Globalization, the State and the Individual

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GLOBAL DIMENSIONS OF SECURITY AND THEIR PROJECTIONS INTO BULGARIAN LAW

VFU "Chernorizets Hrabar"

Summary: The first two decades of the 21st century are characterized by the fact that security issues have come to the fore. One of the indications of this important public fact is the increased dynamics of the use of the legal term „national security." The clarification of the content given to it is of utmost importance for the formation of such a legal order, which guarantees the peace and well-being of the citizens of the Republic of Bulgaria.

Keyords: planet degrades, security, national security law

Characteristic of the 2nd decade of 21st c. is that the security issue has come to the forefront. The challenges of survival of separate human individuals, groups, and entire nations and countries are in the focus of public attention on a daily basis. Twenty years ago, (1997), scientists from the Roman club were the first to warn of the fact that, the world is facing an environmental apocalypse. In the annual 2017 report with a title "Come On! Capitalism, shortsightedness, population and Planet destruction ", they were even more determined – the world is in danger: the planet degrades, authoritarianism and fundamentalism are on the rise, speculative capital triumphs. The crisis overwhelming our planet – the authors said- is no longer confined within the frames of human-nature interactions; the crisis has penetrated the social, political, cultural and moral spheres. It manifests itself as crisis of democracy, ideology, the capitalist system, and is no longer cyclic, but continuously accelerating. The strategy of guaranteed reciprocal destruction, as the basis of international security is insanity that serves only to justify the available nuclear arsenals.

The authors of this report – the two co-chairs of the Club of Rome-Ernst von Weizsaecker and Andreas Wijkman see the outcome of this situation in:

– The formation of a new worldview based on an authentic reading of the ideas of Adam Smith, David Ricardo and Charles Dickens;
– Educational reform that will ensure "literacy in relation to the future "(„futures literacy");
– Introducing, for all countries, new, mandatory globally enforceable, rules of conduct and legislative changes that would deprive financial and speculative capital from the privilege of being untouchable for justice;
– Establishing a new strategy to ensure the planet's security and survival. (8,2018)

This report impresses with its scope and depth, respecting with its correctness, which against the background of modern political reality, acquires the shape of scientific valor and civic courage. The issues on which this report has been dedicated and the ideas suggested to solve these issues however are neither new, nor unique. The situation rather resembles the boy in Andersen's tale, and the authors resort to the global community: "Look! The king is naked! ". In the tale, because of the obviousness of what was said, people could immediately perceive what they saw and started repeating aloud the child's words. The king also thought that the people was

right, but continued walking, because he thought, "Anyway the procession must go to the end! ". Unlike the story of Andersen, authoritative world scientists spoke the truth in the report of the Club of Rome. For intelligent people this would mean that, stopping the "procession", or "planet degradation" where politicians similarly to the king's servants, "solemnly wear the ends of the imaginary mantle „has no alternative.

To be precise, it shall be noted that, the first ever-alarming signals about the fate of the world date back to the beginning of the last century. The issue of the failures in the interaction between the elements of the system „nature - man - society" caused by the widespread implementation of machinery and technologies in people's lives, was first put forward in science fiction. One of its founders, the English writer H.G. Wells, first warned that history would increasingly become a race between science and catastrophe.(9,2018)

The supports of the bridge between science fiction and science itself were cast in 1952, by the American writer Ray Bradbury. Then, in his story "A Sound of Thunder", he formulated the idea of dynamic chaos. The plot is not particularly original – following some presidential election in the USA, a member of the pre-election team of the successful candidate was awarded to make a trip to the past. This type of travel was organized for a first time and reached back to the epoch of dinosaurs. To ensure that causalities would not be disturbed, the participants were instructed to move along the dedicated steel pathway. The hero of the story failed to meet this requirement – he walked unintentionally on the ground and crushed a small golden butterfly. Upon returning to the present, he could see that his unintentional action had caused dramatic changes – the least important among all being a different result from the elections, while the more dramatic were changes in the spelling rules and composition of the atmosphere. Deviation from the basic trajectory caused through smashing the butterfly had tremendously grown with time. A negligible, accidental cause has had enormous implications.(2,2018)

Eleven years later, in 1963, Nobel Prize-winning physicist Richard Feynman formulated the principal limitation of a person's ability to predict "predictability limit "), even in the world, which is perfectly described by classical mechanics.

During the same year, the American mathematician and meteorologist Edward Lorenz discovered the so-called „butterfly effect" and made his

footprint in the history of science as one of the founders of „chaos theory." For the purposes of the navy forces who needed long-term weather forecasts, he created a theoretical model of air convection that has a key role in dynamics of atmosphere. This model is based on the cause and effect relationship that is well known in science, between air stream movement, temperature of seawater, land, etc. weather factors, data from numerous weather stations, located worldwide, and calculation potentials provided by the state- of- the-art electronic computing machines at that time. Lorenz had set the task to discover the algorithm of changes of weather conditions. The resultant computer graphics however amazingly resembled a butterfly, because given identical basic data and identical conditions, the plotted curves reflecting weather changes did not coincide. The reason being minor, random events. Therefore, the "butterfly effect „of Lorenz has not only proven the idea spoken by Feynman on predictability, but has also become a symbol of building the bridge between science fiction and science itself.

Again, in 1963, the first edition of the bestseller of Stanislaw Lem - The sum of technology (4,1964) - thought over potential perspectives and alternatives of development of global civilization. The title and the plot were borrowed from the work Summa Theologiae, written in the 13th century by Thomas Aquinas. In this work, the medieval philosopher and theologist relates the destiny and the future of the world to true belief in God, and the most terrible dangers, which could lead to its end – to the wrong choice of belief, i.e. Heresy (old Greek αἵρεσις – choice) in the Christian doctrine.

Stanislaw Lem's thesis is - the main hope for the future is associated with newest technology, while basic hazards and threats for humanity – with their wrong use. At the end of 80's and the beginning of the 90's, the book's most pessimistic forecasts came true virtually in front of the author's eyes. The start of the clearly demarked tendency of periodic recurrence of major accidents with scope and complexity of adverse effects increasing, occurred with the accidents in the chemical plants of Flixborough (UK, 1974) and Seveso (Italy, 1976). There were hundreds of injured, and remediation of the effects required enormous material, financial and human resources. In 1984, the accident in the chemical plants in Bhopal, India. Due to human mistake, leakage of highly poisonous gas – methylisocyanate occurred. There were approximately two thousand casualties, and 100 000 suffered serious health damages. During the same year, a gas plant near Mexico City experienced a series of explosions. All was turned

to ashes within a range of one kilometer; 450 men virtually evaporated, as if being in the center of a nuclear explosion. On April 26, 1986 an explosion has destroyed one out of four reactors of the Chernobyl nuclear power plant. Material and moral effects had such a nature and scope that they have turned the Chernobyl catastrophe in a global event, historically commensurable to the eruption of Vesuvius and the destruction of Pompeii.

Scientific achievements at the end of the 20th c. have demonstrated clearly that Man is a mystery itself not only socially, but also in the technical sense. New technologies have helped discover the fact that the rate of transmission of information in the human nervous system is a million times lower than that in the personal computer. The time required for nervous cell activation exceeds millions of times the time of computer tact. Obviously, brain functionality is based on principles that are different from computer algorithms. Which are those principles then enabling a little child to distinguish quite easily between a cat and a dog, while modern computers could not at all? "Utter need to explain this issue and other questions of similar nature – as G. Malinetskii wrote – delineatesasubjecregion of new sectors of science. There the subject matter of separate scientific disciplines necessarily gets richer synthesizing in itself computer technologies, cognitive psychology, neurobiology and non-linear dynamics."(11,2018)

Every technology is conditioned by the status of scientific knowledge and the efficiency of tools required to achieve the relevant goals set by society. This includes also objectives and results that had not been considered at all, before approaching the solution of any specific task. "We live in a technological civilization, based on technology and not theology. If we look at what had been achieved via modesty and humility, as recommended by Blessed Augustine – G. Malinetskii says, - we shall confess that, technological achievements of humanity are quite modest. Threefold increase of yield in grain production in the 20th c. was compensated via a 100-fold increase in energy consumption per ton of grain. The Chernobyl disaster occurred despite the fact that reliability of nuclear plants is assessed as 10-6 accidents per year, which means one accident per one million years." (11,2018)

The advent of advanced technologies in all spheres of public life and their penetration into people's private lives, even the most inner sphere, is perceived as evidence for the realization of what was predicted in the beginning of the 20th c., by V.I. Vernadsky, i.e. transformation of biosphere

into a noosphere . The main result of this transformation is contained in the finding that, "man is being transformed in the most powerful geological force"(V.I. Vernadsky).(10,2001) We live in Anthropocene - as noted in the report of the Club of Rome, - in a geological epoch where human activity acquires determinant significance for the planet.(8,2018)

The large-scale transformation, however, does not negate the significance of the circumstance that human kind remains as it was in the conditions of biosphere, indivisible from the circle of substances and energy, and its existence is a function of the sustainability of this circle. A similar fact referred to the threshold capability of human society to predict and control hazards caused by it, becomes a specific paradox. The practical significance of paradox in science is by being apparent and attractive they can not only attract attention, but also stimulate additional research, leading to reconsideration of some theories and the associated postulates. In this sense, as is the classic example of Russell's „paradox" (Bertrand Russell), they are a whisper signal that something is wrong.

The paradoxical situation - mankind is not able to control the dangers it causes- this is a sign that the scale and ways of implementation of new technologies and the negative consequences they cause, are a function of the state and the evolution of social relations. This process is characterized by a clear disparity and contradiction of its evolutional tendencies. The reasons for this chaotic situation are not technical. Technical sphere is relatively autonomous and socially neutral, however it is not beyond the man as a strange force and it does not oppose man. Occurrence of contradictions and anomalies is in the sphere of human interrelations. Therefore, the issue of "security „is associated with public mechanisms, as used to determine and implement public goals, such as politics and law.

Obviously, survival of humanity as a function of its ability to defend itself against its own self, has acquired the nature of a formal-logical controversy. Its solution, in the sense of explaining and overcoming of paradoxical situations, is undoubtedly a scientific issue that necessitates radical reconsideration of understanding the basic category of "security". This would not happen unless revision and precision are applied to the content of notions, such as danger, safety, threat, and risk. It is a need which when being satisfied becomes the engine of evolution of cognitive process. The American researcher E. Rothschild in her work "What is Security"(6,1995) proves its objective nature; reveals how, over the centuries, the dominant

meaning of the concept has changed several times – from an individual's inner perception, through awareness of security, as a necessary condition for individual freedom and the state of the country and the international community, to the ability of society and its structural units to protect their vital values. The algorithm of the relationship between the emergence of new economic or social factors and the inclusion of new elements in the political organization of society explains not only the emergence of the state but also the whole of its further development. Therefore, the current situation, which gives rise to doubts that the state, under the pressure of the rapid development of production, trade and communications, is incapable of embracing the dynamics of social processes and fulfilling its basic functions; this is not something new. Exactly in such historical contexts in the system of principles, functions and organs of the state power, new vital elements emerge - the administrative division and the local power (6th century BC, Persia), the restriction, and then and the abolition of absolute royal power (XVIII century, France), application of the principle of separation of powers (XVIII - XIX century, USA, France) and others.

These changes in the structure of state power, among other things, are an expression of public awareness and public will about how to regulate public relations and what the rule of law is. Thus, the processes of state improvement and evolution of law take place in parallel.

History unambiguously shows the direct connection between the essential points, milestones in the modernization of the state and the establishment of new structural divisions (legal branches) in the system of law. The limitation of the royal power by the General States and the adoption of a constitution of France from 1791, for example, are both a consequence of the development of the ideas of constitutionalism and a factor in the establishment of constitutional law (XVIII century). This is what is happening internationally. The great geographic discoveries and the collision between the West European sea countries imply the idea of the international law of Hugo Grotius, Francisco de Vitoria and Alberico Gentile to be adopted and enforced as a regulation in the context of extremely dynamic relations between countries at that time. The evolution of the state and the development of law, in its deepest essence, are a continuous process of adaptation to changes in the surrounding world. Thanks to the ability to adapt each system - a mechanical, biological or social retains its resistance to changes in the environment of existence. In the case of sudden or qualitative chan-

ges, only those systems, whose elements are capable of performing new functions, are re-arranged in accordance with new principles, and are able to survive to incorporate new elements into their structure. It can be said that Bulgaria is experiencing this type of adaptation process at present. An indication of this is the relationship between the linguistic features of legal terminology and their socio-cultural background in the field of security. It is about legal provisions which, in their totality, are designed to form the most favorable environment for the implementation of the functions of the security authorities and thus to guarantee the well-being and security of the citizens.

National security as an idea of law, using the relevant legal term, is most common in public law - in the basic law of the country, in the system of rights and obligations of the citizens, the legal persons and the bodies of the state power. We find it also in private law, for example, in the status of property and the people, at all - in the whole „network of interdependencies and relative autonomies, whose arrangement, as written by the prominent French constitutionalist J. Bourdo, gives the community its own appearance".(1,2007) In this context, the extremely intensive use in the law-making process in Bulgaria of the term „national security" is noticeable. As shown in Table 1, in the period between the adoption of the Constitution of the Republic of Bulgaria in 1991 and November 1, 2015, when the Law on the Management and Functioning of the National Security Protection System, various law enforcement bodies have used the term „national security" in more than 460 texts of different legal acts.

Table 1.

Legal acts	Quantity	Regulation quantity
Constitution	1	6
Laws	55	229
Rules	42	129
Regulations	55	9
Resolutions of Constitutional court	16	
Total:	169	460

Use of the legal term "national security „in the valid Bulgarian law as of 01.11.2015

Law measuring statistics data could be used as an empirical basis for assessment of law-making activity of the body of legislative and enforcement power, and for quality measurements of the parameters of the specific problems. Numerous texts of legal provisions in the Constitution, in the laws, and bylaws, utilizing the term of "national security" evidence the emergence and evolution of a new kind of public relations. Differentiation process of these in a relatively individual law space in itself is a condition precedent for formation of a separate sector of law.

From this aspect, focusing on the contents of the legal term "national security" as a linguistic and socio-cultural phenomenon is of highest importance. It has been well known that, law norm is a measure of expressing free will and human behavior. Understanding and "perceiving" of a specific situation by each individual depends on both inner factors, such as - reason, temperament, character, and external circumstances, such as the condition of public relations, the degree of power of different authorities, but mostly on the quality of law making product. It is here that the role of law terms is decisive. They form the main layer of lexicology built not just on separate notions, but on a multitude of terms, referred to as "scenario". Considering the legal norms as scenarios "written „using legal tools, such as principles, notions, terms, assumptions, etc. , one will be able to see their sheer form – why shall not those be seen simply as part of worldly order or a product of public relations. It would then become clear that, the invention of those has been a complicated process of consideration and acting, where demands and interests of specific individuals and various social groups, refracted through summary information about the surrounding natural and social realities will lead to development of legal norm as a middle-of-the-road option for control, acceptable for its time, and for the entire society which will ensure normal living for the people.

Thus in the "scenarios" set in the legal norms, there is the reflection of dialectics of interaction among the components of the system "nature -man-society". Supposing that a legal norm adequately reflects this interaction, such norm also serves a tool for cognitive activity. Legal discourse as a phenomenon in social communication, has the unique public significance of not just concentrating the experience from interaction among humans in all spheres of public life, but can also assess its adequacy in reference to the situation of the surrounding world. In this sense, intensive, but chaotic use of the legal term "national security" within the system of

linguistic tools, which reflect the "reforms" in the different spheres of public life, is indicative of the degree of their realization.

To summarize, in Bulgaria in general there is a legal basis for the activity associated with safeguarding the national security, in particular: a set of basic normative acts containing legal principles and norms intended for legal regulation of public relations in this sphere.

At the same time, the legal framework is still far from the required degree of perfection and is rather a mechanical mixture of interrelated, however intrinsically discordant regulations. Presence of these however is a condition precedent for the success of the newly started process of formation (through adoption in 2015 of four new legal acts,) of a system for the legal base of national security - a stage that inevitably has the characteristic features of any transitory phase.

The expected goal of this transition - completion of the system of legal basis for national security of the Republic of Bulgaria has set a number of tasks before the team of law researchers and academicians:

1. to establish a theoretical model for the legal basis of national security of the Republic of Bulgaria as a system;
2. based on that, to identify the existing omissions, controversies in regulations that include legal principles and norms, intended for legal regulation of public relations in this sphere;
3. to develop and provide reasoning of suggested amendments and supplements to the existing set of regulations.

Achieving the goal goes through the successive solving of responsible scientific and practical problems:

– establishing a theoretical and methodological base for research in legal issues of national security;
– description and explanation of the current state of the valid set of regulations and the associated conformity with the good practices within the European community and NATO, the international standards and norms of international law;
– Determination of the exact position of the various bodies of state power, their relevant role and tasks focused on improving the capabilities of the state to defend national values.

Finally, let us refer to Ortega y in whose opinion "the world faces us with a number of problems. Our answer to these is a set of decisions. It is called culture." In this sense, the legal science and the young security science in

Bulgaria are called not just to get involved in the establishing of the system of legal basis for national security, but also to enrich national culture.

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DIGITALIZATION OF REGISTERS IN THE PUBLIC ADMINISTRATION – KEY ELEMENT OF ELECTRONIC GOVERNANCE

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Abstract: The digitalization of registers in the public administration is key element of the e-governance. Their status is crucial for provision of e-services and for reduction of the administrative and regulatory burden. In this relation a reform in the registers is necessary aiming to facilitate the procedures, to reduce the intermediaries in the provision of the services as well as the direct contacts with officials of the public administration. As a result the opportunities for corruption will be reduced and optimization of the administrative service processes of citizens and business will be achieved.

Keywords: digitalization, administrative service, e-governance, registers

With the amendments in the Administrative Procedure Code (APC) of 2014 the switch-over to modern forms of complex administrative service (CAS) has been defined as major priority in the provision of services and prohibition has been introduced for the administrative bodies to require provision of information or documents that are available with them or with another administrative authority and, respectively, an obligation for them to provide these ex officio. A prohibition to require provision of information or documents available with the competent or with another authority and obligation to provide them ex officio has been introduced also in respect of the services to the business through the Act on Restriction of Administrative Regulation and Administrative Control over Economic Activity. In spite of the changes in the APC and in a number of other legal acts, there is no evidence of implementation of the complex administrative service and electronic governance in the Republic of Bulgaria. One of the reasons for this is the state of the registers system in the country. In the Program for management of the government for the period 2017-2021 the development of electronic governance is also defined as one of the priorities as a base for modernization of the public administration and optimization of the processes of administrative service to citizens and business. Instead of this citizens stand from one desk to another one, losing time, patience and money. The key measure to achieve this priority is connected with the digitalization of the registers, improvement of key registers and provision of interoperability to switchover to automated data exchange and electronic documents. The state of the registers of the public administration is of big importance for provision of electronic services and reduction of the administrative and regulatory burden. We consider that urgent data digitalization is necessary – switchover to completely digital format of all data and registers in the public administration unless explicitly provided by law. For the sake of digitalization of the paper registers it is necessary to stress on description of the formats, the logic and the scope of the information stored in the registers from the view point of easy integration with the information systems. Citizens and companies have no access to their own data as well as no information which institution and which public official has used their data, this is unacceptable. By adoption of the Basic model for complex administrative service in 2013 taking evidence by the administrative authority ex officio is defined as leading principle of the complex administrative service. For realization of automated data exchange from

the primary registers it is necessary to allow remote access through an application programming interface, aiming to provide possibility for data collection/notification ex officio through a secure, controlled, and automated access for retrieving/recording of data in the registers of the central administration. In this way according to the principle of service start the rule for one time collection of information and re-use of the information shall apply. The strategy for public administration development provides for ensuring the interoperability between the existing information systems and registers and free ex officio exchange of information and data between the administrations. And in 2017 in the Ordinance on the general requirements to information systems, registers and electronic administrative services the general requirements to the registers and the data bases have been defined.

In order to realize CAS it is necessary to establish common multi-level information systems because establishment of a separate information system for each register is inefficient. The information system should be intended to provide to each applicant for services separate access to data and the administration should be able to adjust the processes of its main information system based on the separate policies. All data in the registers and the data bases of the public administration should be made available by electronic means. The digitalization of the registers in the public administration should ensure that citizens and legal entities may exercise their legal rights in electronic form, such as: provision of certification services by the authorities; exchange of electronic data and documents between different authorities as well as between them and the persons having public functions, and the organizations providing public services. By the Electronic Governance Act of 2008 the primary data administrators are obliged to send ex officio and free of charge the data to all administrative authorities, to the persons having public functions, and to the organizations providing public services that also process these data on the basis of law and have expressed their wish to receive them. The provision is made automatically by electronic means as internal electronic administrative service.

On central and territorial level in the public administration a total of 17 956 registers are kept.[1] The territorial units of the central authority and the territorial administration, including the district and municipal administration, keep a total of 17 193 registers. Out of the total of 17 956 registers, 15 079 are connected with the provision of administrative services

[1] The whole collected information is available on the internet at www.kao.mapex.bg

and the others – with other management activities. Let us examine the state of the registers in the regional administrations. The district administrations are legal entities on budget support where the governor is a single-person authority of the executive on regional level.

There are 28 districts on the territory of the Republic of Bulgaria with their respective district administrations formed in 1999 by Decree No. 1 of 5.01.1999 of the President of the Republic of Bulgaria concerning confirmation of the boundaries, the administrative centers of districts and the municipalities included therein (published in the State Gazette, issue 2 of 08.01.1999). The district administration supports the governor in execution of his powers stipulated by law; it provides technical support for his activity and carries out activities on the administrative service of citizens and legal entities. The organization of keeping the public registers of the district administration falls principally within the competence of the governor or of an official authorized by him. The registers connected with administrative service of natural persons and legal entities are kept by Directorate "Administrative control, regional development and state property" carrying out the activities on accomplishing the functions of the governor on spatial development pursuant to Art. 17 of the Rules of procedure of district administrations, as well as providing the legal and actual activities on acquisition, disposal and management of the state property on the territory of the district within the powers conferred on the governor. A total of 19 registers are kept within the system of the district administrations. 16 out of the above 19 are registers connected with the provision of administrative services within the meaning of par. 1, p. 2 of the Administration Act. The other 3 registers are not directly connected with the provision of administrative services but are subject to the activity – subject to the analysis in view of classified data available and the opportunity of the use thereof. The administrative services provided on the base of the registers kept by the district administrations are provided to all interested natural persons and legal entities, as well as ex officio to public authorities and various government structures and entities.

At present one part of the registers in the district administrations is kept on the basis of a law, a number of registers are provided for in a regulation as there is no requirement to establish registers only on the basis of a law. A majority of registers in the administration are kept without legal act defining the power of keeping them and in this way information

is collected that is not regulated, and thus could lead to misuse thereof. The information collected in this way is in contradiction with major principles, such as: legality, openness, confidence. The relevant legal acts and regulations that provide legal bases for keeping registers in the system of the district administrations are: State Property Act, Spatial Planning Act, Military Monuments Act, Rules of procedure of district administrations, Implementing Rules on the State Property Act.

As per the provisions of Art. 106, par. 2 of the Implementing Rules on the State Property Act (IRSPA) the governors may introduce also other registers to reflect the situation with the state property than the explicitly listed ones in the State Property Act (SPA) and Art. 106, par. 1 of IRSPA. The registers kept on the basis of Art. 106, par. 2 of IRSPA intend facilitation of the activity of the administration and the provision of administrative services. Such registers are: registers connected with the provision of administrative services, register of the issued acts for preparation and approval of development plans and the amendments thereof, register of the issued construction permits, register of the constructions put into operation, register of the state property granted for management to the governor, register of the contracts with transactions for disposal of private State property, register of the contracts for management and use of the properties granted to the governor, register for writing off private State property, register of orders for opening of tender procedures for letting State owned properties and registration of the applications for participation, register of orders for seizure of State owned property under Art. 80 of SPA, register of the signals on complaints and corruption.

It should be noted that the lack of explicit legal framework in regard of the organization of some registers brings a lack of clarity on the way of keeping the registers and the data storage therein. This, in turn, leads to different practices in the organization of registers of the same type within the various district administrations.

In conclusion: the district administrations in the Republic of Bulgaria are statutory obliged to keep certain registers connected directly with the administrative services, with the State-owned property, as well as with the activities carried out in the respective district. Data are stored there that concern only the particular district and administration, and some registers are kept in more than one district administration but the data entered and stored therein are independent and autonomous. As regard of the registers

kept in relation to the respective acts connected with the development plan, construction permits etc., as well as the registers not connected with the provision of administrative services. In view of the amendments in the Spatial Planning Act adopted in State Gazette, issue 13 of 2017, complete duplication of functions is noticed for keeping the same registers by several different authorities (on the basis of Art. 3 par. 4 of the Spatial Planning Act the Minister for regional development "shall organize keeping of public registers of the issued acts for preparation and approval of development plans and the amendments thereof, of the issued construction permits and the constructions put into operation", and on the basis of Art. 4, par. 4 of the Spatial Planning Act the governor "shall organize keeping of public registers of the issued acts for preparation and approval of development plans and the amendments thereof, of the issued construction permits and the constructions put into operation"). It would be useful that a detailed regulatory framework is being set up to provide concrete normative requirements for uniformity and standardization of the way and type of keeping and storing, respectively provision of the information in the respective registers kept by the governor without an explicit legal basis, and that the registers defined in regulations are being defined by law. It is necessary that the registers kept without legal basis are falling away or are being defined by law as well as data exchange ex officio is being ensured. For standardization of the processes of receipt, processing and verification of the data in the register data sets it would be good to establish a common, detailed and comprehensive legal framework and to implement complete reform of the model of organization and keeping of the registers in the public administration. This will save citizens and business time and expenses for different kinds of fees, transport and administrative costs. The register reform will bring facilitation of the procedures, reduction of intermediaries for provision of the services and minimizing of the direct contacts with officials of the public administration which brings with it restriction of the opportunities for corruption. And not least, the digitalization of the registers of administrative services will contribute to reducing the primary data administrators, enhancing the data exchange ex officio and the implementation of electronic governance in Bulgaria.

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DIGITALIZATION, HUMAN RIGHTS AND THE PRINCIPLE OF EQUALITY BEFORE THE LAW

Abstract: The article tends to discuss some main aspects of relation between new technologies, digitalization and human rights. Traditional human rights acquire new digital dimension, that generates the notion of digital identity, digital citisenship and digital rights. The non-discrimination principle has a significant role in the process of lawmaking and jurisprudence in digital era. The concept of digital rights is composed of new digital human rights and specific legal remedies that are ussed to guarantee the traditional human rights in digital envierment.

The United Nations has developed policy for promotion, protection and enjoyment of human rights on Internet in the sense of Universal Declaration of Human Rights and relevant international Human Rights treaties. European Union uses another approach, developing Digital Single Market policy. Measures to make Europe more secure online are under implementation. Bulgaria follows the international rules, and has expirienced in ensuaring the equality before the law in degital area.

Key words: human rights, digital rights, digital citizenship, equality before the law

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Dgitalization and the challenges before the law – some theoretical issues

The digitalization and access to internet affects lawmaking and jurisprudence in a specific way. A lot of new concept are under the process of establishment, developing legal science and practice[3]. The question is: 'In what kind does it happen? Whether the nature of law is changing in a digital era or it is a new form of the same 'old' law, that we uderstand and interpret as a cultural achivment of human civilization in normative regulation of the society?'

The purpose of this article is to put on discussion some new concepts that are used in legal literature and their influence on law in digital envierment. The appropriate approach, we think, is to analyze how the Human Rights principles are applied in regulation of digital and new information technologies envierment. The principles identify the tendencies of development of law systems and adopt their application at different times and areas, because of its universal and global understandig. From this point of view they allow theoretical argumentation, interpretation and justification of development of law in a digital envirement. Of course, the current work doesn`t pretend to cover all the principles and aspects of relation between new technologies, digitalization and human rights. The core issue here is the principle of equality before the law, which is well known and fully implemented in contemporary legal systems as a normative criterion in human rights` regulation. But first we need to identify some new concepts with digital meaning that affect law.

'It has never been more important to protect the concept of 'who we are' said Professor Stephan Saxby from University of Southampton in review of the first full-lenth study of digital identity in an international context of *Clare Sallivan* '*Digital Identity: An Emergent Legal Concept*'. A right to digital identity and its protection is theoretically established – 'an individual has the right to an accurate, functional digital identity' as a part of right of privacy [1]. No doubt this is an issue of Theory of human rights.

The Natural Rights' Theory argues that every individual has natural rights that are inseparable from human nature. In virtual realty the identifica-

[3] For analysis of the influence of digitalization on law in common see Ethan Katsh, M. Law in a Digital Word. Oxford: University Press, 1995.

tion of the person is a difficult task. Global meaning of legal personality rises a lot of other legal concepts as a result of digitalization and development ofnew technologies. Legal personality exceeds national boundaries and national law systems. Human rights acquire new digital dimension, that have real social, political and legal existance and importance through digital citizenship and digital human rights. Legal literature defines *digital sitizenship* as an 'ability to participate in society online'[2]. In global context the notion of citizenship is the access to new technologies and the way of using it. Political aspect of the national citizenship is not a feature of digital citizenship. It could be define as a freedom to participate in global economy and social networks, that`s why the digital citizenship is used as a concept much more in economical relations, then in any other area. There is a well established legal regulation of electronic trade at internetional and national level [3, pp. 24-46]. Therefore digital citizenship has a global meaning and differs from national citizenship as a connection with political community and certain civil, political, and social rights. For example Estonia offers digital citizenship for every person, and issues electronic ID cards with access to the virtual reality and has economical purposes[4]. Enormous legal gap exists in protection of rights of person in digital envirement and Internet network on daily basis[5]. The implementation of legal remedies is an ongoing process and the obvious prove of the existance of new digital rights, that have all characteristics of human rights, and more then ever make visible their universality[6]. The global meening of digital citizenship is a condition for creating digital national citizenship in the future. E-governance and the right of access to Internet allows an easier and protected access to civil, political, economical and other rights [5, pp. 1-5].

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4 Estonia classifies internet access as an human right. Information about e-residency is available at: https://e-estonia.com/

5 Digital citizenship describes an individual's positive behavior and ability in ethical meaning, mainly within social communication using new tecnologies.

6 There is a theorethical discussion on universality of human rights as far as the protection of rights is not the same in different law systemes. Universality of rights means that they are established by the law for every person. The variety of law systems doesn`t affect universality of rights. Even on the contrary, the heterogenity in law illustrates and enriches the universality of human rights (for more information about universality of digital rights see Колев, Т. Правото и правата като културен феномен. С.: Сиела, 2015, с. 112-125).

Digital Human Rights

Reaffirming the statement that 'the same rights that people have offline must also be protected online'[7] The United Nations Human Rights Council has given validity to Resolution for the promotion, protection, and enjoyment of human rights on the Internet (27 June 2016)[8] in the sense of Universal Declaration of Human Rights and relevant international Human Rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[9]. The United Nations (UN) expressing concern that 'many forms of digital divides remain between and within countries and between men and women, and recognizing the need to close them'. According to the organization the Internet will remain global and open, if States guarantee security in accordance with International Human Rights Law, especially with regard to freedom of expression, freedom of association and privacy. UN understands access to information on the Internet facilitates as an important possibility for affordable and inclusive quality education in global meaning. But it`s important to underline that access rights has another specific feature regarding imformation, property and access – Digital Copyright Law [4], which is not really in the subject here.

Digitalization and new technologies have exposed individuals` human rights to the risk of violation in global context. International and national law isn`t capable to protect human dignity and human privacy in appropriate way[10]. Starting from these point of view, the UN resolution has

7 Resolutions of the Commission on Human Rights and the Human Rights Council on Human Rights on the Internet (UN): Council resolution 20/8 of 5 July 2012, para. 1.

8 Resolution of the Human Rights Council 32/13on promotion, protection and enjoyment of human rights on the Internet, adopted on 1 July 2016.

9 See also Council resolution 26/13 of 26 June 2014 on the promotion, protection, and enjoyment of human rights on the Internet; Resolutions 12/16 of 2 October 2009 on freedom of opinion and expression, Resolution 28/16 of 24 March 2015 on the right to privacy in the digital age; Resolution 23/2 of 13 June 2013 on the role of freedom of opinion and expression in women's empowerment; General Assembly resolutions 68/167 of 18 December 2013 and 69/166 of 18 December 2014 on the right to privacy in the digital age; Resolution 70/184 of 22 December 2015 on information and communications technologies for development.

10 Regarding chellanges in implementation of Human Rights in the era of new technologies see Coccoli, The Challenges of New Technologies in the Implementation of Human Rights: an Analysis of Some Critical Issues in the Digital Era. Peace Human Rights Governance, 1(2), 223-250, available at: http://phrg.padovauniversitypress.it/system/files/papers/2017_2_4.pdf .

identified the need for balance which should be established between technological progress and moral content of humanity, expressed by human rights. As a result a new legal remedies for protection of human rights have to be implemented. Human rights principles must be protected in digital era, and the same issue is under discussion: 'How to guarantee universal rights to every person? ' [6, pp. 5-11]. The concept of Fifth State has been exposed – the concept of digital human rights and e-governence spesify the development of contemporary societies and states in digital enviroment. We agree that a new human rights' categories could be identified as a new generation of human rights: the right to access to Internet; right to non-discrimination in Internet area (use and governance); right to liberty and security in Internet; right to development through the Internet; freedom of expression and information on the Internet; freedom of religion and belief on the Internet; freedom of online assembly and association; right to privacy on the Internet; right to digital data protection, etc.

The UN has given institutional form of digital human rights as an official policy of the organization. Under the Internet Rights and Principles Coalition within UN The Charter for Human Rights and Principles for the Internet has been adopted, which is an opened document of important social and political meaning[11]. Although it does`t have biding legal force, the digital human rights are written down for further develoment through legislation.

European Union (EU) has developed a policy regarding digitalization, but the concept, and it`s understandable, is strictly related to the global economy. A strategic agenda for EU Digital Single Market policy have been established to ensuring that Europe's economy, industry and society take full advantage of the **new digital era**. To make the policy real EU needs to develope and implement measures to make Europe more trusted and secure online, so that citizens and business can fully reap the benefits of the digital economy transformation.

The EU policy on digitalization till now does not interpret human rights as a specific digital rights. It is related much more to the equality before the law, providing the benefit of Digital Singel Market to all citizens, including corporations. The rigth to Internet acccess is a part from fundamental rights of EU citizens. It`s known as the right to freedom to

[11] The Charter for Human Rights and Principles for the Internet, created in 2013. Compiled and edited by Marianne Franklin, with Robert Bodle and Dixie Hawtin, Internet Rights and Principles Dynamic Coalition UN Internet Governance Forum, available at: http://internetrightsandprinciples.org/site/charter/

connect, right to freedom of expression and opinion and other fundamental rights, so EU understands the rigth to Internet access as a guarantee of fundamental rights of citizens in digital area, and mainly in participation in Digital Singel Marker [7].

The right to Internet access reaffirms the rights to information in digital envirement, and adds a new meaning of human rights. The digital rights could not be specify as absolute or relative legal rights [8, p. 113]. New information technologies have changed the way of comunication in society. Social groups exist at the same time with social networks, that exceeds the common understanding of national peculiarities of human rights` regulation. A new risks for human nature have occured, which leads to necessity of new legal possibility as guaranty for human dignity and personality. Some new specific legal rights are under discussion: right to publicity, right to be forgotten[12], etc.

Bulgaria accepts and implements the policies of UN and EU in providing secure digital envirement. Nevertheless that Bulgarian e-governance isn`t fully established, the country has expirienced in ensuaring the equality before the law in degital area, which is usfull for development of legislation in accordance to the non-discimination principle.

Digitalization and non-discimination principle – Bulgarian Experience

Equality before the law is a fundamental principle in the Constitution and current legislation of Bulgaria. All citizens are equal before the law without discrimination on grounds of sex, race, ethnicity, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other grounds provided for by law or international treaties, ratified by Bulgaria[13]. The Protection against Discrimination Act prohi-

[12] The Judgment C-131/12 (Google Spain decision) of the Court of Justice of the European Union (CJEU)confirmed that EU data protection legislation gives to the right to request search engines to de-index webpages that appear in the search results on names of data subject. The Judgment is available at: http://curia.europa.eu/juris/liste.jsf?num=C-131/12

[13] According to Art. 6 of the Constitution of Republic of Bulgaria All persons are born free and equal in dignity and rights. All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.

bits any direct or indirect discrimination based on 19 grounds (Art. 4, para. 1). Bulgaria is pursuing a consistent policy aimed at preventing and eliminating any forms of discrimination and creating understanding and tolerance among persons belonging to different ethnic, religious or linguistic groups of the population.

The policy of e-governance has put on discussion some new cases of discrimination. Certain groups in society systematically have more limited Internet access and less opportunities for effective use than others. This can lead to discrimination in terms of their ability to realize the human rights that the Internet offers. The Commission for Protection against Discrimination (CPD) has made a decision, defining as an 'indirect discrimination the 5% discount on the tax on lodging the annual tax return when submitting it electronically to those who do not use the Internet and electronic information systems', compared to citizens using new information technologies. The Commission correctly accepts the statement that according to the Art. 53, para. 2 of the Personal Income Taxes Act (PfDA), individuals who have submitted annual tax returns electronically have benefited from a 5% deduction tax on the annual tax return[14]. The taxpayers who have been unable to send their annual tax returns are discriminated. Actually the legislation introduces unequal treatment between different social groups. There is a privilege that only Internet users could benefit from. Taxpayers who do not use the Internet and information technology are discriminated when paying their tax obligations.

The decision of CDM illustrates that the principle of non-discrimination must be fully implemented in legislation on digital area. It`s not a question of balance between competing interests, it is much more a question of moral content of human rights. The brief presentation of CPD`s decision clearly shows that nowadays it is important to implement also the principles of interdependence and universality of human rights in digital envirement.

The relations between new technologies, digital area and human rights gives 'new life' of well known natural rights, that show the moral importance of every person, even in digital envirement. It`s mostly philosophical and theoretical interpretation of human rights law in a digital development of societies and states. But the issue has really practical dimension, and answers the question: 'How to establish access to the Internet to every person as an human right by law? '.

[14] Decission of CPD is available at: http://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1137-2018

Conclusions

It`s not possible to establish global law for all contries and nations, but the globalization is fact, the Global Market and the Global Internet network also. The Human Rights principles must be used as a guidelines in technological development of societies with full respect of moral importance of every person. Therefore non-discimination principle has leading role in the procees of lawmaking and jurisprudence, including digital area.

The concept of digital rights tends to stress on two main level of relation between technologies, digitalization and human rights. First of all traditional human rights have to be protected in digital envierement with new legal remedies. Secondly a completlly new content of personal develpment in moral and social meaning has been laid down in digital envierment, that could be identified as a right of access to new information technologies and the right of access (and use) to the Internet. Therefore, the concept of digital rights is composed of new digital human rights and specific legal remedies that are ussed to guarantee the traditional human rights in digital envierment.

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ELECTRONIC EVIDENCE AND ELECTRONIC EVIDENCE MEANS IN BULGARIAN CRIMINAL PROCEDURE

Summary: This article aims to disclose and argue the need for a novel and expanded understanding of evidence and evidence means in the Criminal Procedure Code of Bulgaria. Based on an analysis of the existing notions of evidence and evidence means, the paper problematizes the lack of appropriate legislation that should regulate the use of electronic evidence and electronic evidence means that have recently permeated and became indelible part of criminal procedures. More specifically, the paper uncovers contradictions and gaps in the extant legislative approach and calls for addressing them. Furthermore, based on the analysis, a number of amendments in the legislation are proposed.

Keywords: criminal procedure, electronic evidence, electronic evidence means.

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Introduction

The rapid development of Information and Communication Technologies (ICTs) in the last two decades has also significantly changed the circumstances and ways of committing crimes. In particular, the permeability of ICTs in daily life has turned various electronic traces such as emails, digital photographs, instant messages, and etc., into potential evidence in court cases. This is, however, a new type of evidence that is qualitatively different from the conventional ones. The lack of procedures and standards for handling and using such type of evidence has been already recognized as an obstacle. This is also an acute problem in the Bulgarian context, where legal regulations fall behind the growing pressures of using electronic evidence and electronic evidence means in criminal investigation procedures.

Thus, this paper intends to address this problem by exploring in detail the suitability of the extant provisions in the Criminal Procedure Code of Bulgaria. It will assess the needs and gaps in the current legal regulations and will highlight the discrepancy between provisions that regulate conventional evidence and evidence means, and the electronic/digital ones. On this basis the paper will suggest ways of adapting and modernizing the Criminal Procedure Code (CPC) provisions. This paper is structured as follows. It will first outline the background and context of the extant legal regulations with regard to evidence and evidence means. It will then move on to discuss the suitability of CPC in relation to both electronic evidence and electronic evidence means. The paper will finish by offering suggestions for revising the current CPC provisions. In this way, this paper will contribute to the wider legal discourse in this area, beyond the Bulgarian context, by offering a specific example of required legislative changes that can allow for contrasting and comparing the specificities and required changes in other legal systems.

Background and contex

From the point of view of substantiation in criminal procedure, Bulgarian law formulates two main categories: evidence and evidence means, on the basis of which is developed the system of law of evidence, and all related evidence categories and procedures. Below, these provisions and categories are further elaborated to sensitize the reader to the complexity

and repercussions of potential legislative changes with regard to new types of evidence such as the electronic ones.

According to Article 104 of the CPC, evidence in the criminal procedure may be the factual data, which is connected with the circumstances of the case, contribute to their clarification and are instituted under the order as provided by the Code. There have been various classifications of evidence made in the Bulgarian law doctrine. Within the scope of this article, the classification of physical evidence and non-physical (or so-called verbal evidence) is particularly relevant and should call for more attention. The logical basis for differentiation between both types of evidence i.e. physical and verbal is the form of their existence in the objective reality. The verbal evidence are facts connected with the circumstances of the case, which are stored in the human memory. They don't have material nature and are considered intangible. Unlike the verbal evidence, the physical evidence have material shape, and exist in the form of actual objects. Physical evidence include objects, which have been meant or used for committing the crime or which have been objects of the crime, as well as, any other objects, which may be used for making clear the circumstances of the particular case. The dominating understanding in the Bulgarian legal doctrine with regard to the physical evidence further divides this category into two sub-categories – these are, 'physical evidence' in the strict sense of the word and 'written evidence' [1, pp. 34]. While physical evidence in the strict sense of the word are important because of their physical features (fabric, shape, size, weight, substance, function); the written evidence is important because of the recorded information (message) that it carries. In particular, it consists of a coherent set of signs encoded into a physical carrier, which in most cases is a sheet of paper. Whereas, both sub-categories of evidence have material nature, it is the textual content that is of concern with regard to the written evidence.

The Bulgarian legislation and legal doctrine manifests a position that the written evidence can be detached from its carrier. Generlly, the carrier is used for presenting evidence disclosed during the course of a criminal trial, and has the character of demonstrative evidence. The evidence means are legally defined in Article 105 of the CPC, according to which they serve for reproduction in the criminal procedure of evidence or other evidence means. Unlike the evidence, the evidence means are not connected with the circumstances of the case, but are rather acts or products of the

criminal investigation that are used to prove or disprove any issue of material fact that is relevant to the case.

Another difference between evidence and evidence means is explicitly specified in the provisions on evidence means in the CPC. Evidence means, which are not pointed out under the conditions as provided by the legislation shall not be admitted. The evidence means are categorized into three main types: verbal, physical and written. Statements of the defendant and witness testimony belong to the verbal evidence means. Physical evidence means include photo pictures, slides, cinematographic records, video records, audio records, records on a computer information data carrier, plans, schemes, casts or prints. Written evidence means are reports on the investigative actions and the protocols of the court sessions and other procedural actions such as reports of preparation of physical evidence means and similar documents.

Overall, the review of the provisions of the CPC shows that significant gaps exist in the extant legislative regulations with regard to electronic evidence and electronic evidence means. Namely, they are neither considered as legal categories nor adequately defined. Moreover, the applicability of most recent amendments in the CPC, undertaken fifteen years ago, are to a large degree not clear and their adaptability and suitability to electronic evidence dubious. In order to further the legal discourse in the direction of fully acknowledging and considering the specificity of electronic evidence and electronic evidence means, a more in-depth analysis has to be carried out of the opportunities for integration and change in the provisions of CPC. Therefore, the sections below will offer insights into these areas.

Legal issues involving electronic evidence

In the Bulgarian legal doctrine, the question of the electronic evidence has been discussed for decades. In particular, there is a growing recognition by both scholars and practitioners that electronic evidence needs to be incorporated as a kind of evidence in the system of Bulgarian evidence law. Such a claim is justified by the common understanding that electronic evidence has a characteristic which coincides with the legal definition of evidence under Article 104 in the CPC. Electronic evidence is conceptually the same as any other evidence i.e. it is factual data, which is connected with the case. They present information leveraged in an attempt to place

people and events within time and space to establish the circumstances of the case. The difference with other evidence is the form of existence of the factual data – that is, information stored electronically, which means its broken down into digits in a generic format, and bits that are set to one or zero that are saved and retrieved using a set of instructions called software [2, pp. 64-65]. However, digital evidence is information and data of value to an investigation as images, pictures and audio, that is stored on, received, or transmitted by electronic devices. Later on, electronic information can be transformed back into images, pictures and audio, by electronic devices in order to be adopted in its original format for human perception.

With the revisions of the CPC in 2003, the Bulgarian legislator decided to treat computer information data as regular evidence which can be collected for evidence gathering purposes in criminal investigations. Unfortunately, the Bulgarian legislator introduces a provision that allows that electronic data can be an object of search and seizure, but further stipulates that electronic evidence can only be collected by a person having special knowledge and specialization in the area of ICTs. This amendment was considered somehow superficial and not addressing the key concerns of both practitioners and scholar. The lack of definition of electronic evidence, description of the subject area, and its inter-relationship to other concepts in the evidence law remained unaddressed.

One of the functions of the criminal legislation is to define main law categories with which to distinguish them from others and to stipulate rules for dealing in criminal procedures. There remains an unresolved issue over the necessity of a special procedure stipulated in new provisions with regard to the collection of electronic evidence on electronic devices. This is a very important point of criminal procedures, because the leak of specific and well-defined procedure for obtaining electronic evidence is a serious obstacle to assessment of its admissibility by the Court. The CPC specified that the system of proof suggests a clear differentiation between various admissible types of evidence, which are required for having adequate investigation and court procedures. For example, according to Article 110 from CPC the physical evidence must be carefully examined, listed in detail in an appropriate record, and where possible – photographed. In addition, the physical evidence under scrutiny should be attached to the case file, with the requirement that they are not damaged or modified. The same requirements also apply to verbal evidence [3,

pp. 370]. Yet, no prescriptions or stipulations are provided when it comes to collecting and using electronic evidence.

Thus, in the investigative practice the seizure of electronic evidence is performed on the basis of the provisions of legislation that concerns the physical ones. These provisions, however, are not tailored to the 'material' specificity and use of the electronic evidence. In particular, this situation might lead to harmful results such as wrongful court decisions as the procedural rights of the people handling the evidence, the admissibility, reliability and verifiability of such evidence remain ambiguous and disputable. Discussions over the necessity of a special procedure and specific provisions for electronic evidence have been held in the legal landscape. Based on these observations and analysis, this paper points to the need to develop respective legislation to regulate the electronic evidence, and in this way ensuring a better protection of the fundamental rights and freedoms of the citizens.

Legal issues involving electronic evidence means

Unlike evidence, evidence means are explicitly defined in CPC. The reason for that is their nature serving the purpose of secondary evidence, and reproducing the primary evidence. Their function is to ensure that the primary evidence, which cannot be separated from the place where it has been found, as well as in other cases to be able to be used for the needs of criminal procedure through their reproduction. Due to the methods applied for reproduction of primary evidence and specific nature of evidence means, they are not only explicitly legally regulated, but also are under more strict judicial inspection regarding their admissibility, reliability and authenticity.

From the evidentiary point of view electronic evidence means are records (copies) of the evidence made with electronic devices, transformed and stored information about them in digital form. Electronic evidence means can reproduce not only electronic evidence such as a file stored on the computer hard disc, but also physical evidence, for example digital picture of the gun found on the crime scene.

The revision of CPC in 2003 added to the existing evidence means such as photo-pictures, slides, cinematographic records, video records, audio records, plans, schemes, casts or fingerprints, a new one – that is, records

on a computer information data carrier. Thus, for the first time electronic evidence means was included in the legislation, but the regulations didn't stipulate crucial matters regarding about their nature and prescriptions for utilizing them. Electronic evidence means systematically takes place in Article 125 from CPC in which all physical evidence means are listed. This legislative approach is considered problematic as it further obscures the distinct nature of the electronic evidence means.

The logical basis for differentiation between existed types of evidence means is the mode that is used for reproducing the evidence. The physical evidence means reproduces evidence through its physical transformation, by using a physical (material) mode. For example a finger trace can be reproduced by a print. The print belongs to the physical evidence means, because they represented significant characteristics of the finger trace with physical mode in material shape. On the other hand, the electronic evidence means don't use a physical mode for reproduction of evidence. The used mode is different, the evidence are reproduced by electronic way and stored as digital information. Although, the carrier is physical object (CD -ROMs, USB drives) the evidence information is in digital form, which determine affiliation to different type evidence mean from physical one. All this argues that the records on a computer information data carrier have their own nature which is in contradiction with physical evidence means.

Moreover, the assignment of the records on a computer information data carrier to the physical evidence means raises important questions for procedures that must to be applied for their preparation. According to the provisions of the CPC the rules for the physical evidence means are applicable. These rules, however, have been designed to regulate the preparation of physical evidence means and are not naturally tailored to the application to electronic evidence means.

The requirements about the electronic evidence means appear to be ambiguous on a number of points. First, under the Article 162 from the CPC the electronic evidence means shall be prepared by a technical assistant, who has special knowledge in the field of computer technology. Second, according to Article 135 from the CPC the electronic evidence shall be reproduced not only through electronic evidence means, but also through written evidence means or recorded on an epistolary media. In other words, electronic evidence means is the only type of evidence that will not have a legal weight, unless it is reproduced on a paper.

It is hard to imagine that extant rules are able to ensure proper conditions for electronic evidence means preparation. Specifically problematic are the rules concerning the mandatory requirement for a paper copy of the original digital information. Other problematic issues concern application of inappropriate and incomplete procedures, the unclear nature of the electronic evidence means. Altogether, these have the potential to severely weaken the weight and credibility of the electronic evidence means and may heavily infringe on an individual's right to privacy [4, pp. 93]. The admissibility of electronic evidence means depends on how it is produced and preserved. The integrity of electronic evidence means requires using and applying an array of complex methods and tools [5, pp. 158]. Therefore, there have to be high standards for the preparation and collection of electronic evidence means as this will ensure its reliability and legally binding nature.

Conclusions

The field of electronic evidence is new and rapidly expanding and poses significant challenges for the traditional rules in the Bulgarian criminal procedures. This type of evidence is an essential part of investigation of most crimes nowadays. Technological advances change the social context and often translate and lead to legislative changes. The analysis of the rules of evidence clearly shows that the legislation is unfit to both ensure an effective collection of electronic evidence and rigorous procedures and guidelines for the preparation of electronic evidence means. It is necessary to include new regulation concerning evidence law with the aim to clearly define new legal categories such as electronic evidence and electronic evidence means. These changes will ensure the proper procedures and standards. Furthermore, they will preserve the digital information in its initial form and guarantee its admissibility to a greater extent, being a main prerequisite for establishing fairness and truth in the legal proceedings. Finally, the problem of electronic evidence should also inspire the shift and modernization of the currant understanding and legal regulation of traditional physical evidence and evidence means.

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THE PRESIDENT'S VETO IN BULGARIA IN THE PERIOD 2012-2018

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Abstract: The tendency in the period under research for exercising the right of the President to return a motivated re-reading of the laws passed by the National Assembly is still unsatisfactory. This necessitates a rethinking of the parliamentary procedure, on the one hand, and the intensification of the President's activity to use his right of veto, given the unconstitutional laws of the Constitutional Court, which he did not react to.

Key words: presidential veto, quality of laws, Parliament, re-adoption of a law

The subject of this research is the practice of applying the right of the President of the Republic of Bulgaria under Art. 101 of the Constitution to return motivated for re-discussion of the laws adopted by the National Assembly, known as its veto, in the period 2012-2018[1]. This period covers the full term of the Fourth President Rosen Plevneliev (January 22, 2012 - January 22, 2017) and the first year of the five-year term of the current 5th President, Rumen Radev, on January 22, 2017 until now April 2018.

The purpose of the research is to justify new conclusions on the effectiveness of the presidential veto on the two lines:

1. The role of the veto - at an earlier stage, even before its entry into force, to prevent the adoption of an unconstitutional law[2] and
2. How well the president actively uses his strongest power to influence the quality of the laws passed by the National Assembly.

The quality of the legislative process and the stability of the legislation are an important element in building the democratic and the rule of law. The choice of the specifics of our constitutional form of polity - a direct choice by the people of the Parliament and the President - reflects the "spirit of the law" enshrined in the Constitution.

The veto institute gives the President a fairly strong opportunity to develop as a public expression and as a corrective of the party's majority for the quality of the law. The presidential veto is an additional guarantee of the quality of the laws in terms not only of constitutionality but also of public expediency.

During his five-year term President Rosen Plevneliev has exercised his right to veto on 14 laws and in his first term President Rumen Radev has vetoed on 7 laws[3]. See Table 1 and 2.

In front of the Constitutional Court under Art. 149, para 2 and 4 of the Constitution were attacked and announced for unconstitutional 26 laws[4] during the period under review, making an impression that they did not

1 The practice of applying the presidential veto during the mandates of the previous three presidents in 1991-2012 is scientifically researched in Siderova's monograph, Сидерова, Е. Президентът като неутрална власт, София, 2012 /Siderova, E. President as a neutral power, Sofia, 2012/

2 albeit with a minimal chance of success in the presidential veto, given the narrowest qualified majority required to overcome it, see Siderova, E., cit., p. 113-114

3 For a comparison in the period 1991-2011, including four presidential terms, have been issued a total of 67 decrees under Art. 101 of the Constitution of Bulgaria, in the ratio 24/11/17/15 returned the law, see Siderova, E., cit., p. 78

4 See Table 3

have a veto against them. This is indicative of the need to seriously reconsider the parliamentary procedure with a view to ensuring that the President is more useful and by influencing the quality of legislation, on the one hand, through the postponement veto. On the other hand, regardless of party coincidence or difference between the president and the parliamentary majority in terms of the so-called "frozen membership" of presidents, the trend of active use of the presidential veto is still unsatisfactory. The adopted formula of the neutral power, power-arbiter of the Bulgarian President in the polity of the state, depends almost entirely on its power and authority. The depoliticization, the embodiment of the unity of the nation, and the exercise of powers in favor of the wider public interest will be constantly proven and above all through the actions of the president.

Table 1

Rosen Plevneliev - the fourth president of the Republic of Bulgaria (22 January 2012 - 22 January 2017)		
№	DECREES under Art. 101 of the Constitution of Bulgaria	**Promulgated in the State Gazette**
	Decree No 231 on the return to the National Assembly of the Law on amendment and supplement to the Judicial System Act, adopted by the National Assembly's XLI on June 7, 2012	SG No. 46 / 19.6.2012
	Decree No 234 on the return to the National Assembly of the Law on amendment and supplement to the Forestry Act, adopted by the National Assembly's XLI on 13 June 2012	SG No. 47 / 22.6.2012
	Decree No 153 on the return to the National Assembly of the Law on amendment and supplement to the Special Intelligence Means Act, adopted by the XLII National Assembly on 11 July 2013	SG No. 66 / 26.7.2013
	Decree No. 168 on the return to the National Assembly of a new law amending and supplementing the Law on the State Budget of the Republic of Bulgaria for 2013 adopted by the XLII National Assembly on 1 August 2013	SG No. 70 / 9.8.2013
	Decree No 207 on the return to the National Assembly of the Law on Amendments to the Aliens in the Republic of Bulgaria Act adopted by the XLII National Assembly on 24 October 2013	SG No. 97 / 8.11.2013

	Decree No. 12 on the return to the National Assembly of the Law on Amendments to the Law on Medicinal Products for Human Medicine adopted by the XLII National Assembly on 16 January 2014	SG No. 9 / 31.1.2014
	Decree No. 31 on the return to the National Assembly of the Electoral Code adopted by the XLII National Assembly on 21 February 2014	SG No. 18 / 4.3.2014
	Decree No 70 on the return of the National Audit Office to a new discussion in the National Assembly adopted by the XLII National Assembly on 28 March 2014	SG No. 33 / 11.4.2014
	Decree No. 73 on the return to the National Assembly of the Law for amendment and supplement to the Law on the ownership and use of agricultural land, adopted by the XLII National Assembly on April 4, 2014	SG No. 34 / 15.4.2014
	Decree No. 142 on the return to the National Assembly of new provisions of the Law on the Ministry of the Interior adopted by the National Assembly on May 28, 2014.	SG No. 48 / 10.6.2014
	Decree No. 157 on the return to the National Assembly of the Law for amendment and supplement of the Law on Protection of Competition adopted by the XLII National Assembly on 18 June 2014.	SG No. 54 / 1.7.2014
	Decree No 197 on the return to the National Assembly of the Military Intelligence Act passed by the XLIII National Assembly on 1 October 2015	SG No. 80 / 16.10.2015
	Decree No. 127 on the return to the National Assembly of new provisions of the Law amending and supplementing the Electoral Code adopted by the National Assembly on 28 April 2016	SG No. 36 / 13.5.2016
	Decree No. 66 on the return to the National Assembly of the Concessions Act adopted by the 43rd National Assembly on 24 January 2017	SG No. 13 / 7.2.2017

Table 2

Rumen Radev - the fifth president of the Republic of Bulgaria (22 January 2017 - at present)		
№	**DECREES under Art. 101 of the Constitution of Bulgaria**	**Promulgated in the State Gazette**
1.	Decree No. 66 on the return to the National Assembly of the Concessions Act adopted by the 43rd National Assembly on 24 January 2017	SG No. 13 / 7.2.2017
2.	Decree No. 175 on the return to the National Assembly of the Law for amendment and supplement to the Environmental Protection Act adopted by the 44th National Assembly on July 27, 2017	SG No. 65 / 11.8.2017
3.	Decree No. 198 on the return to the National Assembly of the Law for the Amendment and Supplement to the Defense and Armed Forces Act of the Republic of Bulgaria adopted by the 44th National Assembly on 27 September 2017	SG No. 81 / 10.10.2017
4.	Decree No 250 on the return to the National Assembly of the Law on the Budget of the National Health Insurance Fund for 2018, adopted by the 44th National Assembly on 29 November 2017	SG No. 99 / 12.12.2017
5.	Decree No 274 on the return to the National Assembly of the Law on Counteracting Corruption and Forfeiture of Unlawfully Acquired Property adopted by the 44th National Assembly on 20 December 2017	SG No. 2 / 3.1.2018
6.	Decree No 25 on the return to the National Assembly of provisions of the Law for Amendment and Supplement to the Seed and Propagating Material Act adopted by the 44th National Assembly on 24 January 2018	SG, No. 12 / 6.2.2018
7.	Decree No. 47 New Debate in the National Assembly Amending and Supplementing the Law on Bank Bankruptcy adopted by the 44th National Assembly on 9 February 2018	SG No. 17 / 23.2.2018

Table 3

№	DECISIONS OF THE CONSTITUTIONAL COURT UNDER ART. 149, item 2 of the Constitution of Bulgaria	
	DECISION No 10 / 06.07.2017 Constitutional Case No 10/2016 (Promulgated, SG No. 57/14 July 2017)	Declares as unconstitutional the provision of Art. 5, para. 4 of the Financial Supervision Commission Act (promulgated SG No. 8 of 28 January 2003, amended and supplemented, SG No. 76 of September 30, 2016).
	DECISION No 4 / 16.03.2017 Constitutional Case No 16/2016 (Promulgated, SG, No. 26 of 28 March 2017)	Declares as unconstitutional the provision of Art. 84, para. 6, ex. first of the Law on the Ministry of Interior / prom. SG no. 53 of 2014, dop. SG no. 13 of 2017 / as well as of Art. 84, para. 8 of the Law of the Ministry of Interior in its part "within 5 days with a decree of the district prosecution office for the place of the placement or the seizure of the property".
	DECISION No 3 / 23.02.2017 Constitutional Case No 11/2016 (Official Gazette, issue 20 of 07.03.2017)	Declares as unconstitutional the provision of Art. 242a (New, SG No. 39/1916, in force as of 26.05.2016) of the Electoral Code (promulgated, State Gazette No 19 of 5 March 2014, last amended SG 97 from 6 December 2016).
	DECISION No 1 / 31.01.2017 Constitutional Case No 6/2016 (Official Gazette, issue 14 of 10.02.2017)	Declares as unconstitutional the provision of Art. 166, para. 3 of the Law on the Judiciary / prom., SG, no. 64 of 7. 08. 2007, last amended. and dop. SG No. 76 of 30. 09. 2016).
	DECISION No 12 / 13.10.2016 Constitutional Case No 13/2015 (Official Gazette, No. 83 of 21.10.2016)	Declares for unconstitutional Art. 79, para. 2, item 2 of the Criminal Code (promulgated in the State Gazette, issue 26 of April 2, 1968, suppl., SG 47 of 21.06.2016) and § 35 and § 36 of the Transitional and Final Provisions of Law Amending and Supplementing the Criminal Code (promulgated, SG No. 74 / 26.09.2015).
	DECISION No. 7 / 21.06.2016 Constitutional Case No 8/2015 (Promulgated, SG, No. 49 of 28.06.2016)	Declares as unconstitutional the provision of Art. 40 para. 1 item 5 of the Classified Information Protection Act (promulgated in State Gazette, issue 45 of 2002, last amended and supplemented, SG No. 28 of 2016).

	DECISION No 5 / 12.05.2016 Constitutional Case No 2/2016 (Promulgated in State Gazette No 38 of 20.05.2016)	Declares as unconstitutional the provision of Art. 100, para. 2 of the Civil Servants Act (promulgated, State Gazette No.67 / 1999, last amended and supplemented, SG No. 98/2015).
	DECISION No 4 / 12.04.2016 Constitutional Case No 10/2015 (Promulgated, SG, No. 32 of 22.04.2016)	Establishes the unconstitutionality of Art. 29, para. 2, para. 3 and para. 4, as well as of Art. 30, para. 1 of the Attorney Act (promulgated, State Gazette, issue 55 of 2004, amended SG, issue 97 of 2012).
	DECISION No 3 / 08.03.2016 Constitutional Case No 6/2015 (Promulgated, SG, No. 20 of 15.03.2016)	Declares as unconstitutional the provision of Art. 45, para. 2 of the Health Insurance Act (promulgated, SG No. 70/19 June 1998, amended and supplemented, SG 48 from 27 June 2015, last amended, SG 102 from 29 December 2015).
	DECISION No 12 / 13.10.2016 Constitutional Case No 13/2015 (Official Gazette, No. 83 of 21.10.2016)	Declares for unconstitutional Art. 79, para. 2, item 2 of the Criminal Code (promulgated in the State Gazette, issue 26 of April 2, 1968, suppl., SG 47 of 21.06.2016) and § 35 and § 36 of the Transitional and Final Provisions of Law Amending and Supplementing the Criminal Code (promulgated, SG No. 74 / 26.09.2015).
	DECISION No 13 / 31.07.2014 Constitutional Case No 1/2014, (Promulgated, SG, No. 65 of 06.08.2014)	Declares for unconstitutional points 2 and 3 of § 6 of the Final Provisions of the State Budget Act 2014 (SG 109/2013), which established Art. 35a, para. 1, 2 and 3, Art. 35b, para. 1, 2, 3 and 4, Art. 35, para. 1, 2 and 3, and Art. 73, para. 1, 2, 3 and 4 of the Renewable Energy Act (State Gazette, issue 35/2011, amended and supplemented, SG, issue 9/2013).
	DECISION No 11 / 10.07.2014 Constitutional Case No 2/2013 (Promulgated, SG No. 61/25 July 2014)	Declares as unconstitutional the provision of Art. 39, para. 3 of the Waste Management Act (promulgated, SG No. 53 of July 13, 2012, amended, No. 66 of July 26, 2013) under the section "free of charge for each of the parties".

	DECISION No 3 / 06.03.2014 Constitutional Case No 10/2013 (Promulgated, SG, No. 24 of 18.03.2014)	Declares as unconstitutional the provision of Art. 112k, para. (1) of the Law on the Maritime Spaces, Inland Waterways and the Ports of the Republic of Bulgaria, (promulgated in the State Gazette, issue 12 of 2000, last amended and supplemented, State Gazette, issue 109 of 2013) without a tender or competition in favor of a person under Art. 112d, para. 1, respectively under Art. 112e, para. 4, as well as "created by § 39 of the Law for Amendment and Supplement to the Law on Maritime Spaces, Inland Waterways and Ports of the Republic of Bulgaria (promulgated, State Gazette No. 28 of 2013).
	DECISION No 2 / 04.02.2014 Constitutional Case No 3/2013 (Promulgated in State Gazette No 57 of 29.06.2013)	Declares to be unconstitutional § 44, item 3, b. "A" and item 5 of the Transitional and Final Provisions of the Law for Amendment and Supplement to the Value Added Tax Act (promulgated, State Gazette No. 94/2012), which amends the provision of Art. 169, para. 4 and the provision of Art. 179, para. 1 of the Tax and Social Insurance Procedure Code (promulgated, State Gazette, issue 105/2005, last amended and supplemented, SG, issue 1/2014).
	DECISION No 12 / 28.11.2013 Constitutional Case No 9/2013 (Promulgated, SG, No. 105 of 6.12.2013)	Declares for unconstitutional Art. 17, para. 1, item 6 and Art. 17a, para. 1, item 2 of the Law for the Structure of the Black Sea Coast (promulgated, State Gazette, issue 48 of 2007, promulgated in SG, issue 66 of 2013).
	DECISION No 8 / 11.10.2013 Constitutional Case No 6/2013 (Promulgated in State Gazette No. 91 of 18.10.2013)	Declares to be unconstitutional and inconsistent with the international treaties to which Bulgaria is a party, art. 26, item 3 and art. 59, para 2, item 3 of the Radio and Television Act (prom., SG 138 / 24.11.1998, last amended, SG, No. 27 / 15.03.2013).

	DECISION No 6 / 15.07.2013 Constitutional Case No 5/2013 (Promulgated in State Gazette, issue 65 of 23.07.2013)	Declares to be unconstitutional and inconsistent with the international treaties to which Bulgaria is a party, Art. 38, para. 1 and para. 2 of the State Property Act (promulgated, State Gazette No 44 of 21.05.1996, amended and supplemented, SG 99/02 of 14.12.2012), and Art. 27, para. 1 of the Municipal Property Act (promulgated, State Gazette No. 44 of 21.05.1996, amended and supplemented, SG No. 91 of 20.11.2012). Declares for unconstitutional Art. 38, para. 3, Art. 39, para. 1, second sentence and second section "Property Benefit - Private Property" in Chapter Three "Pre-Expropriation of Real Estate - Private Ownership for State Purposes" of the State Property Act and Art. 29, para. 3, item 1 and art. 30 of the Municipal Property Act.
	DECISION No 4 / 04.07.2013 Constitutional Case No 11 of 2013 (Promulgated SG, No. 62 of 12.07.2013)	Declares as unconstitutional the provision of Art. 28, para. 5 of the Hunting and Game Protection Act / prom., SG, no. 78 of 26.09.2000, last amended. no. 15 of 15.02.2013).
	DECISION No 2 / 23.05.2013 Constitutional Case No 1/2013 (Promulgated in State Gazette, issue 50 of 07.06.2013)	Declares to be unconstitutional Art. 11, para. 5 of the Law for Withdrawal in favor of the State of Illegally Acquired Property (promulgated, State Gazette, issue 38/2012, last amended, State Gazette, issue 103/2012).
	DECISION No 13 / 13.10.2012 Constitutional Case No 6/2012 (Promulgated SG, No. 82 of 26.10.2012)	Establishes the unconstitutionality of Art. 2 in the part "or administrative-penal", Art. 3, para. 1 in the section "and to restore the sense of justice to citizens", Art. 24, para. 3 and 4, Art. 27, para. 3 in the "fifteen years" section and Art. 73 in the "fifteen-year limitation" part of the Law for Withdrawal in favor of the State of Illegally Acquired Property (prom., SG 38 from 18.05.2012).

	DECISION No 11 / 02.10.2012 Constitutional Case No 1/2012 (Promulgated in State Gazette, issue 78 of 12.10.2012)	Declares to be unconstitutional and inconsistent with the international treaties to which Bulgaria is a party, Art. 11, para. 1, item 8 of the Law on the Bulgarian Telegraph Agency (promulgated, State Gazette No. 99 / 16.12.2011).
	DECISION No. 8 / 04.07.2012 Constitutional Case No 16/2011 (Promulgated in State Gazette, issue 53 of 13.07.2012)	Declares for unconstitutional Art. 1, para. 2, line 5 and § 5 of the Law on the budget of the National Health Insurance Fund for 2012 (promulgated, State Gazette, issue 99/2011).
	DECISION No 7 / 19.06.2012 Constitutional Case No 2/2012 (Promulgated in the State Gazette, issue 49 of 29.06.2012)	Declares for unconstitutional Art. 35, para. 1, item 1 and item 5 of the Labor Code (promulgated in the State Gazette, issue 26 of 1986, last amended, issue 7 of 2012), as amended by § 3 of the Law for Amendment and Supplement The Labor Code (promulgated, State Gazette, issue 7 of 2012), and Art. 414a of the Labor Code established by § 21 of the Law for Amendment and Supplement to the Labor Code.
	DECISION No. 5 / 05.04.2012 Constitutional Case No 13/2011 (Promulgated, SG, No. 30 of 17.04.2012)	Announces for unconstitutional para. 4 and para. 5 of Art. 61c of the Local Taxes and Fees Act (SG 117/1997, last amended, State Gazette, issue 39/2011).
	DECISION No 3 / 21.03.2012 Constitutional Case No 12/2011 (Promulgated in the State Gazette, issue 26 of 30.03.2012)	Declares for unconstitutional Art. 13a, para. 3, ex. 1 and Art. 54, para. 2, ex. 1 of the Waste Management Act (promulgated, State Gazette, issue 86/2003, last amended, State Gazette, issue 3 3/2011) in the part "general".
	DECISION No. 1 / 01.03.2012 Constitutional Case No 10/2011 (Promulgated, SG No. 20 of 09.03.2012)	Declares to be unconstitutional Art. 189, para. 13 of the Road Traffic Act (promulgated in the State Gazette, issue 20 of March 5, 1999, amended, SG, No. 19 of 8 June 2011).

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ELECTRONIC REGISTER OF THE MEDICAL CERTIFICATES SPECIFICS AND FUNCTIONS RELATED TO THE PREVENTION OF ABUSE IN THE HEALTH INSURANCE SYSTEM

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Abstract: This paper studies the specifics of the established system of the electronic register of the medical certificates by taking into account its characteristics related to the development, nature and relevant stakeholders in the context of the increasing digitisation of the health insurance mechanism. Based on the analysis, conclusions and recommendations regarding its status and development are derived, given the current social and economic parameters and the legal framework.

Key words: medical certificates, sickness certificates electronic register, National Social Security Institute

Introduction

The Opinion of the European Economic and Social Committee of 20 September 2017 on the "Impact of the digital healthcare revolution on health insurance" justifies the introduction of digital healthcare revolution as a basis for maintaining and promoting the development of solidarity-based, inclusive and non-discriminatory health insurance/healthcare systems that serve the needs of everyone. At the same time it highlights that the health insurance systems should use digital support in order to enable the exercise and activation of some basic social rights through confirmation of the values of solidarity and universality, which underpin the health insurance mechanism.

The system for electronic reporting and control on the issued medical certificates that was established and which is already permanently functioning should be noted as a positive aspect in the development of the health insurance system in the context of the so-called electronic healthcare, in particular the clinical information systems, the electronic medical files and digital hospital with enhanced centralism and reporting, as an instrument for prevention of any irregularities in the provision and expenditure of funds from the health insurance system. In this sense, the **objective of this paper** is to discuss some of its typical features relevant to its current development and status and to make the respective conclusions and recommendations to support its adequate and, practically working application, considering the legislative concept, in the health insurance system mechanism.

The following **tasks** have been identified for the implementation of this objective:

1. To study the main parameters, bases for establishment, principles and working mechanism.
2. To derive some key conclusions – positive, as well as negative trends, with a view to the general legal framework and practical application and action of the health insurance mechanism.

Position

The existing system of the electronic register of the medical certificates has been developed at several key levels – as a legal framework and

basic regulation on the one hand, and as application products on the other, which further develop and create the working mechanism to be applied by the relevant stakeholders, i.e. the National Social Security Institute, hospitals and attending physicians or, respectively, doctors of dental medicine. Thus, the basic legal instrument in the system is the Regulation on the procedure for provision of data to the National Health Insurance Institute on the medical certificates issued and the decisions on their appeals (Adopted with Decree of the Council of Ministers No 241 of 4.08.2014, promulgated in SG, issue No. 67 of 12.08.2014, in force as of 1.12.2014), adopted on the ground of Art. 103a of the Health Act, where the exclusive competence on the control of its implementation is assigned to the head of the National Social Security Institute.

In further development of the principles of exclusive competence, the National Social Security Institute develops and provides the web services related to exercising control, provision of data and access to the data in the register, used by the programme products through the web application "Electronic register of the medical certificates and decisions on their appeals". These have created a specific procedure, the main principles of which are accountability and control, and the main objective – prevention of any abuse of funds from the health insurance fund. For the purpose of the system upgrade and its adequate application, pursuant to Order No. 1016-40-210 of 28.02.2017 of the Head of the National Social Security Institute, "Functional requirements, structure and format of the data maintained by the software products for entry, control, storage, printing, presentation/ cancellation of data and generation of reports for medical certificates issued/cancelled and the decisions on their appeals" were approved, which are designed for the developers of the software used by the medical expertise bodies. There are some changes in the established requirements, which have the purpose of formalising the conditions for accepting or rejecting incorrect data from issued medical certificates in the Electronic register of the medical certificates and the decisions on their appeals (ERMCDA) and for communicating them to the external participants in the process.

The system is based on three main principles - 1) **exclusivity of the software products –** where, in particular, software products distributed by NSSI free of charge or other software product meeting the functional requirements, structure and data format, approved by an order of the head of NSSI and published on the web page of the institute, are

used for entry, control, storage, printing of the medical certificates, presentation/cancellation of the data in the register and for generation of reports on medical certificates issued/cancelled; **2) licensed software** – at the level of which the software product distributed by NSSI works on licensed versions of the operational environment, where the Institute shall not be held liable for its operation if the software is started in operational systems that are not licensed; 3) **centralised method for development** – exclusive competence of the National Social Security Institute to develop and provide the web services for exercising control, presenting data and providing access to the register data used in the software products; 4) **uniqueness and authenticity of the data submitted** - through their presentation and storage in the register under a unique number, which is automatically generated by the register and which consists of a one-letter code defining the method of presentation of the information from the medical certificate.[1] Currently, the following main levels constitute corresponding and relevant components of the digitalised framework:

1) Instruction for use of NSSI's web application "Electronic register of the medical certificates and the decisions on their appeals" – it functions based on the user registration principle, considering the generation of unique numbers for medical certificates and for data submission, or, respectively, submission of files with data from medical certificates issued and decisions of medical advisory committees (MAC).
2) Software product "e-medical certificate/e-decision of MAC - created for entry, control, storage and printing of the medical certificates, presentation/cancellation of data and generation of reports on medical certificates issued/cancelled since 01.01.2015 and for entry, storage, printing and presentation of data from decisions of MAC with respect to medical certificates against which appeals have been filed since 01.01.2015.[2]

[1] The latter comprises of: a) E – for data presented electronically in the register; b) P – for data presented in NSSI on paper; a four-digit full designation of the calendar year, in which the number is generated; a seven-digit ascending number, which is unique for the calendar year in which the number is generated.

[2] The data input via this product is sent to the National Social Security Institute and is entered in the Electronic register of the medical certificates and the decisions on their appeals. After submission of the data, the product provides information on the data accepted and on any discrepancies established therein, as well as on the reasons for any data rejection.

3) accompanying software products and files: NSSI's software product for issuing medical certificates and decisions on their appeals - Version 1.9. of 07.11.2017 for initial installation, file for replacement of the version of NSSI's software product for issuing medical certificates and decisions on their appeals - Version 1.9. of 07.11.2017 for replacement of version, file for replacement of the nomenclatures in NSSI's software product for issuing medical certificates and decisions on their appeals - Version 1.6. of 07.11.2017 for replacement of nomenclatures.

Based on the functioning system, the data contained in the issued medical certificates submitted to the electronic register of the medical certificates is presented to NSSI by the attending physicians or the relevant doctors of dental medicine in person or through the hospitals where they exercise activity, or, respectively, by the medical advisory committees (MAC) through the hospitals in which they function. Then, the data contained in the decisions on appeals against the medical certificates are presented in NSSI by the medical advisory committees (MAC) through the hospitals in which they function, or, by the territorial expert medical committees (TEMC) through the regional files of medical expertise (RFME) as well as by the National Expert Medical Committee (NEMC).

The identification and operation in the system is based on the requirement for uniqueness and personalisation of the liable individuals, based on which NSSI provides hospitals with unique numbers for the physicians/ doctors of dental medicine who exercise activity therein, as well as for the MAC, based on an application submitted to the relevant territorial division of NSSI or online through a web application accessible from NSSI's web page, where a separate account is kept for each hospital in the register, in which the data, changes to data and the generated unique numbers contained in the application are entered.[3]

To complement the mechanism for data provision and for gaining access to the data in the register, **medical doctors/doctors of dental medicine** and hospitals are registered as users of the web services online or through a web application accessible through NSSI's web page.[4][1]

[3] For the registration, doctors/doctors of dental medicine must have a valid certificate for qualified electronic signature of an individual issued by an accredited provider of certification services, which shall contain the personal identification number of the individual.

[4] For more information about the procedures for provision of data, see Andreeva, A., G. Yolova, Legal framework of paid time off and leaves, V., Science and Economics, 2017, page 140

The system for electronic reporting of medical certificates has some significant benefits, such as prevention of abuse of health insurance funds, and these shall be identified at the following levels: 1) detailed and yet dynamic social security regulations, which shall be targeted and adaptable as a specific legislative response to the increasing cases of abuse in the social security system because of improper and illegal expenditure of social security funds; 2) a wide system of measures for formal and logical control, with strict rules and formality of the established requirements; 3) serious legislative response to the possibility for issuance of false medical certificates with incorrect or untrue content; 4) extended deadlines for archiving, which will allow corrections within longer periods and will provide an opportunity for recovery of unduly received sums within strictly defined and yet prolonged periods. The conclusions of the European Economic and Social Committee are similar[5].

However, the following problems of the system need further investigation: 1) low level of compatibility with the enhanced trend for personal data protection and wide accessibility of information in the health files; 2) prioritising data protection, mainly with respect to the control and not with respect to the data protection legal framework for the insured individuals; 3) weak system for seeking administrative penal responsibility for violation of the procedures, with priority to property sanctions with no alternative of the penalty, such as depriving the violating entity from their right to exercise their profession or activity; 4) the system that has been developed does not apply to data contained in the expert decisions of TEMC/NEMC, enacted with respect to medical certificates for which appeals have been filed; 5) NSSI has exclusive competence and, at the same

[5] 6.1.1. The gradual computerisation of our healthcare system will certainly contribute to the improvement of the administrative and financial management of the social security files of all citizens (saving space, time, consumables, increasing productivity, simple and safe archiving, benefits for the environment) on the one hand, and, to the rapid recovery of the costs of the healthcare providers and of hospitals on the other, while increasing the inspections and reducing the risk of errors in the billing of services at the same time.
6.1.2. The elimination of paper administrative forms reduced the necessary time for their submission and resulted in simplification of the administrative procedures, even though this does not bring any direct benefit with respect to the quality of care. This facilitates the medical practice and allows the physicians to concentrate their efforts on the art of treating patients, instead of focusing on the inevitable administrative actions related to this.

time, the law specifies that the Institute is not liable for the operation of the product if it is started on operational systems that are not licensed.

Conclusion

It is evident that the digitisation process as a basis for the modern further development of the regulatory health insurance mechanism follows the trend of dynamic, adaptable and continuous development, which necessitates immediate and adequate steps with a view to the protection of the rights of the insured individuals under the new regulatory framework. Thus, digitisation turns out to be the new legal and technical order in the assertion of the rights and also in the protection of the health insurance funds in the guidelines for accessibility, fairness, proper and lawful spending.

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SOME ASPECTS OF THE ELECTRONIC MONITORING OF SENTENCED JUVENILE OFFENDERS

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Summary: The present report reveals some aspects of the electronic monitoring of sentenced juvenile offenders from the point of view of the effectiveness of this method of control on the conduct of the juvenile offenders. In our analysis the attention is focused on the issues of stigmatization risk and effectiveness of the use of the electronic monitoring for limitation of the recidivism among juveniles. The concept that direct forms for realization the corrective-educational influence of the probation officers are preferred than the electronic monitoring of the juveniles.

Key words: electronic monitoring, sentenced juveniles, probation, stigmatization.

The digitalization of the contemporary society extends the legal-technical opportunities for crime prevention. The digital technologies could be used for improvement of citizen information and their crime prevention, so as to realize the electronic monitoring as a method of control on the conduct of certain categories of convicted persons and defendants under house arrest[1]. Among the offenders on whom the electronic monitoring can be used, the sentenced juveniles represent a specific group as regards their age peculiarities. That is why this electronic monitoring on their conduct reveals certain specifics.

Firstly, the electronic monitoring on juveniles is applicable in the conditions of imposed probation measures – compulsory registration under current address or restrictions of free movement according to Article 263, paragraph 1, item 2 of the Law for execution of penalties and the detention in custody (state newspaper, № 32, 2016). Here we must have in view that the principle situation of art. 63, paragraph[1], item 6 of the Penal code, according to which for the juveniles under 16, probation is replaced by public censure. Therefore the law regime of electronic monitoring of the juveniles includes only those who had 16, on whom the court has already imposed some of the cited probation measures[2]. Such an example is a theft made by a juvenile offender sentenced on 17th September, 2015 by the district court in Byala Slatina, with a probation measure – restriction of free movement with the prohibition to leave his house from 22.00 to 6.00. The court has ordered the measure to be implemented by electronic monitoring for the maximum period of 6 months, according to Art. 267, paragraph 1 of the Law for execution of penalties and the detention in custody.

Another hypothesis in which electronic monitoring is applicable on juveniles is a conditional conviction when the court imposes probation measures during the probation period (Art. 67, paragraph 3 of the Penal code). The requirements for implementation of probation measure with electronic monitoring in this case are: the juvenile must have 16 and the suspended punishment of imprisonment is not less than 6 months. Having in view the opportunity for application of Art. 64 of the Penal code when the suspended punishment is up to 1 year imprisonment, the cases of the enforcement probation with electronic monitoring under conditional condemnation of juveniles are limited.

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1 http://parliament.bg/bills/43/502-01-67.pdf

2 In Art. 3, item 1 of the cancelled Regulation № 15 of 4.12.2009 for electronic monitoring of the behavior of the sentenced persons, it was definitely excluded the electronic monitoring for sentenced juveniles under 16.

For the first time in Bulgaria the electronic monitoring was introduced with a pilot project for 183 people[3]. The analysis conducted in connection with the study of offenders‘ attitudes towards the electronic monitoring system gives proofs that they face two major obstacles. The first one is related to the requirement of observing the restrictions, which make them worried and create discomfort. The second obstacle is related to the attitude of the public to label people who are serving a punishment, including those who are not imprisoned[4]. The finding in the evaluation report that public attitudes are difficult to change and therefore offenders perceive the attitude of the surrounding people and the institutions as hostile and rejecting them should be even more accountable to juveniles. According to the researchers of electronic monitoring in other countries, this method **„**subject youth to additional stigmatization and marginalization”[5]. Processes of stigmatization put under risk namely this group of juvenile offenders, who are most sensitive to the sanction and public reaction of use of sanctions.

All those conclusions correspond to the results of the study made in 2016 of imprisoned people in Varna prison. They show that the mechanism of stigmatization is found in 32,6 % of the established 129 people with sustainable criminal career. Among most of them (83 %) the initial moment of the stigmatization mechanism is found until the age of majority[6]. Therefore using the electronic monitoring on sentenced on probation juveniles it is necessary to have in view the effect of that monitoring on the stigmatization of juveniles in the society. Because persons under 18s take the public reactions of disapproval with the sensitivity, spontaneity and emotionality typical to the age. Next, about the sentenced juvenile offenders, is necessary an instructive influence by the probation officers in a higher degree than their formal conduct monitoring. In this sense, we must have in view that **„**electronic monitoring cannot replace professional human intervention and support for

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3 Evaluation report on Project NFM-2013-BG15-2 „Strengthening of the use of probation measures in accordance with European standards and system of electronic monitoring”, finances by Norwegian finance mechanism 2009-2014 with beneficiary General Directorate “Execution on Penalties”, Bulletin “Prison activity”, book 1/2016, p. 39.

4 The same, p. 49.

5 Weisburd, K. Monitoring Youth: The Collision of Rights and Rehabilitation. Iowa Law Review, Vol. 101, 2015, p. 330.

6 Kovacheva, G. Стигматизация и криминална кариера [Stigmatization and Criminal Career]. Изд. „ВСУ „Черноризец Храбър”, Варна, 2018 [Ed. VFU „Chernorizets Hrabar”, Varna, 2018], p.90.

suspects and offenders"[7]. When the probation with electronic monitoring is used on juveniles, in all cases the contact with a probation officer should be leading than the electronic method for monitoring. The practice shows that the prohibition of the juvenile to leave his home, during the electronic monitoring, is combined with measures compulsory current address registration and compulsory periodic meetings with a probation officer. However, it is not an obstacle, along with the electronic monitoring of the juvenile, to carry out visits by the probation officer at his home, thus reinforcing the positive educational impact of the periodic meetings at the appropriate probation service. That way the negative effect related to the isolation of the probation measure could be restrained.

Another aspect of the electronic monitoring is related to the restraint of the recidivism. The results of the study of the long-term effects of the use of this method of control on the conduct of the sentenced for their future criminality activity are not simple. „A significant number of the major empirical studies conducted in the last fifteen years – mostly derived from North America and the United Kingdom – have found that the efficacy of EM in reducing re-offending after monitoring has concluded is modest or minimal, or, in some cases, non-existent or negative".[8] At the same time „some studies, especially those from Europe, indicate a modest positive impact on re-offending in comparison to other types of penal sanctions"[9]. For juveniles the continuation and deepening of their criminality could be the result of several deficits, which instead of being eliminated by the punishment and the imposed probation, only could become deeper because of the electronic monitoring. For example& In 2015 at the district court in Ruse in a criminal case a juvenile was condemned conditionally by agreement. During the probationary period a probation measure has been imposed limiting the free movement for the time from 9 p.m. to 6 a.m. during which time he couldn`t leave his home**.** For the implementation of the imposed measure it is stated that for 6 months the juvenile would be supervised by means of electronic monitoring. Later it was evident from the judgment of the district court of 9th. May, 2017, the sentenced offender

7 Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring.

8 Graham, H., G. McIvor. Scottish and International Review of the Uses of Electronic Monitoring. Report No.8/2015. The Scottish Centre for Crime & Justice Research, p.64.

9 Graham, H., G. McIvor. Op. cit.

after the electronic monitoring period has recurred. At the moment when the control on his conduct expired, the juvenile committed a new crime. In prognosis, the effectiveness of the electronic monitoring on certain sentenced juveniles can be limited or be missing, because of the fact that they are difficult to be motivated for a long-term change of the regime and everyday habits after restraints have expired. While in adults, the need for behavioral adjustment can be better understood and constant. We shouldn`t neglect the negative influence of the criminal friends environment which is important to juveniles.

Another consideration which imposes to give a meaning of the problem of electronic monitoring of juveniles is related to their insufficient social maturity and conduct self-control. The use of electronic monitoring on them can lead to frequent infringements of the restraints comparing to supervised full-aged people. In the juveniles „the risk of either probation or electronic monitoring violations, or both, is that much higher—and for longer"[10]. As a result of the violations, given the provision of Art. 267, paragraph 3 of the Law for execution of penalties and the detention in custody, the electronic monitoring can be prolongated for a new period of 6 months. The prolongation of the electronic monitoring can have negative consequences for the future criminal activity of the juveniles as the opportunity of stigmatization and the adjustments for deviation grows.

In conclusion, electronic monitoring can be useful for certain categories of sentenced as an adequate method of creating self-discipline and filling in deficits. If a policy of extension of the use of that method is accepted, proving technical means for bigger number of sentenced, a profound analysis is necessary for the need to use of electronic monitoring of juveniles. No matter of digitalization of the modern society, the human factor has always been and remains leading in the correction and re-education of the juvenile offenders.

[10] Weisburd, K. Op. cit, p. 319.

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THE ACT OF DETENTION OF A PERSON THAT HAS COMMITTED AN OFFENCE UNDER ARTICLE 12A OF THE CRIMINAL CODE

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Summary: Not the very "inflicting of damages" to the person in the course of their detainment is a circumstance which precludes danger to society, but it is exactly "the act" of legal detainment of a person that has inflicted the damages necessary in the particular case if this has happened within the necessary limits. This "act" has extremely important instructive and waring significance and facilitates the limiting of the passiveness, indifference and apathy of surrounding people who see that an offence is being committed but do not interfere.

Keywords: necessary action of detainment of a person; detention of a person that has committed an offence; circumstance excluding the danger to society and the unlawfulness; inevitable defence; absolute necessity

I. The act whereby damages are caused in the course of detention of a person that has committed an offence where there are the prerequisites, conditions and limitations of the Criminal Code (hereinafter "the CC") not only does not involve the elements of an offence but is even to the benefit of society and is lawful. The legal definition of this new circumstance excluding the danger to society and the unlawfulness of the act is stipulated in Article 12a (1) of the CC. The circumstance is new because, although with a delay, an existing gap of long standing in the Criminal Code was filled in. So far, it has been considered in the practice that: "due to the lack of a legal regulation, the features of the legal institute of detainment of an offender are specified by the criminal law doctrine by comparison with another circumstance excluding danger to society – the inevitable defence" (Judgment No 15/1995).

Part of the conclusions drawn by the Supreme Court (hereinafter "the SC") about the institute of inevitable defence, if rephrased, will be also valid in full effect to the institute of detainment. It is about the latter that the SC assumed that: "it has a great importance for the timely" limitation of the consequences from "violations against the interests of the state and society, against the person and the legal rights of citizens. Through it, criminal law involves society in the fight against crime and stipulates that an act shall not be of danger to society where it does not cause damages to the person that has committed an offence "if this has happened within the necessary limits" (Decree No 12/1973).

II. According to our relatively newer judicial practice, the detainment of a person who has committed an offence "may be defined in most general terms as an act, which, despite formally involving the features of the corpus delicti envisaged in the law, is not of danger to society due to the fact that it was committed for detainment of an offender provided that it was not possible that the offender is detained in another manner and the inflicted damages correspond to the seriousness of the committed offence and the situation of the detainment" (Judgment No 15/1995).

The formulation that the act itself of detainment of the person who has committed an offence is not of danger to society where it is in observance of the provision of Article 12a of the CC is at first glance clear and does not raise any doubts. It is necessary to underline that it is fundamental for the contents and meaning of the institute itself and the underestimating of its typical roles results in contradictory theoretical conclusions, respectively, to wrong decisions under particular cases in the practice.

Irrespective of the fact that in Article 12a (1) of the CC, the legislator has used the expression that "shall not be considered dangerous to the society if damages are inflicted on a person who has committed a crime, where this occurs in the course of detention of such person", then it is recommended that the interpretation in this case is not literal but instead according to the meaning. This refers to the fact that, as element of the contents of the norm, the term „act" is not present but although not specified explicitly in the text, it is implied that the act is still present in the definition implicitly.

Is should be underlined that not the very "inflicting of damages" to the person in the course of their detainment is a circumstance which precludes danger to the society, but it is exactly "the act" of legal detainment of a person that has inflicted the damages necessary in the particular case. It is exactly because of the damages that have been inflicted to the person who has committed an offence that it has to be judged when, at what conditions and as a result of what those damages will be determined to be necessary and lawful. If the consequences of the act of detainment are not harmful to the person but useful or at least neutral ones, there would not arise at all the need to examine this structure in detail and it would not be of special interest for criminal law. In this case, the inflicted damages result from the committing of the relevant act of detainment, not vice versa. Because, if the act is of public danger, its consequences cannot be of public benefit, justified and necessary.

It may be explained that the lack of the element "act" in the text of Article 12a of the CC would result in theoretical conclusions whose meaning is different from the implied one. That is why here as well as in similar definitions and elements, in order to avoid ambiguities and prevent useless discussions, the CC has to use a sufficiently objective and exact regulatory wording.

III. According to the established judicial practice, the committers of the necessary action of detainment of a person who is committing or has committed an offence shall be the citizens, and the government and public authorities (Decree No 12/1973). But, in reference to the committers of detainment, there are also other various concepts, extreme and intrinsically contradictory that are to be found both within the doctrine and outside it. To bring clarity to the matter about the detaining person, it is sufficient to go deep into the meaning of detainment as an institute. It should be said that "the efficient realization

of the fight against crime requires not only to repulse the attack but also to detain the offender who is committing or has committed an offence so that the latter is delivered to the government authorities" (Decree No 12/1973). The sound common logic employed by the Higher Court 50 years ago and the distinctively pragmatic purpose of the institute of detainment refer to the conclusion that this could be a wider scope of persons, virtually each person, without a requirement that they have a special capacity. Similarly to inevitable defence, the law gives the right of detainment not only to the victim but also to each citizen, without the need to seek the interference of government of public authorities (Decree No 12/1973).

The limiting of the scope of committers either to ones with special authority or such without special authority will result not only to reduction of the field of application of the institute but also to invalidation of its public and legal significance. There might be a selective application of Article 12a (1) of the CC depending on the subjective preferences of the law-enforcement authority for interpretation of the norm. This might also result in lack of action of those citizens who have the physical chance, willingness and courage to detain a person who has committed an offence but do not have the necessary knowledge and confidence for having the sanction of the state to do that. Finally, this might lead to criminal inaction by the relevant officials who are obliged by their official duties to undertake actions of detainment but are afraid they might be undeservedly accused of exceeding the authority.

IV. As Article 12a of CC justifies the necessary damage-inflicting detainment of a person who committed an offence so that the latter is delivered to the relevant authorities, the act of detainment should be aimed only and solely at the perpetrator. Although the norm envisages the detainment of one person – the perpetrator of the offence, there is no dispute that in case of complicity, the direction of detainment may also be in reference to two or more persons and irrespective of their role of accomplices.

1. The act of detainment most often refers personally to the perpetrator of the offence and this consists of two directions:

а) mandatory which consists of the realization of physical control for limiting the right of free movement in space in cases where the persons escape or hide, and

б) facultative which consists of causing the necessary damages to the detained person, for example, bodily injury or even death.

It is possible that the act of detainment affects not only the person of the perpetrator but all their legal benefits, too, and also affects the means used to commit the offence, irrespective of whose property they are. Someone else's legal benefits insofar as they were used in the perpetration of the offence or rights of third parties cannot be damaged by the act of detainment. The damage itself should contribute for the achievement of the objectives of the detainment, to be an element of the protection of the interests endangered by the offence (Nenov, Iv., 1992, p. 70).

In theory, there is the question as to whether in the course of detainment of a perpetrator of an offence, the committer of the detainment should be aware that they prevent infringement or limitation of already affected legally protected interests or they may realize the detainment also without having such awareness.

In reference to the set question, it can be said that the act of detainment, similarly to the act of inevitable defence is objectively of public benefit. There is a theory that inevitable defence depends exclusively on objective factors but not on the mental experience about the contents of the defence. It is related neither to the knowledge about the attack nor the intention of defence but when there is a will for defence, the motives of the committer have no significance for the existence of inevitable defence (Dolapchiev, N., 1994, p. 219).

In the particular case, however, the incentives that have motivated the committer of detainment to realize physical control on the perpetrator have a significant, crucial significance. Because it is known that the two cumulative prerequisites for lawful infliction of damages in the course of detainment of a perpetrator of an offence are that: a) there is no other harmless method of their detainment; and b) the actions of detainment are to be performed only aiming at delivery of the person to the competent government authorities and preventing the chance of commitment of another offence.

Those two prerequisites should undoubtedly be realized by the committer of the detainment. Otherwise, if the detainer is not aware of them but actually there was a committed offence and feigned detainment, we will have one detained perpetrator who was delivered to the authorities. **That is, if we take into consideration the objective nature of the public danger of the act in general and the objectively beneficial nature of such act of detainment, we should assume in such cases that the right**

of detention has been realized and the matter whether the damage of the perpetrator is lawful will be resolved in any particular case.

2. Similarly to inevitable defence where only the attacker may be damaged, also in the hypothesis of Article 12a of the CC, damage may be caused only to the detained person, in contrast to absolute necessity whose act affects third parties. The act of detainment, however, is only against such a person who is committing or has committed an offence – the legal fact which arises the right of detainment. Here lies the difference with the right of inevitable defence whose legal fact is the immediate illegal attack which may also not be criminal but another type of infringement of law.

It should be explicitly emphasized that the inflicting of a damage to third parties in the course of detainment is not admissible. On the other hand, the inflicting of damage in the course of detainment of the perpetrator is of public benefit but only where there was no other method of their detainment. Similarly to absolute necessity and in contrast to inevitable defence, it refers to an act that is an extreme and final means. If the perpetrator of an offence does not attempt to escape or they do not counteract or if they escape but the location they hide is known, then it is not justified to cause them any damage (Judgment No 15/1995).

Finally, in reference to their comparative analysis, it may be summarized that the detainment of a person who has committed an offence, similar to absolute necessity, is a collision, a conflict of two or more legally protected interests, fight of right against right while inevitable defence is a fight of the right against wrong (Dolapchiev, N., 1994, p. 229).

V. To continue the comparative examination, we may also mention that with inevitable defence, the attacked person could refuse counteract to the attack (without the obligation of refusal of active protection) and seek other options for avoiding or prevention of the attack. In contrast to inevitable defence, the detainment in analogue to absolute necessity, has a subsidiary nature. This means in particular that only if there is not harmless method of detaining the perpetrator of an offence, "it is justified to sacrifice legally protected interests" (Nenov, Iv., 1992, p. 79).

However, when it comes to damages in the course of detainment of a perpetrator of an offence, similarly to inevitable defence (and in contrast to absolute necessity), it is not necessary to fulfil the requirement that the avoided damages are smaller than the caused ones because here, "the very acts and not the results are to be subject to measurement" (Girginov, A., 2012, p. 10).

The right of the citizens to realize detainment of a person committing or having committed an offence, similarly to inevitable defence "has extremely important instructive and waring significance and facilitates the limiting of passiveness, indifference and apathy of surrounding people who see that an offence is being committed but do not interfere. And this encourages the infringers of public order, confirms their confidence that they can freely and without any trouble violate laws, rights and freedom of a human person" (Decree No 12/1973).

In reference to the act of detainment of a perpetrator of an offence, the following suggestions may be done **de lege ferenda** in Article 12a (1) of the CC:

Article 12a (1) of the CC "**It shall be of public benefit and legal if an act inflicts damages on a person who has started committing or has committed a crime, where this occurs for his/her delivery to the authorities provided there is no other way to detain such person and provided the necessary lawful measures have not been exceeded".**

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CONSTITUTIONAL AMENDMENTS IN THE JUDICIARY

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Summary: According to Montesquieu‘s theory of separation of powers each of the three state authorities is entrusted to a separate bearer/holder independent of the other two authorities. The Bearer of the jurisdiction is the court. Therefore the court is the only bearer of the judiciary according to its main function – the justice. This is a good reason to consider of a radical constitutional reform of the judiciary.

Key words: constitutional amendments, jurisdiction, judiciary, justice, principle of separation of powers, holder of the judiciary

1. The 1991 Constitution is a modern European constitution as its norms have direct effect, it affirms the principle of popular sovereignty and the democratic participation of Bulgarian citizens in political and social life, establishes and guarantees the principle of separation of powers, proclaims the priority of international law, establishes a complete and the most modern catalogue of citizens‘ rights and freedoms, while granting their irrevocability, establishes the Constitutional Court with a special jurisdiction for protection of constitutionalism, establishes a constitutional basis for multi-party system and sets a foundation of an active civil society. All its features of a modern and democratic constitution made it Bulgaria‘s most recognizable business card while joining the Council of Europe, NATO and the European Union.”[1]

We can’t go against such a true and accurate assessment of the Bulgarian Constitution of 1991, given by Professor Pencho Penev. We owe our respect and appreciation to the members of Parliament who took part in the Grand National Assembly in extremely difficult historical period of transition from totalitarian society to democracy and despite their political and personal biases; demonstrated wisdom and vision of the future of the state. With a lot of enthusiasm, with reason and will, the founding power proclaims its determination to create a democratic, legal and social state.

Indeed, the Constitution of 1991 is the strongest reason for Bulgaria‘s accession to the European Union. At the same time the main critics coming from our European partners are mainly related to the ineffectiveness of one of the constitutionally regulated authorities - the judiciary. Looking closely at the criticism and recommendations from the European Commission it seems they are primarily related to prosecutor‘s office activities. The constitutional model of the structural units of the judiciary in Bulgaria is innovative: along with the court it includes the prosecution and the investigation. The idea of asserting the independence of the judiciary prevails, with emphasis on the independence of the prosecution.[2] Professor Pencho Penev, a participant in the adoption of the Constitution and Minister of Justice of that time, provides an interesting explanation of the reasons why investigation was included in the judiciary. “The reality is”, he says, “that the Bulgarian state institutions - the Grand National Assembly and the pro-

[1] Penev, P. The Judiciary in Bulgaria 1989-2014. Problems of modern discourse. S. 2014. p. 108-109

[2] Penev, P. The Judiciary in Bulgaria 1989-2014. Problems of modern discourse. S. 2014. p. 218

gram government of Dimitar Popov were under strong pressure from our European partners to take the investigation out of Ministry of Interior's structure .... We were unofficially told that if we do not pull out the investigation from the Ministry of the Interior we have no chance of admission to the Council of Europe. Thus, we pulled investigation out of the Interior Ministry, and since it was ridiculous to position it as an independent institution, separate from the three authorities, we found a place for it in the judiciary, something that does not exist in Europe."[3]

Thus, in the current Bulgarian Constitution of 1991 the functions of the judiciary are entrusted to bodies that act as an independent and unified system. Three relatively autonomous subsystems exist within it divided both functionally and institutionally: court, prosecution and investigation. Their common goal is to protect the rights and legitimate interests, i.e. to take care of the law. The three subsystems have organizational autonomy; perform their specific tasks so as to ensure the effective functioning of the unified judiciary; each subsystem works with its inherent means and methods.

The foundation of jurisdiction is the courts. The court is a state body charged with performing a judicial function. It acts with independent judges within the competencies conferred by the Constitution and the law. Jurisdiction is concentrated in courts composed of professional and independent judges. It is carried out by the Supreme Court of Cassation, the Supreme Administrative Court, appellate courts, regional, military and district courts. Other specialized courts may also be established by law[4], such as, for example, are the Administrative and Specialized Criminal courts. There is a rule that prevents establishment of courts during extraordinary situations.[5]

The structure of the prosecutor's office is in line with that of the courts. It consists of prosecutors, who are sole bodies. At the head of the Prosecutor's Office is a Prosecutor General, who supervises the lawfulness in activities of all prosecutors. The powers of the Prosecutor's Office are laid down in Article 127 of the Constitution and are focused on ensuring of lawfulness in criminal investigations. The Prosecutor's Office also participates as a party in civil and administrative matters in the prerequisite legal

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3 Penev, P. The Judiciary in Bulgaria 1989-2014. Problems of modern discourse. S. 2014. p. 108-109

4 Article 119 (2) of the Constitution

5 Article 119 (3) of the Constitution

conditions. Investigative bodies are part of the judiciary.[6] They investigate criminal cases in prerequisite legal conditions.

A fundamental principle in the constitutional system of the judiciary is the equality of the judge, prosecutor and investigator in their legal positions. The goal is to ensure their independence from the other two authorities. Judges, prosecutors and investigators are called „magistrates". They are appointed, promoted, demoted, relocated and dismissed by the Judges or Prosecutors' College of the Supreme Judicial Council.

2.Since the adoption of the Constitution, four amendments and supplements have been made to Chapter VI „Judiciary" in the years 2003, 2006, 2007 and 2015. In all their diversity in all levels one theme can be assessed, related mainly to the common factor for these constitutional changes - the European integration process. In that respect, Professor Nora Ananieva acknowledges that, „The general assessment of the amendments made in Chapter VI „Judiciary" motivates the conclusion that it was not much of our own practice, mature political will or social mood that gave life to this renewing constitutional wave."[7]

The discussed and proposed projects for radical changes of the judiciary have been „stopped" in the pre-accession period by Interpretative Decision № 3/10.04.2003 on Constitutional Case № 22/2002 of the Constitutional Court.[8] It states that „while autonomous, separated from the legislative and the executive powers, according to the principle of separation of powers, the judiciary and its bodies (Chapter Six of the Constitution) are inextricably linked to the parliamentary form of government and are an irrevocable element of it." Constitutional judges gave a wider understanding of the form of the state government by considering the judiciary as part of the government. The thesis has been criticized by a number of authors for being inconsistent with basic principles in law and philosophical legal doctrine.[9]

The National Assembly has made four constitutional changes in the judiciary:

The first amendments to the Constitution were adopted by the 39th National Assembly, promulgated in the State Gazette (SG), № 85/2003 and generally refer to the legal status of judges, prosecutors and investigators.

6 Article 128 of the Constitution

7 Ananieva. N. The 1991 Constitution and the Incomplete Revolution. S. 2014. p. 450

8 Interpretative Decision № 3 / 10.04.2003, с. № 22/2002 of the Constitutional Court

9 Radev. Theory of Justice. S. 2006г. p.44-48.

They aim to increase the requirements for magistrates and their responsibilities. By an amendment of Article 129 (3) the required length of professional experience for the acquisition of irremovability by magistrates has increased from three to five years. There are new additional basis for their dismissal: serious misconduct or systematic failure to comply with obligations as well as actions harming the prestige of the judiciary. The principle of functional immunity of judges, prosecutors and investigators has been introduced and they are no longer equivalent to the MPs. Thus, magistrates bear no civil and criminal responsibility for their official actions and for the acts they have issued unless the offense is a deliberate crime of general nature.[10] A mandate of the administrative heads of the judiciary is laid down up to two mandates for a period of 5 years.

The second group of constitutional changes adopted by the 40th National Assembly, promulgated SG, № 27 of 2006 are related to the need of achieving better synergy in the judiciary (prosecution and investigation) units in their fight against crime. The changes were made as a compromise between the desire to exclude investigative offices from the judiciary and the prohibition imposed by Interpretative Decision № 3 of 2003 of the Constitutional Court. As a result, Article 128 of the Constitution was revised - the investigators remain in the judiciary by being given the power to investigate criminal cases in the cases provided for by law. Thus, with the procedural law most of the pre-trial proceedings were submitted for investigation to the Ministry of Interior. In connection with the new concept of criminal investigation two new powers have been given to prosecutors - to supervise the lawful conduct of the investigation and to lead the investigation, i.e. to carry out independent investigative actions.[11] Thus, the management and control of the investigation is given to the prosecutor's office, and the judicial inquiry is added to it with a law. The extent to which these constitutional changes have contributed to the effectiveness of the fight against crime is very controversial. The aftermath of eleven years has shown that the main problems of justice lie in the area of criminal justice which in turn is primarily due to the poor quality of investigation. European Commission's monitoring reports are consistent in criticizing it.

Other constitutional changes since 2006 concern the establishment of the powers of the Minister of Justice with regard to the judiciary. It was

[10] Article 132 of the Constitution
[11] Article 127, items 1 and 2 of the Constitution

decided that Minister of Justice is responsible to propose a draft budget for the judiciary and submit it to the Supreme Judicial Council for discussion; to manage the property of the judiciary, but later this power was revoked and granted to the Supreme Judicial Council (SG, issue 100 of 2015); to make proposals for appointment, promotion, demotion, relocation and dismissal of judges, prosecutors and investigators; to participate in the organization of the qualification level of judges, prosecutors and investigators; to check the magistrates' cases flow through the Inspectorate, but later this power was revoked and an Inspectorate was established at the SJC (SG, issue 12 of 2007). The extension of the powers of the Minister of Justice and his involvement in the staff and budget matters of the independent judiciary is in some extent a step back from the principle of the separation of powers.

Again, the 40th National Assembly accepts **the third consecutive amendment to Chapter VI „Judiciary" of the Constitution**, promulgated in SG, № 12 of 2007. The constitutional changes are related to the extension of the powers of the SJC and its transformation into a permanent body. The Inspectorate is established at the SJC consisting of a Chief inspector and ten inspectors who are elected by the National Assembly with a qualified majority. The powers of the Inspectorate are constitutionally enshrined[12] and are limited to checking the activities of the bodies of the judiciary without affecting the independence of judges, prosecutors and investigators.

The last (fourth) changes to the constitutional regulation of the judiciary show that the problems in the judiciary have not been resolved. They were adopted by the 43rd National Assembly, promulgated in SG, № 100 from 2015. The authors of the bill to amend the Constitution are motivated by the following, "The constitutional amendments to the structure and organization of the judiciary have so far been limited in their scope and are not fully effective in a way that the independence of the court is guaranteed and the Prosecutor's Office is effective and accountable to the public ..... Despite the successive, though incomplete reforms, constitutional deficits in the judiciary model continue to exist. One of the main issues, on which criticism from European and international institutions and organizations focuses, is regarding the simultaneous administration by the Supreme Judicial Council of different in nature, functions and logic institutions - the court and the prosecution."[13]

[12] Article 132a of the Constitution

[13] Motives for a Draft Bill on Amendment and Supplement to the Constitution of the Republic of Bulgaria. S. HC. 2015. http://www.parliament.bg/bg/bills/ID/15407

The adopted fourth constitutional changes concerning the judiciary provide establishment of two colleges in the SJC: Judges' College and Prosecutors' College. Thus, the Human Resources Management (appointment, promotion, demotion, transferring and dismissal) of judges is delegated to Judges' College and prosecutors and investigators to Prosecutor's College. A new provision distinguishes the powers of the SJC plenum from the competencies of the respective colleges.[14]

The plenum consists of all members of the Supreme Judicial Council. It is in its competence to adopts the draft budget of the judiciary; adopts a decision to terminate the mandate of an elected SJC member; organizes the qualification courses for magistrates; solves organizational issues common to the judiciary; hears and adopts the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General; manages the immovable property of the judiciary; makes a proposal to the President of the Republic for the appointment and dismissal of the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General; exercises other powers as defined by law.

Colleges in line with their professional orientation appoint, promote, relocate and dismiss judges, prosecutors and investigators; make periodic attestations to judges, prosecutors, investigators and administrative heads in the judiciary, and resolve issues of acquiring and restoring irremovability; impose disciplinary sanctions to demote and dismiss judges, prosecutors, investigators and administrative heads in the judiciary; appoint and dismiss the administrative heads of the judiciary; resolve issues concerning the organization of the activity of the respective system of judicial bodies; also carry out other powers specified by law.

3.There will be a major revision on the effectiveness of constitutional amendments affecting the judiciary system. Recent constitutional changes have been defined by the political body as a „historical compromise". There are doubts that the independence of the court is guaranteed and that the prosecutor's office will become more effective and accountable to society, „The changes that were voted several times so far and which led to a serious redrafting of chapter six of the Constitution, leave a feeling of lack of the full picture, shifting from one direction to another, and the most importantly, the inability to solve the general problem of the judiciary, which is ensuring its independent and effective action ".[15]

[14] Article 132a of the Constitution

[15] Ananieva. N. The 1991 Constitution and the Incomplete Revolution. S. 2014. p. 473

The establishment of two colleges of the SJC and the direct election of magistrates from the professional quota to the SJC are undoubtedly steps in the right direction to distinguish the separate structural units in the judiciary and most importantly to affirm the independence of the court from the prosecutor‘s office. Thus, issues related to the status and responsibility of an individual judge are solved only by judges of the Judges‘ College, excluding prosecutors who are parties to the trial. Not yet implemented are the numerous recommendations of the Venice Commission, the Council of Europe‘s Consultative Council of European Judges (CCJE) and the Group of States Against Corruption (GRECO). One of them is the resolution of the staff and disciplinary issues of judges to be conducted by a Judicial Council, which in its majority consists of judges directly elected by judges. According to the adopted amendments in Art. 130a of the Constitution, the Judges' College consists of 14 members and includes the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, six members elected directly by the judges, and six members elected by the National Assembly. This means that out of 14-members in SJC, only six members are directly elected by the judges. The majority of judges are in the political quota elected by the National Assembly. The plenum of the SJC consists of 25 members. Thus, on important issues of court independence such as the judiciary budget, judges‘ qualifications, etc., the professional judges quota is an absolute minority in decision-making.

A fundamental position in Montesquieu's theory of separation of the authorities is that each of the three authorities is entrusted to a separate bearer / holder, independent of the other two authorities. The aim is to prevent excessive concentration of power in a person / body. I fully agree with the thesis of Professor Dimitar Radev: „If we recall the rule that each power has only one holder, then who is the holder of the judiciary? Only the authority that has the highest place in the judicial hierarchy, i.e. the highest judicial authority, may be the holder of the judiciary... But with the current system adopted by the basic law, the investigation and prosecution, somehow artificially, without reasons and contrary to legal principles and ideas, are added to the judiciary. At the same time, the officials of these two bodies enjoy the rights (and, in particular the privileges) of magistrates (judges) without jurisdiction, without exercising judicial functions ... This situation should be changed by a radical constitutional reform.“[16]

[16] Radev, D., The principle of separation of powers. S., 2001, p.151-153

The mandatory interpretation given by the CC's decision № 3 of 2003 presupposes the procedure for radical constitutional amendments to the judiciary. They should be carried out only by the Grand National Assembly. Such changes are indispensable and should be made in the direction of identifying the only judicial body, such as the court, as the sole owner of the judiciary. Prosecution and investigation as non-judicial bodies charged with an investigative function should not be treated as part of the judiciary. Examples of such an approach among the EU Member States are Austria, Germany, Denmark, the Netherlands, Sweden, Estonia, Poland, the Czech Republic, Slovakia, Slovenia and Hungary, etc. In most cases, the prosecutor's office is part of the executive power, and in Sweden, Slovakia, Slovenia and Hungary it is identified as a separate independent institution outside the judiciary. In countries where the Prosecutor's Office is constitutionally attached to the judiciary, such as Belgium, Spain, Italy, Portugal, Finland and France, there is a difference between the status of judges and prosecutors, with the exception of Italy.

The constitutional model of the judiciary organization in Bulgaria poses a problem related to the defense of the independence of the judiciary within its structural distinction. Equality of three very different government bodies with different functions creates the possibility of unacceptable interference in courts by non-judicial bodies. Any doubt that the staff selection, career development or disciplinary sanctioning of judges are influenced by representatives of other authorities is unacceptable. Therefore, the reform should continue in the direction of distinctly highlighting the court as the only bearer of the judiciary. It would be good to learn from the experience of our European partners, to listen to the criticisms and recommendations of the annual reports of the European Union.

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DIGITAL POLICY AND (IN)JUSTICE (LEGAL-PHILOSOPHICAL PROBLEMS)

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Abstract: The article is dedicated to the connection between digital policy, justice and protection of personal data in the context of the philosophical concept of fairness, equality and freedom. Digitization must not create additional social inequality but, on the contrary, become an essential tool for overcoming economic imbalances, social exclusion and backwardness of certain regions. The legal- philosophical aspect of the analysis should not only be to the conclusion that digitization creates additional social inequality (injustice). It is necessary to predict how digitization should become a major tool for overcoming economic disproportions.

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

The problems of the connection between the digital policy, justice and protection of personal data has its politological and purely legal and legal-philosophical aspects. The digital revolution is transforming all the aspects of business and society. The internet has been a principal contributor to evolution and growth in the global economy over the past decades. It continues to have the potential to propel societies, help business leaders develop innovative business models, and help governments address legitimate policy concerns related to a networked future as long as the essential integrity of the digital ecosystem remains intact. Modern technologies are dramatically altering today's industries. Despite the opportunities digitization provides in terms of value and efficiency when it comes to communication, implementing it is also a source of major risk and uncertainty, leaders are grappling with the strategic implications of these transformations for their enterprises, ministries and ecosystems and urgently need reference models and architectural structures that would enable them to collaborate on national and transnational policy aspects.

Digitization of the social communications means, in the literal sense of the word, the introduction of communication technologies in which different types of information (text, music, voice, video, documents, graphics, multimedia) become a binary digital form that exists electronically series of discrete impulses and through them can be processed, preserved, restored, crawling at great speed. It is different from the analog representation of the alphabet by continuous signals. In one case, there are continuous and in the other discrete quantities. The most common technologies for digital processing, storing and transmitting information are computer and internet. Digital technology, the digitization and the internationalization of social (including political communications), lead to radical changes in politics, formed in the time of the dominance of analog technology [1, 2]. They are a prerequisite for the gradual development of 21th-century mass representative democracy within the nation state. Digital technologies change the democracy into new versions of the digital type in which a kind of symbiosis of the previous representative and direct democracy in a network democracy with global dimensions is realized. Its essential characteristic is the huge quantity and dynamics of straight and inverse relations in the political process , enabling a rapid, almost instantaneous impact of each individual on local, national, regional, and global processes. As a result, the political process is transformed from an asset-authorized by the

citizens for a given mandate politicians in a network of vast multitudes of interactions. In these interactions also involve individual citizens and the increasing number of civil society actors.

The analysis of that relationship needs a short philosophical and legal 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 modern technologies (including the protection of personal data) and justice to be of equal value and in equal measure. Both justice and modern technologies 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 and injustice 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.

In general, it can be said that the computerization and electronization of the link between citizens and lawmakers tends to revolutionize the mechanism of action of the legislative bodies and the way in which certain interests and causes emerge through them. The E-mail pressure of thousands of citizens competes with traditional apparent and implicit lobbying influences, enables direct impact from the diversity of rapidly changing intere-

sts and causes of civil society. This leads to a rapid increase in electronic traffic to parliament and parliament in the world. With the help of new versions of the software, they can be bombarded with a huge amount of letters in support of certain pressures. If earlier pressures on legislators were much more of a privilege for groups possessing material opportunities for this purpose, now the economic constraints on communication impacts are no longer available. Organizations and communities that do not have enough money are given the opportunity to join forces with each other and exert pressure on others, and this in practice increases inequality and injustice [1, 2].

Improving the effectiveness of elected representatives‘ work depends on three particularly important trends. The first is related to the decentralization of the functions and the way of work, which at first sight poses risks to the effectiveness of the communication. The second trend is related to the opportunities of public opinion, different interest groups, people in a constituency to exert direct pressure on legislators to solve a particular problem, to protect various interests and causes. The third trend stems from the increase in opportunity for collecting and storing information, as a result of which an elected representative may be held accountable for actions carried out years ago[1,3,4]. Problems of previous votes, laws, defended positions, etc., without any problems, can be found without having to go to the institution, ask for access and digress in archives - physical presence is no longer so important. A typical example is the hearing of Face book CEO Mark Zuckerberg at a US Senate. Zuckerberg personally made his official apologies to the Senate for making mistakes about the protection of personal data of social network users and its use for political manipulation. The purpose of the hearings is to find out how the data of 87 million users of the social network were at the hands of British Cambridge Analytica, which later used them for manipulation strategies during Br exit and the election of a US president.

The latest trends in digitization and marketing now require more efforts to attract and retain customers in the information age.

Businesses are increasingly entering the business world, the financial industry is cutting off frontloading of crypto-loudspeakers, tests of penetration of artificial intelligence into every sphere, approaching the age of self-governing cars, and virtual reality taking over reality. The Internet of things is no longer a new trend, digitization increasingly involves medicine

and biotechnology, and 3D printing is becoming more and more accessible. Thus, digitization penetrates every industry to increase the transparency of companies. If the b2b marketing strategy had been sufficient for budgeting, building a corporate identity, maintaining an information website, distributing print materials, quality links to the public and participating in various information events, the site must now be interactive, optimized for search engines to go forward in the results, make e-mail marketing, maintain presence in social media, blog and deposit, make infographics, along with print materials to draw and in electronic format, webinars and seminars, etc.

The new GDPR 2016/679 / EU Privacy Regulation lays down rules on the protection of personal data of individuals and the free movement of personal data. It is intended to prohibit the processing of data revealing racial or ethnic origin, political opinions, religious beliefs, genetic and biometric data, data on the health and sex life of individuals and others. Subjects should explicitly consent to the processing of their personal data, and silence is not considered as such.

The Regulation provides for the repeal of the Framework Directive 95/46 / EC, which is introduced in the current Privacy Act. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the EU and shall apply from 25 May 2018.

The Regulation is binding in its entirety and directly applicable in all EU countries. The directives will have to be introduced by May 2018.

This regulation is linked to several other acts, the work of which has continued for years.

Regulation (EC) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (Single Data Protection Regulation);

Directive (EU) 2016/680 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the enforcement of sanctions and on the free movement of such data and repealing of Council Framework Decision 2008/977 / JHA;

Directive (EU) 2016/681 on the use of Passenger Name Record data for the purpose of the prevention, detection, investigation and prosecution of terrorist offenses and serious crime.

There is also a need to introduce a regulation for cookies that leave traces for the data subjects. There is also a draft new e-Privacy regulation to

harmonize the cookie setting and the new privacy rules. GDPR data subjects have rights that data controllers and officers are required to observe. Requirements for personal data registers are also introduced and defining the activities that administrators should take when infringing the security of personal data.

The virtual environment creates the new social inequalities (injustice) where the one who knows the technology well and has information is dominated. In other words, Internet elites are proclaimed to be such as to aggressively flood the network with their publications, statuses and comments, or to be referred to as such by the virtual community they are in.

Internet power is held by empowered citizens, by bloggers, by leaders of various virtual communities who, because of their technological culture, knowledge and over-activity on-line, become authorities, internet elites, where their share spreads instantly from dozens, sometimes hundreds of users, is not questioned, even furiously defends itself. The web is controlled, even managed by those internet elites who direct the public (on-line) understanding in a certain direction, of course this is a hypothesis that can not be categorically shared.

The legal- philosophical aspect of the analysis should not only be to the conclusion that digitization creates additional social inequality(injustice). It is necessary to predict how digitalization should become a major tool for overcoming economic disproportions

The engine of the digital revolution in Europe - ranging from smart phones to ultra-fast internet, mobile applications and research into future and emerging technologies - are largely technological and market innovations. The EU plays an important role by: definition of European rules in the telecommunications sector; consumer protection; definition of technical standards; supporting research and innovation.

Digitization must not create additional social inequality but, on the contrary, become an essential tool for overcoming economic imbalances, social exclusion and backwardness of certain regions. Under the Bulgarian Presidency of the Council of the EU, one of the main priorities of our country is the creation of prerequisites for the development of a digitally strong and competitive Europe, which will innovate and ideas in products and services, increasing economic growth and creating new jobs. For that purpose, it is necessary to continue to increase the investments in educational infrastructure and connectivity. But it will also be crucial for citizens to

acquire skills related to technologies using artificial intelligence, robotics, cloud services, block circuits, and more.2018 is of the utmost importance in the forthcoming EC discussions on the next multiannual financial framework, particularly in view of European cooperation in the field of research and innovation, as well as in education and youth.

if we use John Rawls‘ idea of the so-called „veil of ignorance“ - being behind the veil of ignorance, we can mentally imagine a just society in which we would like to live, but without knowing what role we will find there[6,7]. The logical experiment would inevitably lead us into a free society where everyone is equal before the law, but not necessarily equal in income or wealth[7,p.93]. Society without privileged and artificial inequality. This society sounds very close to the notion of capitalist society and not quite like what we have in the modern Western world.

Today we are talking about „digital inequalities“ as inequalities in the use of technology, and we will soon talk about inequalities between „digital creators“ and „digital users“. The economy will depend on where there are more people who create and run high-level machines.

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PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

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Abstract: The present study explores the specific core of jus cogens and some aspects of the process of emergence of the peremptory norms of international law, as well as their legal effect with respect to international treaties. Treaties are based on the free will of states to be bound by certain obligations. The existing international customs and their codifications limit the scope of this freedom by the peremptory norms of international law. Even though this limitation is widely accepted by the international community, the norms and the process of their emergence are unclear. This uncertainty could potentially impede the development of international relations and the law of treaties in general.

Keywords: Jus cogens; erga omnes; International treaties; terminaton

At the time of concluding of the Vienna Convention of the Law of Treaties[1], the international community has accepted that a treaty that conflicts peremptory norms of the general international law will be void and are to be terminated[2]. In that respect, the validity of an international treaty is subjected to the lack of a peremptory norm that conflicts with it.

Thus, it is necessary to clarify the essence of peremptory norms and the process of their formation.

The doctrine of international *jus cogens* was developed under a strong influence of natural law concepts, which maintain that states cannot be absolutely free in establishing their contractual relations. States were obliged to respect certain fundamental principles deeply rooted in the international community[3]. The power of a state to make treaties is subdued when it confronts a super-customary norm of *jus cogens*[4]. In other words, *jus cogens* are rules, which correspond to the fundamental norm of international public policy and in which cannot be altered unless a subsequent norm of the same standard is established. This means that the position of the rules of *jus cogens* is hierarchically superior compared to other ordinary rules of international law[5].

The international community in general has gradually accepted that certain general principles of international law exist that allow no derogation under any circumstances[6]. One of the first scholars to research this legal matter is Johann Bluntschli[7] who developed the concept that was later researched by prof. Lassa Oppenheim[8]. Both of them reached the conclusion that a treaty that regulates issues that are widely forbidden by the international community is not to be treated as a binding instrument of international law[9].

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1 United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

2 Argument based on Art. 53 and Art. 64 of the *Vienna Convention on the Law of Treaties*,

3 Wallace, R. International Law 33. 1994.

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The concept was officially recognized by the Permanent court of international justice in the 1923 Wimbledon case[10]. The court did not explicitly define which norms exactly are *jus cogens* but it could be derived that the prohibition of genocide, maritime piracy, slaving in general, torture, refoulement and wars of aggression and territorial aggrandizement fall within the scope of this concept[11].

The *jus cogens* concept was studied by the PCIJ but the court at no point developed or discussed the threshold that a general principle of international law should meet in order to qualify as a *jus cogens* norm. This issue was discussed by the International Law Commission when developing the final draft of the Vienna convention of the law of treaties[12]. It was, however accepted that a *jus cogens* norms meet a set of certain criteria[13].

The norm should be derived from the general international law and should have a universal character[14]. It was discussed whether *jus cogens inter parties* norms could exist, but this concept was denied by the ILC[15].

The norm should be accepted and recognized by the international community of states as a whole. It is important to note that the ILC discussed the possibility of one state vetoing the emergence of a *jus cogens* norm due to its national interests. In that sense, it was accepted that it would not be required to have an unanimous acceptance of the norm, but an acceptance of the states as a whole is needed[16]. In that sense, the jus cogens norms can be usually derived from general treaties that involve the majority of states, general international customs and general principles of international law[17].

The norm should be one from which no derogation is permitted and which can be modified only by subsequent norm of general international law of the same character. It could be stated that this is the most identifying

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10 The SS 'Wimbledon', United Kingdom and others v Germany. PCIJ. 1923

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feature and 'essence' of a *jus cogens* norm[18]. These norms have a fundamental bearing on the behaviour of the international community of States as a whole and from which no derogation is permitted at all[19]. It should be noted that the threshold of this requirement is rather high as was pointed by the ICJ in the Barcelona Traction case[20].

The ICJ held in the Barcelona Traction case that there is a fundamental difference between the obligations of one state towards another state and the obligations of states towards the international community as a whole. The first category is derived from a treaty and has a relevantly limited applicability. The second category is more complicated, since these obligations are related to the whole international community, including all states. That would mean that all state would have a legal interest in following these obligations. The doctrine and the ICJ has called these specific obligations *erga omnes*[21]. A breach of *erga omnes* obligations gives the right to every state would have legal standing in a procedure in the ICJ or another international judicial body with no prejudice about the interest of that state in the specific case. The ICJ established that every state has legal interest in following erga omnes obligations[22]. In that sense jus cogens norms and erga omnes obligations are interrelated. All peremptory norms of general international law are obligations towards the whole international community and every state would have legal standing in a procedure, related to a breach of a *jus cogens* norm, ergo *jus cogens* norms are *erga omnes* obligations[23]. There are, however, a number of erga omnes obligations, that are not peremptory norms of general international law. In that sense, the two categories are tightly related but differ in terms of their legal core and definitive characteristics[24].

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In conclusion, it should be noted that jus cogens norms usually do not affect existing treaties, since it is not often that parties conclude a treaty that is in conflict with peremptory norms of international law. The importance of this institute however is in its preventative functions. The difficulties related to the process of emergence of jus cogens norms are rather substantive. In that sense this is an issue that should be resolved in order to have a fully understandable and functioning mechanism that could be applied in the law of international treaties.

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THE ROLE OF THE MILITARY ADMINISTRATIVE JURISPRUDENCE IN THE GOVERNANCE OF DEFENSE

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Abstract: The article introduces the results of the analysis of the role of the military administrative jurisprudence in the system of the administrative jurisprudence, defines the characteristic features of its subject and method, which allows it to be regarded as a complex branch of jurisprudence and the branch of the law and military science, demonstrating certain trends in its development of the military jurisprudence at the present stage of development of the armed forces.

Keywords: administration, jurisprudence, law, administrative jurisprudence, legal regulation of security and defense, military administrative jurisprudence

In the last years the security threats to the contemporary societies, such as terrorism, increasing migration as a consequence of ecological and climatic changes and most of all as a consequence of military conflicts at certain problematic areas around the world, undergo certain development. The threats to the Western Industrial civilization, the way we know it, evoke the search for global response and reaction that can guarantee peace, equanimity, stability, and rule of law.

The security of the state, the society and the individual citizens of a country are in direct relation to the state of the constitutionally established legal order in it. The Constitution of the Republic of Bulgaria is based on universal human values such as freedom, peace, humanism, equality, justice, and tolerance. The rights of the individual, its dignity and security are raised in supreme principle.

Historical experience clearly shows that all countries, even those with the least political or economic importance to other countries, must maintain standing armies, according to the rule and the vision, „if you want peace, prepare for war." The understanding of this necessity by the public authorities is historically formed as a result of the tradition of certain kind of state actors. No matter how peaceful these countries were, they were doomed to imminent and inevitable demise because of their unwillingness to sustain their armed forces or the lack of ability to exercise control over them.

Administration [5] is an organic necessity for every country. Without it, the state cannot exercise its functions. A state without administration cannot exist as such. The importance of administration will increase more and more in future and will become one of the current problems of the 21st century. It is known that the term has Latin origin (administratio - management, service).

The realm of jurisprudence is the joint social life of the people within a community. The purpose of law is to create order in their relations among themselves and in their relations with the authorities, as well as in the relations of the authorities among themselves. All these relationships must be clearly established and fairly regulated: the words „just" and „justice" have a common root.

Jurisprudence[2] is a system of legal norms created by state regulating the basic social relations, including those connected with security (national and international) and protected by a specific system of legal norms. Normative institutionalization of society is achieved through law

as a sum of formal rules, informal restrictions, and mechanisms for their enforcement.

Jurisprudence gives a new shape of the realization of social relations. State establishes or sanctions the formal or written rules of conduct. "Sanction" in this case meansupholding the existing rule of conduct by making it a legal norm and giving it a binding character. It defines the legal rights and liabilities of legal entities (holders of legal rights and obligations) for each type of public relations. The relationships connected with the national and international securityalso belong to thistype of public relations. Jurisprudence is an inseparable part of the system ofnational security, as the obligation to observe and implement the provisions related to the protection of the national securityis regulated and given through legal norms.

Administrative jurisprudence as a branch of general jurisprudence regulates relations connected with the implementation of the functions of executive power. The subject of administrative jurisprudence is specific social relations between subjects of administrative jurisprudence, which arise in the process of executive operation of state organs. The legal relationships that arise may be vertical or horizontal. Horizontal is the relationship between subjects of equal standing. No subordination, hierarchical, official or other, exists among them. Relationships evolve verticallyin case of formal hierarchical dependency among entities. The main characteristic of the method of legal regulation is that it entails enforcement of power. This depends on the nature of public relations as well as the existing and legally established inequality among the entities. In the majority of the cases, legal changes are unilateral. They depend on the will of the state body and lead to a legal change in the operational domain of the entity to which they relate. The system of administrative jurisprudence is strongly influenced by its regulatory function with regard to the relations between the executive power and society.

As part of administrative jurisprudence, the legal regulation in security and defense should instantly mirror shifts in the security environment and if possible, be adapted inaccordance with evolving future risks and threats.

The legal regulation of defense belongs entirely to the domain of public jurisprudence. The distinction between public and private jurisprudence has been adopted since the time of the Roman law, and is most clearly formulated by Ulpian (300 AD) in his „Institutions". Undoubtedly, defense jurisprudence refers to the role of the state as a public legal entity and

hence the public legal character of the state action in this domain. The regulatory basis in the system of defense consists of the Constitutional Law and Administrative Law.

According to a definition formulated by Professor PetkoStaynov [4], the military administrative law is a legal discipline which, as part of general administrative jurisprudence, examines the internal legal norms relating to the organization and functioning of the public service for the preparation of the armed forces and the conduct of war.

This definition of military-administrative jurisprudence poses several questions for consideration:

- The military-administrative law is a legal discipline. It must therefore first be distinguished from other disciplines that also apply to the Armed Forces and the War but are not legal.
- Military-administrative jurisprudence is a legal discipline. Therefore, first of all, it should be distinguished from the other disciplines, which are also related to the armed forces and war but do not possess legal aspect of their character.Military administrative jurisprudence makes up a part of the general administrative law since its object of study is the public service connected with the organization of the Armed Forces and the conduct of war, which in itself makes up a part of the general governance, of state administration. In the past, when the service in the armed forces was not regarded as a public service to the state in general, but as armed and supported by the monarch, the lord of armed a group of people, as a military caste placed on his personal service and disposal, attempts were made to derive one perfectly distinct right to regulate solely the status of the armed forces and the military.

In today‘s democratic state, the existence of such an independent military jurisprudence cannot be accepted. In view of the fact that it is part of the administrative law, it is necessary to draw the distinction between it and two other legal disciplines, which are also related to the Armed Forces:

a) Military-criminal jurisprudence.It is a penal law discipline and does not deal with the study of the legal norms relating to the organization and functioning of the armed forces, but with the legal norms relating to the determination of the penalties for offenses in the armed forces or in connection with the armed forces and the war, and the ways for their enforcement. Here is the so-called „military-disciplinary law“, which in fact is not a separate branch of jurisprudence. However, sin-

ce disciplinary punishments in the armed forces are of a particularly strict nature and are very close to the ones for criminal offenses, the mere imposition of these penalties in some respects is also subject to study in military-criminal law, but the essence of military discipline, as the essence of all kinds of professional discipline, is studied in administrative law as it is a manifestation of an administrative rather than a judicial power, and it is realized not only through imposition of punishments but also through the realization of process of education.

b) international law of war

While military administrative law deals with the domestic legal norms reflecting the conditions created by the domestic positive law for citizens as a consequence of proclamation of war or war itself, there are legal norms that international law seeks to establish and which, as norms pertaining to relationsbetween states, seek to regulate the relations between warring states or neutral states in connection with war - this is the so-called "law of the war" that constitutes part of the international law.

Another definition states that military-administrative law is the science of legal norms governing the structure, organization, recruitment of the armed forces and its procurement with everything necessary, as well as the organization, competence, and activity of the military authorities.

According to some Russian authors [1], military law as a science studies the legal aspects of state activity in military building and the legal regulation of relations connected with the management and organization of armed forces, troops, military formations and authorities connected with militaryservice, their management and assembly, organization of the military service, ensuring combat and mobilization readiness. Therefore, for them, the subject of military-administrative law is military building as one of the main components (branches) of state activity in the military domain as part of the state building, governed by regulation inextricably linked to the state legal system and ensuring its military security.

From all of the above-mentioned, it is clear that military-administrative law has a number of peculiarities. First of all, the subject of legal regulation is specific - these are the public relations related to the organization, management and implementation of armed forces. Second, there is a high degree of complexity of the legal framework and practically impossible codification. Third, the development of the legal regulation of defense requires constant harmonization among a large number of norma-

tive acts. Fourth, like other sub-branches of Administrative Law, military and administrative law regulates executive authority and power enforcing authority by its nature - the activity of the Minister of Defense, its administration, and the Armed Forces. And since the essence of any executive action is the issuance of administrative acts (the so-called administrative proceedings) and the mission of the Bulgarian Army and the Armed Forces has a very different character -- protecting the independence and territorial integrity of the Bulgarian state -- this creates an inner contradiction that clearly affects the actual functioning of the defense system and creates a sharp dilemma between the declared mission and the actual activities of this complex organization. Despite that, the discrepancy can be solved partly through the so-called „sources of military-administrative law" that can generally be classified into two groups:

- Meta-juridical sources.
- Legal and regulatory sources.

Meta-judicial sources have a political rather than a strictly legal nature. These are the different strategies, concepts, and doctrines. These include some international meta-sources, such as the NATO Strategic Concept, the European Security Strategy, and others. In terms of meta-juridical sources in the period 2010-2011, serious progress has been made but it is based on „hollow foundations", i.e. in the absence of Bulgarian National Doctrine, which should serve as the basis of the National Security Strategy and the National Defense Strategy.

The most important current meta-juridical sources of military-administrative law are:

- 2010 Strategic Concept of NATO
- The European Security Strategy (last edited in 2010)
- The Review of the Structure of the Armed Forces in 2010
- The White Paper on Defense and Armed Forces (adopted by the National Assembly in October 2010)
- Armed Forces Development Plan (adopted by the Council of Ministers in December 2010)
- The National Security Strategy (adopted by the National Assembly in February 2011)
- The National Defense Strategy (adopted by the Council of Ministers in April 2011)
- The Ministry of Defense Investment Plan until 2020

Regarding the strictly legal sources of military and administrative law, we can note that there is overregulation - several dozens of laws and hundreds of secondary legislation. In the case of legal sources, there is insufficient consistency with other statutory instruments such as the Ministry of Interior Act, the State Agency of National Security Act, the Disaster Protection Act, Decree of the Council of Ministers No. 18 of 01.02.2011 on the Establishment and Designation of European Critical Infrastructures in the Republic Bulgaria; and others. Another serious shortcoming of the legal framework is its chronic instability. Even within the same electoral cycle, the basic law in the field - the Defense and Armed Forces Act undergoes changes after short periods of time. These changes, which are usually fragmentary, show serious deficiencies in the conceptual rationale and development of this specialized regulatory framework.

The most important legal sources of military-administrative law are as follows:

- 24.08.2017 Law on Defense and Armed Forces of the Republic of Bulgaria
- 29.12.2016 Reserve Act of the Armed Forces of the Republic of Bulgaria
- 29.12.2016 Counter-Terrorism Act
- 17.03.2016 Act on the Implementation of the Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- 13.11.2015 Military Intelligence Act
- 11.02.2015 Law on the passage through and residence on the territory of the Republic of Bulgaria of allied and foreign armed forces
- 18.05.2012 Law on the Civil Servant
- 09.03.2012 Labor Code
- 08.09.2011 Law on Administration
- 04.07.2011 Law on the Military Police
- 24.06.2011 Classified Information Protection Act
- 22.03.2011 Law on the disabled and the war victims
- Law on Countering Corruption and for Removal of Illegally Acquired Property
- Administrative Procedure Code (APC)
- State Budget Act
- Law on Public Procurement (and the Ordinance on the Award of Special Procurement)

- State Property Act
- Access to Public Information Act
- Tax-insurance laws and others.

It is obvious that the rapidly growing legal framework does not contribute to the better development of the defense system and in particular to the military-administrative law, as well as to the strengthening of the Armed Forces. At the same time, the current legislation does not regulate essential legal institutes, such as crisis management and research in the interest of defense. All this raises the question of the need for an integrated military-jurisdictional expertise to improve the regulatory framework and the overall functioning of the defense system.

Conclusion

Military-administrative jurisprudence originates and is directly related to military jurisprudence, therefore by its nature and content it is a military legal science that to great extent combines significant military and legal issues related to the study of complex, multifaceted phenomena such as building and transformation of armed forces.

One of the main directions related to the contemporary challenges to national security is the improvement of the regulatory framework regulating the activity of the security and defense sector as well as the establishment of the organization and material provision for its strict observance within the framework of the military and administrative law.

Ultimate success can only be achieved when we rely on the power of law, not on the law of power.[3]

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THE ROLE OF THE BULGARIAN SOFT POWER AND PUBLIC DIPLOMACY IN THE CONTEXT OF THE PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN PERSPECTIVE OF THE WESTERN BALKANS

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Abstract: The article marks the beginning of a study of the importance of soft power in the relations of the Republic of Bulgaria with the Western Balkan countries and their European perspective. The publication is part of a research project by lecturers, students and PhD students in State university of Library Studies and Information Technologies with topic "The Experience of the Republic of Bulgaria in the Process of joining the NATO and the European Union and the Euro-Atlantic Perspective of the Western Balkan Countries".

Key words: soft power, European Union, Western Balkans, Bulgaria, Presidency.

In the contemporary development of international relations an important role plays the attractiveness of one or another country. American diplomat and political scientist J. Nye formulated the following thesis: "The power is the ability to change the behaviour of others to get what we want." According to him, "soft power" is one of the main ways to achieve this target.

J. Rachel and Cohen in the book "Power and Interdependence" Nye and Robert O. Keohane emphasize that the main idea in this concept becomes "complex" interdependence. The peculiarity of the soft power at international level is not the promotion of the national interests of the states, but the realization of the interests of the coalitions, alliances. The meaning and essence of the "great state" is gradually losing it`s place, which is replaced by co-operation and coalitions.

"Soft Power" is a complex multi-level system that allows states to achieve their goals and tasks in the international relations through official channels and also through informal channels. It is an important factor in every country's foreign policy, with its cultural, educational and information aspects which are key parts of the soft power. Another important feature is that it is a universal foreign policy instrument for all actors in international relations. Soft power gives the opportunity to influence the international processes and gives power for those countries which have insufficient traditional resources for influence, for example - are not permanent members of the UN Security Council or are located in geographical periphery. We definitely can say that developing countries or those in the Third World also have the potential to influence through their culture and identity, but they are hampered mainly by their low technological development. The main tools of translating soft power which are used globally are: foreign policy that includes public diplomacy, cultural diplomacy, media, efficient institutions, Internet and social networks; religion, etc. The combination of these factors is the basis of creating an attractive and effective image of the country which has the power to influence and to create strong relations. The main methods of influencing are voluntary participation of the other side in major foreign policy measures of the country, which applies the soft power, the adoption of common goals and the illusion of achieving a common result.

In the recent years, the EU's capabilities in soft-law enforcement may are weakened for a number of reasons, including institutional confusion,

Brexit, refugee crisis, terrorism, the rise of populism and anti-European moods, and the subsequent resistance of Member States to further enlargement economic problems of the Union. There is also disappointment with the results of the "young Member States" such as Romania and Bulgaria, as well as from older countries such as Greece, Italy and Spain.

However, the European union`s soft power has its potential, especially in the relations with the Western Balkans and their perspective of joining the Union. Although they are unlikely to join the European Union before 2025, they need to be heard and it is necessary to focus the attention on their interests, which are undoubtedly directly linked to those of the Union. There are a several problems in the countries of the region that hamper EU integration such as economic, high levels of corruption and organized crime, political influence on the judiciary, youth unemployment. But the enlargement of the EU in the region should continue, otherwise it would have serious consequences. Blocking the integration of the Balkan countries into the EU, would destabilize the region and revive its enormous past. Furthermore, there should be no competition between the "big powers" in the region. In particular, Russia is using the opportunity to undermine the Western influence, thereby moving the countries out of the way of European integration. The EU has the ability to be a guarantor of stability and security in the continent. It is necessary that the EU measures and policies, and in particular those of the Presidency of the Council of the EU, refer to not allowing to revive the longstanding reputation of an unstable and conflicting region.

Bulgaria is leading the Council of the European Union for the first time just eleven years after joining the EU. Moreover, for the first time in the history of the European Union, the Presidency, is transferred to a Member State that does not enter either the Eurozone or the Schengen area. In this way, this Presidency will be a double test. On the one hand, it would be checked the Bulgaria's ability to deal with European dossiers and also to maintain its domestic political balance which is necessary to fight with the corruption and accelerate judicial reform. On the other hand, it will be a test for the whole Union. It is test and for the effectiveness of the decision making process and for the implementation of the priorities set by a country which is subject of monitoring by the European Commission. Promoting the Program by the Presidency State for European Integration and EU Accession to the Region is absolutely necessary. Bulgaria has the

mechanisms and has good potential in applying soft power as far as its intention to revive cooperation in the region through interconnection projects. Such an approach is also beneficial in terms of reducing tensions in the area where territorial disputes, conflicts, ethnic issues and internal instability either divert attention from the desired reforms or hinder their implementation.

The effectiveness of the Bulgarian soft power is a combination of internal and external factors which could be used to influence and to give good model to the countries in the region. The external factors are following:

– Foreign policy and authority in international affairs;
– Geopolitical status and membership in international organizations;
– Civilization status - each country has its own culture, but not every country is the heir to a civilization.
– Political and economic development;
– Strategy for development of the state and the ability to implement it;
– Information resources, communication mobility, etc.

The internal factors that are particularly important for the application of "soft power" are:

– Ideology;
– Quality and level of living;
– Values - including a national idea;
– Culture of the country - art, literature, film industry, etc.
– The creative potential of the country - the ability to generate ideas and technologies.
– Education.

Only the combination of these features can create the right and strong instruments of soft power and public diplomacy, which have the ability to unfluence the foreign audience.

Nowadays, the public diplomacy is an integral part of relations between countries and the coalitions. It is focused to create long-term relationships, to protect the foreign policy priorities of states, and to make it easier to understand the values and characteristics of societies in other countries. Undoubtedly, Bulgarian public diplomacy is capable to act there where traditional instruments of the diplomacy are ineffective. The actions of cultural, social and information institutions should be aimed to the ordinary citizens in the countries in Western Balkan region. The instruments of public diplomacy are different. In this activity are engaged official and

non-governmental institutions and also civil organizations. The goal is not to manipulate, but to involve society in processes and to engage it in long-term dialogue. The common historical past should not be a reason for misunderstandings and c contradictions, but on the contrary, it should be a tool for expanding dialogue and deepening the relationship between states.

In broad terms, Bulgaria's presidency will not lead to drastic changes in the short-term accession of the Western Balkan countries. However, our country has the potential to attract attention for six months to the processes that are taking place in the region and to be a major player in not allowing the region to come under the influence and dependence of other countries.

Conclusion

Nowadays, the soft power needs to be seen in the focus of global socio -political, economic and cultural processes. They form the new system of international politics. Through well-organized and applied instruments of soft power, Bulgaria has the potential to become the leader of the Balkans, particularly in the time of the Presidency of the Counsil of the European Union.

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TACTICAL SPECIFICS IN OPENING CRIMINAL PROCEEDINGS IN THE INVESTIGATION OF FRAUDS

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Summary: This report explores the tactical specifics of criminal proceedings, and in particular those in the investigation of fraud. The same is intended to confirm the criminal investigation theory regarding the existence of correlation between these specifics and typical investigative situations, as well as their impact on the overall organization of the investigation. As a basis of the conclusions, empirical results are used from the investigation of completed court cases, in the period 2005 - 2015, related to investigation of fraud under Art. 209 and Art. 210 of the Criminal Code. In addition, the study aims at enriching the scientific knowledge in the formation of criminal investigation methodologies for the investigation of this type of crime to be implemented in practice.

Keywords: criminological procedures, formation, fraud, verification

INTRODUCTION

Bulgarian criminal process is characterized by its formal nature. It is initiated in accordance with a procedure explicitly regulated by the law, and is subject to the conditions laid down for the initiation of criminal proceedings. The legislator explicitly has pointed out the preconditions under which the criminal proceedings in Art. 207 (1) of the Code of Criminal Procedure, i.e. a legal cause and sufficient data, which must be available cumulatively.

The legal cause is the existence of precisely defined sources of data indicating a crime of a general nature. For a legal cause can serve the sources of information on the committed crime, which are explicitly mentioned in Art. 208 of the Code of Criminal Procedure (CCP). First of all, a legal cause may be a communication to the pre-trial authorities of the fraud; Secondly, this will be information about a committed crime spread by the mass media; Next, this is the personal appearance of the perpetrator before the bodies of the pre-trial proceeding with confession of a crime; Finally, a legal cause may be the immediate disclosure by the authorities of the pre-trial proceedings of indications of a criminal offense. Sufficient data, within the meaning of the law, are facts from which it can be reasonably assumed that a crime has been committed.

The criminal proceedings are formed in two ways. First, by an express procedural act - a decree that can only be issued by a prosecutor who is the only competent not only to prosecute a crime but also to take a decision to initiate the criminal proceedings. The second way, which is an exception to the general procedure, is regulated in Art. 212, para 2 of the Code of Criminal Procedure, according to which the pre-trial proceedings are considered to be initiated by drawing the act for the first action of the investigation, when their immediate opening is the only opportunity for collecting and keeping evidence. Such actions shall include inspection, search, seizure and interrogation of witnesses, as well as the cases of conducting searches under the conditions and order of Art. 164 of the CCP.

Criminal investigation theory pays attention to the question of the opening of criminal proceedings, examining it in the light of its specifics, in the individual private methods of investigating crimes [Vidolov, 2008, pp. 110]. Criminal investigation theory and procedural practice are known to have typical specifics in the formation of criminal proceedings for indi-

vidual types of crime. Criminal investigation theory is interested in those tactical, cognitive and organizational features that form the initial investigative situations in investigating individual types of crime, determine the process of building and verifying the versions, and the overall planning of the investigation. Typical specifics related to the formation of individual types of crimes are due to the peculiarities of the legal causes that justify the initiation of the proceedings, the content of the data in them, the time from committing the offense to the initiation of the proceedings, and the specifics of the individual crimes. Knowing the typical peculiarities related to the formation of criminal proceedings for the different types of crimes helps the proper tactical organization of the investigation, the planning of the investigative actions in order to reveal the objective truth and the persons involved in the crime [Vuchkov, Vidolov, 2011, pp. 99]

OPENING OF PRE-TRIAL PROCEEDINGS IN THE INVESTIGATION OF FRAUD

The study into the theoretical and applied aspect of the crime of fraud contained in the norms of Art. 209 and Art. 210 of the Criminal Code confirms the above-mentioned formulation of the question. The empirical data show that two types of legal causes are observed in the cases of fraud: a notification to the pre-trial authorities of a committed crime (99.2%) and personal appearance of the perpetrator before the pre-trial authorities (0.8%). The notification to the bodies of pre-trial proceedings is most often submitted by the victim (97.7%), or his relatives (2.3%). This circumstance predetermines the initial volume of data related to the event under investigation and the need for urgent procedural action to be taken to collect and retain evidence. The pre-trial proceedings are initiated by a prosecutor's decree in the majority (90.1%) of the investigated cases, while in the other cases there is an urgent need for carrying out procedural actions in the investigation (8.4%). There is a differentiation in the initial investigative situations arising from the specifics of the two procedural forms of formulation of pre-trial proceedings.

It can be observed that from the pre-trial proceedings initiated by a prosecutor's decree, the original communication does not contain sufficient data to make a reasonable presumption of the existence of fraud (96.7%). Only a small part of the investigated lawsuits had the prerequisites for the

opening of pre-trial proceedings immediately after receiving the communication (3.3%). An analysis of empirical data shows that in these cases the notification provides details about the perpetrator of the act and the type and size of the offense. There is no description of the circumstances of the offense committed to justify the assumption of fraud. This has led to the need to carry out a preliminary check under Art. 145 para. 1, item 3 of the Judicial System Act (JSA). The reasons for this are complex and can be distinguished in the following groups: 1) Deficit of written and verbal expression by the crime victims (poor vocabulary and lack of expression skills). 2) Lack of legal culture (failure to identify the necessary constitutive signs, misconception in the qualification of circumstances, etc.). 3) Unconscientiousness in exposing the facts in order to exert pressure on a particular person (most often giving characteristics of private-law relations to a crime with a view to resolving the dispute in their favour faster and cheaper). [Decision No. 402 of 11.08.1976 on criminal case no. 382/1976, II Supreme Court Criminal Division].

PRELIMINARY INSPECTION FOR COLLECTING ENOUGH DATA FOR OPENING PRE-TRIAL PROCEEDINGS

The research of practical cases shows that the inspections under Art.145, para. 1, item 3 of the Judicial System Act are effective and help in the uncovering of the offense only in the cases of fraud in which the perpetrators have attended the crime. What is characteristic of them is that the offense is committed in the conditions of obviousness [Belinski, 2006, p. 454]. As a result of the examinations carried out, in the opening of the pre-trial proceedings by a prosecutor's order, the initial investigation situation may be considered as favourable, as there are data on the identity of the perpetrator of the fraud (95.7%). In other cases, there is information to help identify him/her – part of the names, nicknames, friendly environment, address, used vehicles and means of communication (0.9%) or a description of his/her external anthropological features (3.4%). The above mentioned circumstances show that the role of the preliminary check under Art. 145, para 1, item 3 of the JSA, contributes to the success of the investigation. To the positive sides can also be mentioned: 1) Procedural economy when conducting them. 2) Lack of formalism, manifested in procedural violations,

often irreparable; (3) Not allowing unnecessary burden on prosecution and investigation authorities with cases that will be terminated due to lack of crime; 4) Possibility to extend the future evidence regarding the identification of circumstances related to other committed frauds by the perpetrator. 5) Ability to deploy the whole range of operative-search methods. The survey also found negative consequences of the preliminary inspections on the effectiveness of investigating fraud influenced by subjective and objective factors. To the first can be attributed the conventionality of their performance, which is expressed in the lack of speed in the execution of the individual operative-search events in the inspection. In addition, the incompetent conduct of the investigating authorities is observed. The survey found that some of the inspections involved information on circumstances, irrespective of criminal proceedings. From a practical point of view, this raises the need to carry out new operative-search events involving the same persons and leads to an extension of the deadlines for their implementation. The objective factors are the negative impact of time related to the length of time elapsed since the crime was committed until receiving the notification about it. The results of the survey show that for the major part of the crimes with proceedings opened under Art. 207, para. 1 of the Criminal Code, the initial notification was received between one and three months after it was perpetrated (69.6%).

In conclusion, it can be summarized that the negative aspects of preliminary inspections of fraud include the possibility of: 1) Loss of part of the evidence (various types of material and ideal traces) due to the objective impossibility of conducting a number of investigative actions. 2) There is an opportunity to hide traces of crime and build alibi by the perpetrators. [Mihaylov, 1999, p. 25]. 3) The impossibility of combining procedural investigative actions with operative-search events leading to greater work efficiency, collectivism and inter-authority co-operation. It is advisable to carry out immediate and effective control over their quality and timeliness.

OPENING OF PRE-TRIAL PROCEEDINGS IN THE URGENCY HYPOTHESIS

The second form of opening pre-trial proceedings under Art. 212, para. 2 of the Code of Criminal Procedure is related to an urgent need to initiate them. In these cases the offense was committed at the victim's home

(20%), his/her workplace (40%), the home of the perpetrator (10%) or at a public place (30%), the notification being made immediately after the offense (42.2%), personally by the victim. There have been prerequisites for the detection of traces of crime, due to the peculiarities of the environment in which it was committed. Only in (30%) of the cases investigated, the identity of the perpetrator is known, upon receipt of the report of the fraud. In these cases, the perpetrator was detained on the scene of the offense with material evidence or immediately after the fraud with the help of "hot trail", and mainly the perpetrator has attended the place of fraud (99.1%). While the use of distant non-attending means to commit a fraud, by means of technical communication, the identity of the perpetrator is known only in (0.9%) of the cases. In these cases the pre-trial proceedings are instituted pursuant to art. 212, para. 2 of the Code of Criminal Procedure in the course of operational investigations in which special intelligence means (SIM) have been exploited or only one of the perpetrators has been captured immediately upon receipt of the object of the offense. In the case of the second hypothesis, pre-trial proceedings were brought against this perpetrator, and his accomplices remained unknown to the investigating authorities or established at a later stage. The non-present (non-attending) ways of committing the offense are characterized by minimal information about the perpetrator at the initial stage of the investigation - data on the anthropological features of the perpetrator who has received the incriminated property (25%) or lack of any information (75%). For this reason, the attended crimes are preferred by fraudsters with established criminal experience. The results of the investigation of court cases show that, in the case of unattended (non-present) ways of committing the crime, there is an urgent need to institute pre-trial proceedings under Art. 212, para. 2 of the CCP. The reasons for it are mainly related to the possibility of deleting the ideal traces in the victim's mind, which necessitates their timely fixation in the interrogation protocol. Empirical data indicate that the victims of the crime are over 60 years old (95.3%). Similar is the conclusion of a survey conducted by the Prosecutor's Office of the Republic of Bulgaria - (12%) of the victims are within the age limit of 61-70 years, (42%) are aged between 71-80 years, and (38%) are over 80 years. [Prosecutor's Office of the Republic of Bulgaria, Investigation of the crime of fraud committed by phone 2015-2016, p. 14]. It is the subjective specifics caused by the advanced age that contribute to the loss of individual circumstances re-

levant to the investigation, due to the period of time before their fixation. Alongside this, planning and conducting the investigation requires a precise organization to ensure its effectiveness. For the identification of the perpetrator of the offense, it is necessary to carry out a number of checks under the Electronic Communications Act (ECA), and the subsequent implementation of SIM to identify the perpetrators. In these cases, there is ongoing coordination of investigative and operative-search actions. There is cooperation in the parallel conduct of several separate investigations of frauds committed through the use of technical means of communication between the perpetrator and the victim.

CONCLUSIONS

The investigation of fraud, like any crime, has its own specifics. They are determined both by the mechanism and specifics of this crime, as well as by the organizational features of the investigation. In the course of the investigation, the stage of initiation of the case is particularly important, since it determines the overall organization, the planning of the individual actions for collecting and verifying evidence. The process of investigating fraud is subject to these general laws. The conducted empirical study reveals a number of procedural and tactical specifics that should be taken into account by investigative bodies in order to gather all relevant evidence, and reveal the perpetrators of the offense.

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COMMENCING LEGAL ACTIONS ON BEHALF OF A JOINT-STOCK COMPANY WITH INCOMPLETE MEMBERSHIP OF THE BOARD OF DIRECTORS IN THE CONTEXT OF CORPORATE REPRESENTATION UNDER THE BULGARIAN CIVIL LAW

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Summary: The present article analyzes some of the most challenging problems in the Bulgarian case law and the legal doctrine, concerning commencing legal actions and legal proceedings on behalf of a joint-stock company with incomplete membership of the Board of Directors in the context of corporate representation. The first part introduces some general issues in the theory of corporate representation within the Continental legal doctrine and its influence on the mechanism of representation in share stock company under the Bulgarian law. The second part entails some problems of high theoretical and practical value, such as the validity of the legal actions, undertaken by a member of the Board of Directors, who is not elected for an executive member, to bind legally the joint-stock company in Bulgaria, which has one registered executive director and two non-executive directors, who has the authority to commence legal proceedings on behalf of the company (or instruct lawyers to do so). In the third part, some conclusions on the will-expressing mechanism in legal entities are made.

Key words: corporate representation, incomplete membership of the Board of Directors, joint-stock company

Is not a rare occasion in practice, when a member of the Board of Directors, which is the representative body of a joint-stock company under the Bulgarian commercial law and within the theory of corporate representation, dies or is dismissed from the representative body and replaced with a new member, when the name of the newly elected member is not registered in the Commercial Register or even when a member of the Board of Directors is factually non-participating in the decision-taking procedures. In such situations, the Board of Directors, as legal entity accomplishing the representative function, will not have the necessary membership and quorum to both take decisions, concerning the internal management of the company, and to exercise the representative power of the company, concerning legal acts concluded with third parties. The present contribution, on account of the limited contents, aims to offer solution to only few of the plurality of various problems that the corporate representation of a joint-stock company with incomplete membership of the representative body – Board of Directors, might bring about.

Part I: On the theory of corporate representation in general

Probably a better understanding of the outlined problem would be given by some preliminary notes on the direct representation in general, and the corporate representation in specific, in the Continental legal doctrine. Under the so-called "corporate representation", the traditional relation between two parties: the represented body and the representative, recognized by modern concept of agency, does not exist since the representative body does not represent a separate legal entity – either individually or collectively. It should be emphasized that corporate representation is a term completely unknown to the Common law, such that the relations between the Board of Directors and the company itself are settled according to the general rules of voluntary representation. In contrast, according to the so-called doctrine of "corporate representation" of a legal entity, the representative body is viewed as legal means for forming and expressing the will of the legal entity[1]. Thus, the legal will of a company is considered to be the one of its body, a part of the organizational structure of the legal entity.

[1] See Kolev, N., "Regarding the representative powers of the executive director of a joint-stock company", "Commercial and Competition Law Review", issue 3/2009, page 15, also – Kolev, N., "Representation of the joint-stock company by its management bodies", "Sibi" Publishing House, Sofia 2012, pp 25-44.

Therefore, the apparent manifestation of the legal entity's will in relation to third parties is made by its bodies. Namely, this concerns specific means of forming, expressing and realizing the entity's will, which differs greatly from the "representational" theory, assumed by the Bulgarian legislation under article 36, paragraph 2 of the Obligations and Contracts Act on voluntary and other manifestations of legal representation (e.g. the will of parents regarding their underage children). In the context of corporate representation even the fact that a sole representative body could be a physical person (for example in the case of a solely-owned joint-stock company), does not mean that there are two separate legal entities – one acting in the name and on account of the other. A physical person or physical (or legal) persons, who/which express their will, do not act in the capacity of a physical or legal person, but precisely as one body. This is the reason why, for example, the corruption of the will of one of the members of the body does not corrupt the expressed will of the body as a whole – the decision made in such case (corruption of the will of one of the members of such body) could not be considered as taken at the existence of defect in the will of such body as a whole (Ibid. Commercial Decision No. 1 – 2001 – General Assembly of the Civil Section, Supreme Court of Cassation). In the case of corporate representation, the will of the collective body is not a mechanical sum of that of its members, but is an independent and separate act – a different decision to those made by individuals (physical persons).

It is for this reason, that in the case of a legal entity, the so-called "representation" refers to actions, the competence of which both in the internal and external relations is divided among its separate bodies. Hence, the use of the term "representation" for a legal entity is only a reference to the fact that the company's will is manifested in relation to third persons through its bodies, which leads to inapplicability of the rules for representation under the Obligations and Contracts Act. The latter legislation regulates voluntary representation – for example: the authorization of a transaction or legal representation by a parent concerning an underage child. The legal entity, as a legal fiction, has no will of its own. Therefore the will, expressed by its bodies, is considered the will of the legal entity itself, as already mentioned.

The members of the management and representative body are physical persons or legal entities, for which no requirement exists in order to be shareholders (members of the General Meeting of the Shareholders). When the composition of this body also includes a legal entity, in order to

be in a position to validly form and express its will, the latter should nominate its representative to perform the obligations in respect of the body.

The theory of corporate representation and the representation of a joint-stock company under the Bulgarian law

The Bulgarian commercial law defines two systems for the management of a joint-stock company (management by permanently acting executive bodies, i.e. management bodies outside the General Meeting of the Shareholders). They are, respectively, one- and two-tier management systems, depending on the number of permanently acting bodies. In a one-tier system, there is one permanently acting body: the Board of Directors. In the case of a two-tier system, there are two bodies: the Management and Supervisory Board.

In a one-tier system, there is only one permanently acting executive body – the Board of Directors. It consists of three up to nine persons who are elected and dismissed by the General Meeting of the Shareholders. The Board of Directors nominates a chairman and a vice chairman from its members. There is no requirement for all of the members of the Board of Directors to occupy the position full-time in a joint-stock company.

The manner of representation of a joint-stock company is stipulated in article 235 of the Commercial Act, which explicitly states that the members of the Board of Directors represent the company collectively. This is a dispositive rule, since the articles of association (the company's statute) may deviate from the notion of collective representation and divide the representative power (meaning the exercise of the representative function, in view of the already provided explanation for the legal nature of corporate representation) among the members of the respective board or delegate it to one person among them. The Board of Directors takes the decision as to how the joint-stock company will be represented – whether jointly or separately, and by whom, because the Board of Directors is entitled to assign the company's management to one or to several of its members. In order to be distinguished from the other members, these elected persons are given the title "executive members" (directors)[2]. Their number should be smaller

[2] A distinction should be made between an executive member and an authorized representative under article 235, paragraph 2 of the Commercial Act. The provision entitles the Board of Directors to delegate authority to one or to several of its members in order to represent the company (article 235, paragraph 2 of the Commercial Act).

than the number of the remaining board members (article 244, paragraph 4 of the Commercial Act).

The executive members, with whom the management assignment contract is entered into, are responsible for the management of the joint-stock company, while the authorized representative represents the joint-stock company before third parties. There is no obstacle preventing these two legal figures to be held by an executive member, which is common practice. The executive member will then perform management and representative functions at the same time.

In article 235, paragraph 2 of the Commercial Act is stated that, the Board of Directors, with the approval of the Supervisory Board, may delegate authority to one or to several of its members to represent the company (as stipulated in article 235, paragraph 1 of the Commercial Act). They are usually given the title "executive directors[3]" and this authorization of a particular person as an executive director is mainly necessary in order to ensure the practical running of the company. It should be pointed out that the executive directors are not a separate and independent body distinct from the Board itself. Even after the appointment of executive directors, **the Board of Directors remains at all times the sole management body and does not share the management activity with the executive directors, who may be removed from their duty and replaced by the Board at any time.**

According to the Bulgarian legislation, authorized representatives are registered in the Commercial Register after having presented notarized signatures at the time of the registration. The authorization can be withdrawn at any time, although, in order to make sure that the transactions, being concluded in the meantime, remain legally binding, the authorization itself and the withdrawal thereof shall be binding upon bona fide third parties after the registration. To that effect, the case law of the Supreme Court of Cassation accepts that in order for it to be binding upon third parties, the names of the persons authorized to represent the company shall be registered and entered in the Commercial Register (see article 235, paragraph 3 of the Commercial Act and Decision No. 179 of 04.06.2012 of

[3] The relation between the joint-stock company and the executive directors may be regulated by management contracts. The contract shall be entered into in written form between the joint-stock company, through the chairman of the Board of Directors, and the respective executive member of the Board of Directors (article 244, paragraph 7 of the Commercial Act).

the Supreme Court of Cassation under civil case No. 665/2011, IV Civil Department, Civil Section).

The conclusion, which can be derived from the already exposed, is that in cases, where there is one registered executive director and two members ("non-executive directors"), the person, appointed and registered in the Commercial Register (the executive director), has the authority to commence legal proceedings on behalf of the company (or instruct lawyers to do so), and conclude contracts. However, this does not take away the legal powers for such an act to be performed by resolution of the collective corporate representative body itself (via the Board of Directors). This is due to the fact that a joint-stock company's Board of Directors is a collective body, which manages and represents the company and which performs activities according to its own internal rules. The fact that the Board of Directors has made use of the powers, granted to it under Article 244, paragraph 4 of the Commercial Act in relation to Article 235, paragraph 2 of the Commercial Act, and has assigned the management to one of its members – the executive director – does not exclude the Board of Directors' competence and powers as a collective body, which is a specific characteristic feature of corporate representation under the Bulgarian law.

Part II: What if the executive member elected does not accomplish their duties and obligations or is missing or dismissed by the General Meeting of the Shareholders? Could then a member of the Board of Directors ("a director"), who has not been registered as a company executive director, have such powers, and if yes – in what circumstances?

First of all, to answer the question we should take into consideration the fact that the executive directors are not a separate and independent body that differs from the Board itself. Unlike, for instance, the manager of a limited liability company, the Board of the Directors of a joint-stock company remains the sole managerial body and does not share or resign its powers of management together with the executive directors who could be replaced by the Board at any time. The appointment of an executive director does not replace the joint-stock company's collective management with a sole or independent management. **By assigning the management and**

the representation from the Board of Directors to the executive director, the members of the Board are not relieved of the right and the obligation to participate in the management and the representation of the joint-stock company.

Additionally, the empowerment of a single member of the Board of Directors to exercise their representative functions with regard to third parties does not limit the representation powers of the remaining members of the Board of Directors. It cannot be accepted that by empowering one of the members of the Board of Directors, the remainder in their collective capacity would find it impossible to perform acts that would bind the company. Even in cases where there is an explicit empowerment stipulated in the company by-laws of a joint-stock company, and registered in the Commercial Register, this does not limit the representative power of the Board of Directors in its capacity as a collective representative body. The empowerment of an executive director only constitutes a method, a mechanism, or an instrument to exercise the representative power of the collective representation but does not limit or exclude it[4]. Besides, the registration of the name of the executive director at the Commercial Register is not a registration of a legal representative who would replace the collective corporate body representative, but is only a way to personalize (with regard to third parties) a physical entity through the appointment of an individual, who, pursuant to an election (by the Board of Directors) and a contract (with the joint-stock company), has been assigned with exercising the corporate body representative power. The power, however, still belongs to the Board of Directors.

With regard to the aforementioned, in our opinion, the empowerment of an executive director through voluntary representation (voluntary representative power, as under the civil law), does not exclude the presence of legal representative power of the Board of Directors. To validly exercise such ad-hoc powers, vested under the voluntary representation (as opposed to the constant corporate representation of the Board), one should apply the provisions of the Commercial Act, as well as the company by-laws of the respective joint-stock company.

Pursuant to article 235, paragraph 1 of the Commercial Act, the members of the Board of Directors, in their capacity as a corporate body, re-

[4] "Civil Procedure Code. Enclosed commentary. Problems at law enforcement. Analysis of the Legal Practice", II issue, "Trud i Pravo" Publishing House, Sofia 2017, p.80.

present the company collectively, "unless the company by-laws state differently". The reference to the word "differently" presumes that the empowerment of an executive director (election of a voluntary representative) preserves the legal collective nature of the corporate body's representative power that could be exercised collectively in observation of the rules for quorum and majority decision-making. Both legal representation powers of the corporate body (the Board of Directors) and the powers of representation of the executive director, empowered by the members of the Board of Directors - granted voluntarily by the Board (i.e. granted by resolution of the Board purporting to authorize a particular member to exercise powers in external relations) and being available to withdrawal anytime – continue to exist in parallel. They co-exist in the same way as a represented party under ordinary (voluntary) representation does not lose the right to perform the activities for which its representative (proxy) has been empowered.

An additional argument in this regard is the imperative rule of article 237, paragraph 1 of the Commercial Act, pursuant to which the members of the Board of Directors have the same rights and obligations, independently of the internal separation of the functions among them and independently of giving the right of management and representation to some of them. This uniformity of the rights of the members of the Board of Directors, provided in the Commercial Act, even after the election of an executive director, greatly reflects the presence of an equal opportunity for each of the members in exercising their powers to have an influence in the relevant decision-making. The aim of this rule, the effect of which maintains that the members have equal rights independently of the internal separation of functions among them and independently of the provision of the right of management and representation to some of them, is that the voting weight of each member of the Board of Directors of a joint-stock company remains the same. It is precisely due to this separation of functions (namely, the assignment of management), that the law grants some procedural and internal-organizational rights to the executive members.

The meaning of this provision should also be construed such that, by empowering the Board of Directors to be the legal corporate body representative of a joint-stock company under the meaning of art. 235, par. 2 by the Commercial Act, the Board does not lose its powers and ability to act as a voice of the will of the legal entity itself, and hence, to effecti-

vely bind the company. In absolute contradiction to the spirit of the law is the opinion that the entire activity of the company depends solely on the executive director, and that it is stated by law that the collective body representative – the Board of Directors – is incapable of performing legal activities that would legally bind the joint-stock company. Such an opinion does not take into account cases where the executive director may be objectively incapable of exercising their functions. Assuming that only the executive director may perform activities that bind the company, such a scenario would mean that we sentence the company to economic death[5].

Furthermore, the Bulgarian legal practice recognizes the notion that the formal legal requirements (for example, the exercise of the representative power solely by the person who has been registered in the Commercial Register) take secondary importance to the general spirit within the Bulgarian law, that the functions of the company (including the bringing of legal proceedings) should not be stunted because of the refusal of an Executive Director to act[6]. The Bulgarian Commercial Register recorded that the relevant member of the Board was the only member of the Board that had not been removed from their position. Additionally, no other members of the Board could be appointed in the Commercial Register (as a result of the company being declared bankrupt and the powers of its various bodies being terminated). The Supreme Court of Cassation therefore accepted that there was no other existing opportunity for the company to authorize a lawyer, who would represent the bankrupt debtor in the lawsuit, except for the only member of the Board of Directors who had not been removed from the Commercial Register.

This is because the corporate body representation is a specific type of "representation" that does not have the common features of the type of "representation" that is commonly understood as the ability of one person to act on behalf of and at the expense of another. Representation of a joint-stock company in Bulgaria does not fit within this common

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5 See: Decision № 125, dated 24 February 2006, of the Supreme Court of Cassation under Commercial case № 370/2005 of the Commercial Chamber, published in "Market and Law" Magazine, issue 5/2006, page 10.

6 For example, in Decision № 116 of March 9th 2015 of the Supreme Court of Cassation, under commercial case № 1670/2014, II Commercial Chamber (speaker – Judge K. Efremova), the Bulgarian Court considered a scenario in which a lawyer's power of attorney had only been signed by one of the members of the Board of Directors of the joint-stock company (which had been declared bankrupt).

understanding of "representation". The fact that many legal provisions of the Commercial Act refer to the actions of the company bodies as "representation" does not in any way mean that this is something different to the exercising of the assigned representative functions, which are part of the powers of the corporate body representative.

Article 235, para.2 of the Commercial Act aims to facilitate the expression of the will and the exercise of the representative function of the collective corporate body representative (which is expressed through the collective ruling and decision-making of the Board of Directors), however, in a way so as to avoid the possibility of exercising the representation within one person, which in turn, would cause the company to become dependent on the acts of that one person. The fact that the function of the corporate body representative could in certain cases be assigned to an individual physical entity does not mean that it is the legal and only representative of the company. Otherwise it would be pointless to speak of corporate body representation and this representation to be differentiated from the voluntary representation. The legal entity and the body are a whole and there is no representative relation between them, regardless of the fact that the functions of a representative body are being fulfilled by a certain physical entity. This does not make the respective body a separate legal entity, because the expression of the will of the corporate body representative is the expression of the will of the legal entity itself, and not "on behalf of and at the expense of the legal entity", which is the case with the "common" representation (for example at authorization). Through this route, third parties find out about the will of the legal entity (as expressed and determined by the whole Board of Directors).

In conclusion, the majority of the Board of Directors can instruct legal counsel, undertake legal actions and conclude contracts on the behalf of the joint-stock company even when another member of the board is the registered executive director. A fortiori, when the rest of the members of the Board of Directors (excluding the executive director) are in the majority, they can obviously exercise their representative function as well (in particular, to authorize a lawyer by means of a legally binding Board resolution on behalf of the joint-stock company).

Part III: Instead of a conclusion

The already made conclusion could be additionally clarified by making distinctions between the powers of the Board of Directors (re-

spectively – the executive director) in terms of internal relations – those towards the company, when compared to those, concerning external relations with regard to third parties. As a rule, making decisions to act, which includes making a decision to authorize a lawyer (which is within the realm of the internal relations), should be distinguished from the respective authorization of a third party (in this case – a legal company), which is directed outwards to third parties. In accordance with the principle of equality of rights of the members of the Board of Directors and of the preservation of the legal collective representative power of the body as established above, it follows as possible: a) that the executive director can make the decision for the appointment of a lawyer, and can appoint one, and; b) that the Board of Directors can unanimously or by majority make the decision to appoint a lawyer, who would represent the company in lawsuits, or the Board of Directors' members to collectively authorize a lawyer.

According to Article 244, par. 1 of the Commercial Act, the company is managed and represented by the Board of Directors. It is being managed – i.e. it is bound in its internal activities by the decisions, made by the Board of Directors (for instance, by the decision to appoint a lawyer), and is being represented (in its internal relations) by the acts of the Board of Directors with regard to third parties (for instance by a power of attorney, provided to a lawyer to represent it). The management is responsible for making decisions (both concerning purely internal relations and relations with third parties, which include the provision of a power of attorney on behalf of the company). As long as the representation is expressed by performing activities, the expression will directly affect third parties (such as the giving of a power of attorney). On contrary, when the expression of the will is performed by only one (non-executive) member of the Board of Directors, it is not sufficient to bind the company. It takes the expression of a will either by all the members of the Board of Directors or at least by a proportion of them, such that it is sufficient to form the quorum for a valid making of a decision.

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THE DIGITIZATION OF THE ECONOMY AND THE CHALLENGES FACED BY LABOR LAW

Abstract: The paper examines the relationship between digitization of the economy and the impact of the process on labor law in an international and national aspect. On the basis of an analysis carried out, conclusions and recommendations for the development of the sector are made in view of the challenges of the global economy and the international labor market as well as with regard of the idea of humanization in working conditions.

Key words: digitization, worker and employee, labor law, right to labor

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Introduction

The strategy for economic growth in Europe is closely linked to the digitization of society. Information technologies are a key factor in this process and, therefore, they impact not only the economic relations but also all social relations. This promotes the competitiveness of enterprises and industrial production and is expected to increase employment in a number of sectors that generate high added value. In the global process of digitization, the impact factors are cumulative and are refracted through the prism of the influence of the inner environment. Over the past decade the Bulgarian economy has followed some global trends, including digitization, both in the area of information technology and in other sectors. Following a proposal from the employers' organizations, the Ministry of Economy has undertaken a number of initiatives for the development of the digital economy by developing the Concept for Digital Transformation of the Bulgarian Industry /Industry 4.0/.

The process of digitization is a trend that cannot be adequately regulated by legal norms given the rapid development that is ahead of the legislative response. However, this process's impact on the law creates interest both with regard to its doctrinal nature and the objective system of norms. It is important to focus public attention on the importance of digitization and its role in the development of the Bulgarian economy as well as on the need for the national legislator to adequately change the norms of the different legal branches to comply with the trends. This also provokes the interest of the authors towards the issues and the process of interrelation of labor law with the digitization of economic relations.

The purpose of this paper is to investigate the relationship between the digitization in the economy and the impact of the process on labor law in an international and national aspect. On the basis of the analysis, conclusions and recommendations on the development of the sector are made in view of the challenges of the global economy and the international labor market as well as the idea of humanization in working conditions.

In accomplishing this goal, the authors have set themselves **the following tasks:**

1. To research the basic forms of manifestation of digitization in the Bulgarian labor law at the level of the existing digitization systems and the digital revolution of work places.
2. To describe major trends in the development of the sector in accordance with the processes of digitization of the economy.
3. To draw conclusions and make practical generalizations.

1. Main forms of manifestation of digitization in the Bulgarian labor law

With the adoption in 2014 of the E-Governance Development Strategy (2014-2020) and the related roadmap for the implementation of the strategy in the period 2016-2020, a Strategy for the introduction of an e-Government and e-Justice is being implemented in Bulgaria with the primary objective of improving efficiency in the e-Justice sector in the country. Similarly, a dedicated agency for e-government in public administration is created, in addition to and as a further development of which processes is the adoption of the Electronic Identification Act as an important step in the context of Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation). Undoubtedly, these are important steps towards digitization of public activities management services, which should also include the mechanism of regulation of the occurrence and development of labor relations.

The problem here should be researched at two main levels: on the one hand, at the level of digitization, there are growing tendencies in the provision of digital services and the respective software products concerning the regulation of the field of labor relations. On the other hand, however, there is an extremely low level of involvement of the labor market in the alternative, respectively digital forms of labour provision. There are digitized acts, data and e-services on the websites of law enforcement institutions that provide accessibility, transparency and inclusion to the working mechanisms of systematic innovation. The latter mechanism is constructed at the following system structural levels related to the creation, maintenance and protection of information assets:

1) website of the ministries involved at the level of regulatory acts and their respective projects, strategies and strategic planning, nature, objectives and strategic planning of individual policies (labor, employment, social assistance, pensions, demographic policies);
2) digitization of the services of law enforcement and control institutions - in particular official web pages of the General Labour Inspectorate Executive Agency containing active sections on legislation, administrative services, activities with maximum spectrum of components (reports, strategies, strategic plans, electronic services). At the same time the developed Information Security Quality Policy[3] states the maintenance and continuous improvement of the quality management system at the levels of quality and effective implementation of the statutory powers, compatibility between the public attitudes and expectations and the results of the control activity of the Agency, improvement of the coordination and joint activities with other state control bodies, institutions and organizations , stimulating the social partners‘ initiative to include them with ideas and projects to promote safe, fair and decent labour, as well as professional and competent resource and process management.[4]
3) software and its respective instructions for access to electronic services and instructions for working with the software. Thus, on the Agency‘s website, applications and documents may be filed, electronic administrative services, in particular entry in a public register of an annual return under Art. 15, para. 1 of the Health and Safety at Work Act, issue of an order for termination of a labor contract of a worker or employee where the worker or employee can not submit his / her written application for termination of the employment contract to the employer (Article 327, para 2 of the Labor Code), issuance of a permit or denial of dismissal to certain categories of employees enjoying special pro-

[3] Developed in compliance with Project BG051po001-6.1.06-0001-c0001 „Enhancing the efficiency of the control activities of the General Labour Inspectorate Executive Agency.

[4] With relevance to the aspects are also the information security objectives defined by the General Labor Inspectorate Executive Agency, developed at the levels of protection of the Agency’s information from threats, security of information sharing, promotion of continuous and professional use of the information, ensuring the continuity of the administration’s activities minimizing the risks to information security and, last but not least, ensuring compliance with applicable laws, regulations and directives;

tection under Art. 333, para 1 and 5 of the Labor Code, issuance of a permit for employment of minors persons (Articles 302-303 of the Labor Code).

The Electronic Services section also provides opportunities for reporting overtime data by employers, notifying the opening of a construction site and entering data from the information board, reviewing the register of the issued injunctions for termination of employment contracts or for refusal of termination, review of the submitted returns under Article 15 of the Health and Safety at Work Act, submission of information on the cases in which the employees have consented to work more than 48 hours per week, number of employees doing night work, night hours, and the measures taken to ensure safe and healthy working conditions.

Parallel to the relatively well-developed e-governance of labor and job regulation, it should be noted that there is a low level of inclusion of alternative forms of employment in terms of job rehabilitation and digitization of workplaces. On the other hand is the poor development and application of intelligent and digitized production and services, including cloud technologies, Internet technologies, the Internet of Things, technologies for utilizing the potential of large data, industrial and service robotics, the development of artificial intelligence. In this sense, it is imperative to promote rapid market integration rates with active, regulatory frameworks, mainly at Community level, to develop policies and models to support the digital economy.

The latter is also a matter of incorporating the philosophy and understanding of the Community values shared in the Opinion of the European Economic and Social Committee on "Building and developing skills, including digital skills, in the context of new forms of employment - new policies and role development responsibilities". The opinion strongly encourages inclusiveness, mainly through Commission initiatives that are predominantly linked to lifelong learning, and through it - a step-by-step approach to digital literacy and digitization and automation of jobs.

2. Tendencies in the development of labour law in accordance with the processes of digitization of the economy

Digitization is a process that is multidimensional, one of the aspects being undoubtedly the impact it will have on the development of labor

law in the future. The evolution of the sector is tied to social processes and follow the dynamics of the economy[5][1], as well as the significant political changes[6][2]. The impact is complex and depending on the specific needs in the respective period the legislator decides on the need to correct principles and/or institutes[7][3].

In this aspect it is not possible for the legislation of one country to regulate independently the processes of impact of digitization on labour relations. In spite of that, it is necessary to ensure the commitment of the local institutions for the development of forecasts and opinions related to the future of the labour market[8] .

The main forms of manifestation of the digitization in the Bulgarian labour law mentioned in the paper indicate the necessity for adaptability of the national legislator who should increasingly adapt the internal legal framework to the European and global needs. In this regard, the European Commission and the Member States should focus their efforts on developing impact policies and, accordingly, identify concrete measures to link education to the needs of labor markets. The different levels of education and relevant training systems should be adaptable and flexible in line with new current forms of employment.

The digitization process requires employee training. It is a process that involves individuals in different age groups and therefore, the impact on them and the methods for their adaptation must be of a different nature.

In view of the protective role of labor law, special attention should be paid to the key challenges related to the labor force aging, the opportunities for improving education, training and retraining policies to better match new skills with the needs of the labor market

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5 See Андреева, А. Законодателни решения в българското трудово право обусловени от връзката му с икономиката, collection of papers „Правната наука и бизнесът–заедно за устойчиво развитие на икономиката“, В, 2016, pp.84-92;

6 See. Андреева, А. , Йолова, Г. Тенденции и предизвикателства пред трудовото и осигурително законодателство десет години след членството на Р.България в ЕС, Научни трудове на Института за държавата и правото, С., 2017, pp.251-261;

7 Андреева, А. Трудовият договор - традиции и тенденции в променяща се икономическа среда, сборник конференция „Икономиката в променящия се свят: национални, регионални и глобални измерения“, Science and Economics publishing house, University of Economics - Varna, 2015, pp.25-32

8 See the Opinions of the Economic and Social Committee http://www.esc.bg/bg/activities/opinions

The digitization process has its positive impact on the labour processes, as well as its downsides, e.g.:

- Labour market insecurity, lack of predictability and uncertainty of short-term forecasts, as well as the impossibility of long-term changes due to changes in the processes in society with the advancement of technologies.
- The process is also associated with new forms of inequality, on the levels of creators and users.

In view of its social role, labor law needs to reflect and complement the forms of protection of labor rights with regards to new forms of employment. In the process of digitization, not only the technical parameters of the labor process, but also the real rights and obligations of the legal relationship are changed. The question is raised of rethinking the concept of this legal area in the context of the new contractors of the „labour engagement" in the face of robots.

New jobs are being created at the expense of the disappearance of those related to routine activities carried out by low-skilled workers. In Bulgaria, the process of digitization is still not developing at the pace of other European countries, but it is expected that in the next 2-3 years it will penetrate all spheres. This implies the readiness of the national legislator to regulate both the entry of new forms of employment and the introduction of labor law norms regulating the protection of workers' rights under the new conditions. Legislation in this sector should complement employers' obligations to maximize worker awareness of working conditions, mandatory digital qualification conditions, and the need for ongoing updating and retraining, respectively.

Changes in the labor market connect digitization with new skills in which context the traditional understanding of a profession is being reconsidered and the question is posed of linking market dynamics with the skills of the workforce.

Conclusion

Digital transformation in the different spheres of the economy is a lengthy process that involves changes in technology, automation of internal processes, management of information assets, etc. This process has characteristics directly linking the technological processes with the human

factor and therefore its introduction into the Bulgarian economy both at national level and at the level of individual employers requires new competencies and a change in the attitudes of the employer and the employees respectively. Digital transformation is not just about technological development; like in the case any other process the human factor is key to its success. Our labor legislation, respectively the digitization of the management of related processes is currently relatively conservative and preserves its traditional institutes and rights, although individual changes in texts indicate the sector's commitment to digitization.

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EMPLOYERS AS PERSONAL DATA ADMINISTRATORS – SPECIFICS AND REQUIREMENTS IN THE CONTEXT OF THE INFORMATION SOCIETY

Abstract: The paper explores the specifics of the personal data administrator in the information society and the new European regulations.

On the basis of the correlation between the digitization in the economy and the impact of the process on the labor relation, the basic obligations of the employer as data administrator are analyzed. Finally, conclusions and recommendations on the application of the regulations are made in view of the employer's commitments regarding the employees' personal data.

Key words: personal data, personal data administrator, employer, labor law

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Introduction

Digitization is radically changing our personal and professional lives. The impact of the processes is positive, but at the same time it entails a number of risks. The development of society and the economy in line with these processes inevitably requires adaptability of employment. Employers and workers are faced with the need to show flexibility associated with multiple needs. The future of the labor market worldwide, in Europe and in Bulgaria is associated with many new and non-typical forms of employment: multiple part-time work, multi-performer work, i.e. "crowdworking", mass employment, voucher-based work, etc.

The said current forms of employment require regulation first at international level, and then regulation within national laws according to the narrow specifics of the particular country. The process of labor market transformation in the context of the information society requires a comprehensive policy at the level of the European Union to cover both issues related to the transformation of traditional into non-typical forms of employment and to provide the necessary safeguards for social protection and security in exercising the right to work. In this regard, one of the important issues to be addressed is the protection of workers' and employees' personal data, respectively the employer's duties as an administrator thereof.

Explaining the term "personal data administrator" on the one hand is essential for the implementation of the Personal Data Protection Act (PDPA) as it will determine which person will be responsible for compliance with the data protection rules. On the other hand, the concept is important for persons whose data is collected, because thus they will be informed and made aware of the scope of the law, what the duties of data administrators are and how they can exercise and defend their rights in cases of unlawful processing of their personal information.

For the purposes of this paper, the term "personal data administrator" and the main obligations of the employer in this capacity will be considered in order to ensure the effective implementation and compliance with the PDPA.

The topicality of the researched issues is obvious in view of the implementation of Regulation (EC) 2016/679 of the European Parliament and of the Council dated 27 April 2016 in the EU Member States and the adaptation of national laws to the provisions of community law. Therefore,

the analysis of the subject requires a complex approach on several levels, on the one hand clarification of the conception apparatus related to the administration of the process and, on the other hand, its binding with the specifics of the labor law.

1. The concept of personal data administrator

According to Art. 3, para. 1 PDPA, a personal data administrator, hereinafter referred to as "administrator", is a natural or legal person, or a state authority or local authority, which alone or jointly with another person determines the purposes and means of processing personal data. This definition contains three main elements that are closely related to each other but will be analyzed separately in this paper.

The first element is "a natural or legal person, or a state or local authority" and refers to the personal characteristic, i.e. who can be an administrator and therefore be held accountable for the obligations arising from data protection legislation. It is clear from the definition that the legislator has covered all the subjects of law and included them in the definition of the personal data administrator. This follows from the objective of the law to offer the widest possible protection of the personality and privacy of citizens in the processing of their personal data.

In principle, it must be assumed that legal persons and public authorities are always responsible for the processing activities carried out in their sphere of activity even if the natural person they have appointed has not complied with the data protection principles. This is because the respective individual acts on their behalf and is not an administrator. An exception to this rule is when the individual uses the data for his / her own purposes outside the scope and possible control of the activities of the legal entity or government body. In this case, the individual in question will be the administrator of the processing and will be responsible for the use of the personal data as long as the purpose of the processing is not for personal purposes. The original administrator in this case may still retain some responsibility if the new processing was done due to a lack of adequate reliability measures.

The second element looks at the possibility of multiple administration. Many legal entities may interact or be interrelated in the processing of personal data. Joint administration occurs when different entities deter-

mine, in relation to particular processing operations, either the purpose or the essential elements of the means which characterize the administrator. However, it is not always a case of joint administrators when different subjects collaborate in the processing. For example, the exchange of data between two parties that do not share the same goals or tools in a common group of transactions should only be considered as a data transfer between individual administrators.

In cases of joint administration, it should also be pointed out that the impossibility of directly fulfilling all the obligations of the administrator, such as providing information, right of access, etc., does not preclude the qualification as an administrator. It is practically possible for these obligations to be easily met by other parties, which are sometimes close to the person for whom data is collected on behalf of the administrator. However, the administrator remains in all cases ultimately responsible for their duties and for any violation thereof[3].

The third element "defines the purposes and means of processing personal data" and constitutes an essential part of the check : which person should determine such purposes and means in order to qualify as an administrator. This element depends on the specific conditions under which processing is performed.

The Personal Data Protection Act stipulates that data must be collected for specific, explicit and legitimate purposes and not further processed in a manner inconsistent with these purposes (Article 2 (2) (2) PDPA). It is therefore the administrator who has to determine which data to process for the intended purpose.

The means relate not only to the technical and organizational issues that can be tackled by the data processors (for example, what software to use) but also to the essential elements that only the administrator can determine such as which data to process, how long to process, who can access them, etc. In this respect, it is quite possible for the technical and organizational tools to be assigned by the administrator to another person who processes the data. At the same time, the purpose of the processing always results in the person being identified as an administrator. In cases where there is a clear definition of objectives but there is little or no indication of technical and organizational means, the means must be a reasonable way to achieve the goal. The person who decides to set the goal is an administrator.

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[3] Statement 1/2010 of the Work Group under article 29 concerning the concepts "personal data administrator" and "a person processing data", (WP 169) dated 16.02.2010, c.25

The quality of administrator is mainly a consequence of the fact that a person or organization has chosen to process personal data for their own purposes. It does not matter whether the decision-maker was legally able to do so or that he was formally authorized under the PDPA procedures. The issue of the lawfulness of personal data processing will remain important, but in cases where the data is being processed illegally, the administrator's identification will help to apply the responsibility for the processing. Administrators are responsible for the processing of personal information of individuals in the context of their duties.

The basic rule of law is that the data administrator should comply with the provision of Art. 2, para. 2 PDPA, concerning the conditions under which the administrator is entitled to process personal data. These conditions relate to the basic principles of data quality - they must be processed lawfully and in good faith. All the provisions defining the conditions for lawful processing are addressed mainly to the administrator, even if this is not always clearly stated.

The provisions of Art. 26, Art. 28a and Art. 34a PDPA on the rights of individuals to information, access, rectification, erasure and blocking, as well as individuals' opposition to the processing of their personal data, are formulated in such a way that they create obligations for administrators. The administrator is also a basic figure in the provisions of Art. 17 and Art. 23 PDPA on the submission of an application for registration before starting the processing of personal data and setting deadlines for periodic reviews of the need for data processing. In principle, the administrator is responsible for all damages resulting from unauthorized processing (Article 39 (2) of the PDPA). This is also **the fundamental role of the term** "administrator", namely to determine the responsibility for complying with data protection rules and how the data holders for whom data are collected can exercise their rights.

The term "administrator" is also an essential element in determining the scope of personal data processing because it clarifies in which cases PDPA applies to data processing. According to Art. 1, para 4 PDPA, the law applies to the processing of personal data when the personal data administrator:

– is established on the territory of the Republic of Bulgaria and processes personal data in connection with its activities;
– is not established on the territory of the Republic of Bulgaria but is obliged to apply the law under the international public law;

– is not established in the territory of an EU Member State or in another EEA Member State but uses for processing purposes funds located on Bulgarian territory, except where such funds are only used for transit purposed. In the latter case the administrator has to indicate a representative established in the territory of the Republic of Bulgaria without thus being exempted from liability.

Lastly, it should be noted that the term 'administrator' appears in a large number of different provisions of the PDPA as an element of their scope or of a specific condition the fulfillment of which is required by them. For example, Art. 4 PDPA provides that the processing of personal data may only be carried out if necessary: to fulfill a statutory obligation of the personal data administrator or to fulfill contractual obligations under which the individual whose data is collected is a party, as well as for pre-contractual actions taken at the said individual's request; in order to protect the life and health of the individual to whom the data relate; for the performance of a task carried out in the public interest or for exercising the powers provided by law to the administrator or to a third party to whom the data are disclosed; for the realization of the legitimate interests of the personal data administrator or of the third party to whom the data are disclosed, unless the interests of the data subject have prevail to such interests; as well as when the individual to whom the data refers has explicitly given his or her consent. The identity of the administrator is also an important part of the information for the person for whom the data are collected, required under Art. 19 and 20 PDPA.

2. Specific requirements for the employer concerning the administration of workers' and employees' personal data.

The protection of personal data provided in the framework of the employment relationship is one aspect of the overall protection of individuals' data in the digital society. The issue is indisputably important for the labor law and this is witnessed by the interest of a number of authors who have worked either on individual issues in this area (Genova Y., 2011, p. 128, Alexandrov, A., 2009, Alexandrov, A., 2013, pp. 68-86, Aleksandrov, A., 2015) or have considered the issue comprehensively (Alexandrov, A., 2016). The research of the issue in this aspect, which is bound up with the employer's labor-law engagement, reveals a number of specifics which will only be outlined in the paper, in view of the limited volume allowed.

We can outline several key stages that are part of the process of establishing, existence and respectively terminating the employment relationship. At each stage the parties provide and handle personal data respectively and, accordingly, obligations for their protection arise for the employer. **The first stage concerns pre-contractual relations** between the parties on the occasion of the occurrence of the employment relationship. This stage determines the lawful occurrence of the future legal relationship and, in view of this, requires a certain set of personal data relating to the employee's personality[4]. For the sake of maximum correctness and at the same time protection of the rights of both parties to the legal relationship, it is advisable to provide a mandatory consent from the data holder, i.e. the worker or employee.

The second stage is the essence. It concerns the active legal connection, related to the occurrence, development and change of the labor relations. It is precisely in relation to these manifestations in the process of labour provision that we can say that the data collection is "staged" in view of the natural course in the development of the legal relationship. It is normal for the employee to have provided only the minimum required data and to supplement them subsequently.

In view of the life cycle of the employment relationship, **the moment of its termination is the last stage**. It is of utmost importance, both legally and socially. With regard to the protection of personal data, the employer's obligation is the last in the series and, at the same time, it is of a special nature since it relates to a commitment on a legal relationship already concluded. Personal data provided under an employment relationship, which no longer exists, are processed. The need for data protection is related to the needs of other proceedings: pension arrangements, litigation, etc. Engaged subjects at this stage are the former employer and, respectively, the former employee.

These stages are indisputable, both from the point of view of their interrelation with the transformation of the employment relationship and in view of the general obligations of the employer to manage the overall process. In the context of the protection of personal data and the forthcoming implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with

[4] In our national law they are regulated by Ordinance 4 of 1993 concerning the documents necessary to enter into an employment contract, in accordance with the position applied for.

regard to the processing of personal data and on the free movement of such data, a number of issues emerge for which national labor law does not contain specific provisions. In this connection, it is necessary that the process of data protection and the control related to this should be organized by each employer through the development of internal documents and supplementation through the Collective Employment Contract. The Bulgarian labor legislation has normative traditions regarding the regulation of the necessary data related to the employment relationship. In this regard, there is no need for a change to adapt the norms to the operation of the Regulation. However, in technical terms, control issues should be perfected by the employer. The information society and the digitization process provide many modern control options, respectively, to ensure data security. In this respect, however, there is a risk of excessive invasion of the employee's privacy, respectively exceeding the limits of the employer's obligations.

Conclusion

The administrator's role is crucial and especially important when it comes to determining responsibilities and imposing penalties. Therefore, the straightforward identification of the person guilty of violating the data protection laws is undoubtedly a main prerequisite for the effective application of PDPA.

In view of the above, a conclusion can be drawn as to the need for a better awareness on the part of employers of the rules concerning the personal data protection and their appropriate implementation. The process is bound both to the worker and employee's employment relations, i.e. concerning the individual labour-law relation, and to the collective employment contracts. The main responsibility for data protection is borne by the economically and organisationally more powerful party – the employer, however in practice this is also the obligation of the individual person - worker or employee, as well as of the trade unions and the employers' organisations, in view of their opportunities to impact the parties' rights protection within the employment relations, and in particular, the personal data protection. Therefore, the persons in charge of the lawful processing of personal data have to be sufficiently encouraged by legal and other means to undertake all measures necessary for the practical personal data protection. In order to ensure the effective application of such encouragement

means, it is necessary to foresee not only the administrator's liability, but also that of the citizens. The aim is to guarantee that any damage shall be compensated and that adequate measures shall be undertaken to correct any errors and violations.

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Gergana Varbanova

USING ELECTRONIC REGISTERED DELIVERY SERVICE - CHALLENGES AND REALITIES

„Those who understand the steam engine and the electric telegraph spend their lives trying to replace them with something better.“
George Bernard Shaw

Abstract: At the end of the 20th century and the beginning of the 21st century, digitization and technology seemed to peak in popularity. Public relations between the administration, citizens and legal entities are increasingly emerging from the era of „paper“ and entering the era of digitization. An era in which paper documents do not exist and all statements relevant to certain relationships are made electronically through various communication software and electronic documents that incorporate the will of the parties that created them. The adoption of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic authentication and authentication of electronic communications in the internal market and repealing Directive 1999/93 / EC created new opportunities and challenges to certification service providers. The preamble of the Regulation explicitly states the desire to establish supranational norms that are valid for all EU Member States and for cross-border recognition of the electronic registered delivery service (ERDS). The provision of ERDS is seen not only as a means of facilitating business turnover and communication between citizens, legal entities or the administration but also as an opportunity to develop new pan-European services. ERDS will still develop and pose new challenges both to certification service providers and to the court that will value it as part of the relevant evidence presented in the case. However, its burden should not be absolutized and the court should also respect any other electronic correspondence that contains electronic statements about the facts relevant to the legal dispute. The burden of any electronic evidence should be assessed in accordance with Article 46 of Regulation (EU) No 910/2014, which explicitly recognizes the evidential value of the electronic document.

At the end of the 20th century and the beginning of the 21st century, digitization and technology seemed to peak in popularity. Public relations between the administration, citizens and legal entities are increasingly emerging from the era of „paper" and entering the era of digitization. An era in which paper documents do not exist and all statements relevant to certain relationships are made electronically through various communication software and electronic documents that incorporate the will of the parties that created them. This, however, raises a number of challenges regarding the establishment of legal frameworks and sufficiently clear norms to reflect the dynamics of the digitization process and at the same time to bring stability and security to the already established legal framework.

Issues of probative power and the evidential burden of electronic statements are increasingly being raised. The **Electronic Document and Electronic Certification Services Act** explicitly recognize electronic documents containing an electronic statement as evidence. There are also issues related to the sending and receiving of electronic statements, the security and integrity of data incorporated in them, the verification of the time of sending and receiving, and in general the security of the electronic data exchange in a virtual environment.

The adoption of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic authentication and authentication of electronic communications in the internal market and repealing Directive 1999/93 / EC created new opportunities and challenges to certification service providers. The preamble of the Regulation explicitly states the desire to establish supranational norms that are valid for all EU Member States and for cross-border recognition of the **electronic registered delivery service (ERDS)**. The provision of ERDS is seen not only as a means of facilitating business turnover and communication between citizens, legal entities or the administration but also as an opportunity to develop new pan-European services. However, the service itself **is not an e-mail service but is a standalone new type of service** designed to ensure the security of the transmitted information as well as the authentication not only of the content of the electronic statement but also sending date and time and its delivery.

In fact, if we want to send a message whose content is certified, our capabilities are limited and related to the physical carrying of a document that incorporates our statement, certified as content either by a Notary

or by using the Telepost service of Bulgarian Posts EAD. Regardless of which of the options we choose - Telepost or sending a notary invitation, this would be time costly, insofar as the prepared Telepost is physically to be taken to the respective post office and the notary invitation should be brought to the notary's office.

The ERDS enables **the transmission of data between persons and legal entities or the administration electronically** so as to provide evidence regarding the processing of transmitted data, including evidence of data transmission and receipt, and protects transmitted data against loss, theft, damage or unauthorized alterations. The main objective is not to save time and money, but to ensure the security of electronic information transmitted between different parties. ERDS has the same weighting and force as when sending a regular registered delivery service. **Regulation (EU) No 910/2014 expressly provides in Article 43 (2) that data sent and received through the ERDS shall have the same burden of proof as the written ones**.

ERDS has the following features, related to the statement (data):

- Data sent by ERDS, either a regular ERDS or a qualified ERDS, has a **presumption of integrity**;
- In addition to the integrity of the data, the use of the **qualified ERDS also guarantees their content by applying a sophisticated electronic signature or advanced electronic seal to a qualified certification service provider**. The use of electronic signature and electronic time stamping aims to ensure that the transmitted data will not be „unnoticed altered" and that the received data will be identical to the transmitted data;
- The **date and time of sending and receiving, as well as any changes to the data, are indicated by qualified electronic time stamp**. When sending and receiving ERDS, there is no doubt as to the timing of dispatch and the timing of receipt of relevant electronic statements or other data;
- Certainly **certify the content of the statement (data) sent by electronic mail**.

It should be borne in mind that ERDS **is not identical to the regular registered delivery service**. The latter only certifies that a particular subject has sent to another postal item, but not what its content is. The purpose of ERDS is to **create security about the content and integrity of data when sending and receiving data**.

Pursuant to Regulation (EU) No 910/2014, the State Agency for Electronic Governance established a **„secure electronic delivery system“**, as part of the Concept for the establishment of e-Justice in Bulgaria. The main idea of the system is to provide ERDS but it is limited to the extent that at least one of the parties (sender or recipient) is required to be an administrative body within the meaning of Article 1 of the Law on e-government. From this point of view, the system **cannot perform ERDS between**:

- Two persons;
- Persons and commercial companies;
- Persons and business entities;
- Business entities and commercial companies.

Regulation (EU) No 910/2014 does not impose such a limit, but allows each certification service provider to assess in what volume and what certification services it will provide. In this case, the secure electronic delivery system provides the opportunity for the various entities to send to and receive certain messages from the relevant administrative bodies. In addition, access to the service is only through registration through a qualified electronic signature or PIC code issued by NSSI. The notification to the addressee of the electronic service could be by e-mail or via SMS. However, taking into account the specificities of the system and the concept of e-Justice, **it could be successfully adopted in the court system** and used as a service of electronic summons and communications, electronic exchange of judicial papers. The mere service of electronic communications may be certified by a service provider of qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014

The provision of ERDS will still develop and pose new challenges both to certification service providers and to the court that will value it as part of the relevant evidence presented in the case. However, its **burden should not be absolutized and the court should also respect any other electronic correspondence that contains electronic statements about the facts relevant to the legal dispute**. The burden of any electronic evidence should be assessed in accordance with Article 46 of Regulation (EU) No 910/2014, which explicitly recognizes the evidential value of the electronic document.

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PRESUMPTION FOR PATERNITY WITH DECLARED ABSENCE OF THE MOTHER'S HUSBAND

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Abstract: The presumptions for paternity are not applied with declared absence of the mother's husband if the child was born after the expiry of three hundred days as of the date of the last notice of the husband.

It is possible that the court decision, whereby the absence has been announced, may be repealed or amended, which would lead to different consequences concerning the descent from the father.

Key words: child, mother, marriage, paternity, presumption for paternity, declared absence.

Pursuant to Art. 61 of the Family Code of the Republic of Bulgaria (FCRB), the paternity of a child shall be acknowledged automatically only by force of the law, when the child was born during the marriage of his/her mother, or prior to the expiry of three hundred days as of its termination. [1]

Such an acknowledgement is possible only under several hypotheses: with the presumption for the paternity of the mother's husband, when the child was born during the marriage, or before the expiry of three hundred days as of its termination, or with the presumption for the paternity of the second (new) husband of the mother, when three hundred days as of the previous marriage have not passed, but the mother has entered into a new marriage, including when the child was born under the conditions of assisted reproduction (Art. 61, par. 1 and 2, in relation to Art. 4 of the FCRB).

For all the cases of those presumptions, there is one exception, envisaged in the regulation of Art. 61, par. 3, hypothesis 1 of the FCRB: when there is absence of the mother's husband declared, paternity is not presumed. It is assumed that that the hypotheses for the paternity of the mother's husband are not to be applied if the child was born after the expiry of three hundred days as of the date of the last notice of the husband. [2]

In such a case, the legal rule raises the problem of applying the presumption for paternity of the mother's husband if it is established that the absent person is alive and there is some notice of him.

There is no explicit legal text in Bulgarian legislation, which could resolve this problem.

The literal interpretation of the regulation of Art. 61, par. 3 of the FCRB suggests an unambiguous conclusion: in all cases, if there is a court decision, which has come into force concerning the declared absence of the mother's husband, the child will be with unestablished descent from the father, unless any of the other methods for establishing paternity is used, and the presumed paternity before coming into force of the court decision for declared absence of the husband may be challenged.

A more in-depth study of the descent regulations concerning its comparative-law aspect in the various legal aspects and statutory acts suggests ambivalent solution of the raised issue. In such a case, conclusions may be drawn by interpreting the various legal norms, reviewed together, or, possibly, to apply by analogy a similar legal norm, or to propose creating an explicit legal regulation through a legislative procedure.

Pursuant to Art. 9 of the Persons and Family Act of the Republic of Bulgaria [3], when the absence of a physical person lasts for more than a year, then "the court by request of the concerned persons or the prosecutor shall declare that person absent". The same act provides that a declared absence may be repealed (Art. 13, par. 2), while pursuant to Art. 552, par. 1 of the Civil Procedure Code of the Republic of Bulgaria (CPCRB) [4] "The decision for declaring the absence or the death of a person may be repealed or amended if it is established that the absent person is alive, or that the exact date of his/her death is different to the one declared by the court".

Under an argument from this text, it is possible that the court decision for the declared absence be repealed when it is established that the absent person is alive and there is some notice of him/her; or it may be amended when it is established that the date, declared with the decision, of the last notice of that person is not accurate and is different to the one declared by the court. Two main hypotheses can be developed on this basis.

In the first hypothesis, paternity is presumed after the court decision comes into force, whereby repealing the decision for declaring the absence of the husband of the mother of the child, unless the descent from the father was already presumed or established with another method before declaring the absence: with another presumption for paternity, through recognition or with a court decision, whereby taking into consideration a paternity establishment claim.

In the second hypothesis, determining paternity is dependent on the recalculation of the period of three hundred days as of the date, changed with the decision, of the last notice of the husband of the mother of the child, who is declared absent. That, in turn, may exclude the already presumed paternity, when the date of the last notice of the absent person is later than the initially declared one (with the entered into legal force initial court decision), or, conversely – to acknowledge the paternity, which was initially excluded, when the date of the last notice of the absent person is earlier than the initially declared one.

The consequences from repealing or amending the court decision about the declared absence of the mother's husband comprise issues related both to establishing the descent from the father with any of the presumptions for paternity, as well as to challenging the presumed descent from the father.

In the case of still unestablished paternity due to entered into force decision for declared absence of the husband of the mother of the child,

after coming into force of the decision for repealing it, the regulation of Art. 61, par. 3 of the FCRB will then be inapplicable. Therefore, if the other prerequisites of Art. 61, par. 1 or 2 are present, including also when the child was born under the conditions of Art. 61, par. 4 of the FCRB [5], the paternity of the husband of the mother of the child shall be presumed, moreover as of the time of the child's birth.

In the case of already established paternity by presumption or by another method, upon repealing the decision for the declared absence of the husband of the mother of the child, it is possible that a competition for the paternity may arise, respectively – to come to a point of not applying the presumption for paternity of the mother's husband, whose declared absence has been repealed. In that case, pursuant to the prohibition of Art. 71, par. 1 of the FCRB [6], there is no need to challenge first the currently known descent from the father in order to apply the presumption for paternity, since the prohibition concerns only the cases of establishing a descent by a claim procedure as well as recognition, but not the presumption for paternity. The child, however, cannot have two or more fathers, and, therefore, when, prior to the repealing of the court decision for the missing of the mother's husband, the child already has an established descent by recognition or by a court decision, whereby taking into consideration a paternity establishment claim, the recognition should be made null and void, respectively – the court decision for established descent from the father. And when it concerns paternity established with another presumption, then the competition should be resolved by providing an opportunity for challenging the paternity from the husband, who has been declared missing.

With an amendment of an enacted decision for declared absence of the mother's husband due to the change of the date of the last notice of the mother's husband, the application of the regulation of Art. 61, par. 3 of the FCRB, respectively – of any of the presumptions for paternity, depends on the changed date. When with the recalculation of the period of three hundred days, that period expires before the changed date of the last notice of the mother's husband, the mentioned regulation shall not be applicable, and when that period expires after the changed date – any of the paternity presumptions shall not be applicable.

In such cases, with unestablished descent from the father due to the impossibility to apply any of the paternity presumptions because of the prohibition of Art. 61, par. 3 of the FCRB, when the changed date is on

a later day and the period of three hundred days after it has not expired, the relevant presumption for paternity should be applied.

With already established descent from the presumed absent husband, but with a changed date, which is earlier than the initially declared one, when the period of three hundred days after it has expired, the rule of Art. 61, par. 3 of the FCRB should be applied and challenge the presumption for paternity under the procedure of Art. 62 of the FCRB, respectively – under another legally stipulated procedure [7].

The problems in the reviewed cases with the application of any of the presumptions for paternity with declared absence of the husband of the mother of the child, are related to the limited periods of time for establishing and challenging the descent from the father, as well as to the specific cases of competition between the different methods for establishing the descent from the father. It is necessary to create clear and precise rules, which would regulate through a legislative procedure the descent of a child from his/her father with any of the presumptions for paternity when there is declared absence of the husband of the mother of the child in the cases of repealing or amending the decision of the court for declaring that absence.

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3. Persons and Family Act. Promulgated in the State Gazette, issue No 182 of 9 August 1949, in force as of 10 September 1949; subsequently amended and supplemented in the State Gazette, issue No 120 of 29.12.2002.
4. Civil Procedure Code of the Republic of Bulgaria. Promulgated in the State Gazette, issue No 59 of 20 July 2007, in force as of 1 March 2008; subsequently amended and supplemented in the State Gazette, issue No 102 of 22.12.2017, in force as of 22.12.2017.

5. This concerns the conditions of assisted reproduction.
6. Pursuant to Art. 71 of the FCRB „A claim for establishing descent may not be filed, nor recognition may be performed until the currently known descent, established with a birth certificate, is not impugned by the presumption under Art. 61 or by recognition. Both claims may be joined".
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THE CREATION OF LITERATURE, ART AND SCIENCE AS A LEGAL FACT OF PRIVATE LAW

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Summary: This research confirms the conclusion that creative activity for the creation of work of literature, art and science should be defined as a type of legal conduct (legal effect *stricto sensu*). It is further substantiated by the author and by the examined general features of this article – a willful (conscious, persistent, human) activity, which is not limited to the will, targeted at specific individuals. Hence, the will does not determine the occurrence of legal consequences (to be understood in the broader sense – not only as subjective rights and legal obligations, but also as distinct qualities, statuses and characteristics of the object). The latter do not need to be known or desired by the author, because they follow from the law. In addition, the thesis is justified by the restrictive and the teleological interpretation of the texts of Article 3 and 5 of LNPF, which leads to the conclusion that the restrictions on legal acts of minors, and, accordingly, on their execution by under-aged, imposed by the strict age rating criterion of the legal capacity rule, do not apply to legal conduct (including for creative activity), but only to legal transactions.

Key words: *creative activity; work of literature, art and science; willful behaviour; legal actions*

Article 3 the Bulgarian Law on Copyright and Neighbouring Rights ("LCNR")[1] defines as an object of copyright **any work of literature, art and science, which is the result of creative activity, expressed in any manner and in any objective form.**

The difficulties, stemming from the concept of **creative activity** (the latter being a prerequisite for the legal protection of copyright objects), are expressed in determining when such activity does exist. **On the contrary**, inasmuch as it is one of the pre-conditions, embedded in the law for identifying the existence of a work of literature, art and science, its incorrect definition also affects the existence of a "work of art" as a subject of copyright protection in general. The characteristics of **creative activity, perceived as originality of an object**, can be considered relatively well examined within the Bulgarian literature;[2] however, still much remains to be researched on the aspect of **the legal nature of the creative activity as a legal fact of creating a work.**

I. The relation between "work" and "creativity"

The term **"work"** is perceived as the specific name of the object of copyright law, which distinguishes it from other objects of Intellectual Property Law ("IP Law").[3] Specifically, it is regarded as a **consequence of creative activity**, as a creation or a work. On the one hand, this understanding is opposed by a criticism against the use of the term "work" as something "suggesting a non-primary character",[4] and, on the other hand, it is the distinction between a work and a piece of work, that is not protected by copyright law due to the lack of link between the author and the work. In addition, it is claimed[5] that it is not the term "work" that distinguishes copyright objects from other IP objects (the majority of which also represent a creative result), but rather the three areas of culture stated in the

1 Available at: https://lex.bg/laws/ldoc/2133094401

2 Draganov, J. Objects of Intellectual Property, Sofia. Ed. Sibi, 2016, Pg. 84, ref. n. 3; Pg. 90 – 100, Kamenova, Tz. International and National Copyright Law, Sofia. Bulgarian Academy of Sciences, 2014, Sarakinov, G. Copyright and Related Rights in Bulgaria, Sofia. Ed. Sibi, 2013, Tadjer, V., L. Avramov, Copyright in People's Republic of Bulgaria, Sofia, Ed. Nauka i Izkustvo, 1965.

3 Draganov, J. Op.cit., Pg. 85.

4 Markov, E. Novelty in the Law of Copyright and Related Rights, Savremenno pravo Review, 1993, № 6, Pg. 23.

5 Draganov, J. Op.cit., Pg. 85 – 86.

law – i.e. literature, art and science (which constitute a third, independent feature of the work).

II. Different views on the "creation" (creative activity) as a legal fact of private law

There is a view that the creative activity as a type of intellectual activity, **the performance of which does not require will**, and can be achieved by any qualified natural person without any limits. The theory distinguishes between intellectual (mental) and creative activity. The first concept is wider and includes all mental (thoughtful) processes, including the simple reproduction of a work, while "creative" is just the intellectual activity, which reflects the specific, individual ideas, perceptions and emotions of the author. The issue of the origin of the distinguishing criteria between ordinary intellectual and creative activity is expressed within multiple opinions, taking as an exemplary the one, according to which, the requirement for creative activity within the meaning of Article 3 of the LCNR, is limited to the originality of the work.[6]

Nevertheless, the subject matter of the present article stands in the qualification of this undoubtedly persistent human activity, subjecting it to one of the groups of legal facts known in private law theory.

It is almost unanimously accepted in theory that the creation of work is a legal fact belonging to the so-called "legal conduct".[7]

However, the specificity of the creative activity (i.e. the creation of work) is more of an interest, compared to other types of legal conduct, and accordingly, situating it within the general theoretical framework concept of such legal actions. According to some authors, the creativity is an intellectual activity, which does not necessarily include a statement of intent. Unlike the legal actions, e.g. the legal transaction that requires already possessing legal capacity to act, the legal conduct does not require their author understanding and wishing to acquire the copyright on the work. In other words, the lack of legal capacity is identified by the exclusion of the will from the basic elements of the creation of work, and the legal actions

[6] See p.ex. the opinions, cited in Draganov, J. Op.cit., Pg.93 –101.

[7] Ibid. Maneva, V., The right of authorship on objects of the Intellectual Property, Pravna misyl Review, 2007, №4, Pg.3-11, Draganov, J. Op.cit., Pg.91, Markov, E. Legal conducts – growing doubts after the reform, Legal collection, Burgas Free University, Law Faculty, 1995, Year III, Vol. III, Pg. 32 et seq.

seem to be distinct from the legal conduct (without being distinct within themselves). There is no need for legal capacity, and the intention of their author does not have any impact on the legal outcome.[8]

Other authors, considering authorship as a legal fact of a patent creation, share the widespread perception of the legal fact as a description of the signs of a given fact of life, provided in the hypotheses of legal norms, the latter linking its manifestation with the occurrence, preservation, modification or termination of legal consequences. For this reason, it is also referred to as the "title" – a fact, giving rise to legal rights. However, the legal consequences (referred to in the disposition of the legal norm) should be understood not only as rights, but also as qualities, characteristics and statuses that accomplish certain effect.[9]

Evidently, the creative activity belongs to the actions (e.g. legal facts, containing willful behavior, which is an expression of will). It is not an event that is independent from the human will (or which, even if being dependent, the law does not apply). It remains a legal action, albeit for the creation of the work, it is irrelevant of the amount of labor invested, or of the occasional genius insight.

The will, contained in the legal conduct, does not need to be a deliberate statement. We assume that in this case, a **willful act is conscious and persistent**, and not expressed in making a statement formed by the will vis-à-vis certain third-persons. The creative activity cannot simply be limited to the third known kind of legal facts – i.e. those of mental life, such as conscientiousness (e.g. the knowledge of possession in property law or the care of the good owner in fulfilling his obligations), the intent, the motive, the delinquency in its various forms, etc. Whilst the activity, especially under copyright law, is most often the expression of inner experience, understanding and emotion, due to their inseparable connection with the actions of their realization in the work (without which they would be entirely irrelevant for the law), are being regarded as legal actions.

Within the category of legal actions, there are two traditionally distinguished groups: (i) legal transactions; and (ii) legal conduct (also referred to as legal acts in the narrow sense). The objective of the current research is to precisely illustrate how the creation of work in the meaning of Article 3 of the LCNR integrates into the context of one of these two groups, and,

8 Ibid. Draganov, J. Op.cit., Pg.93.

9 Tadjer, V., Civil Law in People's Republic of Bulgaria – General Part, Vol. 2, Sofia, Ed. Nauka i Izkustvo, 1973. Pg. 165.

shall it proves that it does not belong to legal transactions, then which of the groups, to which the legal acts are subdivided, should it be referred to.

In the case of legal transactions, a central element is the will aimed at giving rise to legal consequences. It is notably this will, which determines the content of these consequences, which, on the other hand, are deliberately desired by the party(ies) to the deal. This implies an assessment of the ability of the willful party, of their ability to form a valid legal will. On the contrary, the creation of work, although willful, i.e. representing persistent and conscious activity, does not constitute a manifestation of this will, upon reaching a particular person(s). The will is not aimed at causing legal consequences, as they are part of the act by virtue of the law. They are not intended by the act of creation, and the latter does not determine their content. It is irrelevant whether the author is aware of them and whether they desire their occurrence. The main aspect in the creation remains the "dressing" of author's thoughts or feelings in any external perceptible form, without which these legal consequences would not be present. Precisely this is the reason why the issue of legal capacity is irrelevant to them.

How are those conclusions projected within the outdated Bulgarian legal framework on legal capacity? Shall we refer the creation of copyright work to the category of the legal transactions and/or the legal conduct? In his profound study, Docent E. Markov[10] for the first time in the Bulgarian civil law theory draws attention to the necessity for a restrictive interpretation of norms on the complete and limited incapacity, in relation to the legal actions as stipulated in the Bulgarian Law on the Natural Persons and the Family ("LNPF").[11]

The wording of Article 3, para. 2, Article 4, para. 2 and Article 5, para. 3 of the LNPF link of the capacity (or incapacity and limited legal capacity) to legal acts, without distinction as to whether they are legal transactions only or legal conduct. The second assumption leads to unacceptable and ambiguous results. If those legal clauses are applied literally to all legal actions (including those in the narrow sense), it would be concluded that

[10] The beginning of the study on copyright (as a founding element in the field of patent law), as legal conduct in the context of the regulation of the full and limited legal capacity under the LNPF, was laid by my first teacher, holding an incredible intellect and an astonishing personality – Docent Dr. Emil Markov, who unfortunately passed away, in his 1995's in-depth study "Legal Conduct – Growing Doubts after the Reform", published in the Legal Journal of the Bourgas Free University, Faculty of Law, 1995, III, T. III, pp. 27-50, cited above.

[11] Available at: https://lex.bg/bg/laws/ldoc/2121624577

the allegedly literary example of a legal act – i.e. the creation of a work of literature, art and science – cannot be conducted (personally or only) by an under-aged person. That is because, according to Article 3, para. 2 of the LNPF, legal actions (including in the narrow sense) on behalf of minors are performed by their legitimate representatives (parents or guardians). Moreover, according to Article 4, para. 2 of the LNPF, the under-aged cannot independently perform any legal actions (including legal conduct), since they require the consent of their parents or trustees (except for ordinary small transactions and placement of own labor). The same would be the case with entirely, or, respectively, with restricted persons, the regime of legal actions of which, under Article 5 of the LNPF, is equal to that of minors, and, accordingly, to that of under-aged. It turns out that literal interpretation of the LNPF, the qualification of the creation of work, according to Article 3 of the LCNR, as a legal act leads to a legal ambiguity in the personal right, according to the original remark of Docent Emil Markov.

In order to avoid this absurdity, he suggests that these texts should be interpreted **teleologically**, on the one hand, and **restrictively**, on the other. The restrictive interpretation means that the scope of these provisions should be limited to the legal transaction as a type of legal action, and teleologically – used in the sense to discover the objective of the law (in terms of the relevant provisions), expressed in the protection of the natural persons' rights, which could be infringed by their own legal actions (in cases of minors and under-aged). However, a guarantee is only provided in the cases when those rights are threatened in the formation (and expression) of the will, which demands the occurrence of the desired legal consequences. Therefore, the result of teleological interpretation is that the prohibition to perform at all (individually) does not apply to cases, where the legal consequences are not generated by the will of the individuals, but by the law (relevant for the legal conduct). Therefore, under the LNPF, minors are prohibited only from being party to legal transactions.[12]

[12] As an additional argument that legal actions in the meaning of Article 3-5 of the LNPF can be understood only as legal transactions, Docent Dr. E. Markov points to the literal interpretation of Article 4, para 2 *in fine* of the LNPF, that minors cannot be party to legal transactions on their own, but they may nevertheless be in charge of what they have acquired through own labour. "Acquired through own labour" is understood not only as an employment relationship, but also as any other type of legal relationship (including legal conduct), as well as factual actions (e.g. finding lost objects, waste, gathering fruits, etc.).

Therefore, **it can be concluded** that the definition of creative activity for the creation of work of literature, art and science as a type of legal action (in the narrow sense) in the prevailing part of the legal doctrine and practice is correct. It is also justified by the general features of these actions – i.e. intentional (conscious, persistent, and human) activity, which is not specified to will. As such, it does not determine the occurrence of legal consequences (to be understood not only as subjective rights and legal obligations, but also as separate qualities, statuses and characteristics), which do not need to be known or desired by the author, because they follow from the law.

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PRACTICAL ISSUES IN THE AWARD PROCESS INITIATION

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Abstract: The present report shall study the mistakes, which the contracting parties under public procurements make upon initiation of the procedures on award of public procurements and implementation of the simplified regime upon the validity of the new public procurement act. The advertisements for collection of offers shall not be published, there shall be implemented discrimination requirements to the applicants and participants or requirements for personal situation, which are not envisaged in the act. The requirements for personal situation of the applicants and participants shall not be specified in the announcement for a public procurement, there have to be enclosed documents to the offer for proving the personal situation and conformity with the criteria for selection outside the Unified European document for public procurements. Typical weakness appears the implementation of subjective methodologies for evaluation of the offers, given a criterion for award „optimal correlation between quality and price“.

Key words:public procurements, violations, procedure, initiation

In pursuance of Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 concerning the public procurements and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and the Council of 26 February 2014 in relation to the award of procurements by contracting authorities, implementing activity in the fields of the water supply, energy, transport and postal services and for repeal of Directive 2004/17/EC[1], Republic of Bulgaria adopted a new Public procurement act.[2]

Subject of the present statement appear some of the particular weak points, admitted by the contracting authorities in initiation of the procedures and the other means for award of public procurements.

1. Collection of bids by announcement without announcement

It is so weird but this is one of the first mistakes, which were ascertained after the effective date of the new act. Upon award of public procurements by collection of bids with announcement, the contracting authority has to fill in two different documents– „Announcement for a public procurement on a value under art. 20, para 3 oof PPA", which appears an invitation for collection of bids, which shall be published on the profile of the purchaser as it has to contain at least the information under Enclosure № 20 PPA and „Information for announcement about public procurement, published in the profile of the purchaser on a value under art. 20, para 3 of PPA", which shall be published in the Public procurements register (PPR) at the Public procurement agency and serves only for information of the potential participants. However, some contracting authorities publish only the second document in the PPR and in the profile of the purchaser- (this is) only the short information, designated for information in the register. In fact in these cases public procurements do not exist as such, because they have not been initiated according to the order, envisaged in art. 187, para 1 of the Public procurement act. Respectively, the award of the procurement (execution of a contract) shall be directly – without collection of bids by announcement (because in fact there is no announcement), which shall lead to imposition of administrative punishment –penalty to the amount

[1] OB L 94, 28.3.2014.

[2] SG issue 13 of 16.02.2016, effective from 15.04.2016; amend. in issue 34 of 03.05.2016.

of 1% of the value of the executed contract (art. 256, para 1 of PPA) for the Contracting authority. Probably the omission is due to the fact that the announcement is not part of the pack of forms, provided by the Public procurements agency for publication in the register, but this does not release the contracting authority to strictly observe the requirements of the law.

2. Introduction of discriminatory requirements to the applicants and participants

Though it is very old and many times commented, that violation continues to haunt many contracting authorities upon implementation of the new Public procurement act too.

One of these constantly met violations is the requirement the participant to prove his experience by specifying a certain number of contracts.

On the second place amongst the discriminatory requirements appears a requirement the contracting authority to have experts, whose education and qualification are not in conformity with the subject and value of the procurement. For example, a contracting authority has required in a public procurement having subject „Selection of contractor for realization of consultancy services, related to preparation of applications for applying and including management and reporting of the projects, which have received funding", the technical assistant under the project to have a higher education in the field of the specialities: „Law", „Economy" or „Administrative management"[3]. It is indisputable that this particular requirement is excessive. The functions of the technical assistant are concentrated to administering the activity of the whole team of experts, which does not require high professional competence, specified by the contracting authority. Employment of a collaborator with the required qualification may occur hard or even impossible. It is possible the participant not to be able to attract an expert in the required fields, who to want to implement activity, which is not correspondent to his professional qualification and even if this would be possible, the labor and social security costs for that expert would be higher. So it shall be reached the factual circumstance, under which shall be hardened and unjustifiably shall be restricted the participation in

[3] See Decision No 837/13.10.2016 under case КЗК 556/2016 and Decision of CPC No 836/13.10.2016 under case КЗК 554/2016.

the procedure[4]. Similar appears the requirement the hardware and system software specialist, included in the participant's team for implementation of the procurement, to have participated in one successfully completed project on the value of BGN 500 000, which to have a subject, including introduction of information system, which project has to be implemented for the last 3 (three) years. In the particular case under research appears the professional competence of the expert. In § 2, i. 41 PPA is given a legal definition of the term as it is specified that the professional competence is the existence of knowledge, obtained by education or additional qualification, and/or skills, learned in the process of exertion of a certain post or position in pursuance of labor, official or civil relations. From the contents of the definition it is seen that the legislator gives direction to the scope of the knowledge and/or skills, without including requirements, related to the amount of received remunerations or the financial value of particular projects, under which has worked the expert[5].

On the next place, wrongly the volume of the activities, identical or similar to those of the procurement, is defined through its value. The value, paid under particular contract, cannot by itself lead to a definite conclusion for existence of qualitative implementation and expertise of the contractor. This is so because the price-forming is mostly influenced by market factors as the demand and supply of a certain service at particular moment, not necessarily and only by its quality.[6]

3. The requirements to the personal situation of the participants are not specified in the announcement for a public procurement[7]

According to art. 55, para 2 of PPA, the contracting authority shall point the circumstances under art. 55, para 1 in the announcement, by which is announced the initiation of the procedure. So, in order to happen the right of the contracting authority to eliminate a paeritipant, for whom there

4 The above-mentioned decisions of the Commission for protection of competition. For these and the next quoted decisions of CPC the author does not have information whether they have become effective, but he completely supports the motives of the commission.

5 Decision No 985/24.11.2016 under case of 672/2016.

6 Again there

7 Procurements with identification numbers 00518-2016-0006, 00138-2016-0041 and etc.

is a reason for non-mandatory elimination, this reason has to be specified exactly in the announcement, not in other part of the documentation. [1] In accordance with that norm appears also the requirement of Enclosure No 4, part B, i. 11, letter „c" PPA , the announcement for public procurement has to contain at least a list and short description regarding the personal situation of the interested parties, who may lead to their elimination. In relation to that mistake, in the documentation continues to be literally rewritten the text of art. 55, para 1, i. 2 PPA „is deprived from the right to exert a certain occupation or activity, according to the legislation of the country, in which the offence has been committed", without specifying from which occupation or activity has to be deprived the participant in order to be removed. In fact the contracting authorities just re-write all grounds under art. 55, para 1 PPA.

4. Introduction of requirements for personal situation of the participants, which are not envisaged by the law

Most frequently this violation is expressed in mixing the requirements of the effective and the revoked Public procurement act. This is the case of a Такъв е случаят в public procurement with identification number 00138-2016-0041. In section IV. Instructions on development of the bid it is specified:

It may not participate in the procedure on award of a public procurement participant, who:

6. is deprived from the right to exert a certain occupation or activity, according to the legislation of the country, in which the offence has been committed, including for offences, related to the export of goods in the fields of the security and defence;

7. by judgment with res judicata it is ascertained that (the person) is guilty for non-performance of obligations under public procurement contract, including in respect to the information security and supply security;

Such grounds for elimination are not envisaged in the Public procurement act, effective at the moment of initiation of the procedure. These are grounds, envisaged in the revoked Public procurement act (2004) effective till 15 April 2016. Grounds under No 6 in the Documentation for public procurement entirely corresponds to art. 47, para 2, i. 2 of the revoked PPA and only partially reproduces art. 55, para 1, i. 2 without the phrase „*inclu-*

ding for offences, related to the export of goods in the fields of the security and defence". Grounds under № 7 in the Documentation for public procurement entirely correspond to art. 47, para 2, i. 2a of the revoked**от PPA,** effective till 15.04.2016 as it does not exist a corresponding requirement in art. 54 – 55 of Public procurement act, in force at the moment of initiation of the procedure. As stating requirements to the personal situation of the participants, which are not envisaged in the Public procurement act, the contracting authority restricts the competitiveness by introduction of requirements, which unjustifiably restrict the participation of industrial subjects in the public procurement. This way it introduces also unlawful grounds for elimination of participants, which besides all are not stated in the announcement for a public procurement.

Variant of that violation appears (the requirement) for proving correspondence with the selection criteria to be required documents, which are not envisaged in the Public procurement act[8]. Accordingsion of art to art. 64, para 1, i. 6 PPA, in order to be proven the technical and professional capacities of the applicants or the participants there have to be submitted one or several from the following documents and evidence in relation to the stipulated requirements: list of the personnel, which shall implement the order and/or of the members of the managing staff, which shall be responsible for the implementation, in which (list) has to be stated the professional competence of the persons. According to the provision of art. 59, ал. 3 PPA the contracting authorities have no right to require from the applicants or the participants other documents for proving the correspondence with the set criteria for selection, except those, stated in the law. It has to be taken into consideration that the provisions of the normative act are construed in their entirety, in view of the contents of the act and the intended legal results. In the particular case the norms of art. 64, para 1 and art. 59, para 3 PPA have to be interpreted systematically and strictly insofar as both provisions are imperative. By virtue of art. 29 of Ordinance No 883 of 24.04.1974 concerning the implementation of the Normative acts law, the provisions of the codes and laws have titles, expressing their main content. In the concrete case the provision of art. 64 PPA has a title „Proving", which clearly indicates its purpose – to be ascertained the way of proving certain circumstances. As seen from the contents of the cited provision and from its systematic place in Chapter VII „Requirements to

[8] Procurement No 00005-2016-0001, procurement No 00138-2016-0041 and etc.

the applicants and participants, Section **II „**Selection criteria" of PPA, the norm intends to ascertain the way of proving the selection criteria related to the technical and professional capacities of the participants. Besides the foregoing, art. 64, para 1, i. 1-10 PPA determines the documents and evidence, by which are proved the above-mentioned selection criteria, as the listing in it is exhaustive. The systematic place of the provision of art. 59, para 3, again located in Chapter **VII „**requirements to the applicants and participants, Section **II „**Selection criteria" of PPA and what is the explicitly stipulated in it lead to the legally justified conclusion that the contracting authorities have no right to require from the applicants or participants other documents for proving the correspondence with the set selection criteria, beside those, envisaged in the law. In the particular case „envisaged in the law" contains in the already commented art. 64, para 1, i. 1-10 PPA. Therefore the proving of the selection criteria, related to the technical and professional capacities of the applicants or the participants can be made only by submission of the documents and evidence, envisaged in art. 64 PPA, namely: lists, descriptions, declarations and certificates, issued by accredited parties for quality control, certifying the correspondence of the goods with the respective specifications or standards. In this respect it is unlawful appears any request of the contracting authority for submission of documents, certifying already obtained higher education, declarations for consent of the expert to join the team, evidence, from which to be seen the participation of a certain expert in particular project and what is the essence of his functions as well as documents, verifying length of service[9].

5. The bid has to be accompanied by documents for proving personal situation and correspondence with the selection criteria outside the European Single procurement document (ESPD).

This is one of the major issue of the contracting authorities upon implementation of the new Public procurement act. Some of them still are not able to analyze that upon submission of the bid, the economic operator only has to declare the necessary circumstances and only in the European Single Procurement Document. Thus the contracting authorities (wrongly)

[9] Decision No 985/24.11.2016 under case КЗК 672/2016.

require additional declarations for facts, which have to be filled in ESPD[10]. Many additional declarations are required as well as other documents, and it is also required yet on the stage of submission of documents to be submitted evidence for correspondence with the selection criteria. According to the Public procurement act each participant shall be obliged upon submission of his bid for participation to declare the lack of the reasons for elimination and his correspondence with the approved selection criteria by submission of ESPD (art. 67, para 1 of PPA). In this particular document has to be filled in the respective information, required by the contracting authority and have to be specified the national data bases, which contain the declared circumstances or the competent authorities, who according to the legislation of the country, in which the applicant or participant is established are obliged to provide information. Exactly in the provision of art. 67, para 1 of PPA are stated the circumstances, which have to be declared by ESPD. ON the first place these are the circumstances, concerning the personal situation of the applicant or participant, envisaged in art. 54, para 1 and/or art. 55, para 1 PPA. On the second place – the circumstances, related to the selection criteria, set by the contracting authority. The introduction of ESPD in our national legislation has a special purpose, clarified in the motives to the draft PPA,where it is underlined that main issue in the public procurements in the last years is the exceesive administrative burden for the applicants and participants, from whom is required to submit many documents along with their bids, given only a possibility for the procurement to be won. As considering the above, the legislator has decided to find solution of the issue as introducing ESPD, which actually appears a declaration in a unified form for the European union, which shall be filled in and submitted by the applicants and participants in the procedures. By it shall be declared implementation of the conditions regarding the personal situation and selection criteria, set by the contracting authority, without being required specific verifying documents at that stage. As far as the factual proving of the stated circumstances, the legislator has considered this to be made by the party, which has won the procurement, without an obligation to arise for the others to do many administratively engaging activities. In art. 47, para 3 of Rules on the implementation of PPA are explicitly specified the documents, which the participants in the procedure have to enclose to their sealed non-transparent package, namely- application

[10] Procurements with No 00138-2016-0041, 00053-2016-0006, 00104-2016-0012, 00656-2016-0003 and etc.

for participation, including ESPD, technical and price proposal. So, at the stage of submission of the documents for participation in the procedure, the contracting authority may only require submission of ESPD, by which shall be declared circumstances, related to the personal situation and selection criteria, but it may not implement an obligation for proving of these circumstances or their declaration for a second time. Such requirement contradicts to the quoted provisions of PPA and RIPPA and to the purpose of the law and leads to substantive unlawfulness of the decision on initiation of the procedure.[11]

According to art. 67, para 5 PPA, the contracting authority may require from the participants and applicants at any time to submit all or part of the documents, by which has to be proven the information, stated in ESPD, when this is necessary for the lawful realization of the procedure. If considered that this provision is applicable at the moment of issuance of the bids, there shall be a contradiction with the purpose of the law to be eased the access to participation and decreasing the administrative burden for the participants. The systematic interpretation of the provisions of PPA results to the conclusion that the provision of art. 67, para 5 PPA shall be applicable at the stage of examination of the applications for participation and the bids by the commission under art. 103 PPA[12], but not at the moment of submission of bids.

6. Subjective methodology for evaluation of the bids at criterion on award „optimal correlation quality/price".

According to art. 33 RIPPA, the contracting authorities may require submission of plans, schedules and other documents, related to the organization of implementation of the activities, because they shall submit the implementation in accordance with the bid of the participant and the requirements of the contracting authority. The completeness and the way of submission of the information in the documents may not be used as an indicator for bid evaluation.

Despite that explicit provision, the contracting authorities still implement their favorite methodology, in which the factors, influencing the eva-

[11] Decision 781/06.10.2016 of the Commission for protection of competition, ruled under case КЗК-567/22.08.2016, similar in Decision No 837/13.10.2016 under case КЗК 556/2016 and Decision No 836/13.10.2016 under case КЗК 554/2016.

[12] Again there

luation, are completely related to the clear and detailed description of the practical organization of the working process, the submission of detailed schedule of the working process as well as the submission of a clear and detailed organizational structure, and the incompleteness in the described working process, schedule and the organizational structure shall be evaluated with less points.[13] When the evaluation methodology contains definitions for the terms „clearly" and „detailed" listing and description, this is connected with the way of submission of the information, which may not be used for evaluation of the technical proposals.[14] In a similar way is the situation with indicators of the type „Risk evaluation". Even if particular risks are specified, since the participants are given the freedom to choose by their discretion the measures for minimization of the risks, it is made a breach of art. 70, para 7, i. 2 PPA, because it is not guaranteed an opportunity for objective comparison and evaluation of the technical bids. It shall be breached also the provision of art. 70, para 5, last sentence, because by formulating an evaluation factor– risk minimization, upon lack of clarify regarding its contents, in fact this shall result in unlimited freedom of choice and lack of guarantee for a real competitiveness[15].

7. In case of a public procurement, which shall be realized on stages, the contracting authority has not included in the draft contract a clause for partial release of the guarantees

According to art. 111, para 10 PPA, when the contract for public procurement shall be realized on stages, the contracting authority shall include into the draft contract clause for partial release of the guarantees, corresponding to the implemented part of the the public procurement. Very often this issue is neglected from the contracting authorities as a secondary and insignificant, but they have to take it into account in all contracts, which are not with single implementation,[16] because this also is a violation of the substantive law and leads to unlawfulness of the decisions for

[13] Procurements with identification numbers 00656-2016-0003, 00104-2016-0012

[14] Decision No 837/13.10.2016 under case КЗК 556/2016 and Decision No 836/13.10.2016 under case КЗК 554/2016.

[15] Decision No985/24.11.2016 under case КЗК 672/2016 г.

[16] Including in the contracts for delivery of consumables and foodstuffs.

ignition of the procedure, by which is approved the documentation for public procurement[17].

Fortunately, the pointed violations upon initiation of the award process are only seen at some of the contracting authorities of public procurements. Disturbing is the fact though that major part of the violations are made by large contracting authorities, having administrative capacity and conducting significant number of procedures each year. The outcome of the problem is in detailed study of the law and cautious preparation of the applications and documentations for the public procurements.

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[17] Decision No 837/13.10.2016 under case КЗК 556/2016 and Decision No 836/13.10.2016 under case КЗК 554/2016.

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PUBLIC SECURITY IN THE SYSTEM OF NATIONAL SECURITY

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Abstract: The person, the public, and the state are the three factors that make sense of the security concept. There is enough analysis and research for personal and state security (state security). Public security is neglected at the expense of national security. Public security is a state of society, where there is no danger of social, technogenic or natural character. The proposed material outlines the main features of public security. On the basis of these, a definition of the subject and subject of public security is defined.

Key words: Security, regional security, public security, national security

1. Main characteristics and definitions

The exacerbation of global political problems humanity was faced with in the late XX century increased the role and significance of national security aspects related to the individual, community and government protection from threats from political, economic, informational, technogenic and other character. In relation to that, the individual branches of national security (public, economic, informational and ecological security are being revisited *(*Актуализирана стратегия за национална сигурност. *ДВ, vol. 26, 23.03.2018; https://www.mod.bg/bg/doc/strategicheski/20180330_Akt_strateg_NS_RB.pdf)*.

It is established that public security alongside with state security (i.e. security of the government) are a type of national security. One of the problems in the common theory of national security is the question about the role of public security in the system of national security. The question more precisely is: what is the connection between public and national security? Defining the domain of public security within national security is needed, because national security's primary goal is protection of the individual's security and the individual itself. The accomplishment of national security's goal is possible through the protection of public security.

Part of the academics present public security as an irrevocable part of national security and say it is the vocation of government authorities, local self-governing structures and public organisations to protect it. The academics present public security as a type of national security of higher order, because of which it should not be treated equally with other types of national security (economical, ecological, informational). It should be treated as of the same importance only with the security of the state itself.

Other academics take public security as being disjoint from national security. They concur with the importance of the problem of ensuring public security but consider only security of the individual to be of higher order, coming from the premise that humanity is the highest valuable.

But all academics present the public security as a very broad concept with two aspects.

Firstly, public security includes the protection of public relations which are not in legal bindings and do not pertain elements of execution of governmental powers. Because of that, only a part of public security is contained in national security and for that part other security sub-types that are outside the scope of national security are attributed.

Secondly, public security denotes the community's ability to retain the integrity of its identity in a constantly changing environment and when confronted with real or potential threats.

The interaction over the chain of national-governmental-public security is presented as such: security is the general term; national security is a generic term; governmental and public security are type terms. Provided that national security as a generic term combines a collection of types of national security (economical, ecological, informational, military, etc.), state security plays the role of a tool and public security is the goal of the particular type of national security *(*Хмелевский *С.В.* Современная система национальной безопасности России. Социально-политические науки. *2011, vol. 1, page. 152).*

It is accepted that as state of security is defined as a state in which danger is absent. Public security is the state of the community from which dangers from social, technogenic, natural or other origin are absent. The term "public security" is comprised of two parts: the state in which danger for the individual, community and government is absent and the precautions taken from the government supporting this state of security and fostering the feeling of being secure in the citizens.

These two integral parts determine the attributes characterising public security as a subject of defence and security, but they also determine it as concept. In the broader meaning of the concept, through its objective and subjective sides, we can discover the primary characteristics of public security:

a) Public security (as a subject of police protection) is the life of every citizen in a state of security and communal tranquillity. The objective manifestation of this characteristic is searched for in the fact that in a peaceful environment, citizens realise their right to healthcare, freedom and personal integrity, work in a safe environment and to life in general.
b) Public security is the conservation of the citizen's personal property, his pride, honour and moral integrity. It is the security of the basic components of the individual or community, which present a certain value that is protected by the state, community or individual.
c) Public security is the absence of conflict – religious, political, ethnic, economical or labour related. With the existence of public security, an environment in which normal personal, communal and governmental life are possible is created.

d) Public security is a collection of authorities and mechanisms for prevention and elimination of threats concerning people's health, life, material valuables and environment. It is guaranteed by the system of law enforcement authorities, through which the state acts in the event in which a danger for the life and property of the citizens occurs.
e) Public security is most effectively protected when public order is ensured. In an objective plan, public security is equivalent to public peace. Security is impossible without peace and order. The essence of public order is effectively the protection of the rights and interests of the people. The strict supervision for the rules of behaviour of people in public spaces is a prerequisite for public security.
f) Organisation of the amenities of a settlement is a condition for successful protection of public security. A well-considered system of planning and construction of settlements and public spaces and their maintenance and development minimises the threats and risks for the public security. Underestimating and disregarding the problems of civil engineering (lighting and sanitation of streets and underpasses, traffic regulation, public transport, maintenance of electric and water networks, parking, markets, stadiums) creates conditions for law-breakings and violations against public security.
g) Public security is regulated and sanctioned according the norms of law. Law norms define proper citizen behaviour, forbit the execution of malicious acts towards the public security, oblige citizens to execute acts aiding the protection of public security, enforce the respective responsibility and guilt for unlawful acts.

Summarising the presented attributes of public security as a systematically occurring entity in the real world, we can outline two main attributes:

First- the state of communal tranquillity in which in the public environment peace, cooperation, confidence in security is ensured

Second- the protected environment is characterised by the fact that the government (police) is perpetually caring for public security and is ready to aid in situations of danger and neutralise threats. In this way, public security manifest itself in the legislative systems as a police law relation, whose participants are from one side citizens, community, governmental authorities (which need protection from criminal violations) and on the other hand the government which via its competent authorities, guarantees the security foreseen by law. In other words, public security is not a self-

contained object, but an object for the individual, community and state. But for the state it is valid under the condition that its security is a social valuable only to that extent in which it guarantees the security of the individual and community. In their early works, Marx and Engels claim that security is the highest social construct of a civil society ("a police concept") and that the community exists to guarantee to each participant the inviolableness of the individual, his rights and his property.

2. Field and Subject of public security

The law relation "citizen-police", whose subject is the security of the citizen, revolves around the following aspects of public security:

a) In an environment of peace and absence of emergency situations, the authorities of Ministry of the Interior (MI), Ministry of Finance (MF), Ministry of Health (MH) and the State Agency of National Security (SANS) execute monitoring, control and preventive duties. These duties are carried out as providing protection against threats and unlawful acts of every type for the citizens, officials, government authorities, governmental and private public organisations. The mentioned authorities establish an administrative regime, which guarantees public security (passport and license issuing, customs and border security, protection of classified information).
b) If events from natural or technogenic character endanger public security, the authorities of MI (the directorates: guarding police, gendarmerie, civil protection, fire safety and civil protection, national emergency number 112) have established appropriate measures for preventing the emergency situations and mitigating aftermath from them. In specific cases when the public security is at risk, a state of emergency can be declared to ensure its integrity. The state of emergency is consisted in temporary social-judicial measures which allow the restriction of the rights and interests of citizens. In this case, the achieving of the greater goal (public security) and protecting the individual, community and state from threats, dangers and risks for the civil residence justifies the enforcing of emergency measures.
c) In both psychological and judicial sense, citizens and organizations existing in an environment of safety are considered protected**.** From one perspective, fear is a metric of security. From another perspective,

this state is determined and regulated by law through government institutions and authorities, whose vocation is to protect the individual, community and state from public security threats. It is also inherited to the citizens and their organisations, which make up society.

3. Definition of public security

For the citizens that make the community, public security is their confidence in the fact that they can live, work and learn undisturbed. They are not anxious about their or their relatives' lives nor for their business and firm in which they operate, and they also not fear for their estate and property. From a practical perspective, public security is citizens not turning their homes into fortresses, their apartments in armoured prisons, not being afraid from a random call, come back home at night and traverse streets and underpasses without fear, acknowledge telephone scams, constantly use the services of health care and academic institutions, have constant and high income and a stable social insurance scheme. The truth is that people's confidence in their security creates the needed conditions for developing human capabilities and its, to a certain extent, fundamental for developing culture. In the words of Wilhelm von Humboldt: in the absence of security, man can neither develop his abilities, nor can he enjoy the fruits of his labour as in the absence of security, freedom is impossible.

In a proposal by the Committee of ministers for the Member States of the EU regarding the partnership in prevention of crime since 2003 gives the following definition: "public security" means a situation in which people (as an individual or a collective) are liberated to a sufficient degree from a multitude of real or potential risks and can cope sufficiently well with the consequences of such incidents, which are possible after all. If they are not in a condition to cope without external help, they are still well protected from these risks and thanks to that can carry out a normal cultural, social and economic life in which they practice their skills, enjoy their well-being and utilise quality services *(Rec (2003) 21:* Препоръка на Комитета на министрите към държавите-членки относно партньорството в превенция на престъпността, приета на 24 септември 2003 г. на 853-то заседание на зам.-министрите*)*.

Public safety means the state of the community in which public peace and confidence of the citizens is predominant. The people's personal

protection against threats, dangers and actions from various character are guaranteed by the system for defense of public security.

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BULGARIAN POLICE OPERATIVE INTELLIGENCE COLLECTION MECHANISMS

Abstract: Police operative intelligence is dependent on a variety of operational police search methods. In this conceptual research article, a total of 9 police intelligence methods used in Bulgaria are described. The authors also discuss the limits of personal search by police. This question is being addressed from the perspective of Bulgarian and European law. In particular by analyzing the legal definitions of the methods in the Special Intelligence Means Act, we do not get any clarity about the limits of personal search. Consider, for example, the determination of surveillance under the Special Intelligence Means Act : visual and technical means reveal and document different aspects of the crime activity and the behavior of persons and objects in their movement, residence in different places or in changes in the specific environment. If a police officer apparently observes a criminal face in a public place, the case falls formally under the quoted definition.

Keywords: police intelligence, operative police methods, personal search, police surveillance

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This article is devoted to the theoretical conceptual development of police operative-intelligence activity to counteract crime. In some basic notions of this activity there are contradictions in different theoretical sources, which is undesirable from the point of view of scientific knowledge, which is characterized by systematics and precision. These differences are mainly related to the ways and organizational forms of the activity that will be considered separately. Methods and organizational forms of the operational-search activities of the military police are not the subject of this article, as there are significant differences in the legislation in Bulgaria regarding the actions of military police.

1. Operational-search methods

The legal regulation of the operational search methods applied by the Bulgarian police is listed in the Ministry of Interior Act , State Journal. No. 53 of 27 July 2014, where in Art. 10, paragraph 1 the following nine methods are regulated:

1. Intelligence collection interview;
2. Personal search;
3. Operational combination;
4. Operational recognition;
5. Voluntary cooperation with citizens;
6. Operational deployment in investigation with an undercover officer;
7. Trusted deal;
8. Controlled delivery;
9. Operative experiment.

An intelligence collection interview is a conversation conducted by a police officer by which he either collects data about a committed, potential, future or potential criminal activity, or for a person of whom he or she can benefit from the fight against crime, or has an impact on crime prevention. Conducting an interview can be either open or secret depending on the expected effectiveness of the outcome and information that will be received by the police. The main topic of the talk , respectively the interest, can be placed directly or indirectly while the purpose of the conversation should be kept secret.

The Western doctrine also use the term intelligence methods. “The term methods, which is synonymous with tradecraft, pertains to the techniques

used by operations officers and analysts to carry out their duties. Methods may include social-science methodologies, computer-based analytic tools, maintaining secretive communications and so on." (Wirtz, 2010)

The personal search is a combination of the empirical cognitive observation method and the logical methods of analysis and synthesis of the data obtained from the observation. Items of personal police search can be people, possessions, processes, states, phenomena, events. There is a difference in the theoretical perceptions of the nature of the personal search. According to Penkov (Penkov,2013,319) and Kaimedzhiev (Kaimedzhiev,2005,243) it is a set of actions, but for Atanasov (Atanasov,1976,206) is a standalone method. Stoyanov in his dissertation argues that personal search is an organizational form (Stoyanov,2013,199). Mihov also writes "... the detection of criminal offenses is not a concept of criminal law or criminal procedure, but rather a concept of the operative search activity insofar as it is one of its main objectives, along with the prevention of crimes" (Mihov, 2012, 85). If we abstractly assume that an activity may be a form, what would be its content? Apparently the individual actions.

Basically, almost every human activity is a set of actions. By way of exception, the activity may also include inactivity, as in criminal law. Therefore, defining as a set of actions is very common. It is hard to argue that an activity is a form, not a content. Assuming that the concepts of "way of doing" and "method" are identical, Atanassov's theoretical position is worthy of support. Similar ideas are supported by Yanev (Yanev,2011,5). We believe that the combination of methods is also a method or a synonymous way of doing. A short definition of the terms "way", "method", "approach" is "a way to achieve a goal". The term "way", is a very suitable focus for the activity - personal search, which is conducted solely by a policeman. As Radulov writes "The police intelligence officer should receive information through personal search" (Radulov, 2012, 153)

Operational combination is a set of actions to create favorable conditions to overcome difficulties in operational-search activities, in solving specific police task according to the current state of the operational situation.

Operational recognition is a search for a match between a mental image and a real state of a person or thing. The comparison may be direct or indirect by technical means. Considering the predominantly secret nature of operative-search activity, direct recognition of a person is usually a se-

cret to him. Occasionally, operational recognition may have a negative effect on the effectiveness of subsequent procedural recognition (Vidolov,2013, 108-110).

Voluntary cooperation with citizens is known in world theory and practice as the informant method. The essence of the method is a secret penetration into a criminal environment through a person in order to obtain information and impact on the crime organization in a publicly beneficial interest. As Clark writes "The job of intelligence is to reduce uncertainty by assessing capabilities". (Clark, 2017, p.22)

Operative implementation, through the investigation with an undercover officer is a secret penetration into the crime by a person who is external to it, have civil servant status, which is unknown to the criminals, with the purpose to obtain information and impact publicly beneficial interest. For this part of the undercover employee's activity, which is the receipt of data needed to fight crime, it can be argued scientifically by comparing the activity to the generic and specific signs of the intelligence concepts that it is a specific manifestation of the "personal search" method.

A trust transaction is an operational search tool that is used by the undercover employee to contact, negotiate, conclude a covert sale, or other type of contract for the purpose of gaining the trust of the other party having in mind a criminal purpose.

Controlled delivery is a method by which police operatives monitor in Bulgaria or another country the movement of the consignment, which is a property associated with criminal activity and the method targets to reveal the co participants in the crime. The consignment is under routine state control, which must not lead to declassification and failure of delivery.

Operative experiment is an empirical method for acquiring data about facts relevant to the fight against crime by experience, which may be primary to verify the assumption or to study the already known facts.

The theory of operative-search activities also describes the "operative research". It is defined as a secret collection of biographical and personal data of a person of interest to the police service. Personality data includes belongings and property preferences, relationships with certain people, behavior. It is too questionable whether this mode is self-sufficient [5] or combination of "personal search" and "Intelligence interview" and if there are opportunities for the police, the methods of informants and the method of undercover work.

Authors who support the theoretical understanding of the method own independence do not point to specific arguments in its defense. Rather, they take the thesis as a given fact of police practice, as usually the collection of information of a person representing a legitimate interest to the police service is usually one of the first steps in countering a crime.

Operational- police intelligence search methods are important concepts of operational search activities and a clear distinction is needed between them . We believe that the operational investigation is a goal of a combined application of the methods we have already mentioned. This objective and, respectively, the result of its implementation is part of the planning and reporting of police operational-search activities. It has already been mentioned that the operational survey is usually one of the first steps in countering a crime . It is definitely about putting order in the action. Therefore, the study and highlighting of the operative investigation is the subject of the organizational forms of the operative-search activity to which the second part of this article is devoted. This initial investigation in some cases can start with the study and collection of police intelligence information from open sources. As Williams points out "intelligence analysts all too often fail to incorporate the growing amounts of open source information". (Williams,2008 316-332)

By embarking on the content of the operative-search methods examined and regulated by the law, and assessing their purpose, we can divide them into three types, namely: preparatory methods that facilitate future operative-search, methods with data collection tools and combined collection methods of intelligence data and providing impact in the name of public interest.

Preparatory methods include operational combination and trusted deal.

Methods of data collection are the personal search, operative recognition, controlled delivery and operative experiment.

The combined methods of collecting data and impacting in the public interest include: intelligence interview, voluntary cooperation with the citizens through operational deployment in investigation with an undercover officer.

The Special Intelligence Means Act has regulated as surveillance methods: surveillance, tapping, tracking, penetration, marking and checking of correspondence and digital information, controlled delivery, trusted deal and undercover investigations. These methods are definitely in rela-

tion to those already commented on under the Ministry of the Interior Act. For some of them, the distinction is not very clear.

By analyzing the legal definitions of the methods in the Special Intelligence Means Act, we do not get any clarity about the limits of personal search. Consider, for example, the determination of surveillance under the Special Intelligence Means Act : visual and technical means reveal and document different aspects of the crime activity and the behavior of persons and objects in their movement, residence in different places or in changes in the specific environment. If a police officer apparently observes a criminal face in a public place, the case falls formally under the quoted definition. The tracking and eavesdropping situation is similar. This is not a good attestation of the legal basis and the protection of human and civil rights.

The authors think that the concept of "personal life", in connection with the application of special intelligence means is too widely interpreted in Bulgaria. In the Constitution, Art. 32, in two subparagraphs it is stipulated that the personal life of the citizens is inviolable. Everyone has the right to protection against unlawful interference with his or her personal and family life and against an attack on his honor, dignity and reputation. And in this connection, no one can be tracked, photographed, filmed, recorded or subjected to other such actions without his knowledge or despite his explicit disagreement except in the cases provided for by the law.

A legal exception to constitutional law is governed by the Special Intelligence Means Act, where even in Art. 1 stipulates that the use of special intelligence means temporarily restricts the inviolability of the person and the dwelling and the secret of the correspondence and of the other messages.

The question is: What are the acceptable frameworks of privacy? If a citizen is in a public place and himself decides to be exposed to the public, refusing to accept the intimacy of his home, should this be considered a private life. It seems to us that the answer is negative.

We could find support for our reflections on the case law of the European Court of Human Rights.

The rights under Art. 8 of the European Convention on Human Rights concerning respect for private and family life, housing and the secret of correspondence are the least defined and most disobedient of the rights enshrined in the Convention. None of the four stated concepts, calls interests to be respected, is defined in the Convention and their content is a matter

of interpretation. The concept of privacy is a broad concept and therefore difficult to define its scope. The house is usually the place - a physically defined area where personal and family life develops.

European Court of Human Rights discusses the concept of "secret surveillance", which he said includes monitoring and recording the movements of a person using listening devices and intercept communications. The court acknowledges that surveillance will violate the person's privacy and therefore falls within the privacy. However, there is a tendency for a narrow interpretation of the concept of "private life". In the case of Uzun v. Germany, the court did not establish a violation in the case of a secret surveillance with a GPS (satellite radio navigation system), and in particular considers that the stringent standards developed in the case of secret surveillance cases are not suitable for the lesser degree of interference privacy by GPS surveillance of public transport. The measure, according to the court, is both lawful and necessary. Many aspects of privacy overlap with home life, which has been discussed and resolved by the European Court of Human Rights in three cases, Chapman, Connors and McKan v. The United Kingdom.

Based on a narrow interpretation of the concept of "privacy", we can avoid the strict procedures of the Special Intelligence Means Act and apply a proactive criminal investigation. However, it is imperative to have a consensus on the matter and to discuss and coordinate the penal policy in this part at the national level between representatives of the General Prosecutor's Office, the Supreme Court of Cassation, the National Intelligence Agency, the National General Directorate of Police and the Ministry of the Interior .

Today's Bulgarian public life continues to exist in the shadow of the fear of the totalitarian state, with which we divorced more than a quarter of a century ago. This fear dictates high legislative control and a limitation on secret surveillance within the meaning of the European Convention on Human Rights. The idea is that the state is something very strong, and the individual citizen, even a criminal, is weak and vulnerable. It is, in principle, but with substantial exceptions in the field of professional and organized crime, in the conditions of the Bulgarian criminal justice system. Professional and organized crime in a number of situations has more resources and opportunities than its counterparts.

An appropriate way of setting clear boundaries between operational search techniques is an explicit regulation in the Special Intelligence Means Act that the means set forth therein are applied in a private place. A private place is a space in which a person feels alone or in contact with another person. The term antipode is the public place - a space in which one can come into contact with one another independently or unilaterally. Space may be physical or virtual. With such a regulation it will be clear that the personal search concerns public places.

Conclusion:

Part of the operative search activity, including its methods, is related to the partial and temporary interference with human and civil rights authorized by law. Therefore, it is necessary to have a precise legal framework and a precise conceptual system in order to achieve the desired socially acceptable result in the fight against crime. The authors hope the article will cause heated debate because the truth is born in the dispute.

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CYBERSECURITY OR THE LACK THEREOF

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Abstract: The cybersecurity is a key element of the national security of the country – the cyberspace is a specific "virtual" territory without physical borders where also "the democratic functioning of the institutions and the fundamental rights and freedoms of the citizens should be guaranteed". The accelerated extension and complication of the cyberspace leads to multiplication of the vulnerabilities and increase of the insecurity in the cyberspace. This implies the necessity of creating an effective strategy for cybersecurity, establishment of a government's program where the policies, models and management standards in the field of ensuring availability and security of the information should be developed, as well as taking active measures to guarantee effective international cooperation, coordination and harmonization of the efforts in the field of cybersecurity.

Keywords: cybersecurity, cyber threats, cybersecurity strategy, information security, complex systems to combat cyber attacks.

The use of the cyberspace today is constant and accelerating and has reached the point where particularly meaningful and increasing social, political, economic and military actions are critically dependent on it, respectively vulnerable to the termination of its use as well as to possible compromising of its opportunities. In the conditions of the rapidly developing broadband mobile internet the existing cyber threats increase significantly and cyber threats of new nature appear. Increasingly sophisticated and efficient are the cyber threats through malicious software (mobile software, software for theft of information, blackmail software etc.).

In the globalized today's world the accelerated development of the internet is ahead of the regulatory mechanisms and the legislative framework, and in this way it puts the state in an ineffective position. Due to the use of the information and communication technologies in all aspects of human activity the cybersecurity interacts with all kinds of security having elements of information, information and communication systems, technologies, virtual environment and many others. The cybersecurity does not relate only to security protection on the internet; the cybersecurity is considered also as protection of key information systems from the critical infrastructure objects, considered in the context of the issues of the critically important sectors, such as energy, telecommunications, ecology and many others. The protection of the critical infrastructure assumes that these systems and networks will be stable in respect of the information security risks, the network security, and the internet security. According to experts cybersecurity is a key element of the national security of the country – the cyberspace is a specific "virtual" territory without physical borders where also "the democratic functioning of the institutions and the fundamental rights and freedoms of the citizens should be guaranteed".[1]

Cybersecurity – a status defined and measured by the level of confidentiality, integrity, accessibility, authenticity and fault tolerance of the information resources, systems and services.[2]

Cyber security is based on effective establishment and support of active and preventive measures. Usually cybersecurity is understood as the preventive measures and actions that can be applied for protection of the cyberspace, both in the civil and in the military field, from treats that are connected with its independent networks and information infrastructure or could disrupt their work. The aim of cybersecurity is to keep the ava

[1] National Cybersecurity Strategy „Cyber-sustainable Bulgaria 2020"
[2] National Cybersecurity Strategy „Cyber-sustainable Bulgaria 2020"

ilability and the integrity of the networks and the infrastructure as well as the confidentiality of the information contained therein. Therefore, actions for protection in general may be taken to ensure cybersecurity through development of strategies and policies for cybersecurity, and development and implementation on their base of legal institutional measures for its achievement. The cyberspace itself is closely connected and ensures to a great extend the functioning of the critical infrastructure, therefore, a destruction, disruption of the access or the opportunities for actions in the cyberspace may have continuous impact on the life of the individual and on the society as a whole. Therefore, the countries of today and in particular the most developed countries in regard of technology and information adopt special complex measures for the regulation of its functioning where strategies are created in direct relation to the protection of the cyberspace. The efficiency of the strategies, policies and activities for cybersecurity is directly depending on their adequacy to the new parameters and trends in the cyberspace.

In the "National cybersecurity strategy of Bulgaria" the definition is laid down that cybersecurity is a key element of the national security of the country[3]. Cybersecurity is a wide range of instruments, policies, security concepts, security guarantees, guidelines, risk management approaches, actions, training, good practices, insurances and technologies that can be used to protect the cyber environment and the organization and consumer assets.

The cyberspace is constantly and rapidly extending and becoming more complex, this requires increasing the efficiency of the existing protective mechanisms and implementation of new ones based on the periodical risk assessment, and development of adequate measures to prevent personal data misuse as well as legal sanctions. The challenges in the legal and technical aspects of cybersecurity are also global in their nature and may be addressed only by integrated efforts in building consistent policies and strategies covering all participants and security aspects. The interested parties in the cyberspace should play an active role not only for protection of their own assets but also beyond the limits of their own liability. That is so because the used applications in the cyberspace continuously extend their scope from the models business user and user to a form of variety of interactions and transactions. The requirements to the individuals and the organizations are extending in order to be prepared to respond to the emer-

[3] Cybersecurity Strategy „Cyber-sustainable Bulgaria 2020"

ging risks for the security and the challenges for effective prevention and reaction on misuse and criminal developments.

The problems related to the security in the cyberspace and the successful counteraction to hackers, cyber threats, cyber terrorism and cyber war as well as the provision of the necessary abilities for cyber-sustainability have been adopted for a long time as one of the greatest challenges of the modern information society, and searching for successful solutions and actions in the field of forming strategy and developing policy for cybersecurity go beyond the limits of a single science or country, and require a complex interdisciplinary approach with the participation of all interested parties.

While currently certain parity has been more or less achieved between the leading countries in military and economic terms in regard of the use of conventional arms or weapons of mass destruction, in the international law the basic principles of the relations of these countries in the ground space, the maritime space, the air space and the space have been stipulated, the issue about the relationship in the cyberspace is still open, disputable, connected with the growing needs of use of the information flows for the existence of the subject in today's world.

In the process of forming the global cyberspace, convergence of the military and the civil computer technologies takes place; there is intensive development in the countries of new means and methods for active influence on the information infrastructure of the potential opponent. Different cyber centers and subdivisions for management and command are being established with main task protection of governmental, corporate and civil information infrastructures, the preparation and carrying out of active destructive and disruptive actions on the information systems of the opponent. Official cyber offices exist already in the USA, in Russia, China, England, France, Germany, Israel, Japan.

Every day around 150 000 computer viruses are circulating and 148 000 computers are being compromised. These facts illustrate the status of the cybersecurity at present. A nontrivial share of the incidents in the cyberspace is caused by cybercrime. Symantec considers that the victims of cybercrime worldwide are losing around 290 billion EUR every year[4], while according to a research of McAfee the income for the cybercrime is 750 billion EUR annually[5]. According to the World Economic Forum there

[4] https://www.symantec.com/

[5] https://www.mcafee.com/uk/about/newsroom/research-reports.aspx Survey for McAFee

is a 10% probability of significant failure of critical information infrastructure in next decade which could cause damages of 250 billion USD. The incidents in the area of the cybersecurity become more frequent, more significant and more complex and there are no borders for them.

Our country works successfully with its partners of NATO and the EU on establishing complex systems to combat cyber-attacks and this is a major priority in the activity of the Ministry of Defense.

Cybersecurity is a key priority of the EU, a number of directives and regulations have been adopted, but unfortunately they have not produced the level of shared and effective cybersecurity defined therein.

In the opinion of the European Economic and Social Committee (EESC) of 22 May 2013 on the "Proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union" it is stated that the committee is extremely disappointed with the lack of progress by many Member States in the implementation of effective NIS at national level. This failure creates increased risks for the citizens and has a negative impact on the completion of the digital single market. All Member States should immediately take actions on their outstanding obligations in regard of network and information security. This lack of progress creates another digital divide between the elite group of ten Member States which are highly advanced in respect of NIS and those which are less advanced. Those ten Member States have formed the group of the European governmental CERTS (EGC) whose members have set the task to work in close cooperation on NIS matters and on reaction on incidents. The cybersecurity is a key priority of the EU, a number of directives and regulations have been adopted, but unfortunately they have not produced the level of shared and effective cybersecurity defined therein. It is necessary to update the legislation and to ratify the existing international treaties, to establish specialized national departments to combat cybercrime connected with the critical infrastructure (law enforcement and judicial authorities). It is necessary to ensure continuous training of the police officers and the judicial staff as well as gaining experience and knowledge about the emerging threats and vulnerabilities connected with the cybercrime as well as about methods of attacks by exchange of information on national and international level.

Measures should be taken on: establishment of a harmonized set of rules for storage of police and court documentation and of suitable in-

struments for statistical analysis of the computer crimes; creating forums for encouraging the cooperation between different participants (for example CERT and intelligence communities); encouraging direct actions of the industry against cybercrime directed to objects of CI; establishment of cooperation with leading academic and research centers (universities) and institutions for development of new digital criminal techniques; establishment of cooperation between the interested parties in the public and private sectors for prompt determination of and reaction on the problems connected with the cybercrimes.

In conclusion, we may say that cyberspace is constantly extending and becoming more complex. The vulnerability and uncertainty in the cyberspace are increasing. The existing cyber threats increase significantly and cyber threats of new nature appear. Our conclusion is that the accelerated extension and complication of the cyberspace, the increase of the users, types and volume of the online interactivity as well as the development of the information and communication technologies lead to multiplication of the vulnerabilities and increase of the uncertainty in the cyberspace. The malicious software is the most recent cyber threat with highest efficiency. The trans-border nature, the enormous increase and the high speed of development of the information technologies make it difficult to achieve effective legislation and normative reaction on the challenges to the cybersecurity. The State must take the legislative, political and organizational responsibility to ensure the cybersecurity. It is necessary to create an effective strategy for cybersecurity, development of a program of the government where the policies, models and management standards in that field should guarantee accessibility and security of the information, as well as to take active actions for guarantee of effective international cooperation, coordination and harmonization in the area of cybersecurity.

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DIGITALITY AND VIRTUALITY OF CONTEMPORARY SOCIETY – A DIMENSION AND A CHALLENGE FOR THE HUMAN FOUNDATION OF VALUES

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Abstract: The text presents the thesis of the understanding of digitality and virtuality as hallmarking features of the contemporary world. Their independent existence as distinct realities is a legitimate phenomenon in the development of postmodernity. Digitality and virtuality as elements of a common continuum of significations can only be useful to the person when there is a properly built human foundation of values. Thus, values will serve as guidances to individuals and communities in solving the questions of what and how much to accept from the new realities, as well as in what way, in order to be able to hold on to the human dimension of the world.

Key words: digital reality, virtual world, foundation of values, integrity, identity

Each age has its distinctive features. These are symbolic phenomena that designate and structure the socio-cultural reality, describe its scope and, in a certain sense, set the perspectives of its development. In addition, at an anthropological level, these signs predict people‘s reflection of the age, of themselves - phylogenetically and ontogenetically, as well as - of their living space.

In postmodern times, one of the remarkable phenomena that focuses the social specifics of civilization is related to the formula: digital world – virtual world– crypto world. The two phenomena, digitality and virtuality are not synonymous and they are not used as such in the present paper. The essence of digitization is related to the process of converting a given type of signal into a digital quantity that is deciphered by the respective devices. As phenomena and terms, we talk about digital marketing, digital art, digital environments, etc. The virtual sphere is possible but unreal. So there is virtual office, virtual museum, virtual world, etc. The idea which is accepted in the paper is that the logic of digital development leads to virtuality, and in this sense, they are elements of a common continuum of significations.

Like any other social phenomenon, digitality and virtuality do not come in a blank place, suddenly, from nowhere. Their genesis has a long history, which is not just technological. There are a number of social conditionalities for the emergence, development and constitution of the phenomenon. One possible guideline for understanding the social genesis of digitality/ virtuality is related to an essential aspect of postmodernity, namely – fragmentation. The fragmentation of the world and of man is manifested in different socio-cultural and socio-psychological aspects of life and marks the current way of our human realization. One of the manifestations of fragmentation is related to the creation of new worlds, differentiated in their own existence.

The idea of the existence of many worlds and realities was probably formulated even in the works of ancient philosophers. But it has got special visibility and has become the focus of the scientific understanding in the phenomenological scientific attitudes. Alfred Schutz analyzed and re-constructed this thesis in a brilliant way in order to formulate the thesis of the existence of „finite provinces of meaning“ [1]. Thus without the existence of a supreme reality, there are many and different areas of meaning – of everyday life, of science, the Don Quixote’s fantasy world according to

Schutz, etc. This idea of the existence of many realities in the postmodern world is manifested in its particularly visible crystallization perhaps with the creation of digital space and virtual reality. The worlds in which man resides continue to multiply and they are not just a part of human life. These worlds constitute their own reality with their own area of meaning.

The thesis of this article is: on the one hand, for the construction of any new social phenomenon, including the constitution of digital and virtual worlds, there should be a conceptual and valuable foundation. Building a foundation of values, at an individual and community level, leads the individual and the community to knowledge and skills about what, how, how much and why to benefit from the new phenomena, in this case digitization and virtualization.

In a situation of absence or of incorrectly constructed foundation of values, the risks are related to the danger of dominance of innovation over man (their injury, neglecting, etc.). This dominance has many different aspects. An example in this respect is the mobilization of the intellectual knowledge of Nazi engineers to create the technology of the concentration camps. The Holocaust experience contains fateful information about the society we belong to. „Civilization has proved incapable of guaranteeing the moral use of the fearsome forces it has evoked for life" [2, p. 165]. One of the most terrifying pieces of information from the Holocaust was not that "this" could have happened to us, but that we could do it. The statement of Zygmunt Bauman in this regard is extremely important and profoundly analytical "in a system in which rationality and ethics point in the opposite direction, the main sufferer is mankind" [2, p. 291]. And in order not to create a Holocaust again, this time a digital and virtual Holocaust, we must be vigilant, humble and responsible for providing a basis of ethics, morals and values that guide our human existence and development.

When the foundation of values is properly built, digitality and virtuality can have powerful signigficance in a variety of directions. Regarding the personal dimension, this new reality can help people return to themselves, to achieve identification at a higher level. The higher identification means the man to discover the human sides within himself/herself in different aspects - physical and physiological, mental, intellectual, social. And thus, the new worlds - digital and virtual - instead to be opposite to the human world - can become its inherent spheres. These two realities - anthropological and digital/virtual - can form a harmonious entirety of two different

and opposite entities. Similar is the example of the millennial coexistence of the human world and the world of buildings. Buildings are something external and artificial to humans but through the millenary shared history of this artificial environment and the human environment a whole functional existence was created. Likewise digitality/virtuality can become a "building" of human functioning and existence. The construction of values can be accomplished through the proven and tested ways – education, socialization, upbringing. The optimal goal of these processes is building human wisdom.

As with many other phenomena, digitization firstly occured and only after that we try to understand its essence, its consequences, its modes of acceptance and management. One of the most difficult issues in understanding, accepting and managing of the process is to find a balance of the relations: digitality – non-digitality, virtuality – non-virtuality. In this continuum positioning the point of view is a real intellectual challenge. Firstly, because the concepts can be defined as ideally typical in the sense of Max Weber. Secondly, because positioning is not only about locating the point but also with the definition of living conditions, strategies, manifestations, etc. the related to this point. And thirdly, because finding this particular balance is fully connected to all other equilibria in human individual and community life, and thus it is related to the overall philosophy of human ontology. We cannot separate digitization solely into the digital dimensions of its sphere. Surely it can be said that absolutising of the poles is not a healthy position, as it is with any absolutization. However, from then on follows the intellectual and spiritual difficulty of „inventing" and accepting a position on the problem.

On the one hand, decisions can be very simple and natural, meaning the intuitive human experience to find a healthy way in this situation. However, in order to find simple, effective and healthy decisions, it is first and foremost necessary that the individual and the community have gone through a long and difficult path of their growth, maturation and appreciation. Therefore, the question is whether phylogenetic and ontogenetic anthropological development has reached the maturity of such spontaneous and simple decisions. Since science in general, in addition to all its other fundamental functions and purposes, has the mission to assist man in their existential realization, social science, within the limits of its present competencies, should answer these questions. In this sense, social scien-

ces, with the attained levels of intellectual reflection, skills to analyze the phenomenon and to anticipate its development, could contribute to finding a path into the insights of the problem.

The many dimensions of the phenomenon cannot be studied productively, so here the focus is on the social dimensions of the issue. This task in front of social sciences is not at all easy. The difficulties are dictated by many different circumstances. Max Weber wrote about the inner metaphysical need of the intellectual to understand the unity of the world [3]. However, in a world that is already inherently and continuously fragmented, the understanding of its unity can be extremely difficult. In addition, the scientific task is not limited to the analytical problematization of the question. The essence of the intellectual position is the concept of the moral duty of the scientists. The understanding of intellectual moral duty is related to building such views that take into consideration and hold on the human well-being. Scientists have the mission to warn of the dangers, to assess human capabilities and limitations, and to build concepts for the future of the human world.

Like any large-scale phenomenon, this one is also evaluated and experienced ambiguously. There have always been novelties and difficulties in accepting these novelties in the history of human civilization. Such difficulties are probably related mainly to the question to what extent the novelty will break the tradition and will change the status quo. The other major difficulty is related to the question of balance, to what extent and in what way to accept novelties.

Undoubtedly, digitization makes us global, connects us with others in a broad context. At the same time, digitization narrows man's psychological horizon. It is logical that at high speed people see more things but more superficially. Moreover, high speed does not allow the person to focus on himself/herself. It is possible to be one of the essential aspects of the postmodern man's drama - in the many possibilities that he/she has, the opportunity to find himself/herself is lost. And probably because of this, identification is one of the most problematic issues for the postmodern man. As a consequence, he/she cannot make use of the opportunities at hand. Futuristically, but not impossible, is the assumption that in the ultimate forms of digitization, we may have to create devices to desipher the human processes - emotions, feelings, thoughts, etc.

The traps of virtuality in connection with social networks are written exclusively analytically. Zygmunt Bauman wrote about the creation of human's own comfort zones that deepen the unreality of such mental well -being. It is an illusion because this seeming comfort fragments our lives even more, turning it into „Life in Fragments" [4]. In such a niche, similar to cellular existence, protection is to a certain point. The critical point is related to the desire of the person to go beyond this cellular area and the inability to do so. The impossibility does not arise from the fact that the boundaries of the cell are impermeable but because outside this zone we cannot cope with the logic of sociality from the outside.

Furthermore, digitization and virtualization are a fact. Their challenge, their denial or underestimation would be a fantastic delusion or medieval narrowness. But entering the worlds of digitality and virtuality is likely to create a digital and virtual universe where the person cannot adapt to his/her human universe. Thus, he/she would lose his/her foundation, his/her security. It is extremely important for each phenomenon on what foundation it is being built. In a parable of The Holy Gospel of Matthew it is said that when a man builds a house on a stone, neither rain, nor rivers, nor winds will destroy it. When a man builds his house on sand, it will collapse from rains, rivers, winds. „And its collapse was great" (The Gospel of Matthew, 7:27) [5].

In this sense, the digital/virtual world should find and grasp the conceptual foundation on which it is being built. This would become post-factum, i.e. after the digital/virtual world has already become a reality. In this situation, it is not impossible for subsequent construction of meaning but for man it will be more difficult to return, to re-think and rebuild the senses. Finding the foundations of values and concepts in the postmodern, fragmented, scattered world is extremely difficult because the conceptual and value basis should be complete, overall, internally coherent which is in contradiction with the fragmentation of the contemporary world. At the same time, this difficulty has its very positive side. If it is assumed that there is a problem, this is a challenge for man to deal with. Of course, this is not a fight for its sake, for the very struggle. These are efforts to find our own value-based guidelines that provide us with formulas of behavior, meaning and purpose.

Digitality has its essential functions in contemporary education. The opposition between classical education and digitalisation in education

would be extremely unproductive. The possibility for their quality coexistence and reconciliation is undoubtful. Human communication and human contact might not be opposite to digitality / virtuality and vice versa. The digital and virtual worlds provide opportunities for better educational practices. The inclusion of such elements in the overall pedagogical process could be related to attracting learners' interest, linking learning to contemporary phenomena, etc. In addition, the use of virtual reality in training processes provides exceptional opportunities for forming and improving professional skills in professions related to direct risk. The controlled environment, resembling the real one, allows facing a wide variety of situations, expanding training practices for shorter time, minimizing the possibility of injury, etc.

At the same time, translation of knowledge is one aspect of the educational process. Knowledge also has a value aspect whose translating is effected by human creatures. Moreover, learning in a virtual environment should be considered as a great opportunity whose effectiveness can only be assessed in real situations. All this explains the symbiosity of both the possibilities and the limitations of these new phenomena.

Digitization changes us as people, changes our communities, changes the world. But this change should not be a random one. At the beginning of modernity man has discovered the power of his/her mind. Postmodernity has provoked even higher human states – man has got to the idea of the limitations of their mind. Therefore we should base ourselves on the knowledge of the weakness of human rationality with regard to the new digital and virtual universe and assess how and why we can adjust digitality to us. It is the man that should be the focus, not the digital device, function or result. The human dimensions of digitality should be sought. Jan Gelell, an urbanist and architect, raises the idea of the city's human dimension, i.e. the artificial environment should be conceived and built according to the man and human dimensions - mobility, sensitivity, etc. Thus, in digitization and virtualization, we should also explore and keep to the human dimension of the digital world.

All these outlined difficulties, issues, challenges should be seen as extremely positive aspects of our existence. They give us directions for development, self-realization, self-actualization. For if, as Apostle Thomas Faithless, we put a finger in our own wounds, not in the wounds of the Lord Jesus Christ, we will believe that we exist and we will be happy with it.

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THE CONCEPT OF NATIONAL SECURITY

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Abstract: This report outlines the process of organisation of the security system, and more precisely the national security system, as well as of the business security system.

National traditions, the effect of the applied organizational forms, the controversy of practice and the negative effects of the unnecessary implementation of foreign good practices have been taken into consideration.

This topic has not been previously explored.

Key words: security, danger, safety, public order, threats

The concept of 'Security'

This report synthesizes information from previously researched literature, in which a multitude of specifying and clarifying definitions of the concept of 'security' can be found. The clarification of the content of this concept could be as an end in itself if it is not used to characterise the contemporary society, the changes occurring in it, and last but not least, the changes concerning the main participants- people. When this concept is applied it usually signifies '**absence, lack of danger, safety' (1)**. That is why we turn our attention to these terms and make an attempt to explain them. We consider that '**danger**' **(2)** is a state of instability and possibility of destruction of core elements, relationships, and subsystems of an independent country. The most extreme form of manifestation of danger is the attempts of destabilising and paralising the subsystems of national security. Unlike danger, **'safety' (3)** is a state of protection of the paramount interests of a given person, industry, society and state from internal and external threats.

The actuality of the analysed issue is defined by:

- the process of organisation of the security system and more precisely national security system , as well as of the business security system;
- outlining the national traditions, the effect of the applied organizational forms, the controversy of practice and the negative effects of the unnecessary implementation of foreign good practices;
- this topic has not been previously explored.

1. Danger in the sphere of security

To a country, which is one of the most complexly organised, self-regulating and self-organising systems, the problem of security is one of the problems which define its nature. Current practice has also been experiencing difficulties due to the fact that the theoretical thought in our country, in the beginning of its existence and development, has not explored and defined a set of criteria for assessment of the possible results of the realisation of various alternatives, as well as the possibility of their implementation.

While we were researching 'the dangers' (4), we established that they are the possible or real occurrences, events and processes which are able to inflict material and moral damages to an organisation or a business. In relation to this, the danger is linked to two uncertainties:

– the uncertainty, which can be found in the well-known conditions of existence;
– the uncertainty of the occurrence of a dangerous event.

Our understanding is that "danger" is "the possibility or probability of something bad to happen, some misfortune". We agree with prof. P. Hristov that the danger (5) in the social existence is related to the happening of potential or real occurrences, events and processes, which, respectively, can be assumed as and linked to the happening of potential or real occurrences, events and processes in everyday existence, which are capable of causing damage, unwanted consequences to people, countries, regions or the entire planet, including such, which can destroy them.

Danger is linked to a possible future development of the processes and occurrences and, that is why, it is necessary, especially in the sphere of national security, to establish the genesis of the causes in their completeness, and not in their acting as different components. It is a well-known fact that at the base of the crime factors are economic and social characteristics. The most extreme form of manifestation of danger is the attempts of destabilising and paralising the subsystems of national security.

Striving towards security, but not the problem of security, also exists in nature where security is equal to survival and it is achieved through adaptation or competitive struggle. Danger can manifest itself in different forms. Quite often it can be an intent, a plan, and an action preparation of some individuals against others with the aim of their annihilation, robbery, insult, slavery, weakening and so on.

Danger (6) characterises actions or inactions, states and situations, including shortage of resources or inadequate behaviour within or outside the country. If these actions or inactions deepen or develop they can inflict serious damage to national security. Dangers are difficult to detect. They can be registered or identified when some harmful consequences have ensued for the country, society or particular individual. In order to eliminate the possibility of arising of danger or unwanted event, there is always a risk whether a certain goal or result will be achieved in the process of decision making. Danger arises when the threat and the risk have exceeded a certain level of intensity.

In other words, danger arises when the risk and the threat have exceeded a certain level of intensity, hence putting at risk the normal functioning of a country as a system. In real life this could be an industrial accident, fire, earthquake, war and others.

The past experience of the Republic of Bulgaria strongly suggests that the old and inherited security system has had insufficient capability to guarantee and protect the fundamental rights and freedoms of every person and the civil society as well as their vital needs and interests. That's why to neutralise danger we resort to safety.

2. Safety in the sphere of security

The problem of security is paramount for every system, which has the capacity for self-regulation so as to set and achieve its aims. Legal literature defines **'safety'** unequivocally. It stipulates that '*safety is an established order which guarantees strict adherence and abiding to the rules aimed at counteraction of severe consequences which can arise as a result of an activity related to the usage of sources of increased danger for people or acts of God.* ' This term can be viewed either on its own or as part of the content of the term public order.

We consider that safety means not only to prevent incidents, risks and threats, but also to make working conditions better. This includes eradication of noise pollution, bad lighting, insufficient heating, gas leak hazards, physical vulnerability.

The strong connection between the terms 'public order' and 'safety' can be discovered in the fact that ensuring safety is one of the aims of public order, because ensuring public order is impossible without guaranteeing safety, i.e. the aim of ensuring public order is related to ensuring safety.

Safety can be ensured by implementing a coherent government policy on guaranteeing of safety through a system of economic, political, and organisational or other measures, adequate to the threats against vital personal interests, a society or a country. Without exception, safety management on all levels follows the pattern "benefit- harm" (7). Taking into account this criterion, the benefit on regional or state level exemplifies the quality of life. Safety is the ability of items, occurrences or processes to retain their main characteristics, parameters and nature when exposed to the pathogenic, devastating effects of other items, occurrences or processes. Safety manifests itself in the orderly relationships between the subjects of public life (society- nature) which ensure favourable conditions for functioning and development of the subjects. This is protection and access control, (8) completeness and confidentiality of information.

Analysis: *Security, viewed as a problem, i.e. as a phenomenon, triggering rational activity and being its result, has been typical for only human beings and society as a whole since its formation. This fact determines the functions and the tasks of the competent government bodies to investigate, prevent and neutralise criminal or malicious actions which put the national security of the country in danger of occurrence of threats as well as to search for safety. In addition, safety is the aim, due to which, if there are the necessary conditions and presuppositions, human societies create countries and maintain their existence in all socio-economic formations known to us.*

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SCIENTIFIC AND PRACTICAL COMMENT ON THE LEGAL CONSEQUENCES OF DUBBING OF AN AUDIOVISUAL WORK AND ITS USE FOR NON-LINEAR DISTRIBUTION /TRANSMISSION/ ON THE INTERNET

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Abstract: Dubbing of an audiovisual work is a specific type of adaptation of an audiovisual work and its original record. In its legal nature, dubbing stands close to the concept of a sound recording /phonogram/ within the meaning of the Law on Copyright and Neighboring Rights. Neighboring rights on dubbing arise for the dubbing director and the performing artists with respect to their performances. This article focuses on the neighboring rights on dubbing within the context of the contractual relationship between performing artists and producers. It outlines the author's position on certain practical issues related to the use of dubbing of an audiovisual work for the purposes of non-linear distribution on the Internet.

Keywords: Dubbing, Performing artist, Copyright, Neighboring rights.

Dubbing of an audiovisual work is a specific type of adaptation of an audiovisual work and its original record[1]. The specific feature is that as a result of the dubbing no secondary work arises as a derivative audio-visual work or as new subject-matter of copyright protection. Another specific feature is that the use of dubbing is only possible along with the adapted audio-visual work.

In its legal nature, dubbing stands close to the concept of a sound recording/phonogram/ within the meaning of the Law on Copyright and Neighboring Rights (LCNR)[2]. As such, dubbing is a standalone subject-matter of a neighboring right, as far as neighboring rights in dubbing arise for the producer of the phonogram. The peculiarity is that the production and use of the phonogram is a specific form of adaptation of an audio-visual work. The only person authorized to create the dubbing is the person explicitly granted with the rights to dub the audiovisual work by the authors and/or the producer of the audiovisual work.

The dubbing can only be used together with the adapted audio-visual work. Neighboring rights of the performing artist within the meaning Art. 74 LCNR shall arise on the dubbing for the dubbing director and the performing artists with respect to their performances. The person that has funded and organized the dubbing is holder of the phonogram producer's neighboring rights as set out in Art. 72, item 2, in conjunction with Art. 85 and within the scope of Art. 86 and 87 of the LCNR.

The agreement between the producer and the performing artists shall be governed by the regime set forth in Art. 42 of LCNR. The applicability of Art. 42 of LCNR is expressly provided for by analogy in respect of performers by virtue of the reference item of Art. 84 of LCNR. Only for

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1 Within the countries from the author' rights legal tradition, among which is the Republic of Bulgaria, as well as France, Germany, Italy, etc., the audiovisual work is a subject-matter protected by copyright, separate from the recording of the audiovisual work itself. Within the countries from the copyrights tradition, such as United Kingdom and Ireland, the subject-matter of protection is the record itself. – on this matter, See, Kamina, Paskal, "*Film Copyright in the European Union*", Cambridge Intellectual Property and Information Law, second edition, Cambridge University Press, 2016, p. 63

2 See para. 2, p. 7 and 8 AD of LCNR*7. (amend. - SG 25/11, in force from 25.03.2011) "audio recording" means fixing on a durable material carrier of a sequence of sounds in a manner to make them available for listening, reproduction, wireless broadcasting, by cable or other technical means; 8. "phonogram" shall be the product of audio recording*

comparison purposes, it should be noted that the application of Art. 42, item 2 of LCNR is explicitly excluded from application in the relations between the producer of audio-visual works and the holders of copyright to the audiovisual work (Article 63 (2) of LCNR). According to Art. 42 of LCNR copyright in a work created under mandate belongs to the author of the work, unless otherwise provided by the assignment agreement. Under the second item of the same article, unless otherwise agreed, the mandator is entitled to use the work without authorization by the author for the purpose for which it was commissioned. In connection with the application of Article 42 of LCNR, there are three sets of questions in the relationship between the commissioning producer and the performer.

First, is it possible to negotiate the rights on the subject-matter of the neighboring right – the performer's performance to belong to the commissioning party - the producer. I believe that the dispositive nature of the provision allows the agreement to set out that the rights on the performance of the performing artist belong to the producer[3]. Such conclusion, should consider the imperative provision of Art. 75, item 2, proposal 1 of the LCNR with regards to the inalienability of the moral right of the performer to require that his name, pseudonym or artistic name be indicated or announced in the usual manner at each live performance and each use of the recorded performance in any manner.

Second, what is the scope of the rights that belong to the commissioning producer or the rights that the producer is entitled to exercise without performer's consent? The scope of the rights is determined by the purposes for which performance is commissioned (Article 42 item 2 of the LCNR). Consequently, the producer acquires or may exercise rights to non-linear distribution on the territory of Bulgaria of the performer's performance (the purpose for which performance was commissioned). Article 42, item 2 of LCNR does not imply the acquisition or exercise of exclusive rights by the producer for non-linear distribution on the territory of Bulgaria of performer's performance. For the acquisition of exclusive rights for non-linear distribution on the Internet, there must be written and explicit agreement on the matter (Article 36 (4), in conjunction with Article 84 of LCNR).

Third, is there a limited duration on the exercise of such rights, provided the imperative norm of Art. 37, item 2 of LCNR? The jurisprudence on this issue is not consistent and rather applying the limitation under

[3] On the contrary, Sarakinov, G., "*Copyright and Related Rights in the Republic of Bulgaria*", Sibi, Sofia, 2009, p.85

Art. 37, item 2 of LCNR of 10 years and with respect to the agreements set out Art. 42 of LCNR. Such is the view established by the legal commentators[4]. Such interpretation cannot be accepted and should be seriously criticized, however it is a matter of time and arguments to have it changed.

With regards to the aforementioned, there are three practical issues related to the use of dubbing of an audiovisual work for the purposes of non-linear distribution on the Internet.

1. Should performers who dub main roles (the main characters) in an audiovisual work be treated as main performers and be entitled to remuneration for the secondary use of their performances for non-linear distribution on the Internet by argument under Art. 78 (3) of LCNR?

The figure of a main role performer is introduced in Art. 78, item 4 of LCNR. According to the rebuttable presumption of this norm, performers playing main roles in the sense of item 3, unless otherwise proven, are the persons announced in the credits of the film in a manner unambiguously indicating that they are considered as such. Where there are no such indications in the credits, the eventual explicit agreements on this issue in the contract between the producer and the performer shall be taken into account, and if it does not contain such agreements or the contract is not presented, the explicit opinion of the scriptwriter shall be taken into consideration, presented in writing regardless at what time.

Dubbing is a sound recording/phonogram/ within the meaning of LCNR. It is a special form of adaptation of an audiovisual work and due to the fact that such adaptation does not give rise to a derivative new audiovisual work nor to a derivative new record of audiovisual work, there are no rights arising on the dubbing, similar to the rights on a derivative adapted audiovisual work. Dubbing in foreign language does not constitute an adaptation of the performance of the performing artist. The rights of performers of main roles as set out in Art. 78, item 4 of LCNR, are function and result of the creation of an audiovisual work and the legal regulation of the relations between performer, film producer and any third persons using such work.

As a conclusion, performers who dub main roles in audiovisual work cannot be treated the same way as the performers of main roles within the meaning of Art. 78, item 4 of LCNR and are not entitled to additional remuneration for the secondary use of their performances for non-linear distribution on the Internet as set out in Art. 78, item 3 of LCNR.

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[4] Sarakinov, G., "*Copyright and Related Rights in the Republic of Bulgaria*", Sibi, Sofia, 2009, p.87

2. Is it possible that the holder of dubbing rights prohibits the use of the dubbing, respectively to authorize the use for the purpose of non-linear distribution on the Internet of the dubbed audiovisual work, separately from the organization that carried out such dubbing, including through a collective management organization?

Neighboring rights in dubbing arise for the dubbing director and the performing artists with regard to their performances /the dubbing/. The person who holds the rights for non-linear distribution on the territory of Bulgaria of the recording of an audiovisual work/ audiovisual recording and has financed and organized the dubbing is the producer of phonograms as set out in Art. 72, item 2, in conjunction with Art. 85 and within the scope of Art. 86 and 87 of LCNR. The Performers transfer to the producer the non-linear distribution rights on the Internet of their performance. Pursuant to Art. 86, para. 1, item 4, the producer of phonograms has the exclusive right to non-linear distribution of the phonogram on the Internet. Moreover, the recording is not a standalone subject-matter other than the adapted audiovisual work, the rights on which, on a contractual basis, are exercised by the same producer. It follows from the aforementioned that only the producer is entitled to authorize or prohibit the non-linear distribution of the recording of the audiovisual work and the accompanying audio recording on the Internet. The performer cannot authorize a third person to use the dubbing alone for the purpose of non-linear distribution of the dubbed audio-visual work, including through collective management organization, because he/she does not have rights on it. Accordingly, the performer cannot prohibit the use of dubbing for the purposes of non -linear distribution of the dubbed audiovisual work on the Internet because it has no rights over it.

3. Upon expiration of the term of use of the dubbing agreed in the contract between the organization that carried out the dubbing and the performer, with whom the user of non-linear distribution of the dubbed audiovisual work on the Internet shall negotiate? Should the user negotiate with the performer (primary negotiation)? Does a collective management organization have the right to set a tariff for use of dubbing performers' performances through non-linear distribution of the dubbed audiovisual work on the Internet?

Hereof I pointed out the specifics of the contractual relationship between the producer and the performers in the initial individual negotia-

tion and the assignment of the dubbing, including with regards to its term. Upon expiration of the initial agreement, the organization that carried out the dubbing continues to be producer of the phonogram with regard to such dubbing, the dubbing performers have the rights of performers as set out in Art. 75 and Art. 76 of LCNR. The economic rights of the performer under Art. 76, para. 1 (3) of LCNR (making his fixed/recorded/ performance or parts thereof available by wireless means or by cable to unlimited number of people in such a way that members of the public may access it from a place and at a time individually chosen by them) might be exercised individually by the dubbing performer and be granted by a written agreement between such performer and its user for compensation in accordance with Art. 76, para. 2 of LCNR. The same economic rights might be exercised, upon authorization, by the collective management organizations or independent management companies in accordance with the provisions of art. 94-94щ and para. 5 of the Additional Provisions of LCNR (Article 73 of LCNR). It should be noted that according to para. 5, item 2 of the Additional Provisions of LCNR remuneration is determined by agreement between the collective management organizations or the independent management companies and the users or their associations, i.e. an explicit negotiation procedure is provided.

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COMPENSATORY MEASURES – FACTOR FOR REGIONAL SECURITY

Summary: The problems and challenges of the security on a global, regional and national scale are growing increasingly in the 21st century. The interests that create and sustain uncertainty on a global and regional scale could be generated by a variety of factors: economic, military, religious, ethnic, political, etc.

The concept of border control at the external borders is mainly explained in the Convention Implementing the Schengen Agreement.

Border control aims to prevent any threat to Member States' internal security and acts as a stabilizing factor in the area of regional security.

Keywords: security1, regional 2, factor 3, measures 4, internal 5

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The problems and challenges of the security on a global, regional and national scale are growing increasingly in the 21st century. Associations of the states in different types of organizations (military, political, economic, etc.) as well as individual countries instead of going and moving on the desirable and expected path of increased security and stability appear to be in a global context of uncertainty triggered by causes and processes designed to serve the interests of one or more of the world powers. The interests that create and sustain uncertainty on a global and regional scale could be generated by a variety of factors: economic, military, religious, ethnic, political, etc. For example, we can point out the conflicts in the former Yugoslavia and the collapse of the USSR, which were provoked on an ethnic and religious basis, and those in the Middle East having mostly economic reasons. The events leading to the overthrow of regimes - the Arab Spring was dictated by its political nature, while the constant opposition in the Gaza Strip between Israel and Palestine is the result of the Palestinians' desire to have their own country (the same is true of the Kurds on the territory of Turkey). Evidence of "permanent" insecurity in the Middle East region is the conflict in Syria which already lasts for seven years and is still ongoing. The expectations for a safer world after the fall of the "Iron Curtain" and the opposition of the two super powers after the Cold War era did not materialize. The increasing violence and the accompanying threats are the "everyday life" of the modern world, the terror of certain factions, organizations and groups have turned the old continent into an area of insecurity and growing instability. People's fears have also been bolstered by the acceptance of several million so-called "refugees" from the Arab world. As a result of the increased pressure on the external borders of the European Union, their security has become a major task.

The concept of border control at the external borders is mainly explained in the European Convention Implementing the Schengen Agreement / Schengen Convention /, the Schengen Borders Code /SBC/and the national legal acts as Law on the Ministry of the Interior/LMI/. There are a few authors who have addressed border control issues and the applicable measures to overcome the security risks to the countries concerned which have removed their internal border controls. The most profound analyses were made by authors such as: Prof. Vl. Ivanov PhD, Prof. St. Ferdov PhD, Associate Prof. Ivan Vidolov PhD, Ivan Lolev PhD, Andrey Dzhunin PhD, Assoc. Prof. Marin Stanchev PhD and others. For these reasons, I consider

that there is no need to pay attention to the notion of border control. In this report we will ezamine the transfer of elements of border control inside Schengen zone, which is a deficit-compensating measure. For the sake of understanding, we will make clear that border control, in accordance with the SBC, is an activity carried out at the border itself for the implementation of border crossing controls or the act of crossing that border. This also applies to the territory on which the border area is located. It includes not only the regular border checks at the established border checkpoints, but also an analysis of the risks to internal security and the analysis of threats that may affect the security of the external borders. Border control aims to prevent any threat to Member States' internal security and acts as a stabilizing factor in the area of regional security. In this sense, it is seen as a fundamental compensation measure and is part of the complex of compensatory measures that Member States have deployed to counter new challenges and threats.

In this report, more attention is paid to the notion of "compensatory measures".

The abolishment of border controls at the Schengen internal borders places significantly higher requirements on the effective security of the external borders and, at the same time, the introduction of a number of additional security measures in the Schengen area - the so-called compensatory measures. There is no clear definition for the notion of compensatory measures and there is no EU-level act to give detailed regulations and precise classifications of the types of measures, although these are not new to the law enforcement authorities.

It originates from the words "compensate" and "measures". In literature and legislation, the word "measures" makes sense as a means of doing something; action, deliberate action - for example, precautions. And the word offset is a reward or recoupment for something lost. In the Schengen acquis these measures are aimed at balancing the level of security after the abolition of controls at the common borders of the Member States.

The notion of "compensatory measures" has also been imposed by non -EU authors. For example, American authors (Koening and Das, 2001, pp. 147-148) point out that the basic idea of the Schengen security system after the abolishment of border controls is introduced in the compensatory measures. They state that these measures are set out in the Schengen Convention. This statement is also imposed by other American authors, Peter

Andreas and Timothy Snyder. In their book "The Wall around the West", which deals with the issues of the state border and migratory control in North America and Europe, the authors also use the term "compensatory measures" (Andreas, Snyder, 2000, pp. 21-23). According to them, border control cannot be removed unless two conditions are met. The first is the compatibility of the standard of living between Member States and the second is the introduction of compensatory measures. It is through the introduction of these measures that they express the general view of the success of Schengen.

The term "compensatory measures" in the same sense is also used by Russian authors. In his dissertation, ***Кыдыров*** points out that the essence of the Schengen system is achieved by the abolishment of both border control and migration and customs control at the internal borders of the Member States, and compensatory measures are a necessary condition for the elimination of this kind of control (Кыдыров, 2002). To underlie compensatory measures means: tightening of controls at the external borders of Schengen regarding third-country nationals; enhancing cross-border cooperation; fighting against organized crime; using a common information system. All these measures are provided for in the Convention Implementing the Schengen Agreement. The Schengen area without border control at internal borders relies on the effective and efficient implementation by Member States of the accompanying measures in the areas of: external borders, visa policy, police cooperation, judicial cooperation in criminal matters, drug policy, the Schengen Information System and the protection of the data. All these accompanying measures are defined in the Schengen acquis.

However, the notion of "compensatory measures" has been established and is widespread in a number of acts and specialized literature rather than in accompanying measures. In one of the documents of the Directorate-General for Research, 2000, the impact of the Amsterdam Treaty on Justice and Home Affairs issues, where the impact of the Amsterdam Treaty on Justice and internal affairs (JHA), these measures are seen as compensating for the "loss of security" in the Schengen area after the abolition of controls at common borders. It is also stated that "... the rest of the 140 members of the Convention consist of compensating (compensatory) measures ...". Schengen Convention consists of a total of 142 members. The provisions of Art. 1 and Art. 2. are excluded. In the opinion of the Directorate-General for Research and Innovation, compensatory measures include:

– strengthening border controls at the external borders;
– the rule of law in the field of asylum;
– introduction of a common visa policy;
– increasing cooperation between the police, customs and judicial authorities of the Member States;
– introduction of a common information system for wanted persons and objects.

All these measures, indicated by the Directorate-General for Research and Innovation, are precisely the provisions of the Schengen Convention.

The Schengen countries also use the notion of „compensatory measures". As seen in the 2006-2007 „Action Plan" on Estonia's accession to Schengen (www.siseministeerium.ee - Estonian Ministry of the Interior), in the article „The Schengen challenge of border security" (Cecot, 2005) - State Secretary on the State Administration of the Ministry of the Interior of the Slovak Republic and others.

From what has been said so far, it should be noted that the concept of „compensatory measures" considered in the context of Schengen is understood to mean all those additional or accompanying measures defined in the Schengen acquis, and the classification of these measures is defined in the Schengen Convention. As such, it has become necessary not only for the public but also for a number of official documents issued by the EU and the Member States in Schengen. As a result, „compensatory measures" should be understood as the measures defined in the Schengen Convention that offset (strengthen) security in the Schengen area without border controls at internal borders.

They should be applied by all Member States in Schengen where border controls have already been abolished, as well as by the candidate countries. Border control is abolished at the internal borders of the candidate countries once they have successfully implemented or are able to implement compensatory measures. All these measures are defined in the Schengen Convention. In fact the stipulate:
– common rules for border control at external borders;
– a common visa policy;
– general conditions for the movement of foreigners;
– a common asylum policy;
– implementation of police cooperation in the Community as well as at regional level;

– the implementation of judicial cooperation at Community level as well as at regional level;
– a common drug policy;
– a common policy on issues related to the acquisition, possession, trade and transfer of firearms and ammunition;
– use of a common information system - the Schengen Information System;
– a common data protection policy.

In this regard, emphasis should also be placed on the change of the EU's common policy and the Member States that have signed the Schengen Convention in the area of free movement of Union citizens within its framework which repeals the „minimum check" (under the Schengen Borders Code) categories of citizens of the Member States and introduces the so - called „systematic check", which is related to the non-admission of EU and member states into the EU, etc. „Islamic terrorist fighters", according to EU Regulation 2017/458 (Ivanov, 2017, pp. 420-428).

All these measures can be classified into three main groups, also based on the Schengen evaluation and monitoring mechanism.

First group: Legislation. This group includes all those legal acts that are issued in accordance with EU law regulating the legal regime in the area of freedom, security and justice within the meaning of the Treaty establishing the EU and the Treaty on the Functioning of the EU. It sets out the general rules and policies that the EU should take to protect security in the Community in order not to violate the right to free movement in this area.

Second group: Technical provisions. These include automated information systems, means of transport and technical surveillance equipment built at Community level. Their introduction aims to collect data relating to the management of external borders and security within the Community and to ensure that Member States have access to a set of information relating to the implementation of border controls. Automated systems and technical facilities make a significant contribution and make it easier for Member States to manage security systems in the Schengen area and the EU. On the other hand, automated systems and related information data bases are the primary means of providing information in countering crime that is directly related to compensatory measures. Operational information databases offer a variety of information and records about occurrences, events of a criminal nature related to the characteristics of specific persons. Such data bases always contain two interrelated sets of indications:

ascertaiment and identifying features of specific individuals, and signs of specific characteristics in their behavior, as well as links to other objects - objects, people, events and/or facts. When entering the information data bases any of the above-mentioned signs can be found within the related person or group of persons (Dzhunin, 2017, p. 174-175).

Third group: Human resources. The use of human resources is the basic set of measures needed to implement or use the measures in the previous two groups. These include all those law enforcement agencies, institutions, offices, etc. established at Community and national level to provide adequate management of security systems in the area of freedom, security and justice. For the implementation of the compensatory measures in Schengen, a special evaluation and monitoring mechanism has been set up to ensure high uniform standards. All countries are assessed on their implementation (Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis **and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen).**

The notion of compensatory measures in Bulgaria has also been applied in the specialized literature (Ivanov, 2011, pp.258-263, Lovev, 2016, p.50.), legal acts (see LMI) and subordinate acts (Instruction on State Border Surveillance, 2015) and strategic acts (Integrated Border Management Strategy, National Strategy on Migration, Asylum and Integration, etc.).

According to the abovementioned authors, compensatory measures are a guarantor of the level of security following the abolition of border controls at the common internal borders, which is in line with the idea of free movement. These measures include common standards for border control at the external borders, harmonized visa policy, police and judicial cooperation and the introduction of a common information system. Compensatory measures are aimed at preventing the spread of crime or making it more difficult to counter it. Ivanov defines compensatory measures as: activity of national structures that are authorized with a certain type of measure; a separate legal system for implementing the Schengen measures; agreements with neighbouring and other countries, and common measures and structures to ensure security in the common area and to carry out police, judicial and other measures throughout the country within the meaning of the Schengen Convention.

In Bulgaria, the notion of compensatory measures was imposed in the narrower sense of the word. It is considered that compensatory measures are only those measures which should only be applied after the abolition of border control at internal Schengen borders. One of the first official documents in the Republic of Bulgaria, which uses the notion of compensatory measures, is the Strategy for Integrated Border Management for the period 2006-2009. The document introduces such measures only at the internal border. While in the strategy for the next period 2010 - 2013, the compensatory measures are more broadly covered (Integrated Border Management Strategy of the Republic of Bulgaria for the period 2010-2013, 2009, p. 14). It implements compensatory measures not only at the internal border but also in the border area. Later, the National Strategy on Migration, Asylum and Integration (2011-2020) takes into account the need for compensatory measures. However, the notion of compensatory measures lacks a legal definition until 2014, where Bulgaria was already successfully implementing some of them (police cooperation, SIS, European Arrest Warrant act, etc.). For the first time in the additional provisions of the Law on the Ministry of the Interior it is defined in point 10 of the additional provisions that "compensatory measures" are the applicable measures under Regulation (EC) No 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). According to the LMI, compensatory measures should be implemented by the Border Police, and only by the police authorities performing the security activities. Thus, the definition in the law does not exhaustively cover all the measures envisaged and regulated in the Schengen acquis as additional (compensatory) security measures after the abolition of border controls at the common internal borders in Schengen and does not coincide with the commonly accepted concept, already imposed in the other Member States. It also excludes the possibility of other MoI authorities directly concerned with applying compensatory measures in line with those applicable under the Schengen Borders Code (SCB), namely the introduction of elements of border control inside the country (see Art. 22 of the SBC "Checks in the territory"). Such bodies of the Ministry of Interior are the "National Police"; The Regional Directorates of the Ministry of the Interior, etc.). Law on the Ministry of Interior act in transitional and concluding provisions provides that these measures will be in force after the Bulgarian accession to Schengen zone.

Thus defined, the term "compensatory measures" in the LMI is not exhaustive. However, we cannot claim that it is inaccurate, given that, as clearly stated, there is no precise definition of what compensatory measures are at EU level. In this context, it can be concluded that the notion of compensatory measures in Bulgaria is defined in the specific case, which concerns only the measures provided for in the SBC. All other measures in accordance with the Schengen Convention are not considered as compensatory measures. However, they are implemented in our national legislation and are being implemented successfully.

In conclusion, I consider that there are no contradictions in the implementation of compensatory measures in Bulgaria with the measures adopted under the Schengen Convention, but the commonly accepted concept of compensatory measures in our country, which at this stage differs. Clarifying the concept at European level and implementing the whole set of measures will inevitably enhance security in the region.

List of documents

Conventions and Treaties:

1. Charter of Fundamental Rights of the European Union(2000)
2. Convention implementing the Schengen Agreement of 14 June 1985;
3. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, as signed in Amsterdam on 2 October 1997;
4. Treaty on European Union (2012);
5. Treaty on the Functioning of the European Union (2012);
6. Treaty of Lisbon (2007);

Regulations:

7. Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen;

8. European Arrest Warrant act (2003);
9. Regulation (EC) No 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code);

Bulgarian legislation acts:

10. Law on the Ministry of Interior (2014 amend. Jan 2018)
11. Law for Protection of Personal Data, (2002 amend. SG. 7/19 Jan 2018)
12. Provision № 8121з-1244 of 14 October 2013 for the surveillance of the state border of the Republic of Bulgaria, the specific security activity for participation in measures to achieve airport security in public areas and the perimeter of airports and the application of compensatory measures (2015);

Strategic documents:

13. Integrated Border Management Strategy of the Republic of Bulgaria (2006);
14. Strategy for the Development of Border Police after the Accession of Bulgaria to Schengen (2011-2013);
15. National Strategy on Migration, Asylum and Integration (2011-2020), adopted by a working group set up by Order of the Prime Minister of the Republic of Bulgaria No R-118/ 16.07.2010.

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FAKE NEWS AND PHENOMENA ACCOMPANYING CYBER IN/SECURITY

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Abstract: This publication examines fake news and the closely related phenomena of information security, namely cyber in/security. Phenomena such as *clickbait* (and the models on which it functions) and *malware* are considered, as well as their reversing interactions, known recently as "*phishing*." Signs by which these negative phenomena can be recognized are indicated, effective steps for proactive behaviour to neutralize them are likewise suggested.

Key words: fake news, disinformation, information security, cyber in/security, antivirus and antispyware software, clickbait, malware, phishing, models, proactive behaviour.

Fake news is one of the most topical themes of the present day. We rarely listen or watch a newscast that does not focus its "arrows" on this phenomenon, having been based on disinformation and propaganda for centuries, and which has peaked in 2017 [1] when it reaches the incredible growth of 365% over the previous year. – A fact that has its basis: 2016 was the year of the presidential race in America, a race that occurred under the sign of propaganda in a particularly large size and was unscrupulous by its nature and which was mainly applied by the current President Donald Trump. False news is associated most often, but not primarily with political propaganda; it is the basis of asymmetric threats and hybrid wars, terrorism, natural disasters, science, urban legends, advertising, finance, etc. It is hardly possible to list all the various discourses without omission.

Fake news usually accompanies information security[3] issues; to be more accurate – information *in*/security ones: clickbait, malware, phishing, social engineering, botnet, darknet. This publication addresses the first three of them; the others are subject to further research.

A clickbait is a special way of creating a title that allows distortion of the meaning of the text in order to draw reader's attention: make them click on the promising start of the news. Clickbait headlines hold back the essence of the information cause, stirring up curiosity. Such vagueness, incompleteness is used as a bait, which is the essence of this complex word. The data of the etymological dictionary reveal the semantics of the word. The Oxford Dictionary gives the following definition of this construct: "(on the Internet) content whose main purpose is to attract attention and encourage visitors to click on a link to a particular web page."[2] The English etymological online glossary dates it back to 2011 and defines it as "internet content meant primarily to lure a viewer to click on it" – derived from "click" and "bait". The etymology of "bait" is revealed in the same dictionary as "food put on a hook or trap to attract prey" (1300), derived back from the old Norwegian *beita* "food, bait" especially for fish, from

[3] Cybersecurity and Information Security are generally used as synonyms in security terminology though there is certain difference between the terms. Shortly, Information security is all about protecting the information, which generally focuses on the confidentiality, integrity, availability (CIA) of the information. While cybersecurity is about securing things that are vulnerable through ICT (Information and Communications Technologies). It also considers the matter where data is stored and technologies used to secure the data. Part of cybersecurity about the protection of information and communications technologies – i.e. hardware and software, is known as ICT security.

the another meaning of *beita* "cause to bite". The noun is related to the Old Norse word *beit* (pasture, pasturage) and the Old English *bat* (food). Figurative sense "means of enticement" is from c. 1400. [3]

This phenomenon arose from the fact that advertisers pay sites for the number of clicks, that is, transitions to the page where the banner is placed.

What are the models a clickbait is created on?

- Using an imperative mood, urging to immediately click on the banner and find out what the intriguing news is;
- The very news and its headline, in which, according to the "rules" of clickbait, there must necessarily be incompleteness, sometimes – on the verge of disinformation;
- The immediate closeness to other provocative news creates an atmosphere of a blitz match, where the most biting and catching wording wins;
- Usage of many epithets, hyperboles, idioms and demonstrative pronouns. The first two means attract reader's attention. The last two ones create a sense of trust between the reader and the site;
- Irrelevant and strange usage of too many exclamation marks, question -marks and three dots which aims at reader's affect and the final goal – their click.
- Third-person singular appeals (It concerns the Bulgarian and Russian languages, for example, but does not concern the English language, where there is no special form of "you" for expressing courtesy and where the forms of the second person singularia tantum and the second person pluralia tantum are the same). On sites where many people use clickbait, readers usually do not turn to "you" for expressing courtesy in the mentioned languages. An unconstrained, friendly "you" in such cases creates an atmosphere of a friendly conversation, as in the case of using demonstrative pronouns and idioms (noted above).
- Contradiction between an ordinary and extravagant, provocative title. Very often a clickbait header consists of two sentences. Usually the first of them describes an ordinary situation, and the second one hints at an unexpected turn of events and "fires" reader's curiosity and imagination.
- One of the "traps" of clickbait is a picture that contrasts with the title and thus allures the reader to click on it in order to understand "what is wrong".

Information security experts' attention has been attracted by fake news because it is the root of malware distribution as well – malicious software. Malware is used as a collective term for various types of software designed

to damage, disrupt, steal, destroy, or generally to perform negative and illegitimate actions within computer systems. Scott Nelson, SecureSet's vice president, says fake news is the newest division in social engineering (social engineering attacks are the practice of obtaining confidential information by applying manipulation techniques to legitimate users, with the most commonly used email and telephone) and hacking. "Today, over 90% of threats rely on social engineering methods rather than on system vulnerabilities. <...> Over 99% of malware codes rely on the user to open an infected attachment or click on a link of a crafty forged webpage. In 2016, there is a 150% increase in social phishing, 600% more are the attacks with cryptoviral viruses, and over 40% of malicious codes today are viruses "gaining" directly from the ransom paid by inattentive users. "[4].

Recently, some phenomena all too often are observed: they interweave craftily with the wiles of clickbait and malware. These phenomena are of major importance to the individual / corporate information security because they may become the reason a large amount of money to be stolen from their bank accounts Over the past two months, the author of this study has noticed an unusual number of breakthroughs in the information security of her personal email, as well as in her friends and colleagues' email (who shared their concerns about the matter), regarding their contacts with the relevant servicing banks of theirs. It is obviously about clients' identity theft and an attempt to drain data from their profiles, and what is much worse - money from their accounts. In such cases hackers rely on the notice, grabbing customer's attention while reporting about an expired account or expired bank account profile and requiring: "Confirm your identity", „Актуализирайте своя информационен персонал" (literary "Update your information staff" which does not make any sense in both languages, it cannot be adequately translated because of lack of coordination between vocabulary and grammar in the subject of the email written in Bulgarian; reading such a message the customers might understand that they have to update their personal details).

One of the bogus bank email has a subject written in broken English which says "Servive your bank" (it is well known that there is not such a word in English like "servive". It is written this way either to attract the readers' attention to a word which meaning is not familiar to them hoping their curiosity to prevail: as to whether it is a matter concerning words with similar spelling like "serve", "survive" or regarding something which is

imminent to get acquainted with…within a click) or it is just the case when the message is written by an ignorant person. Here is another example of a bank notification (Fibank)[4], saying "Dear Clients, some account information from your account is missing or incorrect. <...> Please update your information *immediately* so you can continue enjoying all the benefits of your account." Then a "Data Update" banner follows that takes the client to a link requiring a lot of personal data to be filled in – their full name, permanent address, ID card number, current phone number, even ... the bank account number (as if the bank itself doesn't have information of it). There is not just one thing or two that should make the client alert: words like "immediately", instantly, urgently, forthwith; the not well structured "body" of the email – the second paragraph in the present example begins without a capital letter and …obviously from the middle of the sentence („that we need to check account information occasionally to make sure that *your*[5] clients can use our services properly /the sentence ends without a dot/ Sincerely ... /the sentence is not completed/) After these lines an "Updating Data" banner follows. Finally, at the end of the email it is written: "Sincerely yours – TWO commas! They are followed by only the abbreviation of the bank but not by the Bank Director's or the authorized employee's name and their signature. We have already studied such a non-standard layout of a title and text featuring too many punctuation marks, inappropriate grammatical, syntactic, stylistic etc. lack of correspondence as one of the certain signs of fake news and other forgery which have to serve as prevention in order to be recognized and not to click on them. [5]

Such is the case with the subject of a mail (in English) sent by Netflix[6] saying: "Notice you statut account was change" (three mistakes in this English sentence); the content of the message (it even seems strange that it is written correctly after such illiterate subject): "Dear Customer, your account was recently logged into from an unrecognized browser or devi-

[4] The message in Bulgarian: „Уважаеми клиенти, Известна информация за профила Ви липсва или е неправилна. <…> Моля, актуализирайте информацията си незабавно, за да можете да продължите да се радвате на всички предимства на профила си. че от време на време трябва да проверяваме информацията за профила, за да сме сигурни, че вашите клиенти ще могат да използват нашите услуги правилно /изречението завършва без точка/ Искрено Актуализиране на данните Искрено ваш„ ПИБ"

[5] It is pretty strange why the bank comments its clients like *your* clients.

[6] Netflix is one of the world's leading subscription service for watching TV episodes and movies on your phone with over 117 million members in over 190 countries.

ce: Location: New Zealand, IP address: 2.47.255.255, Navigator: Chrome (Windows).” A banner in red follows after it which says “Update My Account”. And here the absent-minded, gullible or uninformed customer is to click on it (as it was supposed to in the above mentioned examples) and start entering the required personal data.

In cases as in preceding it is very important a person to rely on a modern and updated antivirus and antispyware software. If you are not sure it has helped, be alert in situations described in [5]. And if users still have doubts, before opening such files they must have proactive behavior: to contact their bank (or organization the file has been received by) and make an inquiry, to personally meet its representative at the bank/organisation office, and if advised, to follow the instructions given by the bank security officers. Such cooperation

- would help solve the problem;
- would provide additional information and knowledge about future behaviour in a similar situation;
- would provide timely clue to the information and cybersecurity department of the bank / organization for a probable breakthrough in the system;
- would facilitate more robust and efficient work of the cybersecurity staff of the respective bank / organization and their cooperation with the relevant departments of related companies to pool efforts to resolve such security breach issues (different banks have been subjected to such cyberattacks over the years as well as the National Revenue Agency in Bulgaria over the last years, even the computer systems in the country on the day of 2015 elections were subjected to cyberattacks, etc.).

The effect brought about by the implementation of the outlined steps would be very likely to yield good results from such cooperation, as in the case of the mail received by the bogus Fibank (not the genuine Fibank). The first steps to increase the bank cybersecurity apparently had already been made when two weeks after the commented mail of the bogus Fibank a new mail was received from it, but at the beginning, above the email subject, a bright red banner appeared, warning: “The letter you have opened contains links to a phishing site. We recommend that you do not open these links.” If there weren’t such a warning, the subject of that mail would put the customer’s attention off their guard just because the subject of the mail

says it is needed some actions in relation to: "REQUIRED ACTIONS - Cash Memo [# 1265-3599] /30.03.2018" to be taken.

In all these cases mentioned above, it is obviously the so-called „phishing" or in other words – an attempt to drain the customers' bank accounts and/or an attempted theft of users' personal data. The word "phishing" is of English origin and is created as conscious distortion of the word *fishing* ("the sport or job of catching fish", [2]), so we are dealing here with the common network fraud. Particularly those clever masters of "ice fishing" create addresses that at first cursory glance cannot be distinguished from the genuine ones. It is a type of Internet fraud, the purpose of which is to gain access to confidential customers' data – logins and passwords or simply to infect their computer with malicious code. Phishing attacks are usually done remotely. The universal tool for phishing attacks is email. The goal of such attacks is to reach as many people as possible, as this increases the amount of the stolen personal data. Thus the attack is achieved by mass sending emails that have to convince the addressee to do one of the following:

- to open a link;
- to enter their password on a non-genuine, bogus website (for example, a copy of Facebook);
- to open a document attached to the letter;
- to install software.

A good example of such creativity can be considered the well-known site *Yanclex.ru*, whose owner was deprived of the domain by the court (the bogus site had a very similar spelling to the spelling of the genuine Russian site *Yandex.ru*). In Bulgaria, one of the most recent examples of such a phishing attack is a fake message from the National Revenue Agency, claiming the addressees owe taxes, and they have to pay them if they do not want to be fined. For more information, the authors of the mail had helpfully attached a document, containing the new legislation governing those fines. However, the document turned out to be nothing else than a virus, and the message was sent for the sole purpose of opening the document and installing that virus on the addressee's computer.

Fake news and phenomena accompanying cyber *in*/security are a product of our time; they are like communicating vessels. From physics, it is well-known that communicating vessels is a name given to a set of containers containing a homogeneous fluid: when the liquid settles, it balances

out to the same level in all of the containers. This physical law has its conformity to the phenomena studied in the present research. The difference lies in the fact that the interaction between the communicating vessels complies with proven physical laws and is therefore predictable, and the interaction between fake news and the accompanying phenomena related to cyber *in/*security, albeit being invariable, is unbalanced and unpredictable. Undisputed, however, is the relationship between fake news and cyber *in/*security: provided that there are phenomena such as clickbait, malware, phishing and similar to them, they are all a sure sign that it is a matter of fake news as well.

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INNOVATIVE APPROACHES TO NATIONAL SECURITY TRAINING IN THE THIRD CYCLE OF THE HIGHER EDUCATION IN BULGARIA

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Abstract: The report aims to present innovative approaches to doctoral training. A methodology for implementing a strategy maps and a balanced scorecard is presented to measure the satisfaction of PhD students. The aim is to reveal the use of new management approaches in the education system.

Key words: PhD students, education, innovation, doctoral training, national security, Bulgaria.

Changes occurring in the modern world in the aspects of globalization, continuous improvement of technology and free exchange of information, make education, and in particular, the higher degree of doctoral education, one of the future priorities of the state policy for numerous countries across Europe and around the world. Investment in education is, on the one hand, a higher incomes prospect and, on the other, gained self-confidence thanks to improved qualification. The effect on the state is also positive. It involves increasing labor productivity in the long run as well as higher budget revenues.

The dynamics of the processes of globalization and the rapid development of information technologies have the most significant impact onthe activities of higher education institutions. When it comes to globalization, in the context of its impact, we mean several important processes: the internationalization of the economy as a major factor, the changes and minimalization of the national state, the betterment of the activity and the stimulation of the development and implementation of information and communication technologies.

Higher education is a keystone priority to every state policy and therefore attracts the focus of social attention. The global public is aware that without modernization and adaptation of education and research, sustainable development in the different sectors of human activity would be difficult to achieve. Education is a cricial factor in society‘s development and progress, not just because the human being is in a continuous process of lifelong learning, but also because the world is constituted and functions according to this major principle. Education ensures qualified and trained staff who are competent and competitive on the labour market. A particular importance represents the relationship education - national security, as a type of security, being also a state’s top priority, which necessitates well -trained specialists with high-quality security education, as well as continuous improvement of qualifications and skills of the staff who evolve in this conjointly scientific and practical realm.

For this reason, we can convincingly say that universities are the educational and research institutions, representing centres for the acquisition of practical knowledge based on accredited qualification. But the raison d’être of their existence is not the idea of either teaching the respondent’s knowledge to the recipient, nor is it merely the creation of opportunities for carrying out scientific research and the accumulation of new knowledge.

On the contrary, modern universities, which manage to adapt to the new dynamic and continuously changing environment, successfully combine both functions and work to develop the novelties in their specific sphere of research. Using innovative approaches, in turn, is a guarantor for the success and sustainable development not only of the institution, being intrinsic proof of successfully realized vision and mission, but also a guarantor of sustainable development and state and nation's progress in the long run. In this line of thought, it is necessary to emphasize the essential benefit that universities bring to society through the qualitative education of PhD students - future specialists; however, in the competitive conditions of the modern Bulgarian and international higher education market, this turns to be insufficient. Due to this significant reason, the changes that have occurred in recent years in the higher education system have also influenced universities and, in particular, have been the basis for the on-going change at the overall organizational level. The terms imposed by the globalization processes have become the driving force and brought the wind of change onto traditional forms of learning. The managers of Bulgarian universities realized the need for change, the necessity to implement new management decisions to ensure the achievement of sustainable development and progress in the schools of higher education. In addition, the implementation of strategic maps and a balanced system of performance indicators are used as a tool for implementing the new strategies of the universities [7, p. 9]. Concurrently, as already mentioned, in order for a university to be competitive on the national and international educational market, innovations need to be implemented not only at the level of training. To know in which direction the university organization moves, it must first answer the questions of where it is now and where it wants to be in the future. The answer to these questions lies in the strategic map and the balanced system of performance indicators(BSPI). BSPI brings the mission into action and works at all levels to raise organizational values.

Globally, there exist many different methods of organizations' research, but the Balanced system of performance indicators is among one of the best and preferred models for strategic positioning measurement and is used to analyse all aspects of the organization. This is exactly what makes it such an effective and preferred measurement tool. The method created by Kaplan and Norton is applicable in any organization. SM and BSPI represent the body of a modern instrument working as a measure-

ment system, strategic management system and communication tool. The successful manager skilfully implements this management approach to put into practice what each organization wants to achieve as a result.

It is important to note that the implementation of a strategic map in the management of academic institutions and the use of the Balanced System of performance indicators is far from new to leading foreign universities. Among the universities that are already successfully using this management tool are California University of San Diego, University of Berkeley, USA, Ottawa University in Canada, Edinburgh University and Lako Scotland, Tama University in Thailand, Osaka University of Japan, State University of Economics and Service in Vladivostok-Russia. One of the first universities in Bulgaria to use this efficient managerial approach is the University of Library Science and Information Technology.

The Balanced system of performance indicators for the needs of doctoral training in UNIBIT is established in particular to measure the effectiveness of teaching in the third cycle of higher education. Interestingly, BSPI is not a system that is strictly canonical as a structure and does not necessarily have to be implemented in its classical form. On the contrary, its flexibility and adaptability allow it to be transformed in a way that responds to the needs, goals, tasks and specific activity of the organization to which it is to be created and applied. For example, BSPI in UNIBIT was adapted to measure the satisfaction and efficiency of PhD students trained in various specialties, including national security.

The methodology of the study includes the research of one of the main perspectives of the system of performance indicators - "customer relations", in particular the satisfaction of the PhD students (users). The implementation of BSPI in UNIBIT allows us to measure the satisfaction of PhD students. The system demonstrates the strengths and weaknesses of the processes involved in the training of future doctors, and, at the same time, allows the problems to be solved quickly and effortlessly. [5, p. 197] Here are the following scales for Satisfaction Diagnosis:

1. "Satisfaction with the content of the tasks performed by PhD students". The scale covers the aspects describing the characteristics of the content of the work and includes the following subclasses:
   - Task Challenge". Characterizes the requirements of the tasks for the development of the intellectual qualities and professional abilities of the individuals which are important for their successful ac-

complishment. This subclass includes items such as "Making New Tasks," "Tasks That Demand Intentiveness," "Tasks That Require New Things to Learn," "Tasks That Hold My Interest For A Long Time," etc.

- "Self-expression". Shows the opportunities that the tasks provide in terms of using the personal professional knowledge and skills of individuals. Include items such as "Performing a variety of tasks," "Tasks in which I can show my abilities," Tasks in which I can use my knowledge, "Tasks which successful performance brings me pride", "Tasks whose successful execution creates a sense of confidence in me "and others.
- "Autonomy". Characterizes the scope of freedom in making decisions about the users' own behaviour in the work process. Include items such as "Perform tasks that I personally distribute the work of the day", "Tasks in which I determine the pace of my work", "Tasks in which I (myself) choose the most appropriate way of execution "," Tasks in which to test my own ideas "and others.

2. "Satisfaction with results when performing tasks". This scale contains statements that express the experience of success in the work process. Includes items such as "I get work results that are acceptable to the department", "I'm working on a quality level that meets the standards in the department," "I feel I'm doing very well with my assignments," etc.
3. "Satisfaction with Working with the Scientific Tutor". The scale reflects the assessment aspects of the two traditionally defined leadership styles and contains two subscales:
   - "Task orientation". Measures the assessments of the actions of the supervisor in relation to the achievement of the expected results in carrying out the assigned tasks. It includes items such as „He/she explains well what results are expected of me", "He/she explains clearly whether he/she approves of my ideas for work", "He/She gives good instructions on how to perform the tasks given", "He/she informs in time about upcoming work changes", "He/she has sufficient professional competence", and others.
   - "Orientation towards human relations". Characterizes the assessments of the scientist's actions aimed at maintaining a favourable relationship with the supervised PhD. It includes items such as „He/she listens carefully when I say something important to him/her,"

"He/she reacts as soon as I make a mistake", "He/she is sufficiently consistent with us", "He/she helps me to do my job properly", "He/she traces to solve real problems in the general work, "" He/she can see the obstacles that I encounter in my work, as I see them, "" He/she rewards me well for my work," and so on.

4. "Satisfaction with colleagues with whom the PhD student works daily". This scale includes statements that present the specific assessments of colleagues' behaviour and consists of three subscales:
   - "Formal Relationships". Characterizes the assessments of colleagues' actions in collaborative work on the required joint results. It includes items such as "They act wisely in cases of general work failures," "They do what they can immediately if I ask them," "They give me useful tips when I need them," "They follow exactly the professional standards of tasks' implementation " and others.
   - "Support from colleagues". Characterizes the concrete judgments of colleagues' actions to obtain emotional and resource support at work. It includes items like "They are interested in my personal problems and understand them", "They are really sympathetic when I have problems," "They help me in the process of work," etc.
   - "Trust by colleagues". This scale shows the ratings of trustworthiness between colleagues. It includes items like "They hear patiently my opinions," "They accept my suggestions with confidence," "They are patient when I state a different opinion from theirs," etc.
5. "Satisfaction with the PhD thesis as a whole". The scale characterizes the extent to which the surveyed are satisfied with every aspect of their work in general – e.g. the tasks, the results, the supervisor and the colleagues. It includes items such as - "I like", "It is nice", "It suits me", I would recommend it to other people "," It is right for me "," Satisfying "and the like.

The follow-up analyses of the results obtained determine the strengths and weaknesses in the training process of the doctoral students in national security as well as the other doctoral programs. The results provide a basis for modernizing and updating the learning algorithm, stimulating more intensive use of information and communication technology capabilities to meet the needs of modern information and university environment. Innovative approaches to doctoral training are possible after changing first and foremost the senior management's mission and vision for the future

development of Bulgarian universities and their place as competitors of the world higher education institutions, because the process of Bulgaria's comprehensive European integration is multifaceted and long. An extremely important role in this process is assigned to the adaptation of the Bulgarian educational system to the well-established international standards widely spread across the European Union. At the same time, the modern age characterized by comprehensive globalization brings new challenges and difficulties to all spheres of public life. The field of education and training makes no exception. Its main social function is to prepare the entire state human workforce to be able to cope successfully with the growing social risks and challenges of the modern era.

It is particularly urgent to continue with the change in the field of higher education which began with the signing of the Joint Declaration on European Space in Bologna (Bologna Declaration).

Legislative initiatives under the Bologna process should be seen as a holistic process of harmonization and adaptation of our national legislation to the general European Union legal frame. One of the main innovations is the adoption and validation of the Doctoral Degree as a third cycle of higher education aimed at providing the training of staff with a specific fundamental proficiency in a given field. In order to achieve this goal, doctoral training needs to be continuously adapted to the new conditions and enrich the process of doctoral learning by boldly introducing learning innovations.

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AWARD OF PUBLIC PROCUREMENTS THROUGH COLLECTION OF BIDS BY ANNOUNCEMENT AT NATIONAL MILITARY UNIVERSITY „VASIL LEVSKI“

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Abstract: The collection of tenders is a quick and eased national way for award of public procurements at a low cost, implemented from public and sector contracting authorities. The head of the National military university „Vasil Levski“ appears a public contracting authority by virtue of the Public procurement act. Upon collection of tenders by announcement apply simple rules and short terms, as the actions of the contracting authority are not subject of appeal

Key words:public procurements, announcement, university, defence, security

The rector of the National military university appears contracting authority public procurements. In order to reach this conclusion we examine the contracting authorities, specified in art. 5, para 2, i. 14 of the Public procurement act – the representatives of the public organizations.

„Public organization", according to §2, i. 43 of the Public procurement act is a legal entity, for which are met the following conditions:

a) it is established with the specific purpose to satisfy needs of common interest, which do not have industrial or commercial nature;

b) it is financed with more than 50 percent from state, territorial or local authorities or from other public organizations, or it is an object of management control on behalf of these bodies; or there is a managing or supervisory body, more of the half of the members of which are appointed by a public contracting authority under art. 5, para 2, i. 1 - 14.

The needs of common interest are of industrial or commercial nature, when the person acts in normal market conditions, he makes efforts to realize profit as independently incurs the losses from implementation of his activity.

According to that definition, the schools for higher education fall within the public organizations [3]. Art.6, para 1 of the Higher education act envisages that the school for higher education is a legal entity with the following subject of activity:

1. training of specialists, able to develop and implement scientific knowledge in the different fields of the human activity;
2. raising the qualification of specialists;
3. development of the science, culture and innovation activity.

The National military university „Vasil Levski" was established by decision of the National assembly of Republic of Bulgaria for transformation of the Higher all-army school „Vasil Levski", the Higher military school for artillery and air defence „Panayot Volov" and the Higher air-force school „Georgi Benkovski" in National military university „Vasil Levski". In i. 3 of the decision it is written that the subject of activity of the National military university „Vasil Levski" comprises:

a) training of specialists for acquiring of higher education on specialities of professional field „Military affairs", as well as on specialities in the field of the natural, public and technical sciences;
b) training for raising the qualification;
c) performance of scientific and applied studies;

d) activities related to the defence of the country, which are assigned on it by the minister of defence.

Upon analysis of the provision of the Higher education act and the provision of the decision on establishment of the university we can reach the conclusion that the National military university, as a higher school meets both criteria in order to be determined as an organization under the public law.[3]

One of the ways for award of public procurements at low cost is collection of bids by announcement. This method is only applicable in cases of civil procurements, but not in case of procurements in the fields of defence and security. To reach that conclusion we consider the fact that upon collection of bids by announcement any interested party may submit a bid. Per argumentum of the stronger grounds, since it is not admissible under the harder way of award to take participation all interested parties, and the legislator has explicitly granted the contracting authority with the right to conduct preliminary selection, it ought the same way to apply also for the easier order of award. Upon the procedures according to national limits (the limits under art. 20, para 2) and procurements at low cost (the limits under art. 20, para 3) the legislator has not envisaged a stage of preliminary selection. This leads to the conclusion that these ways for award are not acceptable in cases of public procurements in the fields of defence and security, all the more that the law provides opportunity for direct award. [3]

This regime is analogical to the award of public procurements through a public invitation under chapter eighth „a" of the former PPA and it arises from art. 3, para 2 of the Ordinance for small public procurements, according to which the contracting authority was obliged to collect three bids in order to award the procurement. Typical for that way of award is the quickness and the impossibility the acts and actions of the contracting authority under that way of award to be challenged.

The collection of bids by announcement is applicable in case of value of the public procurement within the frameworks:

- From BGN 50 000 to BGN 270 000 – in cases of construction;
- From BGN 30 000 to BGN 70 000 – in cases of deliveries and services.

This order of award is not applicable upon competition for a project (because in this case there have to be submitted not bids but projects), as well as upon the award of services under Appendix 2, insofar as in such cases the opportunity for free award is within the limits of BGN 70 000. `[1]

Upon collection of bids by announcement, the contracting authority operates under the conditions of discretion. Despite the low cost of the procurement, it has the power, if making a judgment that it is expedient instead of collecting bids by announcement to conduct an open or limited procedure or a public contest [4].

For the period after entry into force of the Public procurement act, the National military university has announced ten procurements for public procurements, collected by collection of bids by announcement, from which construction – 3 procurements, deliveries – 5 procurements and services – 2 procurements as from the procurements for delivery two have been suspended for made mistakes upon initiation of the award process.

The procurement subject can be seen in Table No1.

Table 1

Identification number)	Procurement object	Procurement subject
9053334	Construction	Construction of solar heat installation of block No 22.
9053695	Delivery	Delivery of consumables. (**suspended**)
9053883	Service	Development of technical documentation– investment projects and energy research, according to assignment for design, detailed estimate of works and materials and subsequent realization of author's supervision of the construction-assembly works for site: overhaul of building No 6.
9053960	Delivery	Delivery of construction materials.
9054057	Delivery	Delivery of consumables. (**suspended**)
9054156	Delivery	Delivery of consumables.
9054899	Construction	Current repair works of the roof of the Artillery complex, building No 39 and the pertaining axle bearings.
9057093	Delivery	Delivery of computers and peripheral devices.
9057148	Construction	Current repair works of „Library complex".
9058663	Service	Conclusion of insurance of road vehicles „Third party liability", „Incident of the places in a road vehicle", „Auto casco" of the vehicles, the buildings and „Accident" insurance

Upon the award of public procurements through collection of bids by announcement, because of the fact that the sophisticated rules of the proce-

dures do not apply nor is it required a European single procurement document for public procurements, the National military university implements the award process quickly and in an economic way.

As regards the discussible issue concerning the applicability of the general rules on award of public procurements by procedure, the National military university has stated the opinion that upon finding incompleteness or inconsistency with the selection criteria and the requirements for personal situation of the participants, they have to be given opportunity to eliminate the ascertained incompleteness or inconsistency. This conclusion can be made upon analysis of the protocols of the works of the commissions for consideration and assessment of the submitted bids. In analogical way is settled the issue with the applicability of art. 72 of the Public procurement act, which requires to be required justification from a participant, whose bid, related to a price or costs is with more than 20 percent more favorable from the average value of the bids of the other participants. The university supports the opinion that upon award of a public procurement through collection of bids by announcement, that particular provision of the act has to apply. This conclusion is reached after analysis of the published protocols in the buyer's profile.

Major weak point upon the award of the procurements, made this way, is the exaggerated administrative burden, which the contracting authority imposes on the participants, requiring a large number of declarations, each of which has to be submitted as an independent document. For example, in the case of the procurement with subject „Conclusion of insurance of a road vehicle „Third party liability", „Incident of the places in a road vehicle", „Auto casco" of the vehicles, the buildings and „Accident" insurance, the contracting authority requires 15 documents, whereas according to the heavier way on award through an open procedure it would require only three– European single procurement document, technical and price bid. The positive change, which could be made in relation to that is (to be made) incorporation of the declarations, required by the contracting authority, in one common declaration, unifying the whole needed information.

There have not been made violations, related to the methodology for assessment and its implementation by the commission, because the criterion for award in the cases of all public procurements is „the lowest price".

The replacement of members of the commission is made by a special order from the rector of the university.

In conclusion it has to be noted that the National military university „Vasil Levski“ as contracting authority of public procurements learns from some of its mistakes and eliminates some of its weak points, but still continues to multiple others.

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GROWING TERRORISM CHALLENGE FOR THE SPORT EVENTS IN EUROPEAN UNION

Summary: Nowadays the importance of international police cooperation at sports events is visible. The necessity for police cooperation has increased with social and economic change of the world**.** The consequences of an terrorist attack at a sports event could result in mass casualties and destruction of buildings and infrastructure. Targeting sports can negatively affect future attendance at sports events in EU, subsequently decreasing ticket sales and the demand for travel and tourism.

Key words: sports events, terrorism, police cooperation, risk assessment

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1. Introduction

Security and safety have been one of the most basic needs of the human-beings since ancient times. Generally speaking EU Member States have the primary responsibility to ensure security on the ground for the sport events. Recently the threat of terrorism has been given unprecedented focus before and during many major sports events. Historically speaking the threat of terrorism at a sports events such as the Olympic games and Football World Cup is nothing new. The olympics and the World Cup have occasionaly been targets for terrorists because of their prominence on the international stage. The 1972 massacre of Israeli athletes and the bombing at the Centennial Olympic Park in 1996 stand as tragic, historic examples of how terrorism has been focused on the sport.

At a international sport events with many milions an audience, the safety and security of athletes, fans, visiting leaders, officials, tourists, organazing committees and local communities are a highly priority issue. At a global sport events, host governments carry the ultimate responsibility for the safety and security of all presents. Through concrete actions, sport has a considerable potential as a tool to promote cooperation, education, health, inter-cultural dialogue, development and peace in the EU. Sport is no stranger to the threat from terrorism. Sport involves all citizens regardless of gender, race, age, disability, religion and belief, sexual orientation and social or economic background.

2. The threat of terrorism at sports events

The sports events have been historically perceived as primed for terrorists to send a worldwide message by executing an attack during the broadcast, potentially reaching tens of millions of viewers simultaneously across the globe. In my opinion one of the central features of the impact of terrorism, is to strike when the society as target thinks that it is secure.

Regarding the link between sports and terrorism, a watershed moment in history took place during the Munich Olympic Games in 1972. Some have even attributed this attack as the defining moment in the growth of modern terrorism (Toohey, 2008, p. 434.) The threat against sporting events from terrorist groups is set to remain a long-term concern. The 12th edition of Inspire, the al-Qaeda propaganda publication, released in March

2014, called for bomb attacks against sporting events including the League Cup in France and English Premier Football League. Al-Qaeda in the Arabian Peninsula (AQAP), which produces the publication, also provided advice on how to carry out attacks, suggesting the best time to target a UK football match is when the crowds are leaving the stadium (Growing Terrorism Challenge for Sports Events, 2016, p. 2)

While it is conceivable that a single active shooter or "lone wolf" attacker could gain access to a stadium, the escalation in physical security and personnel will make this more difficult. Attention also should be turn to more sophisticated methods. So called "high-tech" issues could pose a risk to the sport event. It is anticipated that high-tech threats surrounding cyber-terrorism will continue to be a key concern for sporting events.

Terrorist attacks in the EU are a real and serious danger. The terrorist incidents in France and Belgium indicate that terrorists continue to target crowded places, because they usually afford the potential for mass fatalities and casualties. For terrorists, impact, symbolism, and dramatic effect are all essential ingredients to successful attack. (Toohey, 2008, p. 432.)

Sport related terrorism is a Europe-wide phenomenon and there is a need for a sophisticated European strategy comprising an extensive array of deliverable measures designed to reduce the associated risks. Sports events safety and security matters and the associated public order risks are complex. It is an area in which the dynamic is continually evolving and which is subject to wide national and local variations in severity and character across EU. The European strategy and preventive measures need to be flexible and nonprescriptive in order to be adaptable to national circumstances. This complexity is compounded by wide variations in the relevant constitutional, legal, policing and safety and security arrangements in each EU Member State.

It is also important to be noted that in recent years, in EU high priority has been given to international governmental and police cooperation in respect of maximising safety and security in connection with sports events with an international dimension.

3. International police cooperation in the context of sports events

The international police cooperation at sports events has accelerated in recent years. In a European Union, a police officer in one Member

State should have the same reflex to share relevant information with colleagues over the border, as he would do with fellow officers within his country. Police cooperation in the context of sports events must be guided by the principles of legality and proportionality. Whilst the competent authority in the organising EU Member States responsible for providing a safe and secure event, authorities in participating, neighbouring and transit states have a responsibility to assist where appropriate.

National Football Information Points (NFIP) in each EU Member State is established according to the 2002/348/JHA: Council Decision of 25 April 2002 concerning security in connection with football matches with an international dimension to act as the direct, central contact point for exchanging relevant information and for facilitating international police cooperation in connection with football matches with an international dimension. NFIP should be the sole points of contact for sharing police information in respect of football matches or other sports events with an international dimension and shall be responsible for coordinating and facilitating police information exchange in connection with football matches with an international dimension. Other agencies or networks may be involved in the information-sharing process if permitted by national or international regulations or determined by the situation.

Setting up a specific tournament-related police information and coordination centre (PICC) is highly recommended. This should be done within or in close cooperation with the NFIPs of the host countries. Depending on the structure of the Criminal Investigation Division of the country concerned, it should be decided whether a separate centre should also be set up for criminal investigation purposes. (Council Resolution concerning recommendations for hosting major football and other sports events, in particular tournaments with more than one organising country, p. 11).

Also it is important to maintain a separate police information and coordination centre for counter terrorist-related international police cooperation and information exchange. The presence of Liaison Officers from participating and neighbouring countries at relevant police information and coordination centres has proven extremely useful. The system of "Team Security Liaison Officers" (TSLOs) has proven extremely useful and should be applied at major sport events hosted by more than one organising country. TSLOs are host country police officers who have to remain with a participating team throughout their involvement in the event. Their task is to act as a link between the participating team and the police.

4. Planning before the sport event

For multinational sport events, it is crucial to begin the joint safety and security preparations in good time. From my perspective, the fundamental question after specific incident will always be whether or not reasonable steps were taken to protect against an incident in light of the availability of security measures, the standards for security, and the potential threat of terrorism.

Regardless of the sport event, higher security costs, logistical issues and crowd control, particularly measures to manage congestion, will become key factors. Core factors that need consideration during the planning process are the nature of the event, the environment (type of venue, climatic conditions, route layout), demographics of the crowd and the overall mood of the occasion. Difficulties also occur because of the environmental factors, particularly the terrain around the venue, and they will have an impact on planning. It is advisable to be created integrated command teams at sports events involving the competent authorities, police forces, emergency services, disaster management authorities and the organisation committee.

At national level, close cooperation between the organisers, law enforcement authorities and private security companies involved in securing the venues is absolutely vital. The individual scope of responsibilities and duties, and of interfaces, also has to be clearly defined in advance. Another important point is to thoroughly inform the public in the host countries and the other countries from which a high number of visitors can be expected well in advance about all relevant information regarding the sport event.

Terrorism is a crime. Many of the security precautions typically used to deter criminals are also effective and could be used against terrorists. Early in the major special event planning process, law enforcement needs to conduct a comprehensive risk assessment regarding the special event in order to plan for possible situations.

A key part of responding to a terrorist incident, bomb attack, or any emergency during a sport event is to have a well-designed emergency evacuation plan. The purpose of the evacuation plan is to move spectators and visitors safely and efficiently out of the facility and away from danger or potential injury (Connors, 2007, p. 59). In the event that a terrorist attack occurs, it is crucial to shape the social perception of the attack in order to avoid panic.

An important element of sport security is planning the evacuation of the venue. This process begins with the understanding that total evacuation is a last resort and may not be the correct response compared to shelter-in -place or partial evacuation. In fact, total evacuation can pose additional because a large number of people will be exposed in an unscreened area outside the venue. Evacuation planning includes developing procedures and metrics for determining whether an evacuation is required, and preparing fans with information regarding evacuation procedures before the start of sport event.

5. Risk assessment for each type of sport event

The risk to sporting events is now more significant than in previous decades. As such, securing sports events, particularly games such as the Olympics, the European Championships, has become more challenging and a long-term issue. Generally speaking sport security best practices put appropriate police staff in place with a clear organization and command chain to respond effectively to the risks identified.

Best practices for sport event security begin with a thorough risk assessment for each type of event and situation. Assessment of risk posed by stadiums has some unique characteristics. Stadiums may host extremely high profile events which raising the value of an attack in the minds of terrorists. They may include access paths that are very difficult to control, crowds may congregate or queues may build up at gate entrances.

According to the literature overall risk is a product of three key factors: threats, vulnerability, and consequences.(Command, Control and Interoperability Center for Advanced Data Analysis, 2013, p.17) Threats comprise all possible forms and weapons of attack. Threats to the venue and nearby facilities like rail lines or airports, can all be considered. It would also be very useful to obtain relative probability estimates for each kind of threat. Vulnerability includes all possible attack paths and scenarios. The vulnerability analysis includes a review of all the operational security systems. Consequences are the potential losses of life, injuries, damages, environmental effects, and psychological damage. The product of these three factors weighted by the probability of each kind of threat, when such estimates are available, gives an overall assessment of risk to the venue. A number of tools are available to assist with developing the risk assessment.

It is important to be noted that the venue profile is one important component of the risk assessment. The profile includes some basic information about location, capacity, a description of the typical events that take place in the venue, and an analysis of vehicle and pedestrian around the venue in connection with the events being hosted. The venue profile includes detailed descriptions of the critical assets associated with the venue as a command centers, communication centers, infrastructure and equipment, medical and fire stations, access control systems and physical security measures

Risk assessment is not a one-time process with static results. The assessment of threats, vulnerability, and consequences can change based on new intelligence (changes in terrorists' weapons, new attack scenarios and new target groups) and changes in any situation around or within the venue. Threats are constantly evolving, and there is a tendency to "fight the last war." (Command, Control and Interoperability Center for Advanced Data Analysis, 2013, p.17) The terrorism threat assessment could either be incorporated into the general security assessment or exist as a separate evaluation.

To briefly summarize what has been said so far the combination of the growing threat from IS, the media attention garnered by the sports events and the presence of a large, condensed crowd of people makes sport a prominent terrorism target. It is recommended that potential competing countries take appropriate legal measures at national level in order to prevent high-risk supporters or terrorists from travelling to the event.

Conclusion

In an era where terrorism and other serious crime operate across borders, EU Member States have a responsibility towards their citizens to deliver an area of internal security where individuals are protected, in full compliance with EU fundamental rights. All counter-terrorist actions in EU, regardless of their scope, undertaken to minimise terrorist threat at mass sports events should be carried out in accordance with basic rules legality, proportionality and human rights. The terrorism threat assessment should be viewed as a useful tool for strategic, operational and tactical planning, coordination and counterterrorist security arrangements prior to, during and after the sport event. In order to ensure maximum effectiveness it is also important that the key police personnel (spotters, football

intelligence officers and NFIP personnel etc.) should receive training to a common EU standard in the area of sport security. A number of incidents have been prevented at high-profile sporting events in recent years due to successful counter-terrorism operations.

We must also not forget that administrators of venues or event organizers hire private security companies whose employees should also be obliged to report to competent police services about abandoned bags, suspicious parcels, packages or substances. Stewards temporarily hired for auxiliary support at the event can also play a crucial role in counter-terrorism protection at the event. In order to be as well prepared as possible for such risks, law enforcement authorities and other authorities responsible for sport security, need to exchange relevant information in an efficient way and to design preventive measures in a coordinated manner.

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PROBLEMS OF CIVILIAN CONTROL OVER THE SECURITY SECTOR IN THE CONTEXT OF EUROPEAN POLICY

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Summary: The analysis focuses on the state and the contemporary problems in the implementation of the parliamentary and civilian control over the security systems in the Republic of Bulgaria.

Keywords: Security, European Union, Politics, Civil Control

The Republic of Bulgaria, as a member of NATO and the EU, is actively involved in the development of policies in the field of security. These policies aim at protecting citizens, society and the state from internal and external threats, as well as striving to preserve the territorial integrity and sovereignty of our country. These policies also aim to make a significant contribution to the democratic efforts of democratic countries to create a climate for regional and global security through models and policies for civilian control over the security sector. Control is an important factor in the process of democratizing society. It contributes to the practical realization of the task of harmoniously joining the scientific level, the government with the raising of the level of informed participation of the population in this government. Among the main priorities of the Bulgarian state in the conduct of the policy in the security sector are the maintenance of adequate military capabilities for the strategic environment, the provision of economic growth and the effective functioning of state bodies and civil society. Formation of an information society, preservation and development of the scientific potential and preservation of the ecological balance in the country. Public control by public authorities or organizations, public amateur structures and other forms of democracy, including public opinion and the mass media. The specificity of public control puts it in a special place in the system of control over the administration. The main task is to assist in the positive management process - to create an environment that does not prevent or prevent the occurrence of negative phenomena and the reasons for them. Public control fully serves the two parties in the process of functioning of the administration - the governing bodies and the objects of management - the citizens and the public. The significance of public control over government is expressed above all in its informational and preventative role and in the speed of its responses. Significance for society is mainly expressed in its ability to capture the inconsistencies of government actions and acts with the needs and interests of citizens and society and to express these needs and interests in the fastest and not always formal way. Public control is an important source of information with a particular value for management. The controlling body can not operate if it does not have the relevant information about the control facility. The control exercised by trade unions, political parties, creative alliances, formal and informal structures of public amateurism is public control because it expresses the controlling influence of different groups of society on the

activity of the administration. Public organizations in all their diversity are subjects of public control. The extent, scope and form of public control depend on the nature of the various public organizations and formations. A particularly active form of public control has recently been the critical publications and materials promulgated through the mass media - print, radio, television and others. The media control claims to be the "fourth power" in the management of society. The objectives and priorities of the security policy are pursued on the road to achieving optimal military capabilities, active participation in international cooperation and integration in Euro-Atlantic and European structures. The role of control and as a tool of the state to provide a well-functioning administration and as a mechanism for the citizens to demonstrate their needs, demands and assessments of the suitability and efficiency of the state administrative apparatus determines the legitimate enhancement of the interest in the theoretical aspects and practical experience in control. The national security system shows that the positive results achieved relate to external security, to the security of the state, which is unquestionably extremely important. In terms of internal security, the situation seems a little different. Disturbing is the lack of coordination and interdependence between the police, the court and the prosecution in the fight against organized crime and not only. We are still far from implementing the idea of fighting corruption. A number of important national security issues are not regulated by law, or if there is a law there are no additions or amendments made to it in order to meet today's reality. Take the example of the Specially Sensitive Act for the Special Investigative Aids Act and recall the "Gnom" case. We can not fail to mention the fact that there is some delay in reforming the Armed Forces, the Special Services and the judiciary, which adversely affects the security sector. One of the outstanding issues in the national security system is that there is still no unified state policy on national security issues. In this connection, questions can be highlighted on the management and governance of the security sector, on the authority of the legislature, the executive and the judiciary, the president of the republic in the security sector, including the leadership of the special services, the democratic and the civilian control in the field of national security. Civilian security control has been gaining momentum in recent years. The original purpose of controlling the army and emerging security structures was to be limit the influence of the monarch on the power structures, and above all the army. Consequently,

especially after World War II, civil and parliamentary control over security policy became an integral part of the criteria for the democratic system. In the democratic political system, the problem of the relationship between society and its armed institutions is that the security systems - the army, police, intelligence and counter-intelligence services - are given the opportunity to manage and use different types of means and methods to protect the internal and external interests of society. On the other hand, this specific monopoly of security systems creates a potential opportunity for them to dominate over other state institutions. This dominance is incompatible with the idea of liberal democracy. In defining the problem of the deformation of a democratic society, it must be further stressed that the potential for security systems to go beyond democratic state governance does not always have to be linked only to the pursuit of power. Often, for example, military intervention is motivated by supreme ideals - to save the nation, to defend the constitutional order, to prevent public chaos. The problem arises when security forces themselves, outside the democratic process, start assigning political missions and determining how to implement them. The formulation and implementation of the new principles of functioning and management of security systems and civil control over the past years is a complex and controversial process. For some security systems, successes are unconditional and visible. For example, in the military security system since the mid-1990s, there has been more or less successful leadership and armed forces management. Civilian control of the armed forces in all its forms is at a satisfactory level, in line with modern democratic standards, collisions between civilians and military over who runs the armed forces no longer have this sharpness. The principle of EU policies clearly defines the strategic objectives for the implementation of the security policy. The basis of this logic and way of thinking is the motto "Think globally and act locally". In other words, this means that the cause of threats can be created "at the other end of the world" and at the same time have a direct negative impact on EU countries. For its part, the EU is taking concrete steps to strengthen security and defense cooperation by 2016, the European Council endorsing a security and defense plan. The implementation plan sets out the prospects for the development of the European Security and Defense Policy. Based on the EU Global Strategy, the implementation plan focuses on three strategic priorities:

- responding to external conflicts and crises
- Capacity building of partners
- protecting the EU and its citizens

Citizen control over the administration is an indispensable element of the democratic state. It is an important effective form of their participation in the state administration, and in particular in the activity of the state administrative bodies. This control is an essential factor for the protection of citizens' rights. The arrangements and procedures envisaged in the control of the citizens over the administration are an extremely important guarantee for the protection of the legitimate interests of the persons and their organizations and for the protection of their rights in the sphere of administrative activity of the state. Through the funds provided for by law control over the administration, the individual citizen is protected by the dominant authority of the state administration, which could lead to arbitrary, unlawful and incorrect actions affecting the legitimate interests and the rights of the citizen. Citizens' control plays an important positive role in defending the interests and well-being of citizens. But it also has its beneficial impact on the administration. Everything that is characteristic of the functions of public control can also be applied to the control of the citizens who are part of society and its separate formations and structures. The right of citizens to control the administration is an extremely important subjective right and as such is enshrined in the constitution and the laws of the country. The right of citizens to control the administration is expressed through citizens' right of complaints against improper and unlawful actions of the administration. This right also includes the right of citizens to apply and make suggestions and signals, as well as the right to be compensated for damages caused by unlawful actions of the state. The exercise of control of the citizens on the administration takes into account the special conditions and procedures provided in separate legal acts as a necessary guarantee for the lawful, correct, efficient and qualitative performance of the control activity. It is carried out through the institutions of the administrative control, the judicial control and the control exercised by the special jurisdictions of the administration. The Adjudicial Procedural Code, The Law on Administrative Offenses and Penalties and a number of special laws regulate the right of citizens to challenge acts and actions of the administration. Any person whose legal rights are violated by acts or acts of the administration has the right to appeal against the relevant admi-

nistrative acts. Individual laws provide for certain procedures and opportunities for citizens to appeal against irregular or illegal acts and actions of the administration. Without going into the legal aspects of the appeal of administrative acts by citizens who are subject to administrative law and process, the most important routes for the manifestation of this type of control can be presented with regard to the main forms of administrative activity. The specificity of public control puts it in a special place in the system of control over the administration. The main task of public control is to assist in the positive management process - to create an environment that does not prevent or prevent the occurrence of negative phenomena and the reasons for them.

Citizen control over the administration is an indispensable element of the democratic state. It is an important effective form of their participation in the state administration, and in particular in the activity of the state administrative bodies. This control is an essential factor for the protection of citizens' rights. The effectiveness of parliamentary activity is a key factor in the legitimacy and stability of the political system in every democratic state. It is measured by the ability of the parliamentary institution to respond to conflicts and problems in society arising from diverse social interests and by creating a supportive environment to support the work of other key authorities such as the executive and the judiciary. The information on the basis of regular monitoring and special reports on the state of parliamentary governance and legislation over the last two years outlines a number of negative trends in the principles of good governance and civil rights. In the future, the need for an even more active civilian control over the power comes to the fore, seeking the opportunity to use the various forms that legislation provides.

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