

**COMPARATIVE SECURITY SYSTEMS
OF NEIGHBOURING COUNTRIES:
SIMILARITIES, DIFFERENCES AND
COOPERATIVE**

International Monograph
Međunarodna monografija

**UPOREDNI SISTEMI BEZBEDNOSTI
ZEMALJA OKRUŽENJA: SLIČNOSTI,
RAZLIKE I KOOPERATIVNOST**

**Editor
Bozidar Forca**



Faculty of
Business Studies and
Law, Belgrade

Faculty of Business Studies and Law University „Union - Nikola Tesla” of Belgrade
Fakultet za poslovne studije i pravo Univerziteta „Union - Nikola Tesla” u Beogradu

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International Monograph of Scientific-research Interdisciplinary Project:
COMPARATIVE SECURITY SYSTEMS OF NEIGHBOURING COUNTRIES:
SIMILARITIES, DIFFERENCES AND COOPERATIVE,
No. ФП ДХ/BE3/0917-0318/2017-2018

Project Manager: Professor Bozidar Forca, PhD

Publisher: Faculty of Business Studies and Law
University "Union-Nikola Tesla" Belgrade

For Publisher: Professor Milan Radosavljevic, PhD
Dean, Faculty of Business Studies and Law

Institution Associates:

Faculty of Security and Diplomacy, Vienna, (Austria);
Institute for Corporate Security, Ljubljana, (Slovenia);
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Military Academy of University of Defense, Belgrade, (Serbia);

Technical editor: Zoran Bojanić

Printed by: Beopress, Beograd
Number of copies: 200

Editorial Office and Administration
Faculty of Business Studies and Law, Belgrade
11070 Belgrade, Sajmiste.29, Serbia
+381 11 31-31-246, www.fsp.edu.rs, info@fsp.edu.rs

ISBN 978-86-81088-01-2

The software has verified and confirmed the authorship of all works.

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Editor

Prof. Bozidar Forca, PhD

Beograd, 2018.

CONTENT

FOREWORD	13
SCIENTIFIC COUNCIL	17
REVIEWERS	23
BALKAN REGION AS A GEOPOLITICAL KNOT	25
Dragoljub Sekulović	
INTRODUCTION	25
GEOSTRATEGIC AND GEOPOLITICAL DEFINITION OF BALKAN PENINSULA	26
GEOPOLITICAL AND SECURITY CHALLENGES IN THE REGION	31
CONCLUSIONS	51
REFERENCES	52
ENLARGEMENT POLICY OF EU – THE BEST PEACE AND SECURITY PROJECT	55
Vladimir Ateljević, Tanja Mišćević	
INTRODUCTION	55
OCCURRENCE OF ENLARGEMENT POLICY	58
SERBIA IN THE PROCESS OF EUROPEAN INTEGRATION	62
NEGOTIATIONS ON MEMBERSHIP	65
ENLARGEMENT POLICY IS A GAIN FOR THE REGION, EU AND SERBIA	70
INSTEAD OF CONCLUSION	73
REFERENCES	74
ANALYSIS OF NATIONAL SECURITY STRATEGIES OF SOME FOREIGN COUNTRIES AND EUROPEAN UNION	77
Branko Krga, Milan Milošević	
INTRODUCTION	77

NATIONAL SECURITY STRATEGY OF THE REPUBLIC OF CROATIA	78
SECURITY STRATEGY OF EUROPEAN UNION	80
STRATEGY OF NATIONAL SECURITY OF MONTENEGRO	84
NATIONAL SECURITY STRATEGY OF THE REPUBLIC OF HUNGARY	86
NATIONAL SECURITY STRATEGY OF THE REPUBLIC OF AUSTRIA	89
NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA	91
NATIONAL SECURITY STRATEGY OF THE RUSSIAN FEDERATION	95
CONCLUSION	98
REFERENCES	100
COMPARATIVE INTELLIGENCE-SECURITY SYSTEMS OF NEIGHBOURING COUNTRIES	103
Andreja Savić, Ivan Mašulović	
INTRODUCTION	103
REVIEW OF THE GENESIS OF DEVELOPMENT OF NATIONAL SECURITY SYSTEMS OF POST-YUGOSLAV COUNTRIES	105
CONCLUSION	124
REFERENCES	127
NORMATIVE FRAMEWORK OF THE SERBIAN NATIONAL SECURITY SYSTEM	131
Božidar Forca, Filip Djoković	
INTRODUCTION	131
THE THEORY OF SINTAGME "NORMATIVE FRAMEWORK"	132
CLASSIFICATION OF NORMATIVE DOCUMENTS IN THE SECURITY SYSTEM.....	134
STATE OF THE NORMATIVE FRAMEWORK OF THE SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	138
COMPETENCE FOR PASSING NORMATIVE DOCUMENTS IN THE SECURITY SYSTEM.....	154
CONCLUSION	154
REFERENCES	155
THEORETICAL DETERMINATION THE NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	157
Miroslav Talijan, Goran Župac	
INTRODUCTIN	157
COMPARATIVE ANALYSIS OF THE DEFINITIONS OF NATIONAL SECURITY AND SYSTEMS OF NATIONAL SECURITY.....	159
DEFINITIONS OF NATIONAL SECURITY	159
DEFINITION OF NATIONAL SECURITY SYSTEM	163

FUNDAMENTALS OF ORGANIZATIONAL (SOCIAL) SYSTEMS	166
DEFINITION OF ORGANIZATIONAL (SOCIAL) SYSTEM	167
THE ELEMENTS DEFINING AN ORGANIZATIONAL SYSTEM	167
POSSIBLE DEFINITION OF THE NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	170
CONCEPTUAL BASIS OF THE SECURITY SYSTEM AND BASIC RULES FOR DEFINING	170
DEFINING THE NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	171
CONCLUSION	177
REFERENCES	178
STRATEGIC CHALLENGES IN DEVELOPING THE CONCEPT OF TOTAL DEFENSE OF THE REPUBLIC OF SERBIA	183
Hatidža Beriša, Igor Barišić	
INTRODUCTION	184
CONCEPT AND APPROPRIATE ANALYSIS OF THE STRATEGIC CONFECTION OF THE DEFENSE	184
THE STATE'S ATTITUDE TOWARDS MILITARY NEUTRALITY	186
THE STATE'S ATTITUDE TOWARDS COLLECTIVE DEFENSE	187
THE STATE'S ATTITUDE TOWARDS COLLECTIVE SECURITY	188
STATE ATTITUDE TOWARDS CIVIL DEFENSE	191
STATE ATTITUDE TOWARDS THE ORGANIZATION OF THE SOCIETY IN A DEFENSE	194
CHALLENGES IN THE DEVELOPMENT OF THE CONCEPT OF TOTAL DEFENSE IN THE REPUBLIC OF SERBIA	196
THE ATTITUDE OF THE REPUBLIC OF SERBIA TOWARDS MILITARY NEUTRALITY	196
SCENARIO 2. A FUTURE ARMED CONFLICT WILL BE ASYMMETRIC	199
THE ATTITUDE OF REPUBLIC OF SERBIA TO THE COLLECTIVE DEFENSE	200
THE ATTITUDE OF REPUBLIC OF SERBIA TOWARDS THE COLLECTIVE SECURITY	200
THE ATTITUDE OF THE REPUBLIC OF SERBIA TOWARDS CIVIL DEFENSE	201
THE ATTITUDE OF THE REPUBLIC OF SERBIAN TO THE ORGANIZATION OF THE SOCIETY FOR DEFENSE	202
CONCLUSION	204
REFERENCES	206
THE SECURITY OF THE REPUBLIC OF MACEDONIA IN MODERN GLOBAL SECURITY CIRCUMSTANCES	211
Tatjana Gerginova	
INTRODUCTION	211

THE ROLE OF THE EUROPEAN UNION IN ACCORDANCE WITH THE GLOBAL STRATEGY OF THE EU FROM 2016 YEAR	212
THE SECURITY OF EUROPEAN UNION	214
STATE AND SOCIETAL RESILIENCE TO EAST AND SOUTH	215
AN INTEGRATED APPROACH TO CONFLICTS	215
COOPERATIVE REGIONAL ORDERS	216
GLOBAL GOVERNANCE FOR THE 21 ST CENTURY	216
CREDIBLE, PROACTIVE AND RELATED EUROPEAN UNION	216
A. CREDIBLE UNION	216
A. RESPONSIVE UNION	217
A. JOINED-UP UNION	217
EU VALUES AND PRIORITIES OF EU FOREIGN POLICY	218
PEACE AND SECURITY	218
PROSPERITY	218
DEMOCRACY	218
A RULES-BASED GLOBAL ORDER	219
NATIONAL SECURITY OF THE REPUBLIC OF MACEDONIA	220
CONCLUSION	229
REFERENCES	232

ORGANIZATIONAL, LEGAL AND CONTENT FRAMEWORK OF THE NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF SLOVENIA. . . . 233

Milan Vršec, Denis Čaleta, M.A. Miran Vršec

INTRODUCTION	233
GENERAL OUTLINE OF THE NATIONAL SECURITY SYSTEM	234
ORGANIZATION OF THE NATIONAL SECURITY SYSTEM	235
CRITICAL INFRASTRUCTURE	238
CORPORATE SECURITY IN ECONOMY	241
PRIVATE SECURITY, DETECTIVE ACTIVITY AND LOCAL POLICE	248
DEVELOPMENT OF THE NATIONAL SECURITY SYSTEM	255
REFERENCES AND SOURCES	256

COMPARATIVE ANALYSIS OF THE BORDER POLICE IN THE REPUBLIC OF SERBIA AND ITS NEIGHBOURING COUNTRIES. 261

Slobodan Čopić

INTRODUCTION	262
ORGANIZATION OF THE BORDER POLICE OF SERBIA AND ITS NEIGHBOURING COUNTRIES	267
BORDER POLICE DIRECTORATE IN THE REPUBLIC OF SERBIA	267
BORDER POLICE IN HUNGARY	270

BORDER POLICE IN ROMANIA	271
BORDER POLICE IN BULGARIA	273
BORDER POLICE IN MACEDONIA	275
BORDER POLICE IN MONTENEGRO	277
BORDER POLICE IN BOSNIA AND HERZEGOVINA	278
BORDER POLICE IN CROATIA	280
COMPARATIVE ANALYSIS	282
CONCLUSION	286
REFERENCES	288
PRIVATE SECURITY OF COUNTRIES IN THE NEIGHBOURHOOD OF THE REPUBLIC OF SERBIA – LEGAL ASPECT AND COMPARATIVE EXPERIENCES	295
Dejan Labović	
INTRODUCTION	296
PRIVATE SECURITY – DEFINITION OF TERM, ROOTS AND FACTORS OF OCCURRENCE	297
BASIS OF NORMATIVE-LEGAL REGULATIONS	300
CHARACTERISTICS OF LEGAL REGULATIONS OF CERTAIN COUNTRIES	301
CONCLUSION	319
REFERENCES	322
COMPARATIVE VIEW OF THE SECURITY SYSTEM OF BORDERS BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF SERBIA	325
Siniša Dostić, Zoran Keković	
INTRODUCTION	326
BORDER SECURITY SYSTEM OF BOSNIA AND HERZEGOVINA	327
LEGISLATIVE FRAMEWORK OF THE BORDER SECURITY SYSTEM OF B&H	328
MEASURES AND ACTIVITIES WITHIN THE BORDER SECURITY SYSTEM OF B&H	331
SUBJECTS OF BORDER SECURITY SYSTEM OF B&H	334
SECURITY SYSTEM OF BORDERS OF THE REPUBLIC OF SERBIA	337
LEGISLATION FRAMEWORK OF SECURITY SYSTEM OF THE BORDERS OF THE REPUBLIC OF SERBIA	338
MEASURES AND ACTIVITIES WITHIN THE BORDERS SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	341
SUBJECTS OF THE BORDER SECURITY SYSTEM OF THE REPUBLIC OF SERBIA	345
CONCLUSION	352
REFERENCES	355

NORMATIVE ASPECTS OF THE PROTECTION AND RESCUE SYSTEM IN
REPUBLIC OF SRPSKA AND BOSNIA AND HERZEGOVINA 359

Žarko Ćulibrk, Dragomir Keserović

INTRODUCTION	359
NORMATIVE ACTS ON PROTECTION AND RESCUE IN THE REPUBLICS OF THE FORMER YUGOSLAVIA.	360
STANDARDIZATION OF THE PROTECTION AND RESCUE IN THE REPUBLIC OF SRPSKA.	363
NORMATIVE ACTS ON PROTECTION AND RESCUE AT THE LEVEL OF THE FEDERATION OF BOSNIA AND HERZEGOVINA.	371
NORMATIVE ACTS ON PROTECTION AND RESCUE AT THE LEVEL OF BOSNIA AND HERZEGOVINA.	371
CONCLUSION	373
REFERENCES	373

ANALYSIS OF SECURITY MEASURES OF CERTAIN PEOPLE'S
PROTECTION 375

Slaviša Krstić, Ivana Rebrača

INTRODUCTION	376
EVALUATION OF SECURITY STATE AND EVALUATION OF VULNERABILITY STATE OF PROTECTED PEOPLE	376
CONTENT OF SECURITY PROTECTION MEASURES OF PROTECTED PEOPLE	380
SECURITY PROTECTION MODEL OF PROTECTED PEOPLE	385
CONCLUSION	390
REFERENCES	391

THE FIGHT AGAINST PEOPLE SMUGGLING IN THE REGION WITH
SPECIAL REFERENCE TO THE REPUBLIC OF CROATIA AND REPUBLIC
OF SERBIA 393

Vanda Božić, Željko Nikač

INTRODUCTION	394
GENERALLY ON MIGRATIONS	395
SMUGGLING OF PEOPLE AS A FORM OF ORGANIZED ILLEGAL MIGRATIONS.	398
INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK OF CROATIA AND SERBIA FOR PEOPLE SMUGGLING PREVENTION.	400
COMPARATIVE REVIEW AND ANALYSIS OF REPORTED AND SENTENCED PEOPLE FOR SMUGGLING OF PEOPLE IN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SERBIA.	408
CONCLUSION	411
REFERENCES	413

TRAINING AND EDUCATION AS AN INEVITABLE NEED OF BUSINESS SECURITY	417
Svetlana Ristović	
INTRODUCTION	418
THEORETICAL STARTING POINTS	420
PRACTICAL STARTING POINTS	428
CONCLUSION AND SUGGESTION	435
REFERENCES	436
INTEGRATED ECOLOGICAL AND ECONOMICAL MANAGEMENT TO ENSURE ENVIRONMENTALLY SAFE REGIONAL DEVELOPMENT	439
Koblianska Inna, Shevchenko Tetiana	
CONCLUSION	457
REFERENCES	458
GENDER ASPECTS OF THE SECURITY SYSTEM REFORM OF THE COUNTRIES IN THE REGION OF THE REPUBLIC OF SERBIA.....	463
Biljana Stojković, Milan Kankaraš	
INTRODUCTION	463
SUMMARY DEFINITION OF KEY TERMS IN THE PAPER	465
NORMATIVE AND STRATEGIC STARTING POINTS.....	467
EXPERIENCES AND PRACTICES.....	473
REPRESENTATION AND ENGAGEMENT OF WOMEN	477
EDUCATION ON GENDER EQUALITY	484
CONCLUSION	485
REFERENCES	486
EVALUATION AND ASSESSMENT OF HUMAN SECURITY FACTOR ..	489
Milan D. Jovanovic	
INTRODUCTION	489
MEANING OF THE SYNTAGM „HUMAN FACTOR”	491
MONITORING THE CURRENT CHALLENGES OF RISKS AND THREATS TO SECURITY	493
STRUCTURE OF HUMAN FACTOR OF SECURITY	498
LEGAL REGULATION – WHAT IS SECURITY SECTOR	500
NATIONAL SECURITY STRATEGY	501
NATIONAL SECURITY SYSTEM	503
INTERNATIONAL AND DOMESTIC PUBLIC OPINION	505
POPULATION AS A QUANTITY OF HUMAN FACTOR OF SECURITY	505

EVALUATION OF QUALITY OF HUMAN SECURITY FACTORS	506
CHOICE OF THE EVALUATION METHODS	509
EVALUATION AND PREDICTION OF THE HUMAN SECURITY FACTOR	515
QUALITY COMPONENTS OF HUMAN SECURITY FACTORS	516
EVALUATION OF HUMAN SECURITY FACTOR	523
STATES OF THE QUALITY OF HUMAN SECURITY FACTOR	524
COMPARISON OF SECURITY THREATS WITH QUALITY OF HUMAN SECURITY FACTOR	526
CONCLUSION	527
REFERENCES	528
INDEX	533

FOREWORD

Since the beginning of the modern state on the land of Europe, countries have become a key subject of international relations. In the structure and processes of international relations, globalization has introduced many other subjects, but the state remains in their focus.

Security is considered a basic prerequisite for world peace and the development of civilization. In that sense, security should also be a consequence of this development. Undoubtedly two decades of the 21st century point to the fact that this is not the case. Even the view is that the world has never been unsafe and that a new great war, in particular war with the use of the most destructive weapons - nuclear weapons and other weapons of destruction - is at stake.

In the last decade of the twentieth century, significant disintegration processes occurred in the territory of Eurasia and in our neighborhood, among which are the unification of Germany, the disintegration of the former USSR and the dissolution of the Warsaw Treaty, the disintegration of the former SFR Yugoslavia, the survival and enlargement of NATO and the European Union.

In pursuit of its own identity and creating the conditions for maximizing its own security and security of territory and population, the newly created states in the former SFR Yugoslavia have reacted differently. All countries are members of the Collective Security System (UN), as well as its regional work (OSCE). In addition: (1) Slovenia was first admitted to NATO and the European Union (2004); (2) Croatia became a member of NATO in 2009, and was admitted to the EU in 2013; (3) Other countries that emerged on the territory of the former SFRY, with Albania called the Western Balkans, are still searching for the ultimate destination. Thus, Montenegro was admitted to NATO in 2017 and is considered to have fared the longest way on EU membership. Macedonia is a candidate for membership

both in NATO and in the EU, but Greece opposes it (because of the name Macedonia). Bosnia and Herzegovina is defined for EU membership and has again become a candidate, while the attitude towards NATO is undefined. Namely, the Federation of B&H is for membership in NATO, while the Republic of Serbs is opposed to it, and (4) The strategic commitment, the interest and the goal of Serbia is the EU membership, while regarding NATO, but also any other military and political the National Assembly Resolution of 2007, which proclaimed the military neutrality of our country.

The fact is that among the countries that emerged in the former SFRY, there are a number of open questions, whose part is directly reflected on the security situation in the region. The situation of slow returns of trust and mutual cooperation, strengthening of nationalisms as well as foreign influences result in the creation of a negative stance on security in the Western Balkans, which can undergo processes from the 1990s, or lead to new conflicts of wider size. On the other hand, we are witnessing both declarative initiatives and practical actions of joint (cooperative) action on various security issues, such as: suppressing non-war threats (floods and similar), assistance in natural disasters and accidents, cooperation in the fight against terrorism, cooperation between the police of the countries of the region and many others.

All this has influenced the question of whether the countries of the region, regardless of their belonging to any integration, or with proclaimed military neutrality, can work together to strengthen their own and the security of the region through co-operative security.

In accordance with the above-mentioned basic issue, the Faculty of Business Studies and Law, or its Security Department, has launched an international project entitled COMPARATIVE SECURITY SYSTEMS OF NEIGHBOURING COUNTRIES: SIMILARITIES, DIFFERENCES AND COOPERATIVE. The basic intention is to try to find answers to this question by scientific research work and other forms of scientific work.

The first step in the realization of the NIR project - the production of a scientific monograph of international significance, supported and took the participation of teaching-scientific institutions from Austria, Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia and Serbia. Some institutions from Ukraine joined in a special request. There are 20 research papers of different char-

acter, from purely theoretical, to the results of empirical research. The papers capture a general approach to security, through its subsystems. The basic characteristic of all works is the scientific character and the knowledge that they relate to the region. The structure of papers in the monograph is random or there were no predefined topics.

In addition to the author of the works, scientists have been engaged in the preparation of the monograph, as members of the Scientific Committee, as well as reviewers. Also, Faculty members have contributed to the monograph's appearance. We thank everyone who contributed to the monograph to see the light of the day and arrive before the readers.

In Belgrade, November 2017

Editor
prof. Bozidar Forca, PhD

SCIENTIFIC COUNCIL

Prof. emeritus, PhD Zivota Radosavljevic, Faculty of Law Studies and Law of University "Union-Nikola Tesla" in Belgrade, (Serbia), president;

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Prof. Dragoljub Sekulovic, PhD, Faculty of Business Studies and Law of the University "Union-Nikola Tesla" in Belgrade, (Serbia);

Prof. Dusan Vasic, PhD, Faculty of Business Studies and Law of the University "Union-Nikola Tesla" in Belgrade (Serbia) and

Prof. Bozidar Forca, PhD, Faculty of Business Studies and Law, Union-Nikola Tesla University in Belgrade (Serbia), project manager.

AUTHORS

Vladimir Ateljević, PhD

Ministry of European Integration

vladimir.ateljevic@eu.rs

Igor Barišić, MS

University of Defense, Military Academy, Republic of Serbia

igor.barisic@va.mod.gov.rs

Assistant professor Hatidza Beriša, PhD

University of Defense, Military Academy, Republic of Serbia

hatidza.berisa@mod.gov.rs

Scientific Associate. Vanda Božić, PhD

Department of Criminal law, Faculty of Law University of Zagreb

vanda.bozic@pravo.hr

Assoc. Prof. Denis Čaleta, PhD

Institute for Corporate Security, Ljubljana, (Slovenia)

Slobodan Ćopić, PhD

Ministry of Interior of the Republic of Serbia, Border Police Directorate

copicslo@gmail.com

Assistant Professor Žarko Ćulibrk, PhD

Faculty of Security and Protection, Banjaluka

culibrk.zarko@fbzbl.net

Filip Djoković

Office of president of the Republic of Serbia

Assistant Professor Siniša Dostić, PhD

MIA of the Republic of Serbia, Faculty of Business Studies and Law,
Belgrade

sinisa.dostic@fppsp.edu.rs

Prof. Božidar Forca, PhD

Faculty of Business Studies and Law, University "Union-Nikola Tesla" in
Belgrade

bozidar.forca@fppsp.edu.rs

Assistant Professor Tatjana Gerginova, PhD

Faculty of security – Skopje

tanjagerginova@gmail.com

Prof. Milan D. Jovanovic, PhD

Faculty of Business Studies and Law of the University „Union-Nikola
Tesla” in Belgrade

Assistant Professor Milan Kankaraš, PhD

Strategic Planning Department of the Ministry of Defense of the Republic
of Serbia,

milan.kankaraš@mod.gov.rs

Prof. Zoran Keković, PhD

Faculty of Security, Belgrade

zorankekovic@yahoo.com

Assistant Professor Dragomir Keserović, PhD

Faculty of Security and Protection, Banjaluka

keserovic.dragomir@fbzbl.net

Associate Prof. Koblianska Inna, PhD

Sumy National Agrarian University, Sumy, Ukraine

koblyanska2@gmail.com

Prof. Branko Krga, PhD

Faculty of Diplomacy and Security, „Union-Nikola Tesla“ University,
Belgrade

branko.krga@fdb.edu.rs

Assistant Professor Slaviša Krstić, PhD

Faculty of Business Studies and Law of the University “Union-Nikola
Tesla”, Belgrade slavishakrstic@gmail.com

Assistant Professor Dejan Labović, PhD

Faculty of Business Studies and Law, Union University “Nikola Tesla” in
Belgrade

dejan.labovic@fjsp.edu.rs

Prof. Ivan Mašulović, PhD

Humanist Studies of the University Donja Gorica, Podgorica

Prof. Milan Milošević, PhD

Faculty of Business Studies and Law, „Union-Nikola Tesla“ University,
Belgrade

milan.milosevic@fjsp.edu.rs

Prof. Tanja Miščević, PhD

Ministry of European Integration

tanja.miscevic@eu.rs

Prof. Željko Nikač, PhD

The Academy of Criminalistic and Police Studies, Beograd

zeljko.nikac@kpa.edu.rs

Ivana Rebrača, Master

Faculty of Business Studies and Law, „Union-Nikola Tesla“ University,
Belgrade

ivana.milosevic@fjsp.edu.rs

Prof. scientific associate Svetlana Ristović, PhD

Criminal-police Academy in Belgrade

Prof. Andreja Savić, PhD

Faculty of Diplomacy and Security, Belgrade

andreja.savic@fdb.edu.rs

Professor Dragoljub Sekulović, PhD

Faculty of Business Studies and Law "Union-Nikola Tesla" University
Belgrade

dragoljub.sekulovic@fpssp.edu.rs

Scientific Associate Biljana Stojković, PhD

Sector for Anti-Discrimination Policy and Gender Equality Promotion of
the Ministry of Labor, Employment, Veterans' Affairs and Social Affairs,

biljana.stojkovic@minrzs.gov.rs,

Prof. Miroslav Talijan, PhD

Military Academy, Defence University in Belgrade

Associate Prof. Shevchenko Tetiana, PhD

Sumy National Agrarian University, Sumy, Ukraine

tanya_goncharova@meta.ua

Assist. Prof. Milan Vršec, PhD

Institute for Corporate Security, Ljubljana, (Slovenia)

M.A. Miran Vršec

Institute for Corporate Security, Ljubljana, (Slovenia)

Assistant professor Goran Župac, PhD

Military Academy, Defence University in Belgrade

REVIEWERS

Prof. Andreja Savic, PhD, Faculty of Security and Diplomacy, Belgrade;

Prof. Branko Krga, PhD, Faculty of Security and Diplomacy, Belgrade;

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Prof. Momcilo Talijan, PhD, Faculty of Business Management, Bar,

Prof. Tome Batkovski, PhD, Faculty of Security - Skopje, University "Sv. Kliment Ohridski" -Bitola,

Prof. Atanas Kozarev, PhD, Faculty of Detective and Criminalistics, European University in Skopje,

Prof. Stojan Slaveski, PhD, Faculty of Detective and Criminalistics, European University in Skopje,

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Prof. Milan Zarković, PhD, Criminal Police Academy, Belgrade,

Prof. Bozidar Banovic, PhD, Faculty of Security, Belgrade,

Prof. Zoran Kekovic, PhD, Faculty of Security, Belgrade,

Prof. Elizabeta Ristanovic, PhD, University of Defense in Belgrade,

scientific advisor Zorica Mrsevic, PhD, Institute of Social Sciences, Belgrade,

Ivan Zverzhhanovski, PhD, UNDP / SEESAC,

Prof. Dragoljub Sekulovic, PhD, Faculty of Business Studies and Law of the University "Union-Nikola Tesla" in Belgrade and

Prof. Bozidar Forca, PhD, Faculty of Business Studies and Law of the University "Union-Nikola Tesla" in Belgrade.

THE FIGHT AGAINST PEOPLE SMUGGLING IN THE REGION WITH SPECIAL REFERENCE TO THE REPUBLIC OF CROATIA AND REPUBLIC OF SERBIA

Vanda Božić, Željko Nikač

Events in the world in recent years, in particular war conflicts, have led to a strong migrant wave of population from North Africa, the Near and Far East to Europe and the United States. Particularly affected are transit countries such as the Western Balkan countries and others who have found themselves on the Balkan migrant route. This further led to the deepening of the political and economic crisis in these countries, the increase in the danger of terrorist acts and the significant increase in crime rates. Migratory movements followed the increase in specific forms of crime such as people smuggling and human trafficking. The international community and states have tried to respond to the challenges, risks and threats mentioned by adopting sustainable legislative solutions, multi-agency approach and international cooperation at the bilateral, regional and multilateral levels. Countries from the former Yugoslavia have also established bilateral and regional cooperation in the fight against smuggling of people and other most serious forms of organized crime, including the Republic of Croatia and the Republic of Serbia as neighboring countries. In the final part of the work, some proposals of de lege ferenda were presented with the aim of suppressing smuggling of people and related crimes.

INTRODUCTION¹

At the beginning of the III millenium in the world there came to tectonic disorders in architecture of international community of states. After tragical conflicts on Balkans, then short standstill and a period of a relative social peace, there came to the escalation of conflicts on the territory of North Africa and Near East. „*Arab Spring*“ is the name for the riot of citizens against totalitarian regimes that have long been in power in Sudan, Tunisia, Egypt, Libya, Bahrain, Syria, Yemen, Algeria, Iraq, Jordan, Morocco and Mali. During the 2010 and 2011 there were smaller protests in Kuwait, Lebanon, Mauritania, Saudi Arabia and Western Sahara. The riots were preceded by classical civil protects, demonstrations and marches with the support on popular social network. There followed the answer of the government in the form of police repression, counter-demonstrations and support of pro-government forces.² Special dimension to this problem has also given the foreign factor and a direct impact of foreign countries, primarily USA and Western countries, which have the spheres of impact in these regions.

The most difficult situation is in *Syria* where there is still civil war that has taken away many lives, and it has caused enormous material damage and unrecorded wave of illegal migrations. The situation is even more complex due to the fact that conflict in Syria, besides the USA, also involves Russia, Iran and other countries. As a domino effect of these events there comes to general growth of crime, particularly the most severe forms of organized crime and escalation of Islamic terrorism, which has a deep ideological background.³ There has come to the unrecorded wave of migrations of entire

1 This research has been fully supported by the Croatian Science Foundation, under the project No. 1949 Multidisciplinary Research Cluster on Crime in Transition-Trafficking in Human Beings, Corruption and Economic Crime.

This paper is the result of the research on Project Development of institutional capacity, standards and procedures for countering organized crime and terrorism in the conditions of international integration, Ministry of Education and Science of the RS No. 179045 and Internal Project Management of the police organization in preventing and combating the threat of security in the Republic of Serbia, 2015-2019.

2 See more: Goldstone, Jack A.; Hazel, John T., Jr. (2011). *Understanding the Revolutions of 2011: Weakness and Resilience in Middle Eastern Autocracies*, Foreign Affairs.

3 See more: Browers, Michaëlle: *Political Ideology in the Arab World: Accommodation and Transformation*, 2009, New York: Cambridge University Press.

small communities, which are not recorded in the latest global history. Turkey, Greece and countries from the former SFRY (Macedonia, Serbia, Croatia, Slovenia) as transit countries on the road to Western Europe, as well as Italy that is on the sea route of migrations. With the intensification of war conflicts in Syria, the migrant crisis was deepened, while the wave of illegal migrations represented a serious threat to the economy and cohesion of EU.

State and movement of illegal migrations and smuggling of people and human trafficking processes related to them points to the fact that these are today the events that have a mass character with features of criminal acts of organized crime. On Balkan migrant route, there are transit countries of Western Balkan which are extremely affected by illegal migrations, trade and smuggling of people. Countries from the former SFRY are particularly sensitive for the issues of migrations because they have themselves in the close future had the waves of refugees, as a consequence of war conflicts in this region. The consequences of illegal migrations, trade and smuggling of people are vast for the national economies of countries, international economic and political relations. Particularly popular is the issue of security of countries and international community as a whole because criminal acts of smuggling people and human trafficking as a rule have the characteristic of organized crime and they are very often related to terrorism.

Therefore the struggle against illegal migrations, human trafficking and smuggling of people in bilateral, regional and wider international plan is the imperative of the survival of modern society. Within the initiated processed of Euro-integrations, the states of our Region have signed a few bilateral and regional agreements and undertaken common operative measures for the elimination of illegal migrations, smuggling of people and human trafficking. International criminal-law and other cooperation of the countries in the Region is far beyond political relations, at highly professional level and protection of universal values of the developed world.

GENERALLY ON MIGRATIONS

In a short *historical overview* of the migrations of population we remember that it is about the event known from the earliest days of human civilization. Migrations have always taken place, will less or greater intensity, depending on social, political, economic and other environmental factors.

Main reason is the striving of people to reach the area where life is easier and where there are better conditions for life and work. In the end of XIX century, they become vast due to technical and technological revolution and industrialization that implies new workforce. Industrial revolution in Britain and the USA has led to the migrations of several million people across the Atlantic in the search for a better life.⁴ Great wave of the migrants has moved, after the ending of the II World War, towards the coasts of the USA. The next was the wave of migrants refugees from the region of former Yugoslavia who have due to war events moved towards the USA, Canada, Australia and developed countries of Western Europe. The last wave of migrants has come as a result of war conflicts in the north of Africa and Near East, particularly after civil war in Syria. Illegal migrations were followed by smuggling of people, as well as human trafficking, as a specific forms of organized crime.

The term migration (Lat. *migratio*) is in a wider sense determined as movement of people which marks the mobility, primarily of people, as well as animals. In the doctrine and practice there is a great number of mainly similar definitions and thus we will in this place point to more important conceptual determinations. In that way IOM - *International organization for migration* defines migrations as movements of people or groups over the borders of countries and within them, regardless of the distance that is crossed, causes and circumstances under which the movement takes place.⁵ In domestic sentences, there is accepted the similar determination of the term by which under migrations (lat. *migro*) we consider the movement of population within the borders of one country or from one country to another.⁶

Etiological dimension of migrations includes natural and social causes and conditions at which there comes to migration processes. *Natural causes* are geographic, climate, geological, hydrological and other factors that affect migration processes in the world.⁷ The same group includes the factors that were mainly caused by man such as accidents, technical and ethnological

4 Ignjatović Đ, *Kriminologija*, Dosije, Beograd, 2007, str.172.

5 *Glossary on migration*, International Organization for Migration, Geneva, 2011, str. 62 i 63.

6 Mastilo N, *Rečnik savremene srpske geografske terminologije*, Geografski fakultet Univerziteta u Beogradu, Beograd, 2001, str. 228

7 *Monitoring disaster displacement in the context of climate change*, UN Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre, 2009, p.8. Prema: Mijalković S, Žarković M.: *Ilegalne migracije i trgovina ljudima*, Kriminalističko-policajska akademija, Beograd, 2012.

events, wars and other extraordinary situations.⁸ *Sociological factors* of migrations are primarily political, social and economic relations in a specific environment, time and space such as: wars, conflicts at religious, racial, ethnical and other bases. These factors are mainly direct causes of illegal migrations and therefore the criminal acts of smuggling of people and human trafficking. Particularly significant are the *economic factors* such as poverty, unemployment, small salaries, low standard of citizens and other that affect the increase of criminality rate in a community.⁹

Division of migrations is performed in doctrine and practice by different criteria.¹⁰ Today, there prevails the division of migrations into: a) *forced and voluntary* (conditions and goals), b) *individual and collective* (quantity), c) *organized and non-organized* (organization), d) *temporary, occasional and permanent* (duration) and e) *internal and international* (territory).¹¹ Particularly important is the division by the legal basis to *legal and illegal* migration. In the practice there are significant illegal international migrations that include the territory of several countries and a greater number of foreign subjects.

State and movement of migrations in the world and Region shows the increase, primarily of illegal migrations. According to official reports of IOM in the beginning of the first decade of the III millennium, there were about 150 million migrants, then in the beginning of the second decade of the XXI century there was even 214 million migrants.¹² The greatest number of migrants were taken by the developed countries of the world – USA, Canada, G. Britain, France, Germany, Russia and some rich Arab countries (UAE, Qatar, Saudi Arabia).¹³ Next we will point to the trends of illegal migrations, smuggling of people and human trafficking in the Region, particularly Serbia and Croatia.

8 Žarković M, Mlađan D, Bjelovuk I: *Specifičnosti kriminalističkog postupanja na mestu događaja u uslovima velikih akcidenata – vanrednih situacija*, NBP No.2, Vol. XIV, Beograd, 2009, str.185–202.

9 International Labour Office (ILO), *Global Employment Trends 2012, Preventing a deeper jobs crisis*, 2012, Geneve, p.10.

10 Babović M.: *Savremeni migracijski tokovi u svetu, Škola o prisilnim migracijama*, Grupa 484 & IAN, Beograd, 2006, str.5–6.

11 Mijalković S, *Suprotstavljanje trgovini ljudima i krijumčarenju migranata*, Službeni glasnik i Institut za uporedno pravo, Beograd, 2009, str. 46

12 *The IOM World Migration Report 2010*, p.1 See more: *Trends in International Migrant Stock: The 2008 Revision*, UN Department of Economic and Social Affairs, p.1-3, dostupno na: <http://esa.un.org/migration/p2k0data.asp>, (25.09.2017).

13 *Ibid.*

SMUGGLING OF PEOPLE AS A FORM OF ORGANIZED ILLEGAL MIGRATIONS

Smuggling of people is a form of illegal migrations predicted in national legislations of countries. It is about a type of organized crime that is rather present among organized criminal groups in the world that extend the market, tend to establish the monopoly in their activity and preserve leadership position in the field.¹⁴ Main goal of the smugglers is to successfully end all the phases of smuggling of people (accumulation, stabilization, expansion and monopolization) and based on that perform the legalization of activity.¹⁵ Activities of organized criminal groups of smugglers are contributed by a mild attitude of public opinion towards this event and carriers, and very often it is considered that it is about the acts of aid for the people in trouble. Of course, this perception of public is not correct or founded, but quite the opposite, having in mind that smugglers abuse difficult position of people and make their difficult position even more difficult.

As *reasons and motives* for performance of this criminal act there are mainly stated: minimum of investments of money and time in smuggling activity; extremely high earnings in a short period of time; minimum risks in performance of criminal act and rare discovery, processing and punishment of executors; mild punishment policy (minimum prescribed punishments); non-harmonized criminal law regulations of countries (prescribed inappropriate criminal acts, non-existence of punishments for the criminal act).¹⁶

Main *characteristics* of smuggling the people and the following:

- a) transition of state border by the smuggled person is illegal, which gives the international element to the criminal act;
- b) location of the smuggled person is always foreign country where he is now or tries to enter illegally;
- c) smuggled person actively cooperates with smugglers;

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- 14 See more: Nikač Ž, *Međunarodna policijska saradnja*, KPA, Beograd, 2015, str. 102-106.
 - 15 Bajraktarević A. H, *Trgovina i krijumčarenje ljudima - povezanost s organiziranim kriminalom-međunarodne pravne mjere*, Sveučilište u Zagrebu, Edukacijsko-rehabilitacijski fakultet, Kriminologija i socijalna integracija, br. 01-02/8, Zagreb, 2000, str. 57-70.
 - 16 Božić V, Lisićar H, Mudrić M, *Kaznenopravni aspekti krijumčarenja ljudi u Republici Hrvatskoj s osvrtom na mediteransku krizu - analiza stanja i preporuke de lege ferenda*, Pravni život br. 9/2015, str. 289-291.

- d) there are no elements of force or threat by the smugglers;
- e) status of the smuggled person is free, he had the freedom of movement;
- f) smuggled person gives consent for the transfer across the border;
- g) smuggled person is not considered a victim of the criminal act;
- h) the aim of smuggling is the earning from illegal transfer across the border;
- i) after the transition of state border there ceases the business and any other relationship between the smuggler and the smuggled person.¹⁷

We point out to the *distinction* between smuggling of people and human trafficking. The term smuggling of people is significantly wider and it includes the illegal crossing of people over state borders, while the human trafficking can also take place within the borders, as well as at the international level. Smuggled person is enabled to cross the state border with a monetary compensation and thus the relationship of smuggler and the smuggled person is ended after the transport to the destination, while in case of human trafficking, the usage of people is developed only after the transfer. Object of protection in the criminal act of smuggling the people is state border, while in case of human trafficking it is the victim of the criminal act. Then there follows the difference in the aspect of will, i.e. voluntary consent that exists in smuggling of people, while in case of human trafficking there most frequently is no consent. Smuggling of people does not include usage of people, which is in the case in human trafficking a reason for the execution of a criminal act. In case of smuggling the people, there is no interpersonal relations and interdependences between the smugglers and people, while that was the case between traders with people and victims.¹⁸

17 US Department of State, *The Human Smuggling and Trafficking Center FACT SHEET*, dostupno: portal US State Department, <http://www.state.gov/documents/organization/90541.pdf> (25.09.2017).

18 US State Department, dostupno na: portal U.S. State Department, <http://www.state.gov/m/ds/hstcenter> (26.09.2017) i *International Centre for Migration Policy Development (ICMPD), Difference between Smuggling and Trafficking*, u: *United Nations Office on Drugs and Crime (UNODC), Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications* (UNODC: New York, 2011.), dostupno na: portal UNODC, https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf, 17.09.2015 (26.09.2017).

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK OF CROATIA AND SERBIA FOR PEOPLE SMUGGLING PREVENTION

a) *International legal framework* for prevention of people smuggling comes, first of all, from the UNCATOC - UN Convention against transnational organized crime,¹⁹ adopted in Palermo in 2000. It is about the international document that has significantly contributed to the struggle against the most severe appearance forms of criminality, among which a significant place belongs to the provisions that refer to people smuggling. The Convention has affirmed the idea of norms harmonization of national legislation of the countries that signed it with its provisions, introduced into legislation special research methods and techniques and promoted special research and other bodies for the struggle against organized crime.²⁰ Documents known by the name *Palermo Convention* has been ratified by a great number of countries among which there is also the Republic of Serbia²¹ and the Republic of Croatia.²²

Based on Palermo Convention and its implementation the *Additional Protocols* are adopted: Protocol for Prevention and Punishment of Human Trafficking, particularly in case of women and children (Protocol I), Protocol against smuggling of migrants by land, sea and air (Protocol II)²³ and Protocol

19 United Nations Convention against Transnational Organized Crime (UNCATOC), United Nations, Treaty Series, Vol.2225, New York, 2000.

20 Nikač Ž, *Palermo konvencija i Dopunski Protokoli u funkciji suzbijanja organizovanog kriminala*, Zbornik KPA, KPA, Beograd, str.265-290.

21 Zakon o potvrđivanju Konvencije UN protiv transnacionalnoga organiziranog kriminaliteta, Protokola za sprječavanje, suzbijanje i kažnjavanje krijumčarenja ljudi, posebice žena i djece te Protokola protiv krijumčarenja migranata kopnom, morem i zrakom, kojima se dopunjuje Konvencija UN protiv transnacionalnoga organiziranog kriminaliteta, *Narodne novine RH br.14/02,13/03 i 11/04, Sl. list SRJ – Međunarodni ugovori br. 06/01, Beograd, 2001* "Službeni list SRJ – Međunarodni ugovori" br. 06/01, Beograd, 2001.

22 Law on Ratification of UNCATOC, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNCATOC, Act, OG, IA No 14/02, 13/03,11/04, UNCATOC, UN, Treaty Series,Vol.2225.

23 Op.cit. u nap.20.

against illegal production and circulation with firearms, its parts, assemblies and munition (Protocol III).²⁴

Protocol against smuggling of migrants by land, sea and air (Protocol II) is adopted in continuity with the Protocol I and it represents the most important document in the struggle against smuggling of people. In the document, already in the Preamble, it is stated that effective action of prevention and struggle against smuggling of migrants by land, sea and air requires a comprehensive international access which includes the exchange of information, international cooperation, and especially the elimination of the cause of migrations such as poverty and others.²⁵ The purpose of the document is to prevent the smuggling of migrants, then for the fight against all types of smuggling to be successful and to promote the cooperation between countries that signed it and protection of rights of the smuggled (migrants).²⁶

In the document there are *defined* the terms in more details such as smuggling of migrants, illegal entrance, there is also defined the range of the application and thus there is prescribed the criminal responsibility of migrants.²⁷ According to the Article 3, *smuggling of migrants* is determined as mediation, in order to directly or indirectly acquire financial or any other material benefit from the illegal entrance of a person into the country who signed it if he isn't its citizen or does not have a permanent residence in it.²⁸ There is prescribed the obligation of countries that signed it to define as *criminal acts* in their national criminal law when they are performed deliberately and in order to acquire, directly or indirectly, financial or other material gain; acts that refer to smuggling of migrants, acts that are performed in order to enable the smuggling of migrants such as false passports and ID cards, as well as procurement, giving or possession of such a document, as well as enabling the person who is not a citizen or has no permit for permanent stay to remain in that country, and without meeting the conditions required for legal stay in that country. *The application* of Protocol, in the context of the mentioned criminal acts, is allowed when these acts have a transna-

24 Protokol III je potpisala i ratifikovala Republika Srbija posebnim Zakonom, „Sl. list SCG-Međunarodni ugovori“ br.11/05. Republika Hrvatska je takođe potpisala i ratifikovala sva tri Dopunska Protokola. Op.cit. u nap.21.

25 Op.cit. u nap.20.

26 See more: Božić V, Krijumčarenje ljudi i trgovanje ljudima u hrvatskom kaznenom zakonodavstvu i sudskoj praksi - analiza stanja *de lege lata* uz prijedloge *de lege ferenda*, Zbornik Pravnog fakulteta u Rijeci br.2, Vol.36, Rijeka, 2015, str.845-874.

27 Op.cit. u nap.20, čl.3-6. Protokola II.

28 Op.cit. u nap.19.

tional character and under the condition that they have occurred as a result of activities of organized criminal groups.²⁹

There was adopted the solution according to which *migrants* are not criminally responsible and they will not be susceptible to prosecution.³⁰ The countries that signed it have the obligation to adopt *legal measures* required for the establishment of criminal acts, when they are done at the international level, in order to acquire financial or other material gain in a direct or indirect way. It is about the smuggling of migrants, those activities are performed in order to enable the smuggling of migrants (making false passport or ID card, as well as procurement, provision or possession of such a document).³¹ There is predicted the obligation of countries that signed it to adopt the laws required to determine *aggravating circumstances* related to endangering or probable endangering of life and security of migrants, inhuman or degrading treatment and exploitation of migrants.³²

The protocol predicts the cooperation and *measures* for the prevention and elimination of smuggling of *migrants by the sea* and measures on *mutual borders* that include: the points of departure, destinations, routes and transport means which are known or suspected to be used by organized groups; identification of organizations and groups for the organized crime; authentication and form of passports of the countries-signatories and theft or abuse of empty passports; means and methods of hiding the faces and transport, illegal changing, reproduction or abuse of passports; legal experiences and practice and measures of preventing and fighting against smuggling of people. A special type of cooperation is a *specialized training* of staff engaged on jobs and tasks of struggling against smuggling of the people.³³

The Protocol especially predicts *measures of helping and protecting the migrants* in the aspect of right to life, prohibition of torture, cruel, inhumane and humiliating treatment and punishments and also the protection against acts of violence. Particularly stressed is the specific need to protect children and women.³⁴

29 *Ibid.*

30 Čl.6. Protokola protiv krijumčarenja migranata kopnom, morem i vazduhom.

31 Op.cit.u nap.19.

32 *Ibid*, čl.6.

33 *Ibid*, čl.14-15.

34 *Ibid*, čl.8-13, čl.16.

At the level of EU there are several significant documents adopted in the matter of eliminating illegal migrations, smuggling of people and human trafficking. The territory of the Union is treated as a zone with a free circulation of people, goods, capital and services, which is an ideal chance for abuses of free movement, populating and selecting the workplace. Developed member countries of EU were particularly struck by the current illegal migrations of people from Syria and other countries. In that context, since 2002, there was adopted *Directive of Council of Ministers of EU, no.2002/90/EZ on defining the facilitation of unauthorized entrance, transit and stay* which ordered member countries to sanction and punish everyone deliberately helping the person who is not the citizen of EU member country to enter without legal basis or go through the state area into EU territory.³⁵ It is about violation of the law of EU member country on entrance and transit of foreigners, as well as the duty to sanction and punish each person who, due to financial gain, deliberately helps the person who is not a citizen of a member country to stay in state area of that country and who thus violates the laws on the stay of foreigners. The Directive particularly stresses the responsibility for encouragement to illegal transfer of people across the borders of EU member countries, participation in illegal transfer, as well as the attempt itself.³⁶ Therefore, Directive establishes the obligation of member countries to adopt and undertake the measures required in order to sanction in the same way the incensors, accomplices and persons who are trying to perform the mentioned criminal act.

Among the other sources in elimination of smuggling of people in the EU territory, we mention the complementary norms such as *Directive of the Council of Ministers of EU no. 2004/83/EZ*³⁷ on residence permits for the citizens of third countries who are the victims of illegal migrations and cooper-

35 Directive of the Council of Ministers of EU 2002/90/EZ, since 28.11.2002. on defining the facilitation of unauthorized entrance, transit and stay, EN Official Journal of the European Communities (OJEC), L 328/17,05.12.2002, http://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:32002L0090#ntr3-L_2002328HR.01001701-E0003 (26.09.2017).

36 *Ibid.* Article1-2.

37 Directive of the Council of Ministers of EU 2004/83/EZ since 29. 04. 2004. on minimum standards for qualification and status of citizens of third countries or persons without nationality as a refugee or a person that in some other manner need the international protection and on the content of the protection approved, Official Gazette of European Union L 304/12.

ate with competent bodies, not only for the victims of human trafficking³⁸ and Framework decision of the Council of Ministers of EU no.2001/220/PUP on the position of victims in criminal proceedings.³⁹ We also remind that at the same time there is adopted a number of norms that refer to elimination of human trafficking that is particularly treated due to the seriousness of criminal act, lack of will and non-agreement of damaged persons.⁴⁰ We also remind of the agreements on international criminal and police cooperations between region countries such as the *Convention on international police cooperation in JIE*⁴¹ and *Convention SELEC*.⁴²

b) *National legal framework of the Republic of Croatia* comes from the *Law on foreigners*,⁴³ according to which a foreigner is a person who is not a citizens of RC. In the mentioned law, law order of RC included many decisions, directives and other regulations of EU that refer to this field, in a way in which there norms have become a constituent part of the national legislation of RC. Especially for the reason that RC was in the meantime (01.07.2013.) accepted in EU as a full member, and accordingly, it was obliged to harmonize its norms with EU legislation. The Law mentions the cases of illegal entrance of foreigners on the RC territory which are the international standard in this field.⁴⁴

38 *Glossary on migration*, International Organization for Migration (IOM), Geneve, 2011, p. 62-63. Više: Mijalković S, Žarković M, *Ilegalne migracije i trgovina ljudima*, KPA, Beograd, 2012.

39 Okvirna Odluka Vijeća od 15. 03.2001. o položaju žrtava u kaznenom postupku (2001/220/PUP), Službeni list Evropske unije L 082/1

40 See more: Nikač Ž, Božić V, *Suzbijanje kaznenih djela ilegalnih migracija na području Regije s posebnim osvrtom na Republiku Hrvatsku i Republiku Srbiju*, Pravna riječ br.48/16, godina XIII, Banja Luka, 2016, str.193-220.

41 *Zakon o potvrđivanju Konvencije o policijskoj saradnji u JIE*, Sl. glasnik RS - Međunarodni ugovori br.70/07

42 *Zakon o ratifikaciji Konvencije SELEC*, Sl. glasnik RS - Međunarodni ugovori br.08/11

43 *Zakon o strancima*, NN RH br. 74/13, čl.1-2.

44 Art.39. *Ibid.*

Of the other more important regulations in this field we mention *Law on supervision of state border*,⁴⁵ *Law on international and temporary protection*,⁴⁶ *Law on Croatian nationality*⁴⁷ and *Law on passports of Croatian citizens*.⁴⁸

Criminal Law of RC predicts illegal entrance, movement and stay in the Article 326 of CL of RC under the title *Illegal entry, movement and stay in the Republic of Croatia, other EU member country or signatory of Schengen Agreement*.⁴⁹ The mentioned criminal act is harmonized with the Directive of European Union no.2002/90/EZ from 28.11.2002.⁵⁰ on defining the facilitation of unauthorized entrance, transit and stay by which member countries are ordered to incriminate the helping to the person who is not a citizen of member country to enter or go across state territory of member state or stay in its territory.

In Article 326 of the CL of RC it is stated that „the person who for his own benefit enables or helps another person to enter, exit, more or stay in the Republic of Croatia or other EU member of signatory country of Schengen Agreement without permission, makes the criminal act of *illegal entrance, movement and stay in the Republic of Croatia, other EU member country or signatory country of Schengen Agreement*, which prescribes the imprisonment from six months to five years“.⁵¹ Qualified form of executing this criminal act is prescribed for the case if during execution of criminal act life of body of a person who illegally enters, moves or stays in Croatia or other EU member country or signatory of Schengen Agreement is in danger, or the person was

45 Zakon o nadzoru državne granice, NN br.83/13 i 27/16.

46 Zakon o međunarodnoj i privremenoj zaštiti, NN br.70/15. (Zamenio raniji Zakon o azilu)

47 Zakon o hrvatskom državljanstvu, NN br.53/91, 70/91,28/92,113/93,04/94,13/11 i 110/15

48 Zakon o putnim ispravama hrvatskih državljana, NN br.77/99, 133/02, 48/05,74/09, 154/14 i 82/15.

49 Kazneni zakon RH, NN br.125/11, 144/12, 56/15, 61/15.

50 Each country brings appropriate sanctions for: a) each person deliberately helping the person who is not a citizen of a member country to enter or go across the state territory of member country and therefore violates those laws on entrance and transit of foreigners, (b) each person who, due to financial benefit, deliberately helps a person who is not a citizen of some country to stay in the territory of that country and therefore violates the laws of that country on the stay of foreigners; Art.1.of the Directive of European Union no. 2002/90/EZ from 28.11.2002, Official Gazette of European Union L 328/17.

51 Op.cit. u nap.47.

treated in a humiliating manner or the act was performed by an official in performing official duty, in which case the executor will be punished with imprisonment from 1 to 8 years.⁵²

For the execution of this criminal act it is required that the executor knew or had to know that it is about the enabling of helping a person (persons) who is not a Croatian citizen to enter, exit, move or stay in the region mentioned and that his intention (*dolus*) was aimed towards the acquisition of benefits that finally do not have to be implemented.⁵³ In any case, there is no criminal act if a person without anyone's help illegally enters, exists, moves or stays in RC or some other EU country or signatory of Schengen Agreement, but in that case a person only responsible of misdemeanour. If the mentioned criminal act is performed within criminal association, the law prescribes the imprisonment from 1 to 10 years,⁵⁴ while for the qualified form of execution (Article 326.par.2) prescribed punishment is from 3 to 12 years.⁵⁵

c) National legal framework of the Republic of Serbia starts from the norms that legally regulate the status of foreigners. *Law on foreigners* predicts that foreigner is each person without the citizenship of RS.⁵⁶ The foreigners are allowed the entrance and stay in Serbia with a valid passport with a visa or residence permit, if the law or international contract do not determine differently. We can prohibit or limit the movement and stay in a specific territory due to the protection of public order, security of the Republic and citizens. Then, there is predicted the control of movement of foreigners that includes the entrance, stay and exit from the RS, while under certain conditions it is possible to refuse the entrance or exit from the RS.⁵⁷

According to the Law as *illegal entrance* in Serbia we consider the entrance: out of the place or time determined from the transit of state border; avoiding border control; usage of somebody else's, invalid passport of other document; giving false data to the border police; during the protection measure of removing foreigners from the RS area, security measures for the deportation of foreigners from the country or measures of denial of residence.

52 Art.326.par.2. KZ RH

53 See more: Božić V: *Krijumčarenje ljudi i trgovanje ljudima u hrvatskom kaznenom zakonodavstvu i sudskoj praksi (analiza stanja de lege lata uz prijedloge de lege ferenda)*, Zbornik Pravnog fakulteta u Rijeci br.02/2015, Vol. 36, str. 845-874.

54 Art.329.par.1.point2. KZ RH

55 Art.329. par.1.point3. *Ibid.*

56 Law on Foreigners, „*Off.Gazette of RS*“ no.97/08, Art.3.

57 *Ibid.*, Art.4-5,Art.8.

The foreigner can be temporarily *prohibited to exit* the RS if: he owns somebody else's, invalid passport or other document; does not have a visa that is required for entrance to another country; if there is a justified doubt that by exit from the RS he could avoid the criminal or misdemeanor persecution, serving a sentence of imprisonment, execution of judicial order, deprivation of freedom and execution of the mature proprietary-legal obligation, by the order of a supervisory body.⁵⁸

Of all the other more important regulations in this field, we mention the *Law on State Border Protection*,⁵⁹ *Law on Asylum*,⁶⁰ *Law on Citizenship*⁶¹ and *Law on Travel Documents*.⁶²

Criminal Law of RS predicts in the Article 350 a special criminal act named *Unauthorized transition of state border and smuggling of people*.⁶³ It is about a criminal act of unauthorized transition of state border and criminal act in case of which the executor by its activity provides the other person an unauthorized transition of state border or unauthorized stay or transit through Serbia, all with the intention to have benefit for oneself or someone else.⁶⁴ For the mentioned criminal act there is a prescribed imprisonment from 6 months to 5 years. If a criminal act was performed by an organized criminal group, the executor will be punished by imprisonment from 3 to 12 years. Imprisonment from 1 to 10 years will be prescribed to the executor of the criminal act for the qualified form if the criminal act was performed by the group, abuse of official position, or in a manner that endangers the life and health of people whose unauthorized crossing of the border, stay or transit is enabled or a greater number of persons was smuggled.

In comparison of the solutions from CL of RS and CL of RC, it is observable that the punishment for the basic form of this criminal act according to CL of RS is in harmony with the height of the prescribed sanction in the CL

58 *Ibid.*, Art.10 and Art.13.

59 *Law on the State Border Protection*, „*Off.Gazette of RS*“ no.97/08 and 20/15 – sec. law.

60 *Law on Asylum*, „*Off.Gazette of RS*“ no.109/07.

61 *Law on Citizenship*, „*Off.Gazette of RS*“ no.135/04, 90/07 See: Decision US RS number IUz-564/2011 - 18/2012-49.

62 *Law on Travel Documents*, „*Off.Gazette of RS*“ no.90/07, 116/08, 104/09, 76/10 and 62/14.

63 *Criminal Law of the Republic of Serbia*, „*Off. Gazette of RS*“ no. 85/05, 88/05 - ispr., 107/05 - ispr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16

64 Art.350.par.2. *Ibid.*

of RC for the fundamental criminal act from the Article 326. of CL of RC. In relation to the qualified form, the prescribed punishment in CL of RS, in the same way, corresponds to the height of the punishment for the qualified form from the Article 326 par.2. of CL of RC. The most important distinction between RS and RC is in the fact that by the provision of the Article 350.par.1 of CL of RS there is a predicted imprisonment up to one year for the executor who *without the prescribed permission crosses or tries to cross the Serbian border, armed or by the usage of violence*. It is about a privileged form of criminal act of *Unauthorized crossing of state border and smuggling of people*, which refers to the executor of criminal act who crosses or tries to cross the Serbian border without the permission required, armed or with the usage of violence.

COMPARATIVE REVIEW AND ANALYSIS OF REPORTED AND SENTENCED PEOPLE FOR SMUGGLING OF PEOPLE IN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SERBIA

In the Republic of Croatia in 2016 for the criminal act of illegal entrance, movement and stay in the RC, other EU member country or signatory of Schengen Agreement, there is reported 135 people, of which 119 people for the fundamental form of the criminal act and 16 people for the qualified form. It was mostly about known executors (133 people), while only 2 people were unknown executors. There is a small number of women that appear as executors of this criminal act (6 people).

The data are presented in Table no.1.

For the criminal act of illegal entrance, movement and stay in RC, other EU member country or signatory of Schengen Agreement, in 2016 in the Republic of Croatia there were 94 persons sentences, of which 91 for the fundamental form and 3 people for the qualified form of this criminal act. The data mentioned are visible in Table no.2.

Table no. 1. *Reported adult executors for the criminal act from the Art.326. CL of RC in 2016⁶⁵*

	Illegal entrance, movement and stay in RC, other EU member country or signatory of Schengen Agreement, Art.326. par.1.	Illegal entrance, movement and stay in RC, other EU member country or signatory of Schengen Agreement, Art.326. par.2.
Total number of reported executors	119	16
Unknown	2	-
Women	117	16
Women - known	5	1
Total number of reported executors	135	

Table no.2. *Sentenced adult executors for the criminal act from the Article 326. CL of RC according to the gender, attempt and sentenced pronounced in 2016⁶⁶*

	Illegal entrance, movement and stay in RC, another EU member country or signatory of Schengen Agreement, Art.326. par.1.	Illegal entrance, movement and stay in RC, other EU member country or signatory of Schengen Agreement, Art.326. par.2.
Total number of sentenced executors	91	3
Sentenced executors – women	4	-
Sentenced executors for the attempt	3	-
Prison - total	91	3

65 Source: State Bureau of Statistics (SBS) of the Republic of Croatia, Report Adult Perpetrators of Criminal Acts, Reports, Accusations and Sentences in 2016.

66 *Ibid.*

Conditional prison	68	3
Prison 1 to 2 years - total	10	-
Prison 1 to 2 years - conditional	4	-
Prison 6 to 12 months -total	70	3
Prison 6 to 12 months - conditional	57	3
Prison 3 to 6 month -total	6	-
Prison 3 to 6 months -conditional	6	-
Prison 2 to 3 months - total	5	-
Prison 2 to 3 months - conditional	1	-
Total sentenced executors	94	

In the Republic of Serbia in 2016 for the criminal act of unauthorized crossing of state border and smuggling of people there is the total of 409 people reported, while 322 people were sentenced. Sentenced people have got the imprisonment (117), punishments of home prison (97), educational measure (1), while for the 107 people there was applied a conditional sentence. The data mentioned are shown in the Table no. 3 and 4.

Table no.3. *Reported and sentenced adult executors for the criminal act from the Art.350. CL of RS in 2016.67*

	Unauthorized crossing of state border and smuggling of people - Art. 350. CL of RS
Total number of reported executors	409
Total number of sentenced executors	322

67 Source: Republic Bureau of Statistics (RBS) of the Republic of Serbia, Report Adult executors of criminal acts in the Republic of Serbia in 2016, accusations and sentences.

Table no.4. *Sentenced adult executors for the criminal act from the Art. 350. CL of RS by sentences in 2016.*⁶⁸

Sentences	Sentenced executors
Prison	117
Conditional prison	107
Home prison	97
Educational measure	1

From the above presented study and analysis of the state of reported and sentenced people for the criminal act of smuggling the people in RC and RS, there is a visible greater disproportion in the aspect of the number of executors of this criminal act and prescribed sanctions. It is observable that a number of reported and sentenced people in Serbia is thrice as bigger in relation to the number of reported and sentences people in Croatia. Main reason is the different legal qualification of smuggling of people as a criminal act. Namely, in the Republic of Serbia there is also punishable the behaviour that refers to the unauthorized crossing of state border for the people who illegally cross the state border under taxably mentioned legal conditions, which is in the Republic of Croatia legally qualified as a misdemeanour.

CONCLUSION

In the history of human civilization, migrations are one of the most present appearances and according to the new data, even 150 million of people today live out of their home countries – birthcountries or those countries whose citizens they are.⁶⁹ Particularly worrying are the illegal migrations which are mainly the results of big social conflicts and wars that have brought to entire migrations of people and groups. After the fall of Berlin Wall, there came to the transition in countries of the former communist block, then war conflict on the territory of former Yugoslavia and in the end, wars in Afghanistan, Iraq, Syria and other countries of Africa and Near East. These conflicts have caused unrecorded wave of migrants from war-infected countries, who

⁶⁸ *Ibid.*

⁶⁹ MIA of RC, *Migarcije kao globalni i lokalni problem*, available at: http://artefact.mi2.hr/_a01/lang_hr/report_katanec_hr.htm, (25.09.2017)

have tried to find refuge in Europe and USA. All of this has also affected the escalation of radicalism and Islamic terrorism in the world whose activities have led to enormous unrest of the public and dissatisfaction by the measures taken for prevention of illegal migrations.

Smuggling of people is one of the forms of the organized illegal migrations that is today rather frequently present, primarily due to minimal risks and earnings which in over 8 bil USD at the global level.⁷⁰ On the other hand, smuggling of people is not experienced in the public as (severe) criminal act, but as a form of aid for the endangered and unhappy people. Particularly endangered are Serbia, Croatia and countries from the former SFRY and other countries of the Region that are on Balkan route towards the developed Western EU member countries.

In the answer to illegal migrations and smuggling of people, international community has adopted the UN Convention against organized crime (*Palermo Convention*) and Additional protocols for its application. *Protocol against smuggling of migrants by land, sea and air* (Protocol II) is certainly the most important document applied in case of the most severe criminal acts of organized transnational crime. In addition to these documents at the EU level, there was adopted *EU Directive on defining the facilitation of unauthorized entrance, transit and stay of people*, which is important due to membership of RC in EU and application of RS for the reception to the Union. At the national level, Croatia, Serbia and region countries have adopted the norms that rely on the mentioned relevant international sources. In that aspect, the most important are the regulations that refer to legal status of foreigners, asylum, citizenship and special norms of the national criminal legislation. According to the Art.326 of CL of RC, the criminal act *Illegal entrance, movement and stay in the Republic of Croatia* is prescribed, while according to the Art.350 of CL of RS, there is predicted a criminal act *Illegal crossing of state border and smuggling of people*.

According to the comparative review and analysis of the reported and sentenced people for smuggling in Croatia and Serbia, there is observed a significant difference in a number of reports and judgements, primarily due to different incrimination in one provision (RC – misdemeanour, RS – criminal act). In that sense, we suggest for *de lege ferenda* execution of novelties of CL of RS and harmonization of norms with EU laws, particularly due to

70 *Ibid.*

the application of RS for reception into the membership of EU. It is required to intensify the multi-agency approach in the struggle against smuggling of people and other most severe appearance forms of organized crime and even more improve the international police and criminal law cooperation in the region and in EU territory.

And in the end, success in the struggle against smuggling of people as a form of organized illegal migrations can contribute to the reduction of risk against terrorism and terrorist acts in the Region and entire Europe.

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