threats to life and health of pre-trial authorities as well as to their relatives;
- direct threats for destruction or damage of property, motor vehicles and other property belonging to pre-trial authorities or their relatives;
- threats related to office and career growth opportunities for pre-trial authorities;
- threats to disclose compromising data on the pre-trial authority.

As a particular form of influence can be mentioned the offering of a bribe in a different form to the body of pre-trial proceedings.

5.2. These various unlawful forms of influence may be applied by different persons interested in the outcome of the relevant criminal proceedings. In this respect, several groups of people can be distinguished: accused in cases that are in the pre-trial proceedings; indirectly through other actors in the criminal proceedings – witnesses, experts, defenders, etc; persons familiar with the body of the pre-trial proceedings, incl. former colleagues; indirectly through senior heads of pre-trial bodies.

In the latter case, the forms of impact may have a procedural, administrative, organizational or everyday life nature. They can be expressed as follows: giving instructions related to the investigation case, the execution of which requires a large amount of time or are practically unenforceable; unjustified seizing of the case and handing it over to another investigative body; unjustified denial to the investigating authority's requests related to the criminal proceedings (eg. refusal to request the court to take "Detention in custody" for the accused person; refusal to extend the investigation period, etc.); secondment of the investigating authority for a long time without justification; transferring the investigating authority to work elsewhere; unjustified indictment of the investigating authority in violation of the law in the course of the investigation; providing counseling to the persons opposing the investigation; no measures are taken to protect the investigative body when there are indications of planning or exerting pressure on it; different forms of psychological pressure, including problems in everyday life etc.

The bodies of pre-trial proceedings can be influenced directly by certain persons, through anonymous messages or through the mass media.

6. Regardless of how the impact is taking place, it is necessary to apply a certain algorithm of various actions to neutralize this impact, which creates an adverse investigative situation/conditions at the relevant stage of the investigation. Forensic science has developed recommendations to overcome the adverse investigati-

ve situations, some of which are related to the development of forensic (tactical) operations (combinations). Their use can be justified by the following arguments:

- forensic operations are a complex/system of various actions: investigative actions, operative-search actions, organizational measures, and the nature of the unfavorable investigation situation requires the application of such a system of actions and measures in a certain sequence;
- the neutralization of unlawful impacts on the pre-trial authorities requires that an interaction with the investigative bodies and other authorities be organized in the course of the investigation - the structure of the forensic operation is included as an element of the realization of such interaction.

The working name of this type of forensic operation may be: "Neutralizing the unlawful impact on the bodies of pre-trial proceedings"[12].

6.1. Tasks of the forensic operation „Neutralization of anticorruption impact on the bodies of pre-trial proceedings":

- preventing preparatory actions for unlawful impact on pre-trial authorities (when information on the preparation of such actions is provided);
- suspension of actions threatening the security of the pre-trial authorities (when such actions have already begun);
- collecting evidence of wrongdoing and bringing the culprits to criminal liability (when crimes have been committed, as a result of these actions).

6.2. Planning of the forensic operation "Neutralizing the unlawful impact on the bodies of pre-trial proceedings".

6.2.1. Planning should start with an assessment of received data on a prepared or already carried out unlawful impact on pre-trial authorities. If data about the unlawful impact were immediately received by the pre-trial authority, he should immediately notify his immediate supervisor and not attempt to counteract independently.

When dealing with this problem, forensic science should use the elaborations of the science of risk. First of all, it is necessary to reveal the risk, which means "determining probable hazards in the process of implementing a specific solution[13].

6.2.2. Planning investigative actions

- interrogation of the accused person

[12] And then assessing the level of the threat to pre-trial authorities and assessing the risk of taking other actions against the threat. As far as protection of magistrates is concerned (including prosecutors and investigators), a Methodology for assessing the threat has been developed, Appendix 1 to Ordinance No. 1.

[13] And then assessing the level of the threat to pre-trial authorities and assessing the risk of taking other actions against the threat. As far as protection of magistrates is concerned (including prosecutors and investigators), a Methodology for assessing the threat has been developed, Appendix 1 to Ordinance No. 1.

During the interrogation, the real reason that the accused person thinks or takes unlawful action should be clarified; The seriousness of his intentions; The persons who help him / her achieve the impact; Persuading the person to abandon these intentions or to stop the action.

- search and seizure

Search and seizure can be carried out in the home of the accused person, as well as in the residence of other persons involved in the realization of the offense. Objects of search can be: items (weapons, etc.) the offense is being effected with; documents that are relevant to the threat; computers, information data, magnetic data carriers, telephone sets, navigation apparatuses, etc. where data can be found about the implemented or already started offensive impact.

- interrogation of witnesses

As witnesses, close and familiar to the accused person may be interviewed, who can provide information on how the offense is organized; persons with whom the accused person has been in custody (if he has previously served a custodial sentence) and to whom he may have shared his or her plans for the planned unlawful impact. Interrogation of an undercover officer, if any, could also be carried out in the organized crime group that has the unlawful effect.

- appointment of experts

If the threat is implemented in writing, they can be appointed:

- handwriting expertise and technical examination of documents – to establish the writer of the letter by his handwriting; technical tool (computer, printer) used for the writing of the text; dactyloscopic expertise (if dactyloscopic traces were found on the letter);
- authoring expertise – to identify the author of the document.

If the threat is made by phone and voice recordings are made, phonoscopy can be assigned.

- use of special intelligence means (if the conditions set out in Article 172 (2) of the CCP Code of Criminal Procedure are in place.)[13].

In order to avoid a direct unlawful impact on pre-trial authorities, some of the investigative actions to prove criminal activity could be carried out by delegation (based on Article 108 of the CCP Code of Criminal Procedure).

6.2.3. Planning operative-search actions

Simultaneously with the conduct of investigative actions it is necessary to plan and carry out operative-search actions with the main purpose of establishing the author of a threat to the pre-trial authorities when this threat is anonymous. Operational means and methods can be used to identify the intended future actions of the persons who have decided to implement the unlawful impact, the type and character of the actions, the time and the place of their execution, etc.

6.2.4. Organizational measures

6.2.4.1. One group of the organizational measures to be planned and implemented is related to the interaction between pre-trial authorities and other bodies.

In cases where the unlawful impact is directed against prosecutors or investigators, an interaction should be organized between the threatened persons and the authorities of DG Security. According to the provisions of Ordinance No. 1, the administrative head of the investigator or prosecutor should be notified about the threat. He draws up a motivated proposal to the Minister of Justice through the Chief Director of DG "Security"; On the basis of the proposal, the Minister of Justice issues a special order to secure the threatened prosecutor or investigator. The prosecutor or investigator must complete a statement of assistance[14]. In execution of the order, DG Security organizes personal physical security (round-the--clock, for certain hours or for certain cases) and / or guarding the home of the threatened (physical and / or technical).

On the other hand, it is necessary to establish an interaction between the authorities of the DG „Security" and the relevant authorities of the Ministry of Interior. To ensure this interaction, regulatory prerequisites are provided.

6.2.4.2. Other organizational measures

- setting up an investigative team of several investigators to carry out different investigative tasks, to undertake individual investigative actions (depersonalization strategy) - in order to make it more difficult to target an unlawful impact on a particular member of the team;
- creating possibility for rotation of members of the investigative teams, including readiness for immediate replacement of a member of the team for whom information has been received that may be or has already been the subject of unlawful action[15]. The threatened body of pre-trial proceeding may be seconded or his place of work changed;
- measures to keep the information about the place of residence and private life of pre-trial authorities and to prevent information leak;
- measures to preserve investigative secrecy in the course of the investigation, and in particular to preserve the secrecy of the action taken against the unlawful impact on pre-trial authorities, including planned and executed forensic operations…

The following conclusion can be drawn. By developing and carrying out forensic operations in order to ensure the security of pre-trial authorities there will

[14] This statement is necessary insofar as it may result in some limitation of the rights of the person in danger. In some countries (the Netherlands, Italy), prior consultation with the threatened person is practiced.

[15] E. Ugo Savona. Protect the criminal justice system from threats and violence. Report of Seminar on Problems of Victimization in a Transitional Society. Tsigov Chark, 26–27.04.1995. Information Bulletin of NIKK-MI, 1995, № 89, p. 9–13.

be achived a more complete implementation of basic principles of criminal proceedings – making decisions upon inner conviction and revealing the objective truth.

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Trust as a psychological factor of personal security

Summary

The article discusses issues related to the psychological side of personal security. Emphasis is placed on trust as a phenomenon linking socio-psychological and personal sides of the influences that define it. As interpersonal relationship trust has a direct and indirect effect on the sense of personal security. It dependents on both, the nature of the relations and the personal qualities of the individuals involved in the processing of signals from the environment and determine the direction of this influence.

Keywords: personal security, trust, interpersonal relations, self control, personal disposition

In the General Theory of Security personal security, also called individual, personal or human security, is represented as a level related to life experiences and state of the individual. It is defined in various content aspects influencing different sides of life, usually in the disposition objective-subjective. According to D. Yonchev "The person who has personal security is the one who enjoys healthy living conditions, whose habitat does not generate threats for his physical and mental health, who has the opportunity to plan his future and has the generally accepted level of freedom to take personal decisions." [3, p. 88] But this point of view reflects only the objective side of the concept, which should involve the subjective side as well [4, p. 17], conceived as personal belief or sense of security[1]. At this point, in the subjective perception and evaluation of state within the vast range of situations, influences, inner incentives and responses, psychology should intervene, which part is not denied by specialists, yet it is underestimated.

The psychological approach to personal security is not exhausted with its subjective perception. It gives the opportunity to examine the influence of various environment factors, such as social relations and interactions, existing attitudes and mass behavior, which are traditionally subject of social psychology. They have significant and sometimes critical importance for perceiving facts from reality and activating reflective and affective processes in the personal aspect of security.

On the other side, the psychological approach could better explain the complex approach of dependencies between personal characteristics and experiencing security, no matter how it is perceived, as a satisfied or frustrated need, as a real situation or an imaginary threat.

Hardly could a serious objection be made to the fact that problems of personal security and security in general should be examined in psychological aspect. It is ascertained that people evaluate their security through cognitive processes determining their beliefs. [5, p. 59] Although outer events, economic, political and military are real, they become part of the individual reality after the relevant psychological "manufacturing". This includes perception, thinking, emotional response and result, which could coincide with reality but it is subjective as a rule. People perceive information and evaluate it in accordance with their personal beliefs for security or not. Since this process is subordinate to the common psychological borders, it is universal, and those regarding security are not an exception. As they have different content (sense of security, sources of insecurity, conditions for higher security), their cognitive character is obvious. But it is not only the thinking of events and their juxtaposing to the experience and the system of personal beliefs that influences the evaluation. Among people this is always related to specific emotions which on their part influence the cognitive processing and even form attitudes for choice of behavior. In the security discourse their modality is

[1] According to A. Wallfus objective security is the absence of threat and subjective security is the absence of fear of threat. Quoted N. Slatinksi. Security – Nature, Sense, Content., S. 2011, p. 18

mostly negative, such as experiencing anxieties and apprehensions. Anxieties are spontaneously arising thoughts (verbal images) for potential threats [1, p. 102]. These thoughts lead to negative emotions, the reasons could be different: real threats, neutral or even sustaining security[2]. But they are rarely random reactions to what is happening. In most cases, they are a result of socio-psychological and personal detreminants, including past experience, attitudes, and character traits.

Socio-psychological factors are all those phenomena that determine the social cohesion of individuals. In general outline, they are related to main subject matters, such as social perception and thinking, social influence, interpersonal, intergroup and mass behavior. More precisely, in the attitude of security, to this category could be assigned phenomena such as awareness, media influence, anti-social activities, destructive behavior, institutional activities, economic conditions and political situations. All these things could influence the sense of security directly by evoking emotions and indirectly by creating specific background for perceiving facts from reality. But also through specific and unique for the human society relations and dependencies.

Such a phenomenon, revealed in the context of relationships, is trust. It is also a result of different, mainly social phenomena, existing in broad content meaning and deeply rooted evolutionary foundations in the human aspiration to affiliation. In socio-psychological aspect it is defined as a rule of social interaction, providing for predictability of behavior, based on reciprocity, belief in good and selfless intentions of the others. Thrust is a part of the ethic system, but it has strong psychologically-content and meaning potential. It is expressed in assessments and relevant reactions, arising from the expectation that participants in the social interaction would abide by certain standards. Viewed as attitude, it is inner willingness to give help or expectation to receive help. [1, p. 75] Referring to the problem of personal security, thrust has a positive impact as it facilitates social interaction and stabilizes social processes. Thereby, it contributes to the common psychological background through which people perceive and evaluate what is happening as dangerous or safe. In a society where mistrust is prevalent, it is normal to become suspicious, precautious and even hostile because people assess signals of the environment as a threat even though there is no reason for this.

On the other side, trust exists in specific relationships between the subjects in different circles. For instance, there is trust or no trust towards relatives, acquaintances or unknown people, towards groups or institutions. Its presence makes the person calmer, more self-confident and open, reduces anxiety and suspiciousness and provides for more effective interactions. On the contrary, the lack of trust in the circles of social interaction increases suspicions, the feeling of insecurity and personal vulnerability. Such "paranoid" state of social perception often leads to

[2] It is paradoxical, but a person could react with anxiety and apprehension to information related with increasing security measures or when observing actions along these lines.

inadequate activities, which provoke counter mistrust in turn. For its part, this is an "argument" for enhancing self-mistrust and its generalizing thus transforming it into sustainable personal disposition. As such, it expands its regulatory functions regarding personal security and it becomes both socio-psychological and personal factor in line with the other dispositions, character traits and states.

Virtually, in the numerous life situations and relationships in different interaction circles there is no complete trust. As a specific social regulator, it is viewed as existing to "some extent". As a specific attitude, it is always mixed with precaution. In other words, "one might not expect help, but he is sure that he will not be harmed" [1, p. 76]. According to A. Velichkov such reduced mistrust is in the grounds of maintaining routine interactions where people have no fears for their personal security. [1, p. 77] When such fears appear, reduced mistrust turns into mistrust. In the narrower circles of interpersonal relations this happens through accumulating disappointment or conflicts. In broader aspect, single cases, indicative of institutions malfunctioning for instance, could ruin the trust not only towards these institutions, but to generalize as common mistrust with consequences for the subjective sense of security. Therefore, it would not be exaggerated to state that the influence of different security levels on personal security is defined by trust.

Trust in the discourse of personal security could be a factor, per se. However, the counter reciprocal effect is also possible – the feeling of personal security or insecurity to increase or decrease trust. This is because feeling both security and insecurity is strongly influenced by personality. In this sense, personal dispositions such as anxiety, emotional lability, locus of control, sense of significance, optimism, etc. are able to change personal beliefs and attitudes through cognitive processing or direct emotional responses to the facts from social reality.

It is ascertained that people with external locus of control[3], who are convinced that their life depends on external uncontrolled situations, are generally mistrustful. If this mistrust is stabilized as a trait of character, it could dominate the perception of people and situations as threatening personal security.

Emotional lability, usually related to increased neuroticism, makes the person pliable to easy change of emotions caused even by insignificant stimuli. In most cases, liable mood tends to project into interpersonal relations and interactions in negative modalities. This could lead to expectations for threats and troubles. If this emotional lability is attended by impulsive quasi-protective behavior, this could lead to reactions of avoidance by the others and even greater mistrust and insecurity.

The disposition of worldly pessimism is related mainly to negative expectations for the future. To define it as pessimistic, these expectations should refer to people,

[3] Statistically prevalent.

occurrences and presumable events in broader causal aspect, obligatory related to the Ego. Therefore, pessimists are prone to expect negative consequences from their social interactions. With a view to protect themselves, they unconsciously form mistrust which leads to intensifying the sense of vulnerability due to its relation with personal security. Moreover, it is invariably persistent in the visions for the future and thus it is directly affected by the disposition itself.

Trust, respectively the sense of personal security, is influenced by the presence of long-term personal life objectives. Researches show that they have great importance for achievements, prosocial behavior, contentment of life, self-assessment and mental well-being. Their absence leads to depressiveness, situational and destructive behavior, inability for stable personal relations [2, p. 111] Although the lack of long-term objectives is not an absolute predicator for asociality, it affects trust. People with weak system of long-term objectives are more pliable to situational influences and more reserved in trust relationships, while those with long-term perspectives find there the resource to achieve their objectives. Naturally, this leads to intensifying the sense of security where the objectives are an additional factor for tangibility of the need itself.

Besides the mentioned characteristics, trust in the context of security is influenced by other personal variables such as personal value, learned helplessness, attributive style. These and other similar variables should be researched and studied due to the fact that depending on the situation and specific causal dependencies, they could be crucial for the trust and its effect on personal security.

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Legal regulation of non-food production safety in Ukraine

Summary
The This article is dedicated to content research of "non-food production safety" accordingly to
Ukrainian legislation. Here the general requirements for non-food production safety are seen as well as its indices, which are verified by State.

Keywords: safety, non-food production, indices of non-food production safety

Society's periodical renewal and renewal of its parts is general law. It's connected to the next circumstances: any system has its potential for development and a transit from one stage to another demands a renewal; human demands are always growing up, environment is changing and a society has to adopt to it; if a system can't change it gives its place to another system, which can satisfy new demands [1, p. 56]. Quality and safety, as categories, are the national idea of all developed countries and we can call it as a historical phenomenon. It concerns to every product, service, social welfare, all fields of human activities. Indeed the high requirements to the product quality and its execution provide a fact, that the production of developed countries dominates on international market, provides their safety and competition, and permits to play the first role on the international work market.

Adaptation of Ukrainian national law about general production safety to EU law is very urgent question due European integration course of Ukraine and Ukraine joining to free trade zone with EU.

The goal of this article is to specify the indices, which insure the safety of non-food production.

The main normative-legal acts in the legal regulation branch are the Constitution of Ukraine, accordingly to its art. 42 the State protects the customers rights and controls products safety; as well as the Economic Code of Ukraine, Laws of Ukraine "About customers rights protection", "About general safety of non-food production", "About standardization", "About standards, technical regulations and conformity evaluation", "About state market control and non-food production control", Ministry Decree No 46–93 "About standardization and certification", Ministry Resolution "Some questions of customers rights protection concerning non-food production safety" No 1400 dated 26.12.2011, "About risk degree confirmation of non-food production and its criteria to specify the correspondences of non-food production to certain risk degree" No 1404 dated 26.12.2011, "About state regulation of non-food industry control" No 1403 dated 26.12.2011.

Accordingly to the Law of Ukraine "About general safety of non-food products" the "safety non-food production" term specifies any product, which usage has no risk or minimum risk in ordinary situation or in predictable situation and such minimum risks are acceptable and they have no threat for community interests; taking in consideration: product characteristics, including its composition, package, mounting and maintenance requirements; product influence on other products if they are used together; precaution on product label, on product manual or on another product information; precautions about product use by certain customers groups (children, pregnant women, aged people, etc.) [2].

The Law of Ukraine "About customers rights protection" dated 12.05.1991 specifies the product safety as an absence of risks for life, health, customers property and environment, in case when the product is used, transported, stored, manufac-

tured or utilized in the normal conditions. The law foresees the general condition for product safety as a rule when a producer is obliged to place in operation only safety products.

The proof of product safety is its conformity to national standards, which correspond to the European standards.

There are law norms in Ukrainian law, which foresee a community access to information of product that provokes risks or might provoke risks, in order to realize the Constitution rights of human being and citizen for safety products. State control departments, according to their authorities, receive such information.

Besides, the State defines the requirements and determines the state supervision and control regulation for non-food production. A new type of state control has appeared, that is a control of product characteristics.

In fact, the Law about market state supervision marks the next responsibilities out:

A producer and a provider have total and whole responsibility for placing only a safe product on the market.

State control departments have responsibilities for:

a. Legal function, by working out and promoting of technical regulation, and the national standards in correspondence.
b. Assurance of the essential technical competence (by accreditation) and of the independence of agencies, which provide conformity evaluation.
c. Law implementation operation (market supervision and control).

In the same time, one of the main demands to state agencies is non-intervention in the activities of economic subjects during their product developing and manufacturing.

The goal of market control agencies operating is to provide the product conformity to the determined standards and to insure an absence of any threats to the human life and health, to insure the safety place to work, to protect the customer's rights, to protect the environment.

The whole production from producers, importers, providers (any economic subjects, which operate in the product promotion chain from a producer to a customer) fall into this law function. All economic subjects are obliged to input in operation and provide on the market only safe products. The proof of the safe products is their conformity to the technical regulation, to the national standards that are in correspondence with the certain European standards.

The technical regulation is the law of Ukraine or legal norm that accepted by Ministry of Ukraine, where the product characteristics or its manufacturing methods are determined, as well as the requirements to the services, including certain statements, which are obligatory to complete. Such technical regulation can include the requirements to the terminology, signs, packing, marking, labels,

which are in use for certain products, process or production methods. There are 49 technical regulations in Ukraine actually.

In order to realize the State policy of the market control, the market control agencies:

- Fulfil the monitoring of the reasons and quantities of customer's calls concerning their rights protection for the safe products; of the reasons and quantities of injuries or health damages after the product use.
- Provide the verification of product specification, including product samples collection and their examination (their usage also).
- Verify the meeting requirements for the product that is introduced on the exhibitions, shows, fairs, festivals, etc., and that doesn't correspond to the determined requirements.
- Take the decisions about restrictive measures and control how the economic subjects complete their decisions.
- Fulfil the monitoring of the economic subjects actions concerning the taking the products out of market, which are liable to be taking out.
- Take the decisions about product destruction or recycle to avoid the product usage.
- Take measures to alert the customers about any danger that the product provides and that was determined by market control agencies.
- Make statistics reports about market supervision and analyse the reasons of law violation.
- Inform the state power agencies, local government and communities about the results of market control.

The market control agencies complete the systematic and casual verification of product specifications.

Systematic verification of product characteristics is accomplished at the place of product providers.

Casual verification of product characteristics is accomplished at the place of product providers or producers.

Product verification can be at the control agency or in the field.

During the product characteristics verification the objects of verification are:

1. The presence of the national sign of conformity (including identification code developed by conformity control agency) if the presence of the sign is foreseen by technical regulation for certain production and the rules of the national sign location are completed (Resolution of Ministry of Ukraine No 1599 dated 29.11.2001 "About determination of description of National sign conformity and the rules of its accomplishment").
2. The presence of supporting documentation that liable to be for certain production (particularly the product manual), label, marking, other signs, if it

determined by legal regulation (including technical regulation), and their conformity to the determined requirements.
3. The presence of conformity declaration, if it's necessary accordingly to the technical regulation for such type of products.
4. Product samples examination of certain production and producer identification.
5. Product samples collection and their testing if there is the reason to suspect that the product is dangerous, unsafe or present the risks, and/or doesn't correspondent to the determined requirements.

The time to complete the product verification in the field has to be less then two days for product providers and less then three days for product producer. The report is done by the result of the verification. According to the results of the verification the control agency can take the decision to take the restricting measures concerning the product, which doesn't correspond to the determined requirements, including the cases of violence of National sign conformity usage, of conformity declaration application, of technical documentation presentation, a namely:

- Limitation for product placing on market (to make such product to correspond to the determined requirements, temporary prohibition of product promotion).
- Prohibition of product placing on the market.
- Taking the product out of market, the return the product to a producer by a provider or by a customer. Taking the product out of market in order to its destruction or recycle. Recall the production is taking as an extraordinary case.

The economic subjects have civic, administrative or criminal responsibilities for violation of Ukrainian Law "About state market supervision and control of non-food production" according to actual legal norms. There are penalties (financial fines) for the economic subjects conditionally the law violence from 75 till 3 000 untaxed minimal income that is from 1 275 UAH till 51 000 UAH, for the repeated the same violence during three years it is from 100 till 5 000 untaxed minimal income or from 1 700 UAH till 85 000 UAH.

Legislation of market supervision foresees the bases for release of the economic subjects from responsibilities if they prove the following:

- The unsafe production wasn't placed on the market.
- The production becomes unsafe because of third person activity or inactivity or because of force-major.

In conclusion I'd like to pay attention that economic subjects are obliged to keep all technical documentation and the documentation, which can identify the product suppliers and/or the customers during the term accordingly to the technical regulation for certain production. If the term is not determined:

- For producer – during 10 years from the date of beginning the product manufacturing.
- For authorized agent, importer or provider – during 10 years from the date of receiving the products.

In case of absence such documentation, if impossible to identify the producer, the economic subject should pay the penalties as a subject which place unsafe products on the market.

Thereby the positive moments of the system of State market control are:

- It changes the actual state control system of manufacturing for control of product characteristics.
- It brings the European way for the control and supervision of the ready production on the stage its placing on the market instead of its manufacturing. This way the state intervention in the economic subject activities is minimal.
- It creates the close cooperation between the economic subjects and the state control agencies that insures more effective control of product safety and urgent reaction in case of unsafe product appearance.

Such cooperation decreases negative consequences of unsafe products as for the economic subjects so for customers.

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National security vs. security of the person, ethnic profiling

Summary
This article is dedicated to content research of "non-food production safety" accordingly to
Ukrainian legislation. Here the general requirements for non-food production safety are seen as well as its indices, which are verified by State.

Keywords: safety, non-food production, indices of non-food production safety

In international human rights law, usually the "right to security" goes together with the "right to life" and "right to liberty" (Article 3 of the United Nation Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights (1966); Article 6 of the European Union Charter of Fundamental rights; Article 5 of the European Convention on Human Rights).

These three rights are strongly interconnected. The right to life is a supreme human right which imposes a duty to the state to protect the life of the people against unwarranted actions by public authorities and by private persons. The right to liberty protects the physical liberty of the person through a number of interrelated rights. The right to security is in very close association with the right to life and right to liberty.

This article focuses on the practices aiming to ensure national security and at the same time often violate disproportionately the rights to liberty and the security of the person of certain groups in the society because of their race and ethnicity. The right to security covers national and individual security.

What is national security?

National security is how the state protects the physical integrity of its citizens from external threats, such as invasion, terrorism and risks to human health. When a situation arises which threatens the continued existence of the state, and thereby of the human rights of the entire population, international law permits certain proportionate measures to counter that threat. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities stated in its Siracusa Principles. Principle B(iv) defines when a restriction can be said to serve national security:

"National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force. National security cannot be invoked as a reason for imposing limitation to prevent merely local or relatively isolated threats to law and order. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse. According to this definition, restrictions on the basis of national security are only justifiable if they address a threat to the "existence of the nation or its territorial integrity or political independence," *as distinct from localised violence and ordinary criminal activities*"[1].

[1] Article 19, National Security

What is the right to security of the person?

The right to security of the person protects physical integrity, which has traditionally taken the understanding of this right more as of protection from direct physical abuse. Emerging standards enlarge the scope of the right including provisions for: the necessities of life (such as sustenance or healthcare); the right to social security; and the protection of health and safety, particularly in employment. Security of the person also raises issues about state or private surveillance of citizens.

The "right to liberty and security" is a unique right, as the expression has to be read as a whole. "Security of a person" must be understood in the context of physical liberty and it cannot be interpreted as to referring to different matters (such as a duty on the state to give someone personal protection form an attack by others, or right to social security). The guarantee of "security of person" serves to underline a requirement that the authorities in Strasbourg have developed when interpreting and explaining the right to liberty in Article 5. The European Court has stressed the importance of the right to liberty and security in many cases. Thus, in Kurt v. Turkey, 1 the Court held: …that the authors of the Convention reinforced the individual's protection against arbitrary deprivation of his or her liberty by guaranteeing a corpus of substantive rights which are intended to minimise the risks of arbitrariness by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act. […] What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection[2].

The main concern today is how to ensure national security and, at the same time, make sure that citizens' individual security rights are not affected. Finding proportionate balance between the two became a challenge after the 9/11 attacks against the World Trade Center in New York, and later, after the terrorist attacks in Paris, Brussels, London, Berlin and other European cities.

The seriousness of the current terrorist threat in Europe and the rest of the world, forced governments to maintain high readiness to respond to imminent attacks by adopting measures to prevent attacks of terrorism. The debate today is how these measures to encounter terrorism effectively and at the same time maintain full respect to human rights of individuals. Authorities found that reaching such balance is extremely a complex and challenging task. However, the acting of law enforcement and anti-terrorism authorities indicates that they are giving

[2] The Right to Liberty and Security of the Person – a guide to the implementation of Article 5 of the European Convention of Human Rights – Human rights book 5, Monica Macovei.

more priority and wait to the state security than to individual human rights including the right to personal security.

The right to personal security has a strong link with, and in many instances, depends from the status of the national security. In the fight against terrorism, often the two types of security may establish collision especially when it comes to the respect of human rights and personal security of certain ethnic and minority groups. This is when ethnic profiling takes place as a result of border control, police and other law enforcement authorities' actions announced to ensure national security.

What is ethnic profiling?

"Ethnic profiling" is defined as the use by police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin – rather than individual behaviour or objective evidence – as the basis for suspicion in directing discretionary law enforcement actions. It is most often manifested in police officers' decisions about whom to stop for identity checks, questioning, searches and sometimes arrest. Ethnic profiling can also be used to "mine" (or undertake computerised searches of) databases for potential terrorist suspects or in targeting surveillance and anti-radicalisation policies[3].

The institution called ethnic profiling was first developed in the U.S. in order to detect drug couriers, and was later implemented in traffic control, and more recently in counter-terrorism procedures. At the heart of these procedures is the idea that the race or ethnicity of the perpetrator serves as a useful tool for the detection of criminality. Thus, stops are not induced by suspicious or illegal behaviour, or by a piece of information that would concern the defendant specifically. Instead, a prediction provides grounds for police action: based on the high rate of criminality within the ethnic group or its dominant (exclusive) involvement in committing acts of terror, it seems like a rational assumption to stop someone on ethnic grounds. Measures are therefore applied not so much on the basis of the (suspicious) behaviour of the individual, but based on an aggregate reasoning. The goal is to make an efficient allocation (based on rational interconnections) of the limited amount of the available police and security resources. After all, the majority of the prison population is Roma (black, etc.), and almost all of the terrorists are Islam fundamentalists (mostly from Arab countries). Accordingly, appropriate restriction of the circle of suspects seems easily justifiable[4].

Minorities and immigrant communities all across Europe have reported discriminatory treatment by the police. A number of reports indicate widespread profi-

[3] ENAR, Fact sheet 40 "Ethnic profiling", October 2009.

[4] Andras Laszlo Pap "Ethnic Discrimination and the War against Terrorism- the case of Hungary".

ling in France, Germany, Italy, the Netherlands, and other European Union member states[5].

In the United States, racial profiling continues to be a prevalent and egregious form of discrimination. Police officers across the country routinely stop black and Latino men without cause. Since September 11, 2001, racial profiling has become much more prevalent for Muslim, Arab, and South Asian communities. Equally troubling are local immigration laws that invite rampant profiling of Latinos, Asian-Americans, and others presumed to be "foreign", based on how they look or sound. Ethnic profiling is not only unfair but also unnecessary and counter-productive. Data shows that racial profiling is a bad tool because when it is used, the rate of discovering unlawful conduct is lower than when law enforcement activity is not infused by race stereotypes. For those who find themselves pulled aside for frequent or abusive stops based solely on their appearance, these stops are often embarrassing, humiliating, and even traumatizing[6].

Unfair policing not only affects individuals, but also their families and entire communities, shaping a view of police as biased and untrustworthy. It generates reluctance to cooperate with police officers, which undermines efficiency in profound ways.

To ensure more effective measures for national security certain procedures suggested attempted to create a descriptive profile of suspects in order to help the authorities in filtering out potential perpetrators based on certain sets of (legal) behaviour and circumstances. In the case of drug couriers, such a characterisation might include short stopovers between significant drug sources and distribution locations, cash paid for an airline ticket, and the relationship of ethnicity, sex and age to criminal statistics. The case for ethnic profiling is further strengthened by the fact that the gangs that play key roles in organised crime tend to be almost exclusively ethnically homogenous. The irony of the situation is that it was right around the time of the World Trade Centre attacks that racial profiling suffered decisive rejection within professional as well as political circles. In the fall of 1999, 81% of those asked opposed stops and vehicle control based on ethnic profiling. By contrast, in a poll conducted a few weeks after September 11, 2001, 58% approved of the idea that Arabs (including American citizens) be subject to stricter security checks before a flight. Some commentators emphasise that ethnic profiling is in principle unacceptable. The result, according to these critics, is the harassment of the innocent minority middle class, which is subjected to a kind of "racial tax" that affects all aspects of people's lives. A further unwanted result is

[5] OSF Report, ethnic profiling- European union-pervasive, ineffective and discriminatory.

[6] American Civil Liberties Union and Rights Working Group "The persistence of racial and ethnic profiling in the United States, a follow-up report to the U.N. Committee on the Elimination of Racial Discrimination.

the strengthening of racial/ethnic essentialism, reductionism to black and white (Roma and Hungarian; Arab and non-Arab, etc.)[7].

In the past several years, the threat of terrorism has grown progressively, and countries around the globe have been struggling to combat this problem. Of particular concern to many people is the perceived trend toward using fears about security to justify the abuse of personal liberties and depriving citizens of their fundamental rights. How to effectively address security while respecting human rights constitutes a key challenge today. Ethnic and racial profiling in the form of behavioral screening initiatives implemented as a response to the increasing terrorism led to the subjection of minorities. In the name of national security, safety protocols are being adopted in non-uniform ways that disproportionally affects migrants' and ethnic minorities' human rights and reinforce harmful racial prejudices and stereotypes. The misbalance between basic freedoms guaranteed by international human rights law and the security policies implemented by the state, turned to be counterproductive because it reinforces racism and ethnocentrism as social norms and fails to ensure a consistent level of protection for all citizens. States should unify their efforts in fighting terrorism with principle approach to resolving the conflict arising between the need for national security and the respect of human rights based on the doctrine of proportionality. Proportionality means balancing two interests – the interest of the state in security and the interest of the individuals in the preservation of their fundamental rights. In order for state jurisprudences to know how to balance the interest of national security and the interest of the individual they need to have some idea of what is to be balanced against the infringement of the individual's right. Terrorism and measures to fight against it must never be allowed to destroy the democratic way of life in society or to endanger the security of its citizens.

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United Nation Declaration of Human Rights, Article 3.

International Covenant on Civil and Political Rights, Article 9.

European Union Charter of Fundamental rights, Article 6.

European Convention on Human Rights, Article 5.

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Safety in the dialectics of mental state, socio-psychological process and social phenomenon

Summary

The text presents the thesis of the understanding of safety as a category existing in everyday and over-day understanding. Safety is defined and analyzed as a dialectical phenomenon, which contains in a unity safety and lack of safety, security and insecurity. This unity manifests itself at a level of a psychological state, of a socio-psychological process and of a social phenomenon. The dialectics of safety and lack of safety is possible as an idea of completeness and integrity understood in different aspects of social human existence.

Keywords: safety, security, insecurity, integrity, identity, freedom

Safety is one of those phenomena that seem self-evident, everyday, self-explanatory, and exactly because of that, the most difficult to be defined and problematized. As with all clear phenomena, here it turns out that it is most difficult to understand the "clear" because these understandable things provide new and new dimensions to the explanations and patterns of their experience. At the same time, such social facts and their intellectual rationalization become the basis for building the legitimacy and identification of science sociology. Durkheim unambiguously predetermined the decades-long reproduction of the problem of sociological imagination with the notion that "a sociologist must ... stand against social facts, forgetting everything he thinks he knows about them as if it is a totally unknown thing" [1, p. 36]. And so – safety as an unknown thing ...

Confronting the difficulty of defining is also with the use of the word „safety". It occurs in a variety of contexts – we speak about physical safety, psychological safety, normative safety, etc. It is even more difficult when another, almost identical, term intervenes. It is security. We talk about international security, national security, public, corporate, computer, information, home, human, economic, social security, etc. It should be noted that they are not only words but have the status of terms. To outline the boundaries between the two terms – safety and security – turns out to be impossible. So the definition of the phenomenon should be by expanding the horizons for its perception, not by limiting and „cutting" the meaning. We assume that these are two sides of the same phenomenon. At the same time, safety also implies a psychological and socio-psychological context of understanding. Security has more objective dimensions and social manifestations. A. Maslow developed an idea about safety as a very fundamental need. He interpreted safety needs as a combination of needs of security, order, and stability. This theory is classical, well-known and accepted in social sciences. Its reference in the text is with a view of the idea that safety and security are aspects of the same phenomenon.

It can be said, with confidence, that this multi-plane and multi-layered appearance of these two words – safety and security is not accidental, nor it is a manifestation of the inability other words and symbolic forms to be invented. Moreover, this observation concerns not only the English language. The starting point of explanation is much more relevant to the idea that the spirituality, the soul, the psychological phenomena and processes of the human community find their form in the symbolic construct of language. Following this a priori point, it can logically be concluded that this is an existential category related to the ontology of human existence.

One possible integrative view at the term „safety" is that it is related to the idea, state, experience, feeling of completeness, integrity, equilibrium and balance. In this sense, safety is a psychological state related to the need for the integrity of the human personality. At the same time, safety is a socio-psychological process

of interaction of personality and community with social structures, and with supra-social structures in the process of seeking balance and equilibrium in this communication. An inseparable part of these two areas of safety is its existence as a social phenomenon. In social terms, the phenomenon exists as „security". This third aspect is manifested in publicly-created institutions whose purpose is to ensure the stability of society, communities and individuals in them. Such are the institutions of social security and support, i.e. the social security system, such as the army, the police, etc., related to ensuring public order and internal and external security, such are supranational institutions such as the EU, the UN, and many others searching security above the local plan.

The thesis that will be developed within the text is that all these spheres of safety exist in a dialectical whole. They are interpenetrating and interrelated. In addition, safety is the initial state of human being and existence. Consequently, the movement of social subjects is aimed at the realization of a state and states of safety. No imbalance and fragmentation are the eternal principles of existence, and the searching, the achievement and the maintaining of a state of integrity. It is clear that the social is only possible through the interaction of the subjects in it. In this sense, the dialogue between the subjects could be a principle for achieving a degree of safety. Interaction and interdependence are not related to the impairment of autonomy. T. Parsons expressed this idea clearly by saying that one of the most common serious mistakes is the notion that interdependence implies a lack of independence. The author added that two units may be interdependent if they are independent in some respects [2]. Therefore freedom and safety are not mutually exclusive categories. The existence of freedom presupposes safety and vice versa.

Safety, understood as integrity is threatened, on the one hand, by the misunderstanding of the dialectics of dependence and independence and, on the other, by the risks of being. In today's postmodern time one of the biggest risks is the speed of change. Changes happen so quickly that it is beyond our ability to predict them and also to perceive them. We cannot stop the change, nor point out the possible sources of risk, so we should focus on the available resources. The mechanisms, which human civilization, or the phylogenetic and ontogenetic human development have provided for achieving certainty in the individual development are of crucial importance for human existence. Such mechanisms are: social adaptation, socialization, psychosocial identity, etc. They all reflect human relationships with the social environment. It is the „proper" realization of these connections that provide the psychosocial safety of the individual. An important and problematic idea is that our relationships and our interdependence on the social plane that move us to safety and security do not make us unfree. It is no coincidence that among the numerous perceptions of identity there is also one saying that it is an intimate experience of freedom [3]. Our personal and

social identities have the function to give us stability, safety and security in our functioning in the social environment.

For the implementation of these mechanisms, social institutions have emerged and established their existence in the civilization development. There is a huge variety of social institutions designed to meet human security and safety needs. The family and the school have the task of introducing us into the social environment by providing us with a degree of safety for our functioning in the sociocultural reality.

Apart from mechanisms and institutions, there are "Eternal Values" in the millennial existence of mankind. They have the function of being a measure of human integrity. Tradition, religion, the connection of human communities to nature can be accepted as fundamental values. On the one hand, their existence in human beings is important. On the other hand, it is important to rediscover their value, to experience their value and to live up to these values. The phenomena of tradition, religion and nature are connected with our understanding of eternity and with the desire to overcome relativity. The lack of our safety is probably due to relativity. Relative values do not bear the permanence of integrity and completeness. Therefore, existential security should be sought in eternal values.

Here is the question why the integrity and completeness of the world, society and man are so essential. Postmodernity highlighted the fragment and fragmentation as existential phenomena. The fragmentation of the world has manifested itself in a number of "separations" and "differentiations". The man is not only emancipated by nature, but is also distinguished from it. By itself, it probably was a regular phenomenon in the development of human civilization. However, the increase in the gap between the human and the natural causes a number of dysfunctions. The destruction of the natural environment that the man perceived as something outside himself/herself reflected on the deterioration of human living conditions and not only. And now, experiencing the stage of separation from nature, we are looking for ways to re-establish our relationship with it. This is how we try to trigger a mechanism to restore human integrity and safety.

Another fragmentation is the separation of people from religion and the formation of a secular and a sacral sphere as relatively independent ones. This line of development leads man and mankind to the loss of meaning and purpose, to a valuable vacuum due to the lack of spiritual orientations. These losses and absences imply a lack of certainty about the valuation of human life. Returning to the value of religion is an attempt to restore the lost connection of man with eternal values. This is one of the significant ways to restore the safety of the direction of life.

The separation and differentiation of man from tradition fragments human world into traditional, modern and postmodern. This process leads to a loss of sense of roots, a loss of confidence about the continuity of existence. Losing the idea of „yesterday" also breaks the idea of „tomorrow". Therefore, after modernity,

the person finds that continuation is immanently connected with the support of tradition.

All these processes, which have led to the fragmentation of the world, society and man, reach their denial. Societies are fragmented by the growing inequality within and between societies. This leads to a loss of communication, to a loss of trust between the unequal countries and consequently leads to a loss of safety and security. Trust connects us with others and is not accidentally defined as the invisible axis of society. Trust is also defined as a "strategy to deal with uncertainty, chance and uncontrollability" [4, p. 31]. A widely shared idea in the scientific area is that trust is one of the foundations of social capital. So the fragmentation of our world leads to impairment of the social capital.

For the personality, the dysfunctions of fragmentation are manifested in the separation of biological, spiritual and social part of the personality and thus the loss of safety of the identity, i.e. the feeling of continuity and sameness [5].

After understanding the problem, an essential part of the concept is to look for possible outcomes, pathways and solutions. It is extremely difficult to distinguish the theoretical perspective from the applied direction. The reason for this is that any good practice should be based on a fundamental idea with which to form integrity. An easy outcome is to establish the illusory homogeneity of man and human communities with the highlighted values - tradition, religion, nature. Probably like all easy things, this is neither reasonable nor possible. There is nor a way to go back to the traditional way of life or back to natural existence. In other words, "the idea of a living entity is a quasi-idea, and it is doomed to be forever a quasi-idea" [6, p. 546]. In this case, awareness of constraints is a powerful tool of development.

Accepting the constraints does not mean denial, but even more persuasive realization of our relationships with eternal values, their appreciation and the search for our way through them. Of course, there are many security illusions on our way. For the person they are numerous, one of them is related to social networks as an imagined niche of psychological safety. Zygmunt Bauman, in an interview for the Spanish newspaper El Pais in 2016, noted that people use them not to open their horizons, but to form their own zone of comfort where the only sound they hear is the echo of their own voice. Thereby social networks became a trap, as the scientist defined them. Even stronger and brighter were his insights about contemporary reality as „Liquid modernity" and „Liquid life". Our life is liquid because there is nothing stable and solid in it. That is why safety is one of our greatest existential problems.

For societies, some of the illusions of security are linked to the systems of social assurance and social support. Through them it is possible to create and reproduce the attitude that someone else has to provide your being. Safety is not deprivation of man of the struggle and responsibility for their own life and the lives of the people around him. The idea of safety should not put aside our natural resistance.

It is not accidental to think of Christian clerics that comfort and success are dangerous to man [7]. Mistaken use of safety can lead to trouble. The escape of controversy, not only does not bring harmony and balance, but also provokes them.

In this sense, safety at its various levels should be seen as a dynamic phenomenon, as a road, as a unity of safety and lack of safety. Perhaps, the lack of safety best defines what safety is. And our Euro-American so-called Western civilization has gone through the path of empiricism and rationalism, should well understand and define uncertainty. All of this gives us the cognitive basis for even more precise problematization of safety. Now, owing to our empirical and rationalist way, we can say that safety is achieved by constantly overcoming uncertainties.

Once again, defining safety is as completeness, as integrity, as unity with uncertainty. In this sense, it is possible to distinguish the everyday meaning of safety, which is opposed to freedom and involves a loss of freedom, from the understanding of safety as a dialectics of safety and lack of safety. Our relationships with eternal values best show these oppositions. In our secular world, the logic is that safety deprives you of freedom. At the same time, there is a religious logic that is paradoxical. The relationship with God and the dependence on God makes you free, just as the fear of God releases you from your other fears [8]. In this sense, the notion of safety must be perceived by cognitive senses that have grown beyond everyday meanings. Our orientation to these well-known, apparently clear phenomena will also depend on where we are on the path of seeking integrity.

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The security right of juvenile delinquents

Summary

The present report raises the question of the security right of juvenile delinquents in determining the correctional measures "placement into a socio-pedagogical boarding school" and "placement into a correctional boarding school". The security right is a right of guarantees against arbitrary deprivation of liberty within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, but it is also a security right of a person relevant the environment in which he lives. When the family environment is stable, the best interest of the juvenile delinquent is to remain in this environment and to perform a specialized correctional influence not instead of it, but together with it. This is essential to avoid the unfavorable consequences from the institutionalization of the delinquents and their stigmatization.

Keywords: security right, juvenile delinquents, stigmatization

Security right of juvenile delinquents[1] is the main right according to Art. 5 of The European Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 6 of the Charter of Fundamental Rights of the EU. It is unlimited and consists of a ban on arbitrary deprivation of liberty for which guarantees are provided in the Convention (Art. 5 §§ 2–5). The adherence to these guarantees is of great importance to obstruction of eventual negative consequences of institutional treatment of the juvenile delinquents and the risk of their stigmatization.

Explaining the issue of providing the security right of juvenile delinquents in Bulgaria, firstly we have to describe the legal regime related to imprisonment. The operative legislation foresees three sanctions of imprisonment according to the Convention. These sanctions are: the punishment "deprivation of liberty" of a juvenile (Art. 62, Section 1 Penal code) and correctional measures "placement into a socio-pedagogical boarding school" and "placement into a correctional boarding school" (Art. 13, paragraph 1, section 11 and 13 of Law for fight against the anti-social acts of the minors and juveniles.

Particularly, these correctional measures concerned with the placement into a correctional boarding school correspond to the limitation according to Art. 5 § 1(d) of the Convention and represent freedom deprivation in order to provide educational supervision. The European Court of Human Rights adopted that they are legal according to the Art. 5 of the Convention (Decision of the case A. and other v. Bulgaria (application no. 51776/08), 29 November 2011). In the case D.L. v. Bulgaria (application no. 7472/14), 19 May 2016, the Court referred to that judgment as a precedent. At the same time the Court accepts that in the appeal regime of those measures, there is an infringement according to Art. 5 § 4 of the Convention (D.L. v. Bulgaria (application no. 7472/14), 19 May 2016; §§ 89-93) as "the applicable legislation did not authorise minors who were placed in an educational centre to apply to the courts for a review of their detention". Therefore, according to the European Court, the security right of juvenile delinquents is not fully guaranteed by the legislation.

The issue of the influence of this unconformity on the future criminal activity of juveniles is of great importance in clarifying the causes of juvenile`s crime. The results of the survey in 2016 made in Varna prison about "Stigmatization of the offenders and their criminal career" can give some insight into the consequences of this form of institutional treatment on the process of criminalization of the person. During the study are respected the requirements of anonymity and volunteering. 225 male people, who are serving prison sentences, are involved. By means of a standard interview is collected the information about the present and

[1] Juvenile delinquents in Bulgaria are the persons who haven`t attained 18: minors who have committed anti-social acts and juveniles who have committed anti-social acts and crimes.

previous criminality of the involved people, including their anti-social acts and crimes before the age of majority.

The data indicates that 45 people, who compose 20 % of the interviewed, had been placed into correctional institutions (boarding school and/or correctional home – prison for juveniles) before they attain majority. For all these individuals, there is ongoing criminal activity, which tends to stability. The made one-factor disperse analysis ANOVA determines an important influence of the independent variable „placement into a boarding school/correctional home" on the dependent variable "sustainability on the criminal career" ($F = 11{,}970$, $p < 0{,}01$). From this it can be concluded that sanctions related to deprivation of liberty until the age of majority, have a definitely influence on the formation of the criminal career of the criminal.

The reasons that lead to the impossibility of these sanctions to realize their individual preventive effect on offenders date back in the separation of the child from his closest social environment. This experience, according to F. Tannenbaum "plays a greater role in making the criminal than perhaps any other experience" [6, p. 19.] The process can be illustrated by the case of the interviewed "S2". His anti-social activity began at a very early age – nine years old, when he was the first systematic escape from school and home, and was taken into report by an inspector at a children`s pedagogical room[2]. In clarifying the causes for the first deviation and the follow-up, still primary deviations, it has been established that they are connected with the friend's environment in which, along with anti-social acts and crimes against property, the use of alcohol was also spread. The family was stable, the relationships were not deformed. Nonetheless, the many anti-social acts have exhausted the possibilities of applying lighter educational measures and have led to a determined institutional reaction of attitude. It is related to placing the delinquent into a socio-pedagogical boarding school, where the stay lasted two years, subsequently into a correctional boarding school with a stay for a new two-year period, until comes to the application of punishment – deprivation of liberty for more than one year in corrective home (prison for juveniles). From the data provided, it is established the self-assessment of the personality regarding the exemption from criminal responsibility with the placement in a correctional boarding school in the past. The interviewed reports that he has „accepted the situation". In the assessment can`t be fount neither the desire of correction of the wrongdoer, nor for giving meaning of the type and severity of the sanction. This reaction of the institutional impact shows that somewhere at the moment of placing into a correctional boarding school, the person has already accepted his social status as a violator and adjusted his behavior further according to this status. At a later stage, the interviewed declared that he has acquired his criminal

[2] Children`s pedagogical room is a state institution in which are taken into report minor and juvenile delinquents committing anti-social acts and crimes.

experience during his imprisonment in the correctional home, and the majority of his close friendly environment already got such an experience. In conclusion, the investigated person has over thirty years of criminal careers, including reported unsolicited crimes against property to which he has developed a professional attitude. The process of such inappropriate institutional treatment of juveniles and the subsequent formation of criminal careers has been investigated already in the beginning of the last century in USA [4, p. 9–11].

Similar, although specific from the point of view of life circumstances is the case of the offender with a profile "P". Up to three years old he was placed in a home for children deprived of parental care, after which he was adopted and raised by a single parent – his mother. Despite the mother's efforts to educate him, the boy has fallen into a drug-addicted youth environment, which determined his future crimes related to drugs. He was placed into a boarding school at the age of ten, for the first time, where he stayed for two months and consequently he returned there 2 years later, when he stayed two years and six months. The aim of the educational measure was to complete basic education due to multiple escapes, including exclusion from school due to its behavior. The paradox in this case is that although the efforts of the state institutions to provide a family environment for raising the child, later it was the state which was forced to separate the child from this environment for a long period of time. Moreover, this separation from the family environment and institutional supervising did not in any way result separation from the negative friend`s environment. Namely, this was the main purpose of the correctional measures.

In such cases and in similar cases, the security right of juvenile delinquents can be examined not only as a right of guarantees against arbitrary deprivation of liberty, but also in a wider context – such as the security right of the person according to the environment in which he lives. When the family environment is stable, the best interest of the juvenile offender is to remain in this environment and to perform a specialized educational influence must be with, but not instead of it.

Next, it may be indicated the impossibility in accordance with the effective legislation of juvenile offenders to initiate proceedings under Art. 31 of Law for fight against the anti-social acts of the minors and juveniles, reviewing of the measure related to placing into a boarding school, after the start of its implementation. In practice, however, there is no obstacle to the delinquent's family to make approaches to the local commission for fight against the anti-social acts of the minors and juveniles, as it can refer to the court and bring an action. However, the lack of such exclusive statutory rule creates a certain element of legal insecurity. This may have a certain traumatic effect on the personality of the young offender. This effect may be expressed in the forming self-assessment in the person that he is labeled and has no legal opportunity to change its unfavorable social status. When as a result of all this is unlocked "a secondary deviation" [1, p. 76.] the justice sys-

tem would face the consequences of the recidivism. An example for such is the person with profile "F1". His family environment was divorced parents, his father was an alcoholic, and his mother was a prostitute. The child made his first escape from home when he was eleven and he was placed consecutively into a socio--pedagogical boarding school, where he stayed for three years, and into a correctional boarding school with a stay of one year and six months. During his stay in the correctional boarding school, the juvenile thought that the attitude to him was severe that is why he had escaped several times from the boarding school. During the last escape, he has committed a theft and has been sentenced to imprisonment for two years and two months, which he has served in a correctional home. At the age of nineteen, the interviewed has committed ten crimes against property and numerous anti-social acts when he was minor and juvenile. For his early years, he has not developed any other self-assessment of his behavior, except this one that his social status of the offender has been finally confirmed.

Another group of causes are connected with the risky environment in which live the children in respect of which the remedial measures in question are imposed. It is about children who commit anti-social acts without any features of crimes such as wandering, begging, prostitution, systematic escape from home or school, alcohol and drug use [5, p. 34]. The empirical analysis of Sv. Margaritova related to the legal action for imposing correctional measures "placing into a socio-pedagogical boarding school" and "placing into a correctional boarding school", shows a vicious practice using such institutions instead of taking measures for protection of children living in a risky environment [2, p. 136–137]. This data is also supported by the results of the Varna prison study, according to which the predominant part of the persons in the boarding schools lived in a risky family environment. Here are included the cases of: parents exercising violence (profiles "Q2", "N4", etc.); parents putting their children in a state of insanity (profiles B1, F4, V6, etc.); parents with mental diseases (profile "H3") or alcohol and drug abusers (profiles "O1", "A7", etc.), parents committing crimes (profile "S3"). This way the juvenile delinquent is sanctioned for his behavior directly linked to unstable family environment.

Especially, the case of „M" is more significant considering that the institutional reaction is not aimed at eliminating family inconsistencies, but in a practically unconscious child. The interviewed was in a family of divorced parents with a step-brother and step-father. From the age of nine he began to run systematically from home and school and wander. The mother has turned to an inspector at a children`s pedagogical room for placement into a socio-pedagogical boarding school. The minor was placed into the boarding school where he stayed for a year and six months, and later as a juvenile was accused of imprisonment with suspense of execution of the custodial sentence. At age twenty-two, the interviewed has three sentences, the last of which is for non-fulfillment of probation measures.

The court assesses the risk of relapse as high. A question may be asked why the sanction was directed against the child instead of taking measures to improve his security in the family environment, including the possibility of taking cares by other people.

In these and other cases, law enforcement difficulties are related to the identification of factors that determine behavioral deviations, rather than the type of sanctions. Properly assessing the causes that led to the commission of anti--social act and crimes by juvenile delinquents would greatly guarantee the security right of the offenders. This may lead to application of the deprivation of liberty in the form of a punishment or educational measure only as an exception.

In conclusion, there are preconditions for treating children with behavioral deviations in the context of the so-called „self – fulfilling prophecy", defined as "false definition of the situation evoking a new behavior which makes the originally false conception come true". [3, p. 195.]. They raise the issue of the security right of the young person in the circumstances of a disorganized society and strengthened institutional control. In this sense, it is necessary to take into account the recommendations of Section IV of the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990), which put the stress on the socialization and integration of children and young people in the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.

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Exemption from criminal liability of minors according to article 61 and article 78a of the penal code (pc) – competition and peculiarities in the application field

Summary

In the paper, the question is discussed of the application field and peculiarities of the exemption from criminal liability of minors, together with applying instructive measures under article 61 of the PC and with the imposition of administrative penalties under article 78a of the PC. The question is raised of the choice of the more favourable regime by the judicial bodies in the event of competition among norms, with a view to the peculiarities of the deed and the perpetrator in each specific case. The conclusion imposes itself that the coincidence in the application field of the two institutes for specific hypotheses does not guarantee to a sufficient extent the judicial security and the uniform application of the law. Suggestions are made for a change of the institute under article 78a of the PC with a view to its application solely with respect to minors that turned 16.

Keywords: exemption, minors, penalty, instructive measures, administrative penalty

The exemption from criminal liability of minor perpetrators is related to the fulfillment of the criminal law policy of depenalization, based on the principles of giving up penal repression and humanization of criminal proceedings with respect to young law offenders. An alternative system of administrative law penalties and/or instructive measures was created; the legislator uses these measures with respect to the perpetrator of a crime, instead of implementing penal responsibility [1]. The goal that the legislator has posed is the correction and instruction of minors by means of preserving the criminal nature of the deed, but the penalties envisaged in the PC are replaced by instructive measures or administrative penalties. The modern approach in contemporary penal policy necessitates that it should be part of the European penal policy, observing the main principles of "sparing" justice, proportionality and justice, subjected to the understanding of using minimum penal repression in the counteraction to crime [2]

The expression of the higher differentiation of measures for state and social influence by means of limiting the imposition of penalties led to the inclusion of minors in the circle of persons that are within the application field of exemption from criminal liability, and imposing administrative penalty under article 78a of the PC. The high crime rate and the problems related to jurisdiction pose the problem of the general effectiveness of the exemption from criminal liability under article 78a of the PC with respect to minors, as a specific means for obtaining the goals of the criminal law.

It must be noted that the active editing of article 78a of the PC [3] has an imperative nature and concerns material prerequisites, in the cumulative availability of which courts of law are unconditionally obligated to exempt the perpetrator of criminal liability. The court follows their availability officially – without a possibility for assessment of the individual peculiarities of the specific crime and the social danger of the perpetrator or the attitude of the parties. The expansion of the application field of the institute under discussion simultaneously deprived the court of its discretionary rights with respect to the assessment of whether the doer has to be exempted from criminal liability in the event of availability of the envisaged prerequisites. In that manner the legislator deems that the irrefutable presumption is present of reaching the desired general instructive and warning effect of the penal law, with present required prerequisites, without complying with the specific facts on the case, the personality of the perpetrator or other circumstances influencing the social danger of the deed and the perpetrator. The conclusion imposes itself that the advisability of the exemption from penal responsibility under article 78a of the PC is not based on circumstances related to the crime perpetrated and the personality of the perpetrator; it is mechanically connected with the presence of specific prerequisites. That is particularly unacceptable, when there is a question of minor perpetrators whose personality's peculiarities, indi-

vidual development and emotional peculiarities impose the need for discretionary power of the court for the assessment of the method of influence.

The existence of two independent regimes of exemption from criminal responsibility of minor offenders imposes the comparison of the advantages and disadvantages of each of them. It is necessary that the law enforcing body should estimate both the type of norm and its application scope and in each specific case select the regime of exemption from criminal responsibility that will in the highest extent correspond to the interests of the perpetrator and the attainment of the correction and instruction goals of the penalty, without using penal repression.

1. Advantages of article 61 of the PC:

1.1. In the application of article 61 of the PC, when the prosecutor refuses to initiate legal proceedings, the interaction of the minor and the legislation system will be completely avoided, and there will be no unnecessary stigmatization of the perpetrator. With the option of "suspension of pre-trial proceedings by the prosecuting attorney", and also with the third hypothesis – "refusal to submit the minor to court", that interaction will be minimal. Solely, when the court deems that the minor must not be tried; in a procedural respect we will have a situation similar to the situation of exemption under article 78a, para. 6 of the PC.

1.2. The exemption under article 61 of the PC can also be applied in the event of perpetration of a serious crime. Theory and court practice have never contradicted each other on that matter, and the fact is not accidental that the initial text of article 29 of The Law for Tackling Antisocial Offences of Minors (LTAOM), where that exemption was arranged – the crime was not deemed a serious one, – was edited to its present form following the legal definition of "serious crime" in article 93, item 7 of the PC. Moreover, there is no legal impediment for the application of article 61 of the PC, even when the negative prerequisites of article 78a, para 7 of the PC are present – the harm caused is serious body injury or death, or the perpetrator was drunken, or in a multitude of crimes, as well as the crime was perpetrated against an authority body or in connection with the implementation of his work duties.

1.3. Under article 61 of the PC, it is mandatory to take into consideration the peculiarities of the minor's psychology in the perpetration of offences – penchant and thoughtlessness. These specifics of the subjective side of the deed are not taken into consideration under article 78a of the PC which application is related solely to specific objective prerequisites and excludes the individualized approach.

1.4. The possibility for multiple exemptions under article 61 of the PC, as well as the lack of prohibition for a person that has already been tried to be released and to undergo instructive measures, is the next advantage for minors when article 61 of the PC is applied. The law poses no restriction like the one envisaged in article

78a, para. 1, "b" - the perpetrator should not have been tried for a crime of general nature, and should not have been exempted from criminal liability under the order of that section.

1.5. When exempting under article 61 of the PC, there is no requirement for the restoring of property damages involved, which is definitely more favourable for the minor.

1.6. The norm is dispositive, and its application is placed under dependence on the subjective assessment of the management and decision taking body – whether in a specific case there can be successful application of instructive measures under LTAOM.

1.7. The exemption from criminal responsibility under article 61 of the PC ensures prompt, real and timely corrective interference, and in that way it is possible to avoid the institutional state interference being characteristic of the penal process passing through all phases which could have a negative effect on the future development of the minor and lead to his or her stigmatization [6].

1.8. The last advantage of the exemption under article 61 of the PC is its proven application for many years, the established and non contradictory legal practice in that application.

2. Shortcomings of article 61 of the PC:

2.1. The application of article 61 of the PC is excluded after the person that has perpetrated the crime as a minor comes of age, because no instructive measures can be imposed on adults instead of punishment, whereas – under the same circumstances – according to article 78a of the PC the person that has already come of age by the moment of imposing of the legal act will be exempted from criminal punitive responsibility, but will be imposed the administrative punishment – public reprimand, possibly an administrative punishment – depriving of the right to practise a specific profession or activity, because that person was under age by the moment of the deed.

2.2. The prosecutor's order of refusal to initiate or of suspension of the criminal proceedings can be attacked only in front of the higher-ranking prosecutor. In that manner there are no procedural guarantees that the perpetrator will contradict his or her participation in the incriminated deed or his or her guilt with the admissible proof and evidence, or will appeal the legal act with which he or she was found guilty of the crime perpetrated. In that connection, the problem is raised of the legal nature of the prosecutor's actions when he or she refuses to initiate or to suspend the pre-trial proceedings already initiated, when there is no evidence collected of the deed and the guilt. In theory, the thesis is formed that in that manner the minor's rights are restricted, in the event that he or she does not

acknowledge his or her guilt and is of the opinion that the discussion of the case in court will give him or her possibility to prove his or her innocence [7].

2.3. If the exemption is not applied by the prosecutor but by the court, the minor will have passed through the entire punitive process – with its two phases. Thus the minor will not to any extent be spared the stigmatization, it is just the opposite. Moreover, if the court does not itself impose an instructive measure and exercises its other opportunity – to refer the case to the Local Commission for Tackling Offences of Minors (LCTOM), there an instructive case will also be initiated and discussed on the case, which means that the minor will have to pass through two procedures – under the Penal Procedure Code and under LTAOM.

2.4. The other downside of article 61 of the PC is that some of the instructive measures under LTAOM, which are the solely applicable ones for that exemption from criminal responsibility, are much harsher than the administrative punishments envisaged in article 78a, para. 6 – public reprimand and deprivation of the right to exercise a specific profession or activity. Placement in specialized boarding schools /instructive boarding schools (IBS) and social pedagogical schools (SPS)/ is of repressive nature, and doubtless has harsher legal consequences than both administrative punishments indicated.

3. Advantages of article 78a of the PC

3.1. The principles of humanism, procedural speed and economy of punitive repression included in the institute of article 78a of the PC, meet the new paradigm in the punitive policy for decriminalization and depenalization.

3.2.By applying article 78a of the PC, the stage of consecutive passing of the minor through two different procedures – a punitive and an instructive case – will never be achieved, because article 78a of the PC does not envisage a variant of transferring the case to LCTOM.

3.2. For minors who turned 16 the proceedings of exemption under article 78a of the PC can conclude solely with the imposition of an administrative punishment – public reprimand, likely an administrative punishment – deprivation of the right to practise a specific profession or activity, if the deprivation of such a right is envisaged for the respective crime.

3.3. The refusal of the court to apply this type of exemption is subjected to appeal due to the violation of the property law because the norm is imperative. It is within the powers of the appellate and cassation instances to change the sentence, respectively the decision, and to exempt the perpetrator from criminal responsibility under article 78a, when the legal prerequisites are available. That is an additional guarantee that the minor‘s rights will not be violated when there is a presence of the material and legal prerequisites for application of article 78a of the PC, if the first instance court has ordered a vicious legal act.

3.4. If the deed has not been perpetrated by the minor owing to penchant or thoughtlessness, there is no obstacle for the application of article 78a, para. 6 of the PC.

3.5. The norm is applicable for continued crime under article 26 of the PC, regardless of the number of deeds.

3.6. Although the practice is contradictory, a lot of crimes fall under the hypothesis of article 78a of the PC, after the reduction under article 63 of the PC, which is obligatorily applied for minors, a lot of these crimes can be of high social risk [8]. That makes the application field of article 78a exceptionally vast.

3.7. The imperative nature of the norm excludes the subjective approach of the law enforcement body and is a condition for non contradictory legal practice.

3.8. In proceedings under chapter 28 of the Penal Procedure Code, the civil claim is inadmissible, and the victim cannot exercise his or her rights of a civil plaintiff and private accuser, furthermore, the victim cannot appeal court acts [9].

4. Downside of article 78a of the PC

4.1. The application of article 78a of the PC does not envisage the use of the individualized approach by the court, like in the exemption from criminal responsibility with imposition of instructive measures under article 61 of the PC.That is to a great extent an unacceptable decision as far as it is a matter of minors, because it is namely for minors that the court needs to have broad capabilities at its disposal for taking into consideration the specificity of each individual perpetrator and his or her specific deed.

4.2. An absolutely necessary prerequisite for the application of article 78a is that the perpetrator should not have been convicted of a crime of general nature, or exempted from criminal responsibility under that order.

4.3. The drunken state of the perpetrator [10] does not permit the application of article 78a, although the use of alcohol is vastly common among minors [11].

4.4. To be exempted under that order, the minor must obligatorily have restored the constituent property damages.

4.5. The norm of article 78a of the PC is inapplicable, when the deed has caused death or serious body injury, irrespective of the form of the guilt for the occurrence of the result – with malice or unintentionally.

4.6. An obstacle to the application of the discussed institute is when the crime was perpetrated against an authority body during or in connection with carrying out his duties. As such a direction is frequently characteristic of hooligan deeds, also typical of minors, this restriction narrows down the possibilities for application of article 78a of the PC with respect to them.

4.7. As the administrative and punitive responsibility arises when a minor turns 16, for persons who are under 16 the consequences of the exemption under article

78a of the PC can be much more serious than for those minors that have become 16 years old; for whom, for the same or a more seriously punishable crime, again under article 78a of the PC, the court has imposed an administrative punishment – public reprimand.

The discussed advantages and disadvantages of the two institutes of exemption of criminal responsibility of minors do not impose a categorical conclusion about which of the two regimes would be more favourable for the perpetrator. Regardless of the fact that the norm of article 78a of the PC is imperative and the application of article 61 of the PC depends on the discretionary powers of the prosecutor or the court, in each specific case it must be taken into consideration the circumstances that have importance for the choice of the type of exemption from criminal responsibility. In the event of competition between the two regimes, it is necessary to observe in all cases both the minor's rights and the goals that the legislator poses for correction and instruction of the perpetrator without using punitive repression.

On the basis of the advantages and disadvantages of both institutes, the conclusion can be drawn that article 61 of the PC, with respect to minors who are under 16 years old, when the prosecutor refuses to initiate or to suspend the pre-trial proceedings already initiated, is a more favourable legal norm, because the contact with the judicial system is avoided to a higher extent, as there is no discussion of the case in a jury session. In that sense, the imperative application of article 78a of the PC, when there are simultaneous prerequisites for application of both types of exemption – both under article 61 and under article 78a of the PC, will put the minor who is still under 16 years old in a more unfavourable legal situation compared to a minor that turned 16; the latter can only be exempted under article 78a by the court. That is why the legislator should restrict the application field of article 78a of the PC only to minors turned 16 on whom solely an administrative punishment can be imposed. In that manner, the content of the norm will correspond to its systematic place in the PC. Taking into consideration the analysis carried out and the arguments outlined, we would like to offer de lege ferenda the following revision of the text of article 78a, para. 6 of the PC which will correspond to the thesis outlined above:

"When the grounds are available under para. 1 and the deed has been perpetrated by a minor turned 16, the court will exempt the minor from criminal responsibility, by imposing an administrative punishment – public reprimand. The court can also impose an administrative punishment – deprivation of the right to practise a specific profession or activity within a term of up to three years, if a deprivation of that right is envisaged for the respective crime".

Thus, for minors that are under 16 years old, solely the exemption under article 61 of the PC will remain, whereas for those turned 16, the court will be able to

apply article 61 solely in the event that the prerequisites under article 78a of the PC are not available.

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See Order No. 1 of 17.01.1983 of the Plenum of the Supreme Court. With the indicated interpreting act it is accepted that the driver of the vehicle is always in a drunken state, when the alcohol content in the blood is not less than 0.5 promille.

Before the changes in the PC reflected in State Gazette, issue 95 of 2016, the text of article 78a, para 7 of the PC did not imply a simple reply to the question of whether these negative prerequisites refer also to the deeds perpetrated by minors, although practice was not contradictory, and in fact it was a matter of non coordination of the individual editings of article 78a of the PC, but the legislator eliminated that error, and currently there is no doubt that negative prerequisites are applied for minors as well.

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International cooperation by Bosnia and Herzegovina for criminal assets recovery (lex ferenda)

Summary
This paper identifies gaps in the legal framework for confiscation of crime-related properties in Bosnia and Herzegovina. It contains legislative proposals to make confiscation procedures in the country more efficient. Particular attention is paid to the Republika Srpska Criminal Assets Recovery Act as the earliest and most used legal instrument in Bosnia and Herzegovina.

Keywords: confiscation, assets, crime, law, international cooperation

Bosnia and Herzegovina {BiH} is a complex country in Southeastern Europe located on the Balkan Peninsula. It includes 4 components, each with its own Criminal Code, Criminal Procedure Code and other laws as well. These four components are: the State Level, two entities (Republika Srpska, the Federation of BiH) and Brcko District [1, p. 3].

1. Countries executing foreign requests for confiscation of assets found in their territories (Article 14 of the UN Convention against Transnational organized Crime/UNCATOC or Article 57.1 of the UN Convention against Corruption/ UNCAC) dispose of the assets in accordance with their national laws. Most often, requested countries make laws to benefit themselves. Their laws postulate that, in general, confiscated assets shall become their property. However, requested countries do not necessarily retain all assets. Options of their redistribution exist. In particular, apart from returning any seized item to its initial possessor if s/he has acted in good faith (Articles 12.8 and 14.2.ii of UNCATOC and Articles 31.9 and 57.1, 3 of UNCAC), the confiscated property may also be shared with the informer of its whereabouts as well.

Legal regulation of such sharing of assets is recommendable. It would be appropriate having a rule in law on asset sharing between the lawful owner (mostly, the confiscating country) and the one who found and reported the assets, incl. the foreign country which by requesting the confiscation of the assets contributed to the successful result. The basic considerations for having such a specific rule in favor of the requesting country are similar to those arguments which support benefiting financially, under any national obligation law, persons who have found and returned a lost item or who have reported its whereabouts, at least. Essentially, the arguments are: to make everyone interested in providing such cooperation. Thus, the person who returns a lost item is awarded with 10% of its value, pursuant to the Republika Srpska {RS} Real Rights Law, or even up to 20% of the lost item's value, pursuant to the Armenian Civil Code, for example. Some similar share might be foreseen in favor of anyone, incl. foreign countries which help BiH to find in its territory and confiscate property which eventually would belong to its budget.

Also, international sharing of assets is widely recommended to stimulate execution of confiscation requests from foreign countries[1]. Pursuant to Point 38 (2) of the Financial Action Task Force 40 Recommendations of October 2003-4, "*there should also be arrangements for coordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets*".

At this point, bilateral agreements are the reliable legal instruments to achieve international asset sharing. It is noteworthy that asset sharing arrangements between countries find support also in multilateral UN instruments – Article 14 (3) (b) of UNCATOC. However, no multilateral convention expressly requires

[1] Asset sharing arrangements between requesting and requested countries find support in multilateral instruments, such as UNCATOC – Article 14 (3)(b).

sharing of confiscated assets. Moreover, one can hardly expect any multilateral legal solution in the near future. According to reliable information, several years ago Iraq carried out consultations for a Protocol on international asset sharing to UNCAC. However, the Iraqi initiative did not yield any positive result[2].

The issue of asset sharing has been solved to some extent in the EU by the Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. Pursuant to Article 16, when money has been obtained through the execution of a confiscation order, it remains in full with the executing (requested) country, if the amount is 10,000 euros or less. Otherwise, 50 per cent of the amount obtained is transferred to the issuing (requesting) country. This Framework Decision is liable to legislative implementation by EU countries but it is also an example worth following by the authorities in BiH as well.

A rule on international asset sharing would be particularly advantageous in regard to foreign countries with which BiH has no international agreement containing a provision on sharing of assets. As BiH is not likely to have such agreements with all foreign countries, it must rely on domestic rules of other countries on international asset sharing to benefit from it. Necessarily, BiH must develop, in turn, its own provisions on such asset sharing to ensure reciprocity.

Lastly, no international asset sharing action excludes any domestic asset sharing, incl. for the benefit of contributing state agencies in the country. On the contrary, international asset sharing might be complementary to such domestic asset sharing in pursuit of the goal to be most efficient.

Either way, domestic rules on international asset sharing are necessary. As competent public officials are in need of a law authorizing confiscation, they needs also specific provisions (international or domestic, at least) authorizing any following international asset sharing as well[3]. Otherwise, without a legal basis, no one can give any part of the confiscated property to requesting/ informing countries in order to financially stimulate them. Obviously, the act of giving in individual situations any part of the confiscated property to them without any legal authorization (international or domestic) would constitute embezzlement in office by the public official in charge unless the justification of extreme necessity or permissive risk is applicable [2, p. 89].

2. Exceptionally, *ad hoc* agreements on international asset sharing might be reached as well. In general, they are based on the principle reciprocity between

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[2] This information was received from the Iraqi authorities by the author of the current paper who worked in Baghdad (2012–2013) as the Head of the Judiciary Team of the EUJUSTLEX for Iraq.

[3] It might be appropriate to borrow the general idea of Article 20.6 of the Law of Azerbaijan on the Prevention of the Legalization of Criminally Obtained Funds: „ *... the funds or other property confiscated on the territory of the Republic of Azerbaijan may be fully or partially delivered to*" the requesting country.

requesting and requested countries. However, the country which approaches other countries with requests for confiscation may rely on reciprocity with them if its domestic legal framework for international cooperation is of good quality and does not unreasonably prevent their incoming requests from being executed.

To avoid any such unreasonable prevention, the RS Criminal Assets Recovery Act {CARA} should be improved. This Act provides for confiscation of any crime--conditioned property found in the territory of RS if some serious crime (specified in Article 2 of the Act) was committed and it has been ascertained by a local judgment – Article 28 in conjunction with Article 48 (2) of the Act[4]. The problem is that the CARA does not prescribe any confiscation if no such judgment is issuable because local criminal law is not applicable to the conditioning crime[5] at all. For this reason the CARA is not well synchronized with the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime {ECLSSC} (ratified by BiH on 01 July 2004). The Convention virtually requires some domestic law "extension" for its actual implementation in all cases where confiscation is appropriate.

According to Article 13 of this Convention, "*a Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall: (a) enforce a confiscation order made by a court of a requesting Party…; or (b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it*". Further on, pursuant to Article 14 "*the procedures for obtaining and enforcing the confiscation shall be governed by the law of the requested Party*"; under Article 15, "*Property confiscated by a Party …, shall be disposed of by that Party in accordance with its domestic law*".

Obviously, the Convention makes no exception for cases when the requested country's criminal law is not applicable to the crime conditioning confiscation. Therefore, the Convention does not free on the grounds that national criminal law is inapplicable any requested country, incl. BiH/RS, from the obligation to confiscate at incoming international requests. The importance of such confiscation, even though conditioned by a crime the requested country's law cannot be applied to, is beyond doubt, nowadays [3, p. 563].

It is true that if the assets wanted for confiscation are located in RS as a requested country, this usually is a clear indication of a money laundering crime commit-

[4] This Paragraph 2 reads: "*Provided that there is no internationally reached agreement or that some of the issues had not been defined by international agreement, international cooperation is to be reached in accordance with the provisions presented by this Act*".

[5] It is called "conditioning" as it opens the way to confiscation because the assets subject to confiscation are related to the crime (most often the link is causal: they originate from it) or because the owner is sentenced for the crime and is in possession of assets which are also confiscable on the grounds (Article 3.1 CARA) that are not explainable with his/her lawful income and are likely to originate from some other criminal activity.

ted in part, at least, in its territory. In theory, this place of commission makes the applicability of local criminal law inevitable. Hence, it seems that once RS authorities receive an international request for confiscation, they can institute own criminal proceedings for money laundering to obtain a local judgment ascertaining the commission of this crime and then proceed with the requested confiscation.

In practice though, such money laundering is hard to prove, let alone be ascertained by a local judgment. As a result, in almost all cases of incoming requests for confiscation conditioned by crimes, committed abroad to which RS criminal law is not applicable, its authorities would, inevitably, break the quoted Article 13 of the Convention. To avoid such systematic violations, counterproductive to local budget as well (see the quoted Article 15 of the Convention), the CARA should provide for an additional confiscation procedure: triggered solely on the grounds of incoming international requests for confiscation when the conditioning crime does not fall within RS jurisdiction but has been ascertained, for example, by a judgment in the requesting country. Otherwise, foreign countries may always reciprocate by refusing to grant requests from BiH (RS) for confiscation, when their national criminal law is not applicable to the conditioning crime, even if – in contrast to BiH (RS) – such confiscation is allowed under their law.

Probably, some prosecutors and judges may try to construe expansively, even apply by analogy, the CARA provisions which allow confiscation (Article 2 and 28, specifically) for the purpose of including in the confiscation grounds also the conditioning crimes committed abroad to which local criminal law is not applicable. This is hardly feasible though, especially given the general idea of the *in dubio pro reo* argument. Therefore, the positive result is likely to occur in few cases. A serious risk of a negative result would always exist.

Obviously, the lack of a clear provision allowing confiscation when local criminal law is not applicable to the conditioning crime substantiates a risk of failure. This risk created by legislative inaction cannot be justified since one simple legal text is sufficient to remove the risk and guarantee success of confiscations conditioned by crimes beyond the scope of national criminal law[6].

In the end, it is appropriate to note that e.g. Article 2.2 of the Law of Azerbaijan on the Prevention of the Legalization of Criminally Obtained Funds tried to offer an alternative solution to the problem with confiscation of assets when the criminal law of the requested country is not applicable to the conditioning crime and therefore, the crime is beyond the country's jurisdiction. This Paragraph reads**:**

[6] As far as it can be judged from BiH, Macedonia, for example, faces the same problem. Article 27 (1) of its 2010 Law on Judicial Cooperation in Criminal Matters postulates that confiscation requested by other countries shall be executed in conformity with the Criminal Code, the Criminal Procedure Code and international agreements. Obviously, national legal framework for such requested confiscation is necessary as international agreements refer to local laws regarding mechanisms of confiscation but none of the laws of Macedonia envisage the situations when the conditioning crime is beyond the reach of its local criminal law.

„*This Law shall apply to the activities related to legalization of the criminally obtained funds or other property and the financing of terrtorism outside the jurisdiction of the Republic of Azerbaijan in accordance with the international instruments to which the Republic of Azerbaijan is a Party*".

However, while focusing on conditioning crimes beyond own jurisdiction, the quoted legal text – similarly to Article 48 (1) CARA – relies only on international law. Such a legislative solution is hardly sufficient to yield a positive result since international law (Article 15 of ECLSSC) postulates that the property subject to confiscation is disposed of by the requested country "*in accordance with its domestic law*". Hence, if the domestic law returns the issue to international law, the respective country creates a vicious circle (Lat.: circulus vitiosus) only. To get out of this circle the domestic law of the requested country should expressly regulate this issue by providing that even if the conditioning crime is beyond the criminal jurisdiction of the country, the property shall, nevertheless, be confiscated if all other legal requirements are met.

3. When it comes to the Federation of BiH, the other BiH entity, one can argue that applicability of own criminal law to the conditioning crime is not always necessary for confiscation on foreign requests. This is true in part since applicability of own criminal law to the conditioning crime is not necessary in cases when requested confiscation results from recognition and enforcement of foreign judgments, incl. those which contain also some confiscation order. Therefore, this confiscation is feasible as even the recognition of such foreign judgments does not require applicability of own (the requested country's) criminal law to the conditioning crime. Once recognized, the foreign judgment is enforced together with confiscation order which it contains. As per Article 37 (2, 3) of the Federation of BiH Law on Forfeiture of Criminal Proceeds:

"(2) The decisions of the competent authorities in Bosnia and Herzegovina on the basis of the Mutual Legal Assistance in Criminal Matters Law, which require temporary forfeiture … shall be submitted to the Agency for execution.

(3) The provisions of paragraph 2 of this article are applicable to decisions of the competent authorities in Bosnia and Herzegovina, which recognize and enforce foreign judgments, if these decisions contain a measure of forfeiture of property and proceeds of crime".

It follows that the confiscation order within the judgment is executable in the requested country's territory even when its criminal law is not applicable to the offence. *Per argumentum a contrario*, though, in all other situations, where a foreign judgment is not enforced, no such a confiscation is possible even under the quoted Law, if own criminal law is not applicable to the conditioning offence. Two are these other typical situations where no foreign judgment is enforced but, nevertheless, confiscation should be carried out: when an executable foreign request for the enforcement of a separate confiscation order issued in the requesting

country has been received, and when an executable foreign request for confiscation has been received without any confiscation order issued in the requesting country – see both situations in Article 13 of UNCATOC. All this means that, like RS, the Federation of BiH has to produce a general rule allowing confiscation even when the conditioning crime is beyond own criminal jurisdiction.

4. BiH is neither a Party to the European Convention on the International Validity of Criminal Judgments, nor a Party to any other similar European instrument. This should not be a long-lasting situation as the general tendency in Europe is to comply with and implement the underlying principle of MUTUAL RECOGNITION OF JUDICIAL DECISIONS [4].

This principle cannot be avoided by BiH given its EU orientation. The said principle is reflected in Article 82 (1) (i) of the 2012 Treaty of the Functioning of EU. This provision encourages the mutual recognition of sanctions (punishments and security measures) in EU, incl. freezing and confiscation orders, and financial penalties – see Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, the Framework Decision No. 2003/577/JHA on the execution in EU of orders freezing property or evidence, the Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and the Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.

In view of all this, it is recommendable that the BiH authorities consider becoming a Party to the European Convention on the International Validity of Criminal Judgments (CETS 070). This is particularly necessary given Article 62 (1) (i) of the BiH Law on Mutual Legal Assistance in Criminal Matters. It postulates that foreign criminal judgments are executed in BiH "*only where so provided by international treaty*".

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Problems and risk management options for the transport of dangerous goods

Summary

This article examines the advantages and disadvantages of rail and road transport as options for carrying dangerous goods. A procedure for managing the risk when transporting hazardous freight has been developed.

Keywords: risk management, risk assessment, transportation of dangerous goods

Introduction

The transport sector is an essential component of the global economy and is often used for its development. In every contemporary society the level of economic growth is directly proportional to the quantity and quality of the transport infrastructure. In order to fulfill the needs of the increasingly progressing world economy, both short and long distance transportation of dangerous goods is often required.

The carriage of goods by land is always accompanied by a certain risk of an accident but if these goods are hazardous there is also the possibility of spillage which in turn leads to risks of fire, explosions and environmental damage.

The main task in the transportation of dangerous freight is to ensure security by minimizing the risk when carrying it along the entire route. This primary goal can be achieved by guaranteeing the security of all safety aspects for trouble-free transport of hazardous goods under normal conditions /packages; filling and degree of filling; marking and labeling; mixed loading; technical equipment; special safety equipment; fixing transport; driver training; loading, overloading and unloading; documents/. All of the elements mentioned above have the same connection with the accident and this relationship depends on the intensity of their impact.

The aim of this paper is to examine the advantages and drawbacks of rail and road transport as alternatives for carrying dangerous goods as well as to develop a procedure to manage the risk of the transportation of such freight by ground transport.

1. Selection of the mode of transport for the carriage of dangerous goods

When analyzing the accidents related to the transport of hazardous freight, it is essential to determine the type of transport.

Rail is the most efficient way of transporting goods over long distances and long routes. However, in the case of an accident, it can cause a range of health related, physical, and environmental and other types of damages. Because of the additional risks posed by the large amount of cargo being carried, the degree of injury and damage can be very high.

Road transport provides fast and urgent delivery of goods and cargo and is characterized by high flexibility and maneuverability, the ability to determine the route and the delivery time, furthermore rail, air and sea transport normally require its use. This type of transport features the possibility of organizing the deliveries of small packages by simply using vehicles with smaller loading capacity in order to reduce the delivery time. Very often when the dangerous goods are

being delivered by road, they pass through urban routes with heavy traffic, large commercial and industrial sites, schools, residential and public buildings. Therefore the occurrence of an accident is a precondition for the appearance of significant damages and casualties.

The choice of mode of transport requires an analysis of the technical and economic characteristics of the different types of transport, focusing on the following points: features of the vehicles, specifics of the operation, economic efficiency and others. [3, pp. 80]

On this basis, it becomes necessary to solve the following dilemma – shipping a large amount of cargo in one course using rail transport or the same amount of cargo being transported in small consignments by road. [2]

The first option includes higher costs, and the second is accompanied by a higher probability of accidents - hence the occurrence of possible damages.

The amount of dangerous goods that are being transported and the likelihood of an accident are both influential and are risk factors (as well as the probability of an accident and the severity of the damage it can cause).

Possibilities to reduce the first risk factor include:

- Increasing the amount of a load, which will reduce the number of shipments and thus the probability of an accident;
- The proper selection of a route which is less populated, outside of any industrial sites and nature reserves and with good driving conditions;
- Full information on climate and season in order to avoid slippery roads in winter /when the likelihood of an accident is twice as high/ and to restrict travels considering the temperature on traffic routes provided that the hazardous cargo that is being transported is dependent on the temperature;
- Providing quality packaging and reliable attachment of dangerous goods, which will reduce potential harm to people and the environment.

Regarding the appearance of the second risk factor / the potential damage /, the risk can be reduced by:

- Reducing the amount of cargo in each shipment, since smaller quantities of dangerous goods will lead to a lower level of damage in the case of an accident. This in turn leads to an increase in the number of shipments which on the other hand is not an effective solution from an economic perspective /the result of reducing the risk in this possibility is practically equal to a reduction of the likelihood of reducing the risk of an accident /;
- Ensuring the quality of the packaging, the loading and the securing of the dangerous goods;
- Correctly selecting the route.

Often after an analysis it is established that the first ways to reduce the two risk factors are contradictory with each other, resulting in the price becoming a leading criterion when choosing the mode of transport.

There are hazardous materials /e.g. waste / that do not cost much, but exist in large quantities which makes it possible that the cost of the transport exceeds the price of the material. In this case, the sender often chooses the cheaper transport. Any mistake can bring great losses to the organization and for that reason the manager or the freight forwarder should have a good knowledge of logistics, economics and organization and management of transport.

When analyzing the problems associated with the use of combined transport, the importance of route planning is emphasized. There should be a minimum number of overloads, storages and stops during the transportation, which can be achieved with modern methods and ways of packaging – using containers for instance.

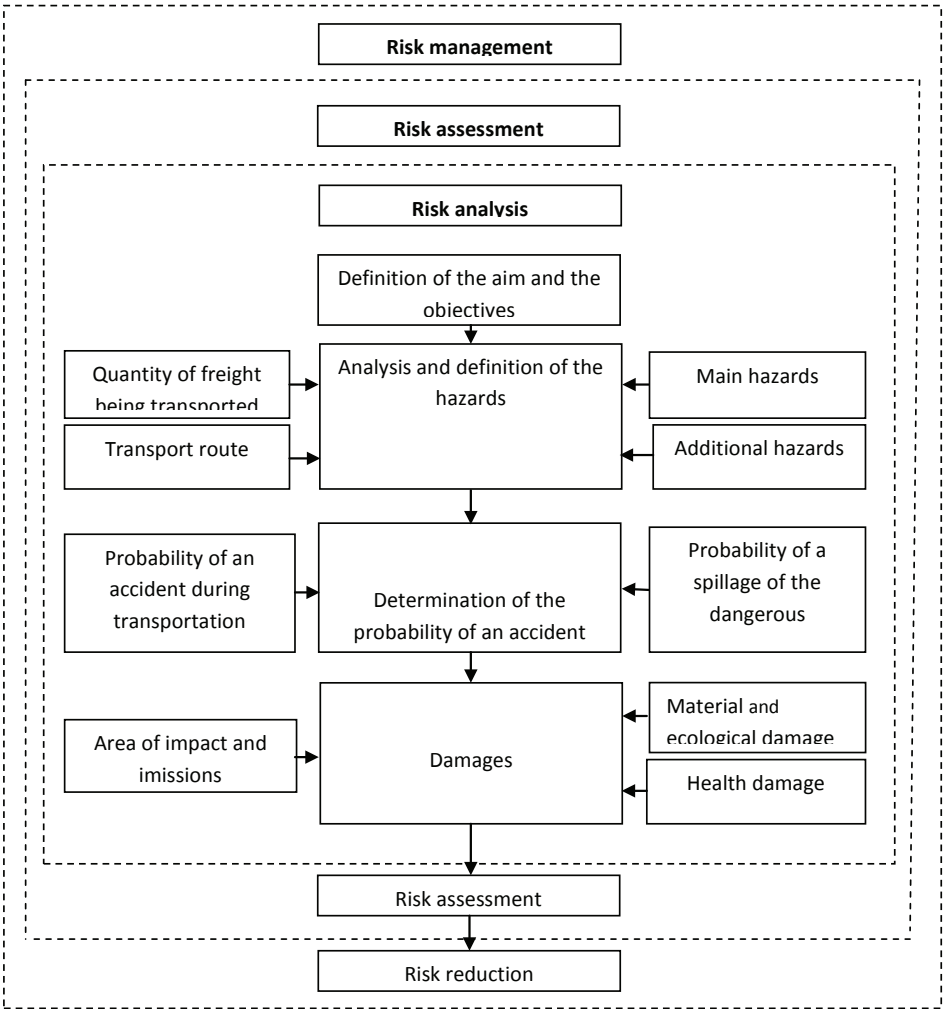
2. Risk management in the transportation of dangerous goods by road

Risk management in the transportation of dangerous goods is essential and a necessary condition for ensuring the security and safety during their carriage. In order to manage this risk successfully and accordingly reduce it to safe levels, it is necessary to analyze all types of hazards that may occur at various stages during the transport of dangerous goods.

The main stages of the procedure for managing the risk (Figure 1) are:

- Risk analysis;
- Risk assessment;
- Risk reduction.

Fig. 1. Procedure for risk management



Analysis and assessment of the risk require considerable amount of information. Basic information should include data on:

- The amount and type of dangerous goods;
- Characteristics of the designated transport route /hazardous areas, residential areas , weather and climate/;
- Alternative traffic routes;
- The number of incidents on the route for a certain period of time;
- The location and composition of the rescue services on the route.

The route has to be divided into individual road segments (these are separate road sections of the route with approximately the same characteristics) in order to make a precise assessment of the risk.

Identification of the hazards requires identifying all hazards, hazardous situations and hazardous events associated with the transport of the amount of dangerous freight with the selected type of land transport. For this purpose data for the types of hazards that may occur in case of a spill of the transported dangerous goods is required, as well as secondary hazards that can be activated depending on the location of the accident and the presence of hazardous sites in the impact area.

The probability of an accident is determined by the probability of a road accident, the probability of a spillage of the dangerous goods and the possibility of an explosion or fire with the following formula: [4]

$$P_i(I) = P_i(A).P(B|A) \quad (1)$$

where : I – random event accident;
A – random event road accident (RA);
C – random event spillage;
i – number of the road segment on the selected route.

The probability of road accidents on the route is defined as:

$$P_i(A) = \frac{N_i}{tr_i} \quad (2)$$

where: N_i – number of RA in the i-th road segment;
tr_i – traffic in the i-th road segment,
for a specific time interval.

It can be interpreted as the number of collisions to the total number of vehicles that have passed.

Spillages after the occurrence of a road accident are random events that are a realization of a random variable that has a Poisson distribution [1, pp. 14–22]

$$P(n) = \frac{(V.L)^n}{n!} e^{-VL} \quad (3)$$

where: n – number of spillages;
V – coefficient, which is determined by statistics /average number of spills per unit of length per unit of time /;
L – length of the route, m.

Formula (3) shows that for determining this probability, the presence of statistics on spillages that occurred under these conditions is necessary.

In order to determine the amount of damages, it is necessary to determine the impact zone of the accident, as well as the objects of infrastructure and people caught in this area. The shape and size of the area of impact depend not only on the substance which is being transported, but also on other factors

such as topographic relief, infrastructure, time, speed and direction of wind and others.

Various geometric shapes are used to describe this area. Traditionally, the area of impact is expected to be a circle centered at the scene of the accident and is accepted to be called "Dangerous Circle". [5, pp. 1–5] The estimated radius [6] of hazard is an important assessment, which determines the material and environmental damage, and the number of vulnerable people in the use of a specific route. The radius depends on the type of dangerous goods being transported, their amount and the time of impact on people and objects found in the "Dangerous Circle".

The risk assessment for each road segment of the route is calculated by the formula:

$$R_i = P_i(A).V_i(A) \quad (4)$$

where: $P(A)$ is the probability of damage A in the i-th road segment;

$V(A)$ – severity of the damage A in the i-th road segment.

The risk assessment for the entire route is calculated by the formula:

$$R = \sum_{i=1}^{n} Ri \quad (5)$$

where: Ri – total risk in the i-th segment,

n – number of segments.

Risk reduction is a lowering of the risk, which involves the application of methods and means for prevention and limitation of the damages. In this case this is achieved mainly by changing the route and time for transportation.

Based on this study, we can conclude that risk management in the transportation of dangerous goods by road should primarily focus on its reduction within the normal range, which can be achieved on the basis of:

1. The right choice of land transport depending on the type and the amount of dangerous goods being transported and the length of the route for their transportation ;
2. The correct choice of the optimal traffic route, taking into account the density, type and characteristics of the existing transport network. The optimal route for traffic on the one hand should be with minimal risk - satisfying the public, on the other hand – at minimal cost – satisfying the business;
3. The choice of the time of the day for the transportation of the dangerous goods, taking into account the traffic flow and the population density on the selected route at different times of the day.

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The nullity of the transaction due to the lack of form – the exception under article 293(3) of the commercial act

1. Introduction

The general rule set in Article 26, paragraph 2 of the Obligations and Contracts Act (''OCA"), that the transaction is void when the form of validity is not observed, also applies to the commercial transactions under Article 288 of the Commercial Act (''CA"), taking into account, of course, the special rules and objectives of commercial law. Apart from that, the sanction for a void transaction due to the lack of form *ad solemnitatem* is provided for in Article 293(2) CA. An important exception to this rule, however, is contained in Article 293(3) CA, according to which the party cannot rely on the nullity if it can be inferred from its conduct that it did not contest the validity of the action/statement.

The exception under Article 293(3) CA applies only to commercial transactions and it only refers to their nullity due to non-compliant written form of validity[1]. In Decision No. 94 of 9.07.2015 in case No. 2094/2014, ruled under Article 290 of the Code of Civil Procedures (''CCP"), the Supreme Court of Cassation (''SCC") expressly accepts that the rule of Article 293(3) CA refers not only to the statutory form of the transaction but also to the form explicitly agreed by the parties for concluding an additional agreement.

The provision of Article 293(3) CA is part of the general rules laid down in Part III of the CA for the conclusion of commercial transactions. Article 293(3) CA is applicable both to objective commercial transactions under Article 1(1) CA and to unilateral and bilateral subjective commercial transactions[2]. In its jurisprudence under Article 290 CCP et seq., the Court of Cassation agrees that ''*non-compliance with the legal form of validity of a commercial transaction does not automatically lead to its nullity, and this is one of the differences between commercial and civil law,*

[1] Decision No.14 of 04.02.2013 of the Supreme Court of Cassation in case No. 1201/2011.

[2] Decision No. 50 of 25.04.2012 of the SCC in case No. 95/2011, and Decision No. 66 of 05.07. 2012 in case No. 376/2011, where the rule of Article 293(3) CA is also applied to an insurance contract concluded between an individual and the insurer, which in its essence constitutes an objective commercial transaction and which has an established written form for validity.

where under the latter the nullity occurs regardless of the behavior of the parties". In commercial law, in order for the non-compliance with the form to result in nullity of the transaction, Article 293 (3) CA requires its validity to be contested. According to the SCC[3], this rule approximates the nullity due to non-compliance with the form in commercial law with partial nullity in civil law (i.e. Article 27 OCA). In other words, the nullity in case of non-observance of the form of the transaction in commercial law can be remedied by the provision of Article 293(3) CA.

2. Controversies regarding the prerequisites for the application of the provision of Article 293(3) CA

In its well-established case law, the SCC accepts that the application of Article 293(3) CA cannot be based on the mere silence of the parties, without any active conduct aimed at the legal consequences of the transaction. Article 293(3) CA does mention silence assimilated to consent but instead a behavior of the party to a transaction, from which it can be concluded that it did not dispute the validity of the statement.

For example, in Decision No.529 of 14.10.2008 in case No. 240/2008, the SCC has ruled that the prohibition on reliance on the nullity of a contract is relevant for the party who, by his/her conduct, has demonstrated acceptance of the effect of the transaction. Such conduct, from which it can be concluded that there is no objection, is the acceptance of the performance of the counterparty to the contract. Therefore, in this case, the defaulting party, who in turn has to provide performance, has no objection against the nullity of the contract, but in stead has to fulfill his/her obligations. The assessment of whether or not the conduct of either party gives rise to the conclusion that it did not contest the validity of the statement is decided on a case-by-case basis.

The case law shows concrete examples of conduct from which it can be concluded that the validity of the statement is not disputed. For instance, in case of a contract, which has not been signed by the insured, but the latter has nevertheless paid the initial installment and has brought action for damages in relation to the insurance coverage[4]. Based on Article 293(3) CA and in light of this case, it should be concluded that the absence of a signature does not lead to the nullity of the insurance contract and does not prevent the possibility of obtaining insurance indemnity. There are similar cases when the insurer has accepted the payment of an installment from the insurance premium, has accounted for the insurance

[3] Decision No.129 of 07.01.2013 in case No. 683/2011.
[4] Decision No. 115 of 23.07.2013 of the SCC in case No. 348/2012.

policy and has sent the data to the Information Center of the Guarantee Fund[5], or when the insurer has accepted the payment of the insurance premium under the insurance policy and on the basis of it has incurred damages for which he has paid compensation to the insured person[6].

3. Scope of application of the rule under Article 293(3) CA. The issue with the qualified written form and the notarial form in the context of Article 293(3) CA

The provision of Article 293(3) CA does not allow a party to a commercial transaction to rely on the nullity due to a non-compliant form under the conditions set out there. This rule is provided for the sake of security of the trade turnover[7].

3.1 The question, which arises, is whether a party to a public procurement contract can invoke the rule of Article 293(3) CA in the case of non-conformity of the content of a public procurement contract with the provisions of Article 18 and Article 19 of the repealed Public Procurement Act (''PPA'')?

The case was as follows: On the basis of Article 266, paragraph 1 OCA, the contracting authority under a contract for execution, concluded under the PPA, was ordered by the court to pay the next remuneration to the contractor, whereby as a proof of the work performed, 19 duly adopted acts were presented. Moreover, as a proof of payment, the contracting authority has also presented invoices.

In the context of the proceedings at first instance and on appeal, the contracting authority maintained an objection of nullity of the contract in question, alleging the lack of a contractual clause for the lodgement of a guarantee by the contractor, as well as a nullity of the subsequent annexes concluded with the legal prohibition of subsequent amendment of the contract of public procurement contracts without a specified deadline – e.g. violation of the legal provisions under Article 30, paragraph 2, Article 19 and Article 17, paragraph 2, of the repealed PPA. The appeal court rejected those objections on the grounds of Article 299(3) CA, arguing that it could not be inferred from the conduct of the party that it had challenged the validity of the contract.

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5 Decision No. 50 of 25.04.2012 of the SCC in case No. 95/2011.
6 Decision No.179 of 27.11.2012 of the SCC in case No. 527/2011.
7 Decision No. 201 of 12.02.2015 of the SCC in case No. 3351/2013.

According to the legal motives set in Decision No. 14 of 04.02.2013 of the SCC in case No. 1201/11, this conclusion is incorrect. It is precisely because of the specificity of the commercial transactions and ''the duty of a good trader", as defined by the law (Article 302 CA), that the decision-maker by virtue of Article 293(3) CA limits the ability of a party to invoke the nullity due to a defect in the form of validity of a commercial transaction, if it can be inferred from its conduct that it did not contest the validity of the statement at the very time it was agreed. When this party has accepted the counterpart performance, but refuses to fulfill his/her obligations, claiming non-compliance of the form of validity of the transaction, this is a manifestation of bad faith in commercial relations, which is not tolerated by the legislator.

In this case, however, the provision of Article 293(2) CA has been applied incorrectly because it is only relevant for commercial transactions and it only affects their nullity due to their non-compliant written form of validity. Therefore, Article 293(3) CA is inapplicable when it concerns the nullity of a commercial transaction due to its contradiction with the imperative provisions of the law. This follows from Article 288 CA, which refers to the provisions of the civil legislation in the cases not provided in the Commercial Act – i.e. Article 26, paragraph 1 OCA, according to which the contracts contradicting the law are void. In this way, the SCC has accepted that the form only covers the way in which the will of the parties has been expressed, and not its content. For comparison, in administrative law, the form is understood to mean both the way in which the will is expressed, and the rules prescribing particular requisites as part of the content of the will; such as the conditions of validity of the individual administrative act – e.g. the name of the author, the time and the place of the issuance of the act; the lack of those elements is qualified as lack of form.

Nevertheless, in commercial law, this is not always the case. And often, the legal norm requires that wills have certain content (i.e. the so-called requisites of the transaction – e.g. the bill of exchange, the check, the promissory note, the insurance policy, the concession contract, etc.). However, in the judgment mentioned above, the court of appeal seems to be guided by the logic that their non-compliance would lead to the defect ''contradiction of the transaction with imperative legal norms", and not to a lack of form. The author shares this understanding.

3.2 The question of the application of Article 293(3) CA in respect of contracts whose form of validity is more serious than the private written one

The provision of Article 293(3) CA speaks of a written form, but it is not clear whether it is the ordinary written form or whether it also applies to the qualified written form when the latter is raised as a condition for the validity of the con-

tracts. This question is of great practical value, since for a number of transactions, which may also be concluded as commercial transactions, the law provides for a qualified written form - certification of the signature as a form of validity of an immovable property in the capital of a commercial company (Article 73(1) and (5) CA), the transfer of shares (Article 129(2) CA), etc.

In one of its cases[8], SCC agrees that despite the provision in Article 144(1) and (2) of the Road Traffic Act, a qualified form for the transfer of a motor vehicle – i.e. written form with a notary certification of the signatures – in the absence of such an agreement and in the presence of the prerequisites under Article 293(3) CA, the party which has accepted the execution cannot rely on the nullity of the contract due to the lack of form. An invoice issued by the seller (i.e. a car dealer) and signed by the manager of the company, in which the plaintiff is mentioned as the addressee, has been presented before the court. The invoice contained a complete individualization of the sold car and the price. In addition, a copy of the cash register of the company was provided for cash paid at the same date, representing the sale price of the vehicle.

In order to reach the legal conclusions, first, the SCC refers to the practice whereby the bilaterally signed invoice is treated as compliant with the form prescribed by law. Second, it is pointed out that there is a commercial transaction with regards to the seller and that the same is valid under the conditions of Article 293(3) CA, although the invoice is signed only by seller and the signature of the recipient is missing, since there was no dispute over the validity of the latter's statements. The invoice contained all the requisites of the sale, such as the type of goods, price, method of payment, description of the parties to the transaction – i.e. the statements of the parties were recorded in a way that allowed them to be reproduced (Article 293(4) CA).

Another similar hypothesis from which it can be concluded that the rule of Article 293(3) CA is also applicable in respect of transactions for which the law requires a qualified written form for validity, is examined in Decision No. 71 of 22.06.2009 in case No.11/2009. In particular, the SCC agrees that the commercial sale of self-propelled equipment within the meaning of the Registration and Control of Agricultural and Forestry Equipment Act is not null and void, although the requirement of Article 12 of the same act that a contract for the transfer of the ownership of such equipment with an engine power of more than 10 kW must be concluded in written form with notary signature endorsement was not complied with.

The SCC justified its conclusion precisely by applying the rule of Article 293(3) CA to the case, arguing it by examining the conduct of the parties to the contract. Specifically, it was found that: (i) the question of the nullity of the contract was not

[8] Decision No. 56 of 06.10.2015 of the SCC in case No. 5143/2014.

raised by the parties because of the absence of a legally established form, nor were any evidence gathered in this respect; (ii) the seller of the self-propelled machinery has not submitted proof of compliance with the statutory form requirement but has claimed a valid contract, relied only on the invoice he has submitted and on which the parties have not disputed that it governed their contractual relations; (iii) the defendant-buyer also did not plead before the court of first instance that the contract was null and void because of a lack of form; he has merely established that he had fulfilled his obligation as a purchaser and paid in full the price stated on the invoice. In this way, the SCC has reached the well-founded conclusion that the prerequisites of Article 293(3) CA were present in the case, and as such has accepted that the transaction in question, although not concluded in the form required by law, has produced legal effect and has validly bind the parties.

3.3 The rule of Article 293(3) CA and the notarial form for the validity of the legal transactions

In its jurisprudence, the SCC has ruled on the question of whether the so-called ''amorphous form" of commercial transactions, established by the norm of Article 293(3) CA, is applicable in respect of commercial transactions in which ownership rights or limited rights in rem are transferred to immovable property for the validity of which a notarial form is established by law.

In Decision No. 201 of 12.02.2015 in case No. 3351/2013, the SCC absolutely accepts that *''Article 293(3) CA does not apply to real estate transactions between traders for whose validity a notarial form is established by law*". The reasoning of the Court is that the rule of Article 18 OCA on the notarial form of transactions concerning ownership rights or limited property rights on immovable property and the related notarial certification rules are imperative and aim to ensure the security of the civil turnover and the stability of the public relations regardless of whether the party is a trader/legal person or a natural person.

In this regard, the SCC explicitly states that: ''*The security of civil and commercial turnover and the stability of public relations relate both to the acquirer, as well as to the future transfer of ownership of the property – i.e. ensuring and proving the property ownership and establishing security for the prospective acquirer that the transaction legitimizing the transferor is genuine. If it is accepted that the provision of Article 293(3) CA does not allow a party to a commercial transaction to invoke nullity on account of a non-compliant notary form, this would mean that also in the case of a written contract for the purchase and sale of immovable property, which is not concluded in notary form (i.e. without a notary deed), if the party to the commercial transaction does not oppose it, the transaction would have a transferring effect.*"

According to the SCC, *''such an understanding and interpretation of the said rule would introduce uncertainty in the civil and commercial turnover and in view*

of the provisions of Article 112 of the Property Act, as well as the Act on the Registry on Entries, the registration of the acts transferring the right to property or the establishment, transfer, alteration or termination of another right on real estate. The purchase and sale of a real estate as a commercial transaction is not subject only to the rules of commercial transactions, as the requirements for the form and entry of the notarial deed and the transaction-related effect of the transaction are provided in civil law and are aimed at protecting the security of a larger circle of public relations than the relations only in commercial transactions.'.

4. Instead of conclusion

It can be inferred from the SCC's considerations that, in order to apply Article 293(3) CA, it is not sufficient to have present its prerequisites provided therein. In particular, the effect of that provision should be seen in the context of the general rules of civil law and civil procedures which, by means of mandatory norms, require a qualified form for the validity of transactions, the order for their execution, as well as the entry requirements, the general purpose of which is to safeguard the interests of all legal subjects, whether they are commercial or non-commercial in nature.

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Analysis of the selection of cadets in the higher military schools

Summary
The report presents the main ways of increasing the effectiveness of the two-stage selection of cadets at the higher military schools in Bulgaria from the admission and ranking to the placement in different specializations after the successful completion of the first year.

Keywords: effectiveness, selection, ranking, placement, cadets

1. Introduction

Candidates for cadets in the higher military schools in Bulgaria are subjected to a two- stage selection procedure – at the admission and after successful completion of the first year of their study the cadets are placed in different specializations. This report suggests ways to improve the effectiveness of the selection and ranking stages.

2. Comparability between the primary and the secondary selection of cadets

In search of ways to increase the effectiveness of the relation between primary and secondary selection, we collate data from three consecutive years in which the same methodology has been used. [8] The dynamics in the nature of ranking at the admission of the cadets and after completing the first year is presented by mathematical function (Formula 1) in Fig. 1. [3,4]

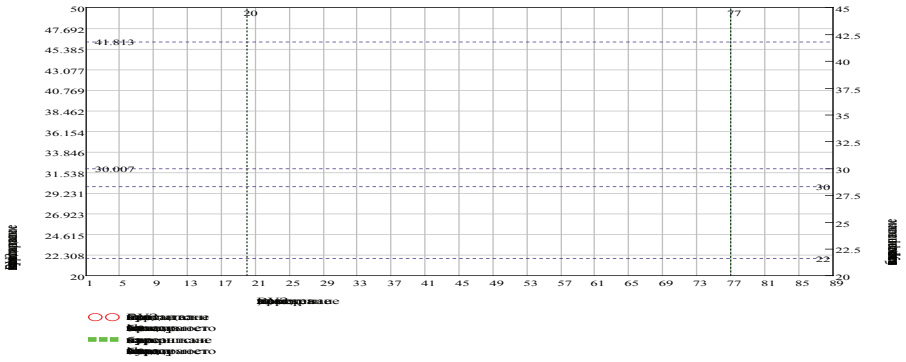

Fig. 1. Ranking of the candidates for cadets at the admission (2006) and after the completion of their 1st year (2007).

$$Обал^{I}_{курс} = f(Kr_{succ}, Kr_{mil\_sys}, Kr_{lead}, Kr_{ind}, Kr^{k}_{bal}) \quad (1)$$

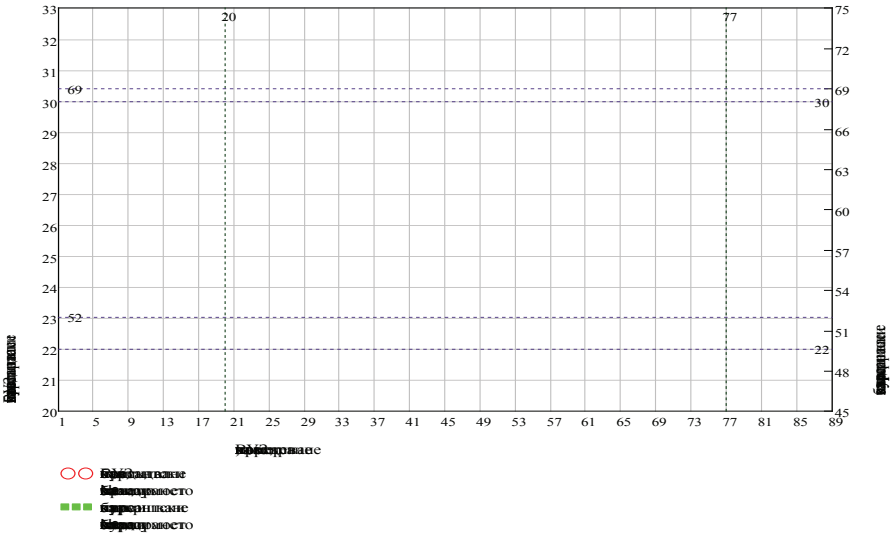

Fig. 2. Ranking of candidates for cadets at the admission in 2007 and after completion of the first year in 2008.

The difference in the ranking of candidates for cadets at the admission in 2007 and after completion of the first year in 2008 is shown in Fig. 2.

It is noteworthy that the initial ranking of candidates for cadets to be enrolled at the higher military school, for example in the range of the 20th position, there is an increase of 4-5 times in the ranking values after the first year. This is due to shortcomings in the methodology for determining the total score: $Общ^{1}_{курс}$ as a result of subjective assessments in the disciplines "Attitude towards the military system and behaviour" and "Leadership".

Meanwhile it reflects the wishes of the cadets to be distributed in a prestigious specialization and/or in the preferred one.

Another trend is observed in the ranking of the cadets after the first year in 2009. Dynamics in the change of dependencies are presented in Fig 3.

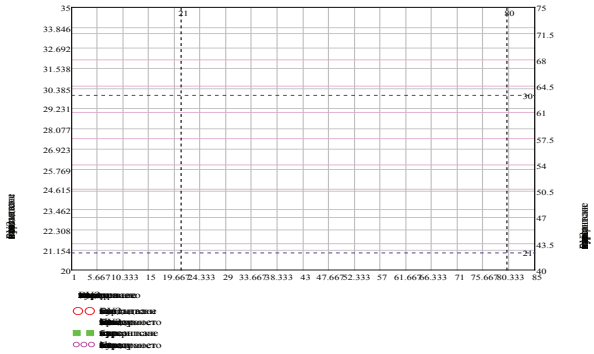

Fig. 3. Difference in the ranking of the cadets enrolled in 2008 and after the completion of their first year (2009).

Dynamics in the ranking of the cadets who completed their first year of study in 2009 show that those ranked in the first 7–10 positions have kept their positions; dependences from the 20th to the 80th position are identical, over 80th position, however, there are converging trends.
(Fig. 3.) [1].

The data show that the trend seems to be to increase the deviation in the ranking after the first year from the time of their enrollment, and the magnitude of the deviations is displayed in Fig. 5.

Fig. 5. Deviations in the ranking of cadets at their enrollment at the higher military school and after completing their first year in the period 2007–2010. [2]

The trend of changing positions in the ranking of cadets after the completion of their first year shows that over 39% of students have increased their ranking by over four positions, and 38% by more than seven positions, which means that there are inaccuracies in the initial selection of candidates. The following two fac-

tors have an impact on the deviations from the initial ranking and the one after the first year:

- subjective factor – formed by the commanders' subjective assessments under the criteria "Attitude to the military system and behavior" and "Leadership";
- pursuit of achieving higher grades in all subjects.

The complex impact of the two factors is determined on the basis of data in Table 1. and the dynamics of changes in ranking. Hence the ratios of these two factors in the overall ranking can be expressed by the relationship:

$$R^{I}_{klas} = 0.689F^{I}_{sub} + 0.311F^{I}_{succe} \quad (2)$$

The significant weight of the subjective factor influence, its value is 68.9%, may have negative influence on the second factor. On the other hand, the desire for choice of specialization is in direct relation to the pursuit of higher grades in all subjects and on this basis re-selection is done.

To reveal the cause of the discrepancies which have occurred, it is necessary that more comprehensive and thorough examination of the records of each candidate be done and on this basis determine how their success changes and the subjective factors which have the greatest impact on it. The evaluation of selection effectiveness requires a comparative analysis of the criteria for ranking and distribution of cadets upon completion of the initial selection.

3. Identification of the priorities and the hierarchy of the existing elements involved in the system of admission and training of cadets

A tool for qualitative modeling of complex problems in the system of admission and training of cadets is a procedure in which part of the elements of are components that form a candidate's score, which for the purposes of the analysis should be arranged in relative weight, i.e. priority [5,6,7].

A variant of such a hierarchy of priorities defined in the existing methods is presented in Table 1

Tab. 1. Components, arranged by relative weight, which form the total score for admission of cadets[2]

№	Elements of the methodology for admission of cadets	Relative weight	Prospective weight
1	Written examination in a subject from the curriculum of the secondary school/ state exam assessment	0.345	0.255
2	Written test in English, French or German	0.005	0.002
3	Physical fitness test	0.155	0.153
4	Psychological test	0.195	0.265
5	Medical examinations	0.255	0.325
		total 1.00	total 1.00

Relative weights ordered as per the importance of the components which form the candidate's score in perspective (Table 1) shows that the top of the hierarchy is the item Medical examinations - 0.325. It is almost equal to the elements – Written examination in a subject from the curriculum of the secondary school/ state exam assessment and Psychological test. The latter implies the need to offer options for increasing the adequacy of the system of admission and training of cadets.

4. Methodology for admission and training of cadets

Determining the effectiveness Eff_{home}^{kad} of the methodology for admission:

$$C_{kad}^{exa} = f[O_a(\text{ÄÇÈ}), T_{lang}^{exa}, T_{f\_fit}^{exa}, T_{psy}^{exa}, M_{inp}^{healt}] \quad (3)$$

On this basis, it is necessary to take account of changes to the key elements involved in the formation of C_{kad}^{exa}, the most important of which is Changes in the relative weight of the written competitive examination in a subject from the curriculum of secondary school / assessment of the state graduation exam. The ranking of each candidate for a cadet, according to the methodology for total score formation is determined by the formula:

$$Bal_{other}^{s} = 2O_a + O_b + O_m + O_f + (O_e) \quad (4)$$

The total score of the candidates for cadets is presented in separate intervals which range from 20.00 to 33.00 and the number of candidates in each interval has similar laws for the distribution of magnitudes.

By using the average data for the admission of cadets for 2006–2012, the laws on distribution as per candidate's total score between these dependencies is shown in Figure 6.

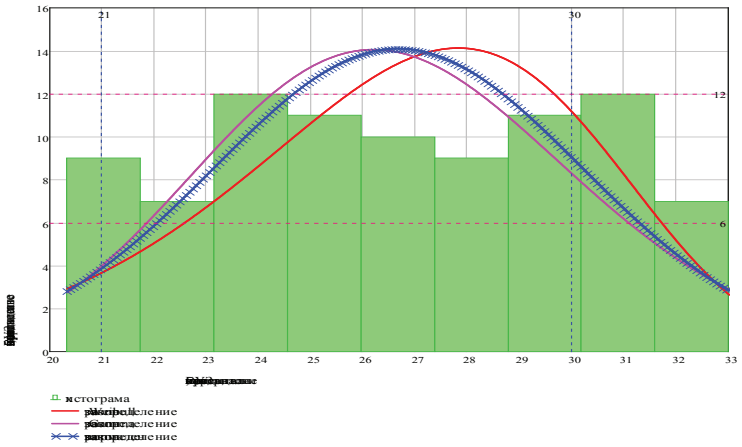

Fig. 6. Laws on distribution of candidates' total score by intervals on admission to a higher military school for the period 2006–2012

These dependencies related to the distribution into intervals of the total score of a candidate obey the normal distribution law. The remaining laws on distribution take into account the proximity of the data of the histogram to higher values of the deviations than the actual values. The special feature of the presented histogram is the relation of the number of prospective cadets enrolled with total score less than 21,00.

An important part in increasing the efficiency of the method of admission of cadets is the particularity of the relation: candidate's total score and the assessment of the admission exam or assessment of the state exam.

Data used with average values concerning the admission period 2006–2012, the specifics are presented in Fig. 7.

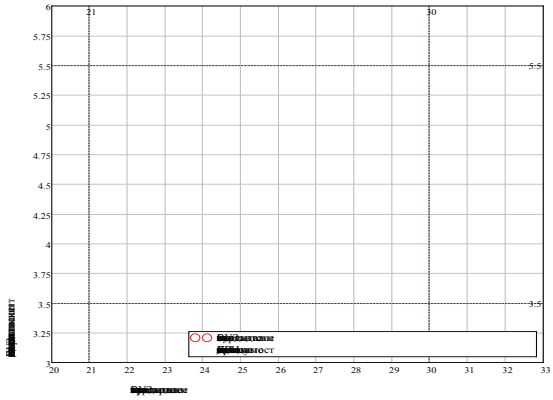

Fig. 7. Relation between candidates' total score and the assessment of the admission exam or state exam upon entering university for the period 2006–2012. [2]

The relation between the values of the admission score and the assessment of the speciality or the state exam for entering higher military school consists of two main parts. One is approximately linear – in $21.00 \le Bal_{kad}^{s} \ge 30.00$, the other – highly nonlinear in $Bal_{kad}^{s} \le 21.00$.

Specificities between critical points show that: between critical point № 1 and № 2 the range of the admission score is: $20.50 \le Bal_{kad}^{s} \le 21.00$, which is a decreasing function compared within $3.505 \le O_a \le 3.559$. And at values $20.00 \le Bal_{kad}^{s} \le 20.50$, it is respectively $3.15 \le O_a \le 3.505$, expressed by the relation between critical points №2 and №3 which is approximately four times reduction in the value of O_a in comparison to the magnitude of the total score. That dependence is due to the assessments obtained by the candidates at the admission exams in different subjects, and taking into account the formation of Bal_{kad}^{s} test scores of the Psychological test.

For example, should all other conditions be equal and the entrance score is 17,00 and the assessment is $O_c = 3.00$, it is still possible to form $Bal_{kad}^{s} = 20.00$, which is implausible for the admission procedure. Furthermore, candidates who have total score $20.00 \le Bal_{kad}^{s} \le 21.00$ always – in the ranking after the first year and after completing their study –90...95% of them keep the same positions, which substantially reduces the quality of education. To compensate for this, it is advised that the minimum score be changed to $Bal_{kad-min}^{s} \ge 21.00$**.** Under this condition, the assessment of the competitive exam or the assessment of the state graduation exam needs to be $O_a \ge 3.5.$. Moreover, the nature of the relation between points № 5 and № 6 is linear, where $21.00 \le Bal_{kad}^{s} \le 25.00$ and can be expressed by a linear equation. And the relation between points №6 and №7 is linear as well, where $25.00 \le Bal_{kad}^{s} \le 30.00$ with significant values of the coefficient a .

Hence, to increase the efficiency of the selection procedure of candidates for cadets and bring it closer to the ranking after the first year of study, it is essential that mandatory minimum score of 21.00 be introduced for all candidates.

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The right to security in the case of a. and others v. the United Kingdom

Summary

This report addresses the right to security in the face of a real danger of terrorist acts. The role of the State guaranteeing public security within the framework of the right to freedom of the individual.

Keywords: right, liberty, security, proportionality, terrorism, arbitrary, responsibility

The right of security is based on the need to guarantee the life and health of its citizens and the respect for public order. Article 5 of the ECHR protects "the right to liberty and security". The term „freedom" is interpreted by the court as a basic human right, which includes „the physical freedom of the person"[1]. The obligation of the state to ensure the security of its citizens and the rule of law by ensuring that the right to liberty is based on the general purpose of Article 5 – no one should be deprived of his liberty in an „arbitrary way"[2].

The facts

The case was examined by the Grand Chamber of The European Court of Human Rights. An appeal was lodged against the United Kingdom of Great Britain and Northern Ireland by eleven non-United Kingdom nationals. The applicants alleged, in particular, that they had been unlawfully detained, in breach of Articles 5 § 1 of the Convention and that they had not had adequate remedies at their disposal, in breach of Articles 5 § 4 of the Convention.

After the events of 11 September 2001 the United Kingdom joined with the United States of America in military action in Afghanistan, which had been used as a base for al-Qaeda training camps. As the main reason the Government contended that international terrorists, notably those associated with al-Qaeda, had the intention and capacity to mount attacks against civilian targets on an unprecedented scale. In the Government's assessment, the United Kingdom, because of its close links with the United States of America, was a particular target from network for Islamist terrorist operations linked to al-Qaeda. They considered that there was an emergency of a most serious kind threatening the life of the nation. Moreover, they considered that the threat came principally, but not exclusively, from a number of foreign nationals present in the United Kingdom, who were providing a support.

On 11 November 2001 the Secretary of State made a derogation order under section 14 of the Human Rights Act 1998 in which he set out the terms of a proposed notification to the Secretary General of the Council of Europe of a derogation pursuant to Article 15 of the Convention based on an existing state of emergency. As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, *inter alia*, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic-law powers. A number of these foreign nationals could not be deported because of the risk that they would suffer treatment contrary to Article 3 of the Convention in their countries of origin.

The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. This is a measure which is strictly required by the exigencies of the situation. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ('SIAC'), will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, it will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

Compared to Domestic-law powers of detention – the Immigration Act 1971 persons can be detained while waiting for their removal or deportation. This power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful [3].In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 5 § 1 (f) as interpreted by the Court in the Chahal case[4].

The first seven applicants have challenged the legality of the derogation, claiming that their detention under the 2001 Act was in breach of their rights under Articles 14 of the Convention in proceedings before SIAC. The Special Immigration Appeals Commission did rule that the derogation was unlawful because the relevant provisions of the 2001 Act unjustifiably discriminated against foreign nationals, in breach of Article 14 of the Convention. The powers of the 2001 Act could properly be confined to non-nationals only if the threat stemmed exclusively, or almost exclusively, from non-nationals and the evidence did not support that conclusion.

Contrary to the view of SIAC, the Court of Appeal held that the approach adopted by the Secretary of State could be objectively justified. There was a rational connection between the detention of non-nationals who could not be deported because of fears for their safety, and the purpose which the Secretary of State wished to achieve, which was to remove non-nationals who posed a threat to national security. The Court of Appeal added that it was well established in international law that, in some situations, States could distinguish between nationals and non-nationals, especially in times of emergency.

The House of Lords found that the applicants' detention under Part 4 of the 2001 Act did not fall within the exception to the general right of liberty set out in Article 5 § 1 (f) of the Convention. Lord Bingham summarised the position in this way: "A non-national who faces the prospect of torture or inhuman treatment if returned to his own country, and who cannot be deported to any third country, and is not charged with any crime, may not under Article 5 § 1 (f) of the Conven-

tion and Schedule 3 to the Immigration Act 1971 be detained here even if judged to be a threat to national security" (see Lord Bingham, at paragraphs 8–9) [5].

The majority of Lords also examined whether the detention regime under Part 4 of the 2001 Act was a proportionate response to the emergency situation, and concluded that it did not rationally address the threat to security and was a disproportionate response to that threat. They relied on three principal grounds: firstly, that the detention scheme applied only to non-nationals suspected of international terrorism and did not address the threat which came from United Kingdom nationals who were also so suspected; secondly, that it left suspected international terrorists at liberty to leave the United Kingdom and continue their threatening activities abroad; thirdly, that the legislation was drafted too broadly, so that it could, in principle, apply to individuals suspected of involvement with international terrorist organisations which did not fall within the scope of the derogation. In addition, the majority held that the 2001 Act was discriminatory and inconsistent with Article 14 of the Convention, from which there had been no derogation.

The European Commissioner for Human Rights to the Council of Europe published opinion on certain aspects of the United Kingdom's derogation from Article 5 of the Convention and Part 4 of the 2001 Act. In that opinion he expressly criticised the lack of sufficient scrutiny by Parliament of the derogation provisions and questioned whether the nature of the al-Qaeda threat was a justifiable basis for recognising a public emergency threatening the life of the nation. He expressed emphasising that as a result of his visit he was in a position personally to testify to "the extremely agitated psychological state of many of them". The Commissioner also expressed a conclusion about the availability under the law of the United Kingdom of alternative measures to combat the threat of terrorism.

In relation to the conditions of detention and the effect of detention on the applicants' health the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the detained applicants and made a number of criticisms of the conditions in which the detained applicants were held. On the occasion of inhumane conditions a group of eight consultant psychiatrists prepared a Joint Psychiatric Report on the detained. The Report has concluded "The problems described by the detainees are remarkably similar to the problems identified in the literature examining the impact of immigration detention. This literature describes very high levels of depression and anxiety and eloquently makes the point that the length of time in detention relates directly to the severity of symptoms and that it is detention *per se* which is causing these problems to deteriorate".

In view of these events the Government announced their intention to repeal Part 4 of the 2001 Act and replace it with a regime of control orders, which would impose various restrictions on individuals, regardless of nationality, reasonably suspected of being involved in terrorism and withdrew the derogation notice.

The law

The Court must consider the proceedings the certification proceedings in respect of each of the detained applicants in the light of the statements made by the parties, referring to the open materialc presented in the proceedings. It notes that the open materialc against the sixth, seventh, eighth, ninth and eleventh applicants contained detailed information about their actions. It considers that these allegations were sufficiently detailed to permit the applicants effectively to challenge them. It does not, therefore, find a violation of Article 5 § 4 in respect of the sixth, seventh, eighth, ninth and eleventh applicants.

With respect to the first, eleventh, third and fifth the Court does not consider that these applicants were in a position effectively to challenge the allegations against them. There has therefore been a violation of Article 5 § 4 in respect of them. The Court also found that there was a risk of the lack of proportionality of the measures taken to ensure the right of security to the right to freedom of the individual. It follows that there has been a violation of Article 5§ 1.

The court unanimously has held that there has been a violation of Article 5 § 4 in respect of the first, third, fifth and tenth applicants but that there was no violation of Article 5 § 4 in respect of the sixth, seventh, eighth, ninth, eleventh applicants and there has been also a violation of Article 5 § 1 of the Convention for all the affected complainants. The Court notes that the above violations could not give rise to an enforceable claim for compensation by the applicants before the national courts. It follows that there has been a violation of Article 5 § 5.

Reasoning

The Court considers that the House of Lords was correct in holding that the impugned powers were not to be seen as immigration measures, where a distinction between nationals and non-nationals would be legitimate, but instead as concerned with national security. Part 4 of the 2001 Act was designed to avert a real and imminent threat of terrorist attack which, on the evidence, was posed by both nationals and non-nationals. The choice by the Government and Parliament of an immigration measure to address what was essentially a security issue had the result of failing adequately to address the problem, while imposing a disproportionate and discriminatory burden of indefinite detention on one group of suspected terrorists. As the House of Lords found, there was no significant difference in the potential adverse impact of detention without charge on a national or on a non-national who in practice could not leave the country because of fear of torture abroad.

The argument of the Government in only to confining the measures to non--nationals, to take into account the sensitivities of the British Muslim popula-

tion in order to reduce the chances of recruitment among them by extremists. However, the Government have not placed before the Court any evidence to suggest that British Muslims were significantly more likely to react negatively to the detention without charge of national rather than foreign Muslims reasonably suspected of links to al-Qaeda. In this respect the Court notes that the system of control orders, put in place by the Prevention of Terrorism Act 2005, does not discriminate between national and non-national suspects.

In conclusion, therefore, the Court, like the House of Lords, and contrary to the Government's contention, finds that the derogating measures were disproportionate in that they discriminated unjustifiably between nationals and non-nationals. It follows that there has been a violation of Article 5 § 1.

Article 5 § 4 guarantees a right to "everyone who is deprived of his liberty by arrest or detention" to bring proceedings to test the legality of the detention and to obtain release if the detention is found to be unlawful. It entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness" of his or her deprivation of liberty. The notion of "lawfulness" under Article 5 § 4 has the same meaning as in § 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1.

The reviewing "court" must not have merely advisory functions but must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful [6]. The proceedings must be adversarial and must always ensure "equality of arms" between the parties. In remand cases, since the persistence of a reasonable suspicion that the accused person has committed an offence is a mandatory condition for the lawfulness of the continued detention, the detainee must be given an opportunity effectively to challenge the basis of the allegations against him [7].

In Chahal, the applicant was detained under Article 5 § 1 (f) pending deportation on national security grounds and the Secretary of State opposed his applications for bail and habeas corpus, also for reasons of national security. The Court recognised that the use of confidential material might be unavoidable where national security was at stake but held that this did not mean that the executive could be free from effective control by the domestic courts whenever they chose to assert that national security and terrorism were involved. The Court found a violation of Article 5 § 4 in the light of the fact that the High Court, which determined the habeas corpus application, did not have access to the full material on which the Secretary of State had based his decision. Although there was the safeguard of an advisory panel, chaired by a Court of Appeal judge, which had full sight of the national security evidence, the Court held that the panel could not be

considered as a "court" within the meaning of Article 5 § 4 because the applicant was not entitled to legal representation before it and was given only an outline of the national security case against him and because the panel had no power of decision and its advice to the Home Secretary was not binding.

The urgent need to protect the population of the United Kingdom from a terrorist attack and the right of the applicants under Article 5 § 4 to procedural fairness must be balanced. Although the Court has found that the applicants' detention did not fall within any of the categories listed in sub-paragraphs (a) to (f) of Article 5 § 1, it considers that the case-law relating to judicial control over detention on remand is relevant, since in such cases also the reasonableness of the suspicion against the detained person is a mandatory condition. Moreover, in the circumstances of the present case, and in view of the dramatic impact of the lengthy – and what appeared at that time to be indefinite – deprivation of liberty on the applicants' fundamental rights, Article 5 § 4 must import substantially the same fair-trial guarantees as Article 6 § 1 in its criminal aspect [8].

The right to security is a fundamental human right. Its observance and assurance by the government must not lead to the violation of other basic human rights. The case of A. and Others v. The United Kingdom reflects the need for safeguards to prevent arbitrary action against the individual's right to liberty and security. Public security meets the needs of citizens for the right to safe living, but not to make decisions about the violation of basic human rights- the right to freedom in the face of fear of terrorist acts.

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Risk mapping system of threats to human security and critical infrastructure during mass events and its application in big municipalities

Summary

The article offers a system for monitoring and early warning of threats to human security and critical infrastructure in big municipalities during mass events. The main outcome of the EU project SMART CIBER, where Varna Municipality is in partnership, is to create a model of a digital map revealing the level of "Risk" and its location through the intersection of several pre-defined risk-indicators.

Keywords: terrorism threat, critical infrastructure, mass event, risk assessment, digital map, clusters of information, indexes and indicators

As noted in the Handbook for police and security authorities concerning cooperation at major events with an international dimension, III.2.3 Terrorist Threats, due to the fact that the European Union and some of its Member States are important players in international politics, the European Union and its Member States are likely to be targets of politically or religiously motivated international terrorists. [1, p. 10] In the document is presupposed that apart from international terrorists attacking the European Union or its Member States at major events there is a possibility of attacks by terrorist groups or organizations located within the European Union or its Member States. The aims of such terrorist attacks could be the event itself, VIPs, politicians of the European Union, national delegations of Member States or the public taking part in the event.

The presence of the international media is an important point from the perpetrators' perspective, since this offers a platform for the presentation of the group's or organisation's ideology. For the prevention of terrorist attacks information and intelligence about terrorist groups and organisations is essential and ought to be available at all times. Therefore, it is important for the organising Member State and its law enforcement agencies to share information and intelligence in general and as appropriate to the event. The law enforcement agencies should decide which terrorist groups and organisations – and individual persons – could be relevant, and check their own data base according to the event. In addition, all other Member States should independently contribute relevant information with respect to those persons, groups and organisations. The selection of suitable, necessary and appropriate security measures should be based on threat assessment and risk analysis.

In the annual report, Europol's Director notices that "… the threat [of al-Qaeda – inspired terrorism] has evolved and lone actors or small EU-based groups are becoming increasingly prominent, as is the Internet as a key facilitator for terrorism-related activities" [2, p. 7]. It is concluded that 2011 presented a highly diverse terrorism picture which would probably be mirrored in 2012, with a possible increase in lone and solo actor plots [2, p. 8]. "…the incidents in Norway in July 2011 prove that attacks performed by individually-operating actors are not a practice limited to al-Qaeda inspired terrorism" [2, p. 11].

Some key judgments in the paper are made. Firstly, numbers of terrorist incidents and arrests continue to fall, but overall activity relating to terrorism and violent extremism still represents a significant threat to EU Member States. Secondly, "…The different modi operandi used in the violent extremist incidents in Norway in July 2011 … has demonstrated the devastating effect of firearms. Since the Mumbai attacks of 2008, the potential impact of a successful firearms assault has been obvious and may be chosen by future attackers" [2, p. 34].

The picture of terrorism threat in Europe described above requires increased joint efforts of Member States to gather preliminary information to prevent and

protect people and critical infrastructure, especially in large municipalities in conducting mass events. Evaluating the security-related risks and risks of terrorism assaults and their assessment is an indispensable tool for reaching the goal successfully.

The project **SMART CIBER** (System of Maps Assessing Risk of Terrorism against Critical Infrastructures in Big Events Rallies) is directly financed by "The Prevention, Preparedness and Consequence Management of Terrorism and other Security-related Risks" (CIPS) programme under the European Commission General Department of Home Affairs. The programme is designed to protect citizens and critical infrastructures from terrorist attacks and other security incidents. It does this by fostering prevention and preparedness, particularly by improving the protection of critical infrastructures. At the same time, projects address consequence management – a key component for the smooth coordination of crisis management and security actions, in particular following terrorist attacks.

Over 140 million euro for the period 2007–2013 has allocated by the European Union for operational cooperation and coordination actions (strengthening networking, mutual confidence and understanding, developing contingency plans, exchanging and disseminating information, experiences and best practices). [3]

The project SMART CIBER is carried out by the Municipality of Milan along with Università Cattolica del Sacro Cuore, Municipality of Varna (Bulgaria), Municipality of Budapest (Hungary), Safety Region of Rotterdam (the Netherlands), Region Lombardia (Italy) and the United Nations Interregional Crime and Justice Research Institute (UNICRI). It aims at improving the assessment of the risk of terrorism against critical infrastructures at EU level (public transport, electricity, water, gas, etc) in metropolitan areas, with a special focus on big events. Starting from the experiences of four European countries (Italy, the Netherlands, Hungary and Bulgaria), the project wants to develop an "Integrated Risk-Map Against Terrorism Issue", informatics map revealing the level of "Risk" and its location through the intersection of several pre-defined risk-indicators.

The project objectives can be summarized as follows: 1) to create, promote and support the development of a model for the protection of critical infrastructure, with particular emphasis on to the methodologies for risk assessment; 2) to improve the information management about critical infrastructures; 3) to achieve the integration of all risk maps belonging to subjects involved in the prevention of terrorist attacks; 4) to establish specific indicators helpful to report on the map the risks of terrorist attacks against critical infrastructure providing a regular update of such a mapping; 5) to use a private network that includes the whole partnership, so that everyone has a standard diagnostic framework and constantly updated list of potential risks.

Specific tasks and actions arising from these objectives are: 1) Defining indicators. The aim is to identify empirical and objective indicators which can be shared

by all partners in order to measure terrorism risk; 2) Comparative analysis and experience sharing. This task requires drawing a comprehensive picture of system and methodologies in place in the EU regarding risk assessment in order to share best practices; 3) Model of integrated mapping of terrorism risks. This means to elaborate a mapping model based on terrorism risk indicators integrating critical areas for big events; 4) Organizational and technological aspects. This task is connected with defining the conditions to make the mapping model useable in all partner countries; 5) Tests in Milan, Rotterdam, Budapest, Varna. The task is focused on validating the model in each city; 6) Final elaboration of methodological tool. It is based on tests, to develop the operational guidelines for mapping risks and replicate the model in other contexts as well as use it as a tool for risk assessment at EU level; 7) Dissemination of the results. The aim is to familiarize stakeholders with risk assessment mapping system in view of its wide application and further development.[4]

Project SMART CIBER target groups in Bulgaria

The first project SMART CIBER target group is Varna Municipality, Directorate "Security Management and Public Order Control'**.** It has the following departments: 1) Defensive and Mobilization Preparation; 2) Civil Protection Operations; 3) Classified Information and Video Surveillance; 4) Public Order Protection with its subdepartments Public Order sector and Environmental Control sector; 5) Construction Control and Supervision and 6) Commercial Activity and Tourism Control with its subdepartments Commercial Activity Control sector and Tourism Control sector. Most of the rights and responsibilities of these municipal structures are focused towards strategic planning, coordination and information management, policy making and management of the risk maps, rather than law and security enforcement itself.

Nevertheless, there is a functioning structure – registered as a separate legal entity with a 100% ownership of the Municipality – which is entrusted particularly with the security, prevention and protection of certain public infrastructural facilities: the Municipal Security Company or as it is also known, the Municipal Police.

Facilities, guarded by the Municipal Security company ("Municipal Police") are: "Prostor" Sports complex, "Primorski" swimming complex, "Chaika" tennis court complex, "Vinitsa" equestrian facilities, "Lokomotiv" Sports complex, "Delfini" swimming pool, "Vladislavovo" Stadium, Municipal Sports Complex, "Asparuhovo" rowing facilities, "Mladost" and "Primorski park" sports complexes, "Youth Centre" Municipal facilities. In addition to all these sports infrastructures the Municipal police has the responsibility to ensure the security of the Port Warehouse facilities; the Open-Air Amphitheatre and both large city parks – Pri-

morski and Asparuhovo – are patrolled by their vehicles, as are all city pedestrian underpasses. Their furthermost responsibility is the Aladzha Monastery complex on the outskirts of the City.

As it is evident, most of these structures are largely recreational. For all other critical infrastructures (CI) the responsibility of providing for their security lies completely with the private or public operators and infrastructure owners. Should they be of public interest, they are also within the competence of various public order and law enforcement organizations – the second project SMART CIBER target group. With all of the below-listed organizations the Municipality and its "Security Management and Public Order Control" Directorate has daily working relationships and frequent collaborations:

1. Ministry of Interior:
   a. Represented locally by the Provincial Police Directorate of the MI and its five District Police Precincts, based on the City territory.
   b. The other separate enforcement subdivisions of the MI are:
      i. National Police Service – incl. Specialized Police Forces and National Gendarmerie Service – deployed specifically to secure important facilities and buildings, to respond to riots and counter militant threats – an intermediate form between Police and Army forces.
      ii. Border Police Service (with applicability in Varna as well)
   c. Fire Safety and Civil Protection Chief Directorate has taken over the functions of the recently closed national "Civil Protection" service, which aims to prevent and act in cases of natural disasters, accidents, terrorist threat and military preparations.
2. National Security State Agency has counterespionage duties. It also includes Organized Crime Service with special and ad hoc duties.
3. Ministry of Defense
4. Private security contractors, which obtain permits with the MI structures.

The main aim is all local and regional law enforcement organizations to be directly involved in implementing "the risk maps" by sharing information and contributing constantly to their continuous elaboration.

The third project SMART CIBER target group is the largest and it comprises of CI stakeholders – public or private. These can include infrastructure managing agencies, municipal, national or private event organizers, 'crisis scenario' teams, researchers, inter-institutional task forces, etc.

The transportation services in Varna are both public and private. The Municipality aims to implement a new and general reorganization of its integrated services; but about 40% of the city's public transportation means would remain private, although tied to the general administrative city planning, mapping and systematic approach. Energy supply services are all private. Water Supply and

Sanitation services are all public, with 51% belonging to the Ministry of Regional Development and 49% to the Municipality. Local roads, bridges etc. are owned by the Municipality. The Port is State-owned. Almost all other culturally and socially significant buildings are privately owned.

The perceived fragmentation of ownership and responsibility consequently transfers into various databases, monitoring systems, control and enforcement procedures. However, all critical infrastructure planning and permit issuing is done (or at least coordinated) at a centralized local and national level. Information Security departments are maintained at the different levels by the City and Regional administrations, as well as the Ministries of Internal Affairs and of Defense.

Project SMART CIBER beneficiaries in Bulgaria are: 1) The Ministry of Interior – maintaining and coordinating public security forces; observing laws and procedures adopted to prevent and combat instances of terrorism; adopting and implementing the law enforcement to create the adequate procedures to prevent and repress 'risk scenarios' about the terrorism threat; 2) Public security forces at all levels – Regional Police Directorate, Specialized Terrorism Combat Forces, National Services for Combat against Organized Crime, etc.; 3) The 'Capital of Culture 2019' initiative committee, to be transformed into an organizing body, with the model for prevention against terrorist risks; 4) Civil Society, all inhabitants and guests of the City of Varna, receiving actual and potential protection as European citizens – if and when under threat benefiting from the policies and forces in place to combat such risks.

As it was mentioned above, the main project outcome is to create a model of integrated mapping of terrorism risks on the basis of identification of empirical and objective indicators and critical analysis on the interconnections between them. The system of indices and indicators for the model can be reached through at least three different perspectives (approaches).

The first approach is based on structural data (demographic indicators), which have been adopted from the city map of Turin (Italy) and can be adapted, according to the requirements of the project SMART CIBER. It has already been tested as a system through specific software. [5]

As an optional approach for selecting data, it can be used the EVIL DONE model. [6, 7] The EVIL DONE model is based on the theories of situational criminology applied to terrorism and acts as a tool that, although still in the process of development, has already been tested by the police in various countries especially to assess the attractiveness and exposure to risk of potential targets of terrorism. For the SMART CIBER project this is very interesting because, firstly, the model is set in the perspective of "Big Events" and "Critical Infrastructure", which are by definition "attractive" targets; and secondly, it can provide operational guidance with respect to the evolution of risk scenarios, indicating the criticality of specific

areas of the city. EVIL DONE is an acronym in which each letter represents a characteristic of the object analyzed (area, place, CI, etc.).

In the final part of the article would be present a detailed model of a digital map which can be tailored by project partners according to their legal, cultural and social framework in order to make it operational within their specific contexts and to identify who can provide relevant information (e.g. structural data), as well as to develop future cooperation with the Critical Infrastructures, classified as highly potential targets of terrorism according to the EU Council Decision n° 2007/124/EC about a Program of Prevention, Preparedness and Consequence Management of Terrorism and Security related Risks [8] and the specific Action Plan on Critical Information Infrastructures Protection (CIIP) – COM (2009) 149. [9]

In order to construct an integrated digital risk map from methodological point of view there have to be defined clusters of information, indexes and indicators. Clusters of information are the perspectives of the observation ("what we look at"). The index is a theoretical category that serves to guide the observation ("the focus of the observation"). Indicators are empirical facts/data that serve to measure the extent of a phenomenon ("what we collect"). Namely, a phenomenon is looked at through a specific focus of observation (clusters + indexes) in order to collect relevant and measurable empirical data (indicators).

In the course of the project at least 3 clusters are selected: 2 concern the risk map while the last deals with further developments on the basis of some limits.

1. Cluster 0: set of data focused on specific structural data (geo-location).
2. Cluster 0.0: set of "sensitive targets" belonging to the Critical Infrastructures (CI) & the Big City (BC) contexts (geo-location).
3. Cluster 0.1: indicators of social uneasiness drawing on the cluster 0 (geo-location).
4. Cluster 1: critical infrastructures, namely relevant indicators focused on critical infrastructures related to early warnings (EWs) and red flags (RFs) (geo-location).
5. Cluster 2: big cities, namely relevant indicators within the urban context related to early warnings (EWs) and red flags (RFs) (geo-location).
6. Cluster 3: resilience opportunities (further developments).

Indexes are used in order to measure risk alerts. Early Warnings (EWs) are weak signs that should raise risk alerts, especially if matched with other data. On the map EWs have to be represented with a light red color (static). Red Flags (RF) measure medium or high risk. On the map, RFs have to be represented with a dark red color (dynamic). EWs turn into RFs on the basis of: 1) Repetitions (% of a single indicator; % interaction among indicators that is data matching); 2) Spatial proximity (two or more than two indicators in the same area).

The limits of this approach can be summarized as follows: 1) The observers are mainly the local police, therefore there is a lack of other crucial data collected

by, for instance, the state police; 2) Selective attention with the consequent risk of ignoring important EWs; 3) The training which needs to be homogenous and focused on "what to look at"; 4) Technological differences among the partners; 5) Technological determinism: risk of relying exclusively on technology without taking into account a more socio-technical approach to security devices; 6) This model is not sufficiently predictive and literature has highlighted the impossibility of predicting through indicators only.

Some recommendations have to be implemented in order the outcome of the project – the digital risk map to become a useful tool for local risks of terrorism and other related risks to be predicted.

- At utmost importance is to develop training activities (theory & practice) specifically addressed to local police agents & critical infrastructures employees;
- It is crucial to develop a network of info-sharing among the involved institutions and stakeholders (CI and Municipality of Milan) through an "official agreement";
- It is also crucial to define the responsibility-sharing (who is responsible for what) through an "official agreement";

The institutions and stakeholders involved in should define a specific protocol about "mass-media communication and approach" in case of emergency events (safety/security: ex. terrorist attack).

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Assuring security of migrants and refugees – Bulgarian perspective

Summary

The presence of a refugee wave often results in negative consequences for the receiving refugee countries. Typically, a refugee is forced to leave his country of origin due to a legitimate fear of persecution and could seek protection under international law. Migration is the movement of people from one place to another for the purpose of permanent or non-permanent residence, usually by crossing a national border.

Migration policy has as its aim to ensure an effective management of migration flows, fair treatment of citizens and provision of an area of freedom and security for everyone.

This article focuses on protection mechanisms provided in Bulgaria, as well as main characteristics of the right to personal freedom and security, which should be respected by all countries, as regulated by international legal instruments for protection of human rights.

Keywords: security, migrants, refugees, protection, legislation

Successful management and regulation of migration processes is an important tool for the development of each country and the migration and integration of immigrants as a key moment at national, regional and global level.

The word "migration" originates from Latin – migratio, migro, meaning relocating, migrating. Migration is related to a change of permanent residence. It is not just a movement of people but a complex social process that affects many countries, the socio-economic life of entire communities and individuals. Migration is the movement of people from one place to another for the purpose of permanent or non-permanent residence, usually by crossing a national border.

Migration flow is the process of movement of parts of the population at the same time from one geographic territory to another. The strength of a migration flow depends on two conditions: the number of population in the regions between which migration flows occur and their location [1, p. 2, 6].

Migration policy aims to ensure effective management of migratory flows, fair treatment of citizens and the provision of an area of freedom and security for all everyone.

The presence of a refugee wave often results in negative consequences for the receiving refugee countries. Typically, a refugee is forced to leave his country of origin due to a legitimate fear of persecution and seeks protection under international law.

The international regulatory system for refugees and migrants protection includes a number of international instruments, including the Convention on the Status of Refugees, adopted on 28th of July 1951 in Geneva; The Protocol on the Status of Refugees, adopted on 31st of January 1967 in New York; The Statute of the United Nations High Commissioner for Refugees (UNHCR), approved by the United Nations General Assembly on December 14th 1950, as well as international law relating to the protection of human rights.

The Convention relating to the Status of Refugees is the cornerstone of international refugee law. The Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment [2]. It sets out the conditions under which a refugee loses his status, identifies the persons to whom the Convention applies and those to whom it does not apply. The Convention does not apply to those for whom there are serious reasons for considering that they have committed war crimes or crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations. The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR. The Convention does not apply to those refugees who have a status equivalent to nationals in their country of asylum. The Convention prohibits the expulsion or forced return of persons who have obtained refugee status. The right of the refugee to be protected against forcible return or expulsion to

the border of the territory where his or her life or freedom was threatened is regulated in art. 33, item 1 of the Convention. States are required to abide by the ban on expulsion or return. The Geneva Convention identifies possible legal regimes for refugees, including the rights and obligations of refugees with regard to the country that granted them the right to asylum. Given the fact that the Convention was created after the World War II, the definition of refugee refers to persons who have become refugees "as a result of events occurring in Europe before 1 January 1951[3].

Over time, it appears that the flow of refugees is not only temporary – as a result of the World War II, but also due to other events related to new migration flows. As a result, the 1967 Protocol on the Status of Refugees, which abolishes the time and geographical constraints contained in the Convention, was adopted in New York.

The Geneva Convention and the New York Protocol provide for the criteria for a person to be recognized as a refugee, the conditions under which he ceases to be a refugee and the circumstances in which he is excluded from the scope of the Convention, The definition of refugee. The Convention regulates the legal status of refugees, their rights and obligations in the country of asylum, as well as the principles and criteria for individual and group refugee status determination [4, p. 3].

In 1949, the General Assembly, in its Resolution 319 (IV) of 3 December, decided to establish Office of the High Commissioner for Refugees (UNHCR). According to the Charter approved by the UN General Assembly with Resolution 428 (V) of 14.12.1950, the High Commissioner is completely apolitical and decides humanitarian and social problems for groups and categories of refugees.

High Commissioner authorized by the UN General Assembly, assumes the function of providing international protection under the auspices of the United Nations refugees who fall under the Statute and of seeking permanent solution to the problem of refugees by assisting governments and, with approval of the respective governments, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities, and denial of their forced vrashtanet in the country where they had a well-founded fear of persecution. The main categories of persons benefiting from UNHCR's protection are: refugees and asylum seekers; Stateless persons; Voluntary returning refugees in the country of origin; Internally displaced persons in the country of origin; And persons in a risky situation. Initially, the Office was set up as a temporary institution for a three-year term, its mandate extended for five-year periods. By UN General Assembly Resolution 58/153 of 22 December 2003, the mandate of the Office of the High Commissioner for Refugees was extended for an indefinite period of time to resolving refugee problems.

The Constitution of the Republic of Bulgaria since 1991 regulates the mechanisms of protection of foreigners in our country. The types of protection provided

in the Republic of Bulgaria to persons who left their country for humanitarian reasons or because of persecution are also prescribed in the Basic Law.

The main legal act directly related to persons seeking protection on the territory of the Republic of Bulgaria is the Law on Asylum and Refugees. The law has been in force since 1 December 2002 and it repeals the Refugees Act of June 11, 1999.

The Bulgarian law on Asylum and Refugees is in line with international legal instruments in the field of the protection of fundamental rights and freedoms of foreign citizens. The main purpose of the legal act is to ensure the application of the relevant European legal instruments in Bulgarian internal legislation [5]. When drafting the law, the provisions of all EU Directives, Conventions and Regulations that have been signed and adopted by our country.

The main purpose of legal regulation of procedures are the rules for the protection of persons seeking refugee status in Bulgaria. The Agreement between the Government of the Republic of Bulgaria and the United Nations High Commissioner for Refugees, signed in 1993 contains the basic conditions under which the Office of the United Nations High Commissioner for Refugees, in the framework of its mandate cooperates with the Government of the Republic of Bulgaria, establishes a bureau in the country and performs its functions of international protection and humanitarian assistance in favour of refugees and other Persons for whom the Office of the United Nations High Commissioner for Refugees carries out in the host country. The United Nations High Commissioner for Refugees through its representative in the Republic of Bulgaria has the right to information and to access to each step of the refugee status, humanitarian status and temporary protection status. He can get acquainted with each particular case and give written or oral feedback on it [6].

The Law on Boundaries in the Republic of Bulgaria determines the conditions and order under which foreigners can enter, reside and leave the Republic of Bulgaria. For the purposes of national law, a foreigner is any person who is not a Bulgarian citizen. Foreigners in Bulgaria have all rights and obligations, except those for which Bulgarian citizenship is required. This conclusion is based on both the Bulgarian laws and the ratified international treaties to which the Republic of Bulgaria is a party [7].

In Bulgarian national legislation, there is a special legal act, which determines the conditions and order in which protection is granted to foreigners located on the territory of Bulgaria. This is the law on asylum and refugees, which was promulgated in the State Gazette in 2002. Under this law, the country can grant asylum seekers alien asylum and two types of protection – international protection and temporary protection. International protection is granted under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

Temporary protection is provided in case of mass influx of foreigners who are forced to leave their country of origin due to armed conflict, civil war, alien aggression, human rights violation or violence.

The President of the Republic of Bulgaria provides asylum. Asylum is given to aliens persecuted for their beliefs or activities in defence of internationally recognized rights and freedoms. The President also provides asylum when he determines that national interest or special circumstances require so.

A refugee status in the Republic of Bulgaria is granted to foreigners who, due to legitimate fears of persecution based on race, religion, nationality, political opinion or belonging to a particular social group, is outside of his country of origin and for that reason can not or do not want to seek protection from the State or to return to that State. For granting of refugee status, it is irrelevant whether the foreigner belongs to race, religion, nationality and social group or expresses the political opinion underlying the persecution. It is enough for the body or organization pursuing the persecution to believe that the foreigner has such an affiliation.

Humanitarian status can be granted to a foreigner who does not qualify for refugee status. The person to whom a humanitarian status is granted can not or does not wish to receive protection from his country of origin, as he may be exposed to a real risk of serious harm.

A request for asylum lodged by foreigner at the State Agency for Refugees will be forwarded immediately to the competent authority – to the President of the Republic of Bulgaria.

Bulgarian migration policy is based on the principles of protection of migrants' human rights, democracy and the rule of law. The country's migration policy is in line with general trends in global, regional and community spheres, but mostly with the national interest of the country.

The State is taking action to improve the integration conditions of migrant and refugees in Bulgaria, respecting the principles of legality, expediency, effectiveness, transparency, flexibility, partnership, monitoring and control. The full integration of third-country nationals in Bulgarian society could be achieved through the targeted activities via immigrant-related institutions, the media, local authorities, workers' and employers' organizations and employers' organizations, NGOs, the academic community.

Bulgaria adopts multilateral approaches in addressing important development and security issues and reinforces the interdependence between policies taken at national and international level. Migration policy in the country leads to respect, tolerance and appreciation of the positive contribution of migrants as part of Bulgarian society.

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Challenges to building critical infrastructure policies in a complicated cyber environment

When it comes to critical infrastructure and its protection against unauthorized access, it is appropriate to specify what definition of Critical Infrastructure (KI) is in official documents of the Republic of Bulgaria and what are the risks and threats to one of the sectors covering The critical infrastructure – its objects it. The definition of critical infrastructure is affected in several strategic documents of the Republic of Bulgaria – "Law on Disaster Protection" (ZZPB), Law on protection of classified information, "the State Agency for National Security (ZDANS). Given that critical infrastructure is a system of facilities, services and information systems, whose braking malfunction or destruction would have a serious negative impact on the health and safety of the population, the environment, national degree panstvo or on the effective functioning of government.

Critical infrastructure consists of many elements whose safe and secure operation needs to be closely monitored by the relevant authorities and institutions to avoid undesirable consequences. The term "infrastructure" was introduced in the nineteenth century by the Swiss military theorist Antouan-Henry Jominin, who emphasized its strategic and operational significance for the leadership of combat operations. Gradually, the term "infrastructure" begins to be used in economic theory and management theory.

Currently it is widely applied in computer science, economic geography and security research. At the end of the century, critical infrastructure protection was an essential element of the security policy of many countries, particularly in NATO and EU member states. This is related, on the one hand, to the process of globalization and, on the other, to the fight against international terrorism. Considering that the Republic of Bulgaria is in Europe and belongs to the EU and the EU policy on shared values, we understand that these are the major vital European interests. Using automated systems in critical infrastructure is an integral part of it in modern life, but it also makes it very vulnerable to malicious individuals, organizations, and even governments. The problem with critical infrastructure protection is relatively new. It gains a lot of international popularity in 2001

after the September 11 terrorist attacks in the United States, but this is not the first such breakthrough attempt on a critical infrastructure site to forget the 1982 case in Russia with the attack of the little-known then Trojan horse virus against the Siberian oil pipeline, as well as train attacks in Madrid on March 11, 2014. Over the years, there have been key events that have been turning points in global security. One of the most scandalous cyber-attacks against critical infrastructures in history is Stuxnet. A case with Estonia in April 2007, which is trying to purposefully block the computer network from overloading with countless false requests. This leads almost all countries, especially those at risk of terrorist acts, to initiate and make serious changes to their legislation – both in the field of critical infrastructure protection and in the direction of terrorism. As a result, the European Commission has drawn up a global strategy for Critical Infrastructure Protection, a European Critical Infrastructure Protection Program, which includes proposals to improve the prevention, preparation and response to terrorist attacks in Europe. Special programs are being developed to protect critical infrastructure, which evolve into strategic plans and even national strategies. Special attention is paid to cross-border cooperation to reduce the risk of terrorist attacks on critical infrastructure. The legal basis in Bulgaria is currently not sufficient to guarantee the security of the infrastructure; Lack of sectoral analysis The Critical Infrastructure Protection Process requires a sectoral analysis to identify the sectors and infrastructure sites that meet certain criteria for Criticality; Absence of partnership between actors in the critical infrastructure protection process, Critical Infrastructure contains multiple networks and assets united in sectors that are owned or controlled by a number of ministries, agencies, agencies, etc. On the background of dynamic growing environment and the attempt of the legislation to regulate the parameters of its functioning Republic of Bulgaria transforms in key factor for developing and supporting of strategic energy and transport objects in regional, national and international aspect. The increasing of their quantity, variety and the expanding of their areas, in combination with the higher terrorist risks, requires synchronized measures for their protection not only surveillance and early warning systems, but also means of adequate reaction. The location of critical infrastructure and its objects together with their risk assessment are made for decreasing the risk of natural disasters and protection of the population. In November 2005 European Commission accepts so called Green book for European program for protection of critical infrastructure (PCI). In the Green book for the first time on a community level is given a definition for the term "critical infrastructure" and is offered a recommended list of critical infrastructure sectors. Except for the term "national critical infrastructure", the authors of the Green book ratify the term "European critical infrastructure". For satisfactory results it is necessary to be clearly defined the tasks for evaluation and planning of critical infrastructure protection. Furthermore it is necessary to be considered the

means of critical infrastructure protecting from cyber attacks so that the practical realization of politics to respond to the expectations set in during the process of forecasting and planning. One national approach for dealing with the threats has the aim to be developed a strategy for reaction based on already made analyses and evaluations. Critical infrastructure contains systems, networks, assets and objects that provide goods and services necessary for the normal functioning of the society. The sovereignty, security and independence of the state are defined by the stable and continuous operation of critical infrastructure. Simply said critical infrastructure protection in protection of assets that are considered invaluable for the society and that provide its social prosperity. Different governments put different accents in dealing with the problems connected with CI. The aim is not to analyze and evaluate these definitions, but to highlight the accent put by governments, which highlights to form the basis of a counter-terrorism policy. "A system or parts thereof which are essential for the maintenance of vital public functions, health, safety, security, economic or social well-being of the population, and whose destruction or destruction would have significant consequences in the Member State concerned as a result of the inability to preserve those functions. "Critical national infrastructure includes those assets, services and systems that support economic, political and social life in Britain, the importance of which, if lost, could: 1. Cause huge human sacrifices; 2 to have a serious impact on the national economy; 3. Cause other serious social consequences for society; Or 3. Make immediate care of the national government" – Britain. The need to enhance critical infrastructure protection capacity is not limited to the EU and its Member States. This need is a reaction from the complex international security environment in which globalization is most clearly expressed through threats of terrorist attacks, the negative consequences of which can affect the majority of the world, taking into account the indivisible links between the states in political, economic and social terms. Cyber attacks made at the expense of modern economies materialize in a way that affects our entire modern society.

A strategic priority in national security includes infrastructures exposed to threats that may interfere with the performance of core services. The malicious code and targeted attacks aimed at sabotaging certain corporate networks are critical threats to critical infrastructure.

Oil refineries, gas pipelines, transport systems, power companies, or water supply systems control systems are all part of a technologically advanced industry where security incidents can have a negative impact on society as a whole.

In our times, we are constantly seeing an expansion of infrastructure any kind, and this expansion also increases the potential entry-point of any cyber attacks. According to cyber security experts, security is a key element of the state's national security – cyber space is a specific „virtual" territory without physical boundaries in which „democratic functioning of institutions and citizens' fundamen-

tal rights and freedoms must also be guaranteed."Cyber space is seen as the fifth domain to conduct operations against national interests, territorial integrity, national security of sovereign states, and citizens' rights and freedoms. Increasing the risks and threats in the geopolitical and strategic security environment, and in particular cyberspace, create the conditions for increasing the vulnerabilities of strategic civilian and military communications-information systems and command and command systems for forces involved in missions and operations in and outside Territory of the country. This requires adequate and timely development and acquisition of cyber defense capabilities as an integral part of the capabilities of protecting the national security management system related to defense and ensuring the territorial integrity of the Republic of Bulgaria, the support of international peace and security in alliance and coalition format And the contribution of the armed forces to national security in peacetime in dealing with crises of a non-military nature.

Cyber Security - a state definitely measured by the level of confidentiality, integrity, accessibility, authenticity and fault-tolerance of information resources, systems and services. Cyber security is based on effective building and maintenance of active and preventive measures. Cyber security usually means the precautions and actions that can be applied to protect cyber space, both in civil and military fields, from threats that are related to its independent networks and information infrastructure or may disrupt their work. The goal of cyber security is to preserve the availability and integrity of networks and infrastructure as well as the confidentiality of the information contained therein.

According to Anders Fogh Rasmussen, NATO Secretary General 2009–2014, "A cyber attack may put one country on its knees without a single soldier having to cross its border, and it is no exaggeration to say that cyber attacks have become a new form Of a constant low-level war". Cyber attacks are a direct threat to the security of citizens and the functioning of the state, economy, society, science and education. They can be done at a distance, with simple and effective mechanisms, minimal economic resources, and cause considerable damage with material and even human losses. Cyber attacks have no national, cultural or legal boundaries. Risks and threats in cyberspace are difficult to define because of the complexity of determining the source of the impact, the goals and motives, the rapid the escalation of the threat and the difficult predictable prospects for development, the complexity and intensity of modern communication and information processes, the dynamics of logical and physical connections and the uncertainty of processes. Cyber attacks are getting more and more and more serious. A national approach to addressing threats is designed to develop a response strategy based on pre--existing analyzes and assessments. Alongside cybersecurity, attention should be paid to physical security as well as measures to ensure the security of the virtual space. It is necessary to develop adequate policies and make real decisions about

tackling cyber crimes against critical infrastructure sites. Experts' predictions that the Internet security issue will grow in the era of the Internet is already coming true. However, in early awareness of the risk, taking the necessary precautions and assuming responsibility, the situation can be mastered. On the basis of the policies for critical infrastructure protection (CI) considered by cyber attacks, it can be concluded that there is no clear boundary between internal and external security due to their interdependence. On the other hand, IT management requires new strategies to address cyber threats based on improved methods and approaches.

When looking for a solution to cybersecurity, we need to address the need to protect cyber networks and create adequate policies to address cyber-attacks.

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Commission for conduction of procedure on award of public procurements in the fields of defence and security

Summary

The lawful award of public procurements in the fields of defence and security is one of the elements, building the general background for security in the country. In order to be lawfully conducted a certain procedure for public procurement award in the fields of defence and security, significant appear the composition and actions of the assisting body of the contracting authority – the commission on conduction of the procedure. The commission shall be appointed by the contracting authority, as its order shall not be subject of independent challenge. A small number of requirements concern its members and special legal provisions are envisaged about the chair of the commission. The decisions shall be taken by majority as if a member of the commission does not agree with the decision, he shall sign it with reservation, with arguments in written. In case of two-state and three-stage procedures shall be appointed only one commission.

Keywords: public procurements, commission, security

Upon award of public procurements, civil ones and in the fields of defence and security, significant for their lawfulness appear the composition and actions of the commission, appointed by the contracting authority for conduction of selection of the applicants and the participants, examination and evaluation of the bids and conduction of negotiations and dialogue [1], hereinafter referred to as commission for procedure conduction.

The commission shall be established by order of the contracting authority. This order shall be issued immediately before the beginning of work of the commission, cafter expiration of the term for submission of applications for participation in case of restricted procedure, competitive dialogue or procedure of negotiation. [5, 6, 8] In the cases of civil procurements, this moment shall be after expiration of the term for submission of bids.[3, 5, 6, 8] The order appears part of the procedure actions of the contracting authority, related to issuance of the final administrative act – the decision on classification of the participants and choice of contractor or decision for termination of procedure, therefore it shall not be subject of independent challenge. (Judgment No 6766 of 17.05.2013 under adm. case No 2638/2013 of the Supreme administrative court of Republic of Bulgaria, IV department).

According to art. 103, para 1 of the Public procurement act, the commission shall be composed by odd number of members, which means that in its composition participate at least three persons.

Regardless of the number of members, this is violation of imperative provision of the law, which shall lead to unlawfulness of the decisions, taken by the commission, hence to unlawfulness of the decision of the contracting authority for classification of the participants and choice of contractor. If the commission consists of less number of members from the number, envisaged in the normative act, this shall also lead to unlawfulness of the decisions, taken by it.

By the order of the contracting authority shall be determined:

1. the members by name and the person, determined as a chair;
2. the terms for implementation of the work;
3. place for storage of the documents, related to the public procurements, till completing the work by the commission.

Members of the commission can be officials from the administration of the contracting authority, but they can also be persons, who are not in labor or official relations with it, as it should be executed a written contract with them. By its legal nature the contract appears a service contract. [6, 7, 8]

The normative acts do not contain special requirements to the members of the commission, except the ban not to exist conflict of interests with the applicants or the participants. According to §2, i. 21 PPA, „Conflict of interests" exists when the contracting authority, its employees or persons, hired by it out of its structure,

who take participation in the preparation or award of the public procurements or (who) can influence the result of it, have an interest, which may lead to a benefit by virtue of art. 2, para 3 of the Conflict of interests prevention and ascertainment Act and for which it could be considered that has an influence over their detachment and independence in relation to the award of the public procurements. Upon award of public procurements, which contain or require classified information, members of the commission for implementation of selection of the applicants and the participants, review and evaluation of the bids and conduction of negotiations and dialogue may only be persons, who have (obtained) permission for access to classified information according to the requirements of the Classified information protection Act.

It strikes that the Public procurement act does not envisage requirements for professional competence for the members of the commission, in contrast to the former act, where according to art. 34, para 2 PPA, there was a requirement in the composition of the commission to mandatorily participate one lawyer and at least half of the other members to be persons, holding professional competence, related to the procurement subject. There was a legal definition of that term in §1, i. 22a from the Additional provisions of PPA: „*Professional competence" appears the existence of knowledge, obtained through education or additional qualification, and/or skills, learned in the process of exercising certain position or position in pursuance of labor, official or civil relations*".

The effective Public procurement act abandoned that approach and it has granted to the contracting authority the opportunity to judge what persons to include in the composition of the commission, without being limited by imperative requirements, which provided the applicants and the participants unlimited freedom of challenge, insofar as in cases of particular procurements having specific subject the proving of professional competence was disputable.

The Public procurement act determines special rules for the chair of the commission. He shall:

1. convoke the sessions of the commission and determine schedule about its work;
2. inform the contracting authority about all circumstances, which impede the implementation of the assigned tasks within the set terms;
3. отговаря за правилното съхранение на the documents до предаването им за архивиране;
4. make proposals for replacement of members of the commission upon ascertained impossibility someone of them to exert his obligations.

The members of the commission shall be obliged:

1. to participate on the sessions of the commission;

2. personally to examine the documents, to participate in taking the decisions and to put evaluations on the bids;
3. to sign all protocols and reports related to the work of the commission.

The members of the commission shall provide the contracting authority with a declaration that regarding them there is no conflict of interests with the applicants or the participants after receipt of the list of them and at each stage of the procedure, when there is a change in the declared data.

Each member of the commission shall be obliged to make a recusal of himself when he finds out that:

1. for objective reasons he can't fulfill his obligations;
2. a conflict of interests has arisen.

In such case the contracting authority by order shall determine a new member. In case of ascertained conflict of interests, when a member of the commission has not made a recusal of himself, the contracting authority shall remove him by its own initiative and it shall determine a new member by an order. The actions of the removed member, related to examination of the applications for participation and/or the bids and (related) to evaluation of the bids of the participants, after the ascertained circumstances have occurred shall not be taken in account and shall be made by the new member.

The replacement of the member of the commission shall be made by order of the contracting authority upon proposal of the chair of the commission, when the respective member has no opportunity to fulfill his obligations.

In the theory and practice it is disputable the issue whether the contracting authority, by the order for appointment of the commission, can appoint alternate members and in case of need they to replace the titulars. In its decision K3K-326/30.03.2017 the commission for protection of competition considered that it is admissible for the contracting authority to appoint alternate members, who without explicit order can replace the members of the commission.

The opposite statement, which I support, is provided in Decision No K3K-286/23.03.2017. „Actually the explicitly determined rules for determination of the commission membership in the Public procurement act are exhausted with the requirement for odd number of members and the lack of conflict of interests on behalf of the members of the commission with the applicants or the participants. The institute of „Alternate members", existing in PPA (rev.) is no more mandatory, therefore the contracting authority shall judge alone whether to appoint such members or not. If we support that thesis, we can really consider that the Public procurement act does not put limitations to the contracting authorities to envisage alternate members, including a chair too, which in case of need to join the work of the commission. The issue is actually what shall be the statute of the appointed alternate members and whether they appear part of the composition

of the commission, appointed with the initial order. The commission for protection of competition rather supports the thesis that though being listed in the initial order, the alternate members shall have no legal statute and they shall rather be persons, for whom the contracting authority has ascertained that they have the required qualification if needed to join the commission as members on examination the bids of the participants. Further on, the act envisages a particular order for change of the commission, membership, as it stipulates two hypotheses – self-recusal and removal (art. 51, para 9, i. 1 and i. 2 of the Rules on the implementation of the Public procurement act – RIPPA). The absence of the persons because of an annual leave can be considered as a rather objective impossibility for fulfillment of the obligations. The Public procurement act and the rules on its implementation do not provide clear definition what is „Objective reason", because of which a member of the commission can't fulfill its obligations. Obviously the judgment is left with the contracting authority and it has to assess whether a certain reason for absence is objective or not and respectively – whether to undertake actions for a change in the membership of the commission. Insofar as in paragraph 9 of art. 51 of RIPPA is stipulated a „self-recusal" and the act does not envisaged the exact form and way, on which this to be made, the factual going on leave on behalf of a member of the commission and the lack of objections for that ought to be considered as a „self-recusal", which the contracting authority shall considered to have been made under objective reasons. In such case art. 51, para 4, i. 4 of RIPPA envisage the chair of the commission to make a proposal for replacement of a member of the commission, and the contracting authority to respectively determine by order a new member (art. 51, para 11 of RIPPA). The legislator has clearly defined in its imperative norm that it is required an explicit order for replacement of a member from the membership of the commission and such order has to be issued for each particular case. In support of the above statement appears also the interpretation of the Public procurement agency, where in „Practical guidance on implementation of the legislation in the field of the public procurements", p. 188 is envisaged: „There is no stipulated opportunity in the order to be determined alternate members of the commission membership. At the same time, art. 51, para 9 RIPPA stipulates that when for objective reasons a particular member cannot implement his obligations, he shall be obliged to make a self-recusal and the contracting authority shall be obliged to determine a new member by an order. This new way for filling the membership of the commission in case of ascertained impossibility of its member to implement his obligations is envisaged also in art.51, para 4, i.4 RIPPA, where it is specified that in this hypothesis the chair shall make proposals for replacement of the respective commission member".

Upon award of public procurements in the fields of defence and security, the commission for conduction of the procedure shall apply the general rules, appli-

cable also for the civil procurements. The commission and any of its members hall be independent in expressing opinions and taking decisions as in their actions they shall be guided only by the law. Each commission member shall be obliged to immediately report to the contracting authority the cases, in which he has been put under pressure to take illegal decision in favor of an applicant or participant.

The decisions of the commission shall be taken by majority of the members. Though it is not explicitly stipulated in the act, under interpretative way is reached the conclusion that all sessions, open and closed, have to be held by the commission with a full complement of members. This conclusion derives from the requirement for a minimum members' composition of the commission, and the obligation for determination of alternate members. It has to be noted that in the open procedure and in the two-stage and three-stage procedures, under which shall be awarded public procurements in the fields of defence and security – restricted procedure, competitive dialogue or negotiation with announcement, there shall be determined one commission, which has to conduct the whole procedure from beginning to end.[5, 6, 8]

In the cases when the decision of the contracting authority for classification of the applicants and choice of contractor has been challenged an the control bodies (the Commission for protection of competition or Supreme administrative court) have revoked it and have referred the case back to the contracting authority for continuance of the procedure from the last lawful actions, the work shall be continued by the initially appointed commission, because this shall be the same public procurement and the legislator has not stipulated determination of a new auxiliary body [5, 6, 8].

The actions of the commission shall be entered into a protocol as the commission shall end its work with a report. The report has to have minimum contents, determined by the law and it has to be signed by all members of the commission. The lack of signature from the commission member shall lead to unlawfulness of the decision of the contracting authority, issued on the grounds of that report. It could be examined also the opposite opinion that after the protocol is signed by the necessary number of members, required for taking decision, according to art. 103, para 4 of the Public procurement act, not-signing by one of the members shall lead to significant violation, which shall not result in a fault in the declaration of will of the collective auxiliary body. I consider the first understanding as being correct, insofar as the provision of art. 60, para 3 of the Rules on implementation of the Public procurement act is imperative and does not allow an expanded interpretation. If the report is not signed by the members of the commission, it may not have such probative force as the law envisages.

The report and the protocols of the commission are not independent object of control for lawfulness under objections of participant in the procedure on behalf of the contracting authority, because by its nature they appear proposals to

the contracting authority for taking a certain decision, but not decisions with final consequences as regards the affected parties.

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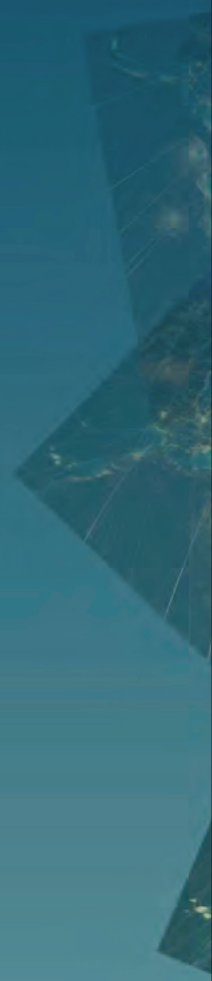

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