

CONTENTS

THE JUDICIAL SYSTEM IN MACEDONIA AT THE BEGINNING OF THE 20TH CENTURY

Prof. Dr. Abdulmecit Nuredin

7

LEGAL PERSPECTIVE ON TEMPORARY PROTECTION STATUS AND THE CITIZENSHIP APPLICATION PROCESS FOR SYRIANS IN TURKEY

Prof. Dr. Zoran FİLİPOVSKI - Ass. Elif HOCA, LL.M

20

RESPONSIBILITY OF THE JUDGES IN THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Dr. Azam KÖRBAYRAM - Angela Angeleskaç, LL.M, PhD Candidate

29

ENFORCEMENT CIVIL PROCEDURE IN ANCIENT ROME

Ass. Prof. Dr. Dijana GJORGIEVA

40

THE CONCEPT AND SOURCES OF LEX MERCATORIA

Ass. Prof. Dr. Jordan DELEV

49

THE CONCEPT OF HUMANITARIAN INTERVENTION AND THE LEGAL ANALYSIS OF THE CASE OF KOSOVO

Ass. Prof. Dr. Azam KÖRBAYRAM - Ass. Elif HOCA, LL.M

65

THE DEVELOPMENT OF HUMAN RIGHTS IN POST INDEPENDENCE KAZAKHSTAN

Prof. Svetlana BAYMOLDINA, PhD - Tevfik Can İNAN, LL.M, PhD Candidate

78

THE JUDICIAL SYSTEM IN MACEDONIA AT THE BEGINNING OF THE 20TH CENTURY

Prof. Dr. Abdulmecit NUREDİN

ABSTRACT

At the beginning of the 20th century, Macedonia's judicial system underwent a profound transformation following the end of Ottoman rule and the region's transition to Serbian control. During this period, the legal landscape was diverse and mosaic-like, with the legal order intertwined with religion, nationality, and traditions. With the end of Ottoman rule, the Serbian legal tradition, which began with Dušan's Code in 1349—a document regarded as a manifesto—laid the foundation for a new order and concept of justice. The inclusion of Macedonia into Serbia initiated a reorganization of the legal system, aiming to establish a modern judicial framework.

In the post-independence period, the Serbian government undertook various measures from 1912 onwards to restructure the legal system in the region. Initially, the "Regulation on the Establishment and Procedure of Courts" was issued in 1914, establishing regional courts and assigning judges to judicial duties in Macedonia. During this time, a Supreme Court was established in Skopje, functioned as the highest judicial authority for all courts in the region. Additionally, due to the shortage of judges, citizen judges were also appointed.

Judicial issues in Macedonia have attracted attention, especially regarding land reform and the regulation of property rights. Courts were initially unable to handle property cases, but subsequent legislation rectified this issue. The 1914 regulation also established Sharia courts, granting jurisdiction over family and inheritance matters for the Muslim population. In 1929, with the formation of Yugoslavia, the existence of various legal regions was seen as an obstacle to political and national unity, leading to the unification of these judicial systems under a single framework.

By the 1930s, new laws and regulations facilitated the creation of a modern and effective judicial system in Southern Serbia. By 1934, regional and district courts were established, and a new Court of Appeal was inaugurated in Skopje. These courts ensured access to justice by implementing civil and criminal procedures. These innovations in Macedonia were carried out to increase the legal security of the region and strengthen the public's confidence in the justice system.

Judicial reforms carried out in Macedonia at the beginning of the 20th century dismantled the remnants of the Ottoman judicial system and laid the foundations for a different/mixed legal order. This process led to significant changes in the social, economic and cultural life of the region and aimed to ensure justice by protecting the legal rights of the people. The legal regulations and the establishment and the new judicial system established in this period constitute the main topic of this scientific paper.

Keywords: Judicial System, Macedonia, Ottoman Rule, Serbian Legal Reforms.

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INTRODUCTION

The Legal life in Macedonia before the end of Ottoman rule was characterized by a heterogeneous structure. The legal order was strictly governed by the millet/nation system of religion, nationality, traditions, and lifestyle. During this period, there was an intersection between the inclusive administrative traditions of the Turkish state and the sensitivities of the region population, reflecting an era of justice and equity (Nuredin, 2008). Efforts were made to erase the traces of Turkish administration and initiate a new era of cultural, economic, and social life in these regions (Nuredin, 2008: 182).

As a mythological and legal basis, on May 21, 1349, the powerful ruler Dušan proclaimed the Serbian Code in Skopje, the center of Macedonia, after successfully unifying the Serbian tribes and establishing order and peace in the country. This code, known as Dušan's Code, aimed to serve as the foundation for future legislation and was considered a manifesto. Dušan introduced this law to organize the empire, codify traditions, and provide the people with a written law that stood above all individuals as the highest/supreme will of the country. With this law and a different administrative approach, he succeeded in regulating the conquered territories, establishing a solid state structure, strengthening order and security in the country, and providing citizens with a peaceful living and working environment. During Dušan's reign, the powerful Serbian Empire's assembly also convened in Skopje.

Based on long-term Ottoman rule, the Serbian people were able to preserve their identity and develop their cultural traditions through the "millet/nation system" (Nuredin, 2011). After the end of Ottoman rule, while Macedonia gained its freedom, Serbian dominance began. Having been under a different legal order and foreign administration for a long time, Macedonia experienced the blessings of freedom and justice most profoundly in social life in the best way (Петровић, В., 2009).

The legal order and personal issues in Macedonia went through specific stages considering temporal and material possibilities. After 1912, Serbia attempted to organize the legal system in this region differently from the "millet/nation system" thus ensuring the life and freedom of citizens (Nuredin, 2022), property rights, religious rituals (Nuredin, 2017: 19), education (Hoca, 2013: 19), and working/labor rights could only be guaranteed within the context of Serbian identity and culture (Hoca, 2013: 161).

Establishing a different system outside the historical "millet system" in Macedonia was possible through a strong ethnic and cultural movement (Janković, D., Guzina, R., 1970). Instead of the hierarchical structure of Turkish administration, the process of building a new legal order based on democracy and legal security within the framework of a dominant Serbian identity began. First of all, as a requirement of the state's mission, the faith of the Macedonian people in justice and equality before the courts needed to be revived. This belief was advocated to be ensured regardless of whether individuals were Muslim or Christian, noble or poor. However, with agrarian reform, the properties of many Turkish farm owners were made public, leading to a migration process (Nuredin, 2011).

Macedonia's exit from Ottoman rule, the necessity of building a new legal order, and the legal order remained subject to restructuring based on human rights and freedoms (Nuredin, 2022). However, both internal and external conditions complicated the establishment of new courts. At that time, the Serbian judicial cadre/staff was insufficient to establish a district court in each region. Following the cessation of conflicts on the battlefields, towards the end of 1912, many judges were appointed to establish courts in Macedonia in their military uniforms by the order of the Supreme Command and the Ministry of Justice.

With the outbreak of war again in 1913, the regional courts began functioning effectively in 1914. The "Regulation on the Establishment and Procedure of Courts," issued on February 17, 1914, marked the formation of the first courts in Southern Serbia. Due to extraordinary circumstances, judges could be transferred from one court to another as needed within six months of the regulation's implementation. During this period, the Supreme Court was established in Skopje, which served as the highest judicial authority for all courts in Macedonia and served as the Supreme Court of Appeals (Jovanović, S, 1937: 12).

Interestingly, according to the February 17, 1914 regulation, the Serbian administration stipulated that, in addition to state judges, non-lawyer citizen judges would also serve in Macedonia. This was perceived as an incompatible practice with the legal order and judicial ethics (Nuredin, 2023). Initially, this practice involved a court panel consisting of two state judges and one citizen judge, who jointly handled both criminal and civil cases. This regulation was created to manage the situations in Macedonia and address the insufficient number of judges. Citizen judges were elected by the municipal councils where the district courts were located, and no educational qualifications were required. The

duty of citizen judges was mandatory, and they began their duties by taking an oath.

District courts handled both civil and criminal cases. Following the Ottoman rule, the land reform issue arose in Macedonia. Since Turkish-owned movable and immovable properties were not registered in the Serbian land registry and intellectual property and property rights were not defined by law (Nuredin, 2017: 352), district courts initially could not handle property cases. Similarly, they were not authorized to conduct transactions involving the sale and purchase of real estate. However, according to Article 32 of the February 17, 1914 regulation, these transactions could be conducted in certain situations, which was considered a different method from general legal customs and the administrative judiciary system (Korbayram, A.; Delev, 2023: 32). The Agrarian Commission, established under Article 35 of the Ministry of Justice, was authorized to examine and provide opinions on land titles issued during the Turkish administration.

METHODOLOGY

This research was conducted through a comprehensive and meticulous examination of the relevant scientific literature, adhering strictly to scientific criteria and avoiding any skepticism. The sources utilized included scientific books, printed research papers, and online databases such as Google Scholar and ResearchGate. These databases feature journals indexed on prestigious platforms such as EBSCO, SCOPUS, and WEB OF SCIENCE. Our investigation was guided by specific keywords, including "Judicial System," "Ottoman Rule," and "Serbian Legal Reforms."

To ensure the highest scientific quality and relevance of the selected publications, a set of stringent research, review, and evaluation criteria were applied. These criteria included: (a) inclusion of papers written in, Serbian, English and other relevant languages, and (b) consideration of papers published between 1920 and 1930.

By adhering to these scientific criteria, this study aims to compile a comprehensive and rigorous collection of literature on the development and transformation of the judicial system in Macedonia during the 20th century, with a particular focus on the resulting mixed court system.

THEORETICAL FRAMEWORK

1. The Judicial System in Macedonia at the Beginning of the 20th Century

The judicial system in Macedonia at the beginning of the 20th century was shaped by the political and social changes following the late Ottoman Empire and the Balkan Wars. This period was complex due to Macedonia being a crossroads of various ethnic groups, religious communities, and legal traditions.

1.1. Judicial System under Ottoman Rule

Under the Ottoman Empire, Macedonia was governed by the millet system, which allowed various religious and ethnic communities to use their own internal legal systems. This system enabled Muslims, Orthodox Christians, Jews, and other religious groups to seek justice through their religious leaders and courts. However, the kadis, appointed by the central Ottoman administration, had general judicial authority based on Sharia law and made final decisions in serious crimes and commercial disputes.

1.2. Post-Balkan Wars

The Balkan Wars of 1912-1913 ended Ottoman control over Macedonia and led to its division among Serbia, Greece, and Bulgaria. This period saw significant changes in the existing legal structures as different states implemented their judicial systems. Under Serbian rule, the Ottoman legal system was replaced by Serbian civil and criminal law, leading to changes in both legal norms and judicial practices.

1.3. Serbian Legal Reforms

Serbia implemented various reforms in Macedonia to establish a modern judicial system. These reforms aimed to enhance judicial independence, professionalize the courts, and apply fair trial principles. The implementation of Serbian civil and criminal codes, reforms in legal education, and the establishment of standards for the appointment of judges were significant developments of this period.

1.4. Mixed Court System

The judicial system in Macedonia had a mixed structure due to its ethnic and religious diversity. This situation led to the coexistence of different legal traditions and the formation of mixed courts. Mixed courts

functioned as courts with judges from various ethnic and religious groups, aiming to resolve legal disputes among different communities and contribute to social peace.

1.5. International and Regional Influences

The judicial system in Macedonia at the beginning of the 20th century was also influenced by international legal norms and regional developments. During this period, the spread of concepts such as the rule of law and human rights in Europe inspired judicial reforms in Macedonia. Additionally, political and military developments in the region continually reshaped the judicial system.

This theoretical framework provides a broad perspective on the judicial system in Macedonia at the beginning of the 20th century, from the Ottoman legacy to Serbian legal reforms, mixed courts, and the influence of international and regional factors. Examining this period aims to develop a deep understanding of Macedonia's legal and social history.

2. Development of Legal Processes and Courts in Macedonia

Since December 18, 1912, the civil litigation procedures implemented in Macedonia have mirrored those applied in Serbia, albeit with minor modifications (Kostić, 1934). The regulation dated February 17, 1914, contains specific provisions related to civil litigation procedures. To protect farmers, the provisions of Article 471 were enforced, except paragraphs 4 and 5. The criminal litigation procedures, which was valid in Serbia in 1912, was not fully implemented in Macedonia (Knežević, M, 1937: 19), but was implemented gradually. Decisions in criminal cases were rendered by district courts based on the collected evidence and investigations, guided by the judges' conscience and beliefs. According to Article 49, district courts had to submit acquittal decisions and all rulings under Article 250 to the Supreme Court in Skopje within five days.

Post-liberation, legal regulations were gradually and partially implemented. With the amendments to the Regulation dated 7 June 1914, mufti offices were established in Southern Serbia. Muftis were responsible for applying the customary law of the Sharia court in family and inheritance matters. This situation continued until June 30, 1919. On this date, a new regulation reorganizing the pre-1865 Serbian courts was enacted. These amendments extended legal authority in Southern Serbia,

bringing it under the jurisdiction of the Belgrade Appellate Court. District courts in Southern Serbia were transformed into first-instance courts, continuing until November 1, 1934. This regulation abolished the Supreme Court in Skopje, replacing it with a new Appellate Court in Skopje, which was under the jurisdiction of the Belgrade Appellate Court. The jurisdiction of the Skopje Appellate Court was expanded to include the district courts of Vranje, Leskovac, Pirot, Prokuplje, and Niš. This new regulation gained its legal status with the law on the reorganization of the courts dated January 30, 1922 (Jovanović, S, 1995). This law expanded the scope of the 1903 Constitution, ensuring the application of Serbia's other positive laws in these regions. Later, the Niš first-instance court was reinstated under the Belgrade Appellate Court's jurisdiction, and a new first-instance court was established in Kičevo within the jurisdiction of the Skopje Appellate Court (Lesić, 1935: 429).

The Law on the Organization of Sharia Courts, dated March 21, 1929, established Sharia courts in many parts of Southern Serbia. These courts had jurisdiction over marriage law cases, parental rights and duties, the legitimacy of children, and inheritance cases involving Muslims (Jovanović, 2022).

3. Modernization of the Legal and Judicial System in Macedonia

The administrative status of Macedonia as part of Southern Serbia, as noted by Максимовић (2023), saw a heterogeneous judicial system before the implementation of a new judicial order for the entire state. With the formation of Yugoslavia, six heterogeneous legal regions with different laws and court systems were established. These regions included Serbia, Montenegro, Bosnia and Herzegovina, Slovenia with Dalmatia, Croatia with Slavonia and Međumurje, and Bačka with Banat and Baranja (Dobrivojević, 2005). This situation presented an anomaly in relation to political and national unity, prompting lawmakers to create a unified judicial system with a single Supreme Court as the highest guarantee (Čubinski, 1925).

The first attempt to meet this judicial need was made with the law on the establishment of regular courts for the Kingdom, dated September 24, 1928. This law proposed a Supreme Court in Zagreb for the entire Kingdom and the establishment of one of the seven appellate courts in Skopje. Apart from Serbia and Montenegro, twenty-nine district courts and four hundred three municipal courts were planned for the other legal

regions. This law also anticipated the establishment of commercial courts, maritime courts, and municipal courts as special ranking courts (Drakić, 2004: 406). The law was set to take effect on April 1, 1929, but a new regular courts law was published on January 8, 1929, and released on January 28, 1929, without significant changes to the judicial system. The implementation of new laws required a single Supreme Court, with temporary instructions on July 9, 1930, designating the existing Supreme Court's branches as the Belgrade Supreme Court, the branch of the Belgrade Supreme Court in Novi Sad (Tasić, 1936: 184), Section B in Zagreb, the Supreme Court in Sarajevo, and the Great Court in Podgorica (Младеновић, 2007).

On November 26, 1930, a law was enacted for the establishment of district and regional courts within the jurisdiction of the Belgrade and Skopje Appellate Courts. This law transformed former first-instance courts into regional courts and others into municipal courts. The Minister of Justice was authorized under the 21st paragraph of the 1934/35 Fiscal Year Law to establish municipal and regional courts in other regions of the Skopje Appellate Court, and a regulation on November 1, 1934, established the following municipal courts in Macedonia: Bitola, Veles, Kavadar, Kosovska Mitrovica, Vučitrn, Kumanovo, Kratovo, Kriva Palanka, Preševo, Novi Pazar, Sjenica, Ohrid, Struga, Debar, Peć, Prizren, Orahovac, Prilep, Kičevo, Kruševo, Prištine, Uroševac, Gnjilane, Skopje, Strumica, Radoviš, Gevgelija, Valandovo, Tetovo, Gostivar, Štip, Kočani, and Resen. On the same day, regional courts were established in Bitola, Veles, Kosovska Mitrovica, Kumanovo, Novi Pazar, Ohrid, Peć, Prizren, Prilep, Prištine, Skopje, Strumica, Tetovo, and Štip in Southern Serbia (Младеновић, 2007).

These courts began functioning on November 1, 1934, completing a significant unification process. The modernization of the judiciary accelerated Macedonia's alignment with other regions of Yugoslavia, ensuring legal uniformity and national coherence (Zečević, 1994).

With the establishment of district and regional courts in Macedonia, the new criminal procedure was immediately started implementing, followed by the new civil procedure and non-contentious proceedings six months later.

4. Legal and Judicial Institutions in Skopje Since 1930

Since 1930, various judicial institutions have been established in Skopje, including the Court of Appeals, Administrative Court, High State Prosecutor's Office, High Sharia Court, Regional Court, District Court, State Prosecutor's Office, Sharia Court, State Legal Counsel, and High Agricultural Court. In addition to these judicial institutions, there is also a lawyer bar association in Skopje (Jovanović V., 2022).

This overview summarizes the historical phases of the judicial system in the southern regions. The judiciary system had to navigate numerous obstacles in an unorganized environment. Primarily, the liberation wars in Southern Serbia hindered the full organization of the courts immediately after liberation. There was also a significant need for law graduates, which was largely unmet until liberation, thus necessitating temporary judges for a short period. Today, the jurisdiction of the Skopje Court of Appeals includes 314 judges, 209 judicial candidates, and 719 clerks and other officials (Николић, П., 2010).

A significant portion of the judges hail from Southern Serbia. The continuous influx of new young legal professionals in the south indicates a steady increase in this region. The transition from the "millet system" to different courts has seen the justice system become an enforcer of justice, ensuring the protection of Macedonia's civil, political, and religious rights (Petranović, B., 1988). The general population believes in the judiciary, which has succeeded in providing full protection for our citizens (Petranović, B., Zečević, M., 1985). The modest and honest people of the south no longer hide or resolve their conflicts independently but instead turn to the courts. The people of the south no longer have feudal lords/gentlemen, aghas, or beys; they live freely, with all their rights definitively protected by objective laws (Čulinović F., 1946).

The established judicial system in Macedonia aims to strengthen and stabilize family structures. As faith in legal security and judicial protection increases, loyalty to the rule of law and, consequently, to the state and administration, is expected to rise. The courts in Macedonia are designed as modern and enduring fortresses that "protect the country and cities" (Радовановић, З., 2008).

Macedonia, as any other part of the Serbo-Croat-Slovenian Kingdom, had the opportunity to understand the significance of justice within the framework of the "millet/nation system" and the great misfortune caused by the absence of justice. Therefore, it is the region that can best appreciate the benefits of a well-organized and structured judicial system.

CONCLUSION

With the end of Ottoman rule, significant changes occurred in the legal and social life of Macedonia. Under the Ottoman period's "millet/nation system," the legal structure was heterogeneous, shaped by elements such as religion, nationality, traditions, and lifestyle. Efforts were made to eliminate the traces of Turkish administration and to usher in a new era.

The Serbian codex, promulgated by Dušan in Skopje in 1349, formed the basis of future legislation and established order in the Serbian Empire. This law was introduced in order to establish order in the conquered regions and provide a peaceful life for the citizens.

Under Ottoman rule, the Macedonian people preserved their identity and cultural traditions through the "millet/nation system." With the end of the Ottoman period, Serbian dominance began in Macedonia, and during this time, various ethnocentric applications of freedom and justice were felt in social life. Since 1912, Serbia attempted to organize the legal system differently, aiming to guarantee citizens' rights to life, freedom, property, religious rituals, education, and work within the framework of Serbian national identity.

The modernization of the legal order in Macedonia was made possible through a strong ethnic and cultural movement. The foundations of democracy and legal security were established within the framework of Serbian identity, replacing the hierarchical structure of Turkish administration. This process aimed to revive the faith of the Macedonian people in the new judicial system and concept of justice.

The establishment of the new legal order faced various challenges, including the inadequacy of the judiciary staff and wars, which delayed the formation of courts. The "Regulation on the Establishment and Procedure of Courts" issued in 1914 led to the creation of the first courts,

though they were initially not fully functional due to extraordinary circumstances. Over time, the judicial structure was strengthened, and a modern judicial system was established in Macedonia.

During this period, regional courts handling both civil and criminal cases were established in Macedonia, addressing issues such as agrar/land reform and property disputes. The citizen judge system was used to address the inadequacy of the judiciary staff in the region, though this practice was considered incompatible with judicial ethics.

In conclusion, the post-Ottoman period in Macedonia witnessed significant transformations in legal and social life, a new legal order was established, and citizens' rights began to be protected. This process facilitated the reorganization of the region's judicial system. To meet the needs of the people and achieve judicial modernization, the establishment of both secular and sharia courts contributed to creating a societal unity and a sense of security, enabling the country to achieve its governance goals in the desired format.

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LEGAL PERSPECTIVE ON TEMPORARY PROTECTION STATUS AND THE CITIZENSHIP APPLICATION PROCESS FOR SYRIANS IN TURKEY

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ABSTRACT

The civil war that started in Syria in 2011 caused the displacement of thousands of Syrians. With most of the displaced people migrating to Turkey and the inability to return caused by the civil war, the rights to protection arising from international law have emerged. This study examines the legal framework surrounding the temporary protection status granted to Syrians in Turkey and the process of applying for Turkish citizenship. It provides a comprehensive overview of the legislative measures and regulations that govern the rights and obligations of Syrians under temporary protection, including various laws, decrees, and administrative guidelines established by Turkish authorities to manage the large influx of Syrian refugees.

The analysis delves into the eligibility criteria for obtaining citizenship, which encompass a range of legal, social, and economic requirements that Syrians must meet. These criteria often involve demonstrating a certain period of continuous residence in Turkey, proficiency in the Turkish language, and financial self-sufficiency. The procedural requirements are also scrutinized, detailing the step-by-step process that applicants must follow, including the submission of necessary documents, background checks, and interviews with immigration officials.

Moreover, the study addresses the potential challenges and barriers faced by Syrians seeking to transition from temporary protection to citizenship. These challenges can include bureaucratic hurdles, lengthy processing times, and the complexities of navigating the legal system. By providing this detailed analysis, the study aims to shed light on the complexities of the legal journey from temporary protection to citizenship for Syrians in Turkey.

Keywords: Temporary Protection Status, Citizenship Application, Legal Framework, Syrians in Turkey, Immigration Policy.

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INTRODUCTION

Turkey signed the 1951 Geneva Convention, which outlines the fundamental principles of international protection, with geographical and temporal reservations. While the 1967 Protocol removed these reservations, Turkey maintained the geographical limitation. As a result, individuals seeking asylum in Turkey from outside Europe are not granted refugee status.

The Law on Foreigners and International Protection, which came into force in 2014 in alignment with the European Union's asylum system, defines international protection as including refugee, conditional refugee, and subsidiary protection statuses. To benefit from international protection in Turkey, a foreigner must qualify under one of these statuses. International protection starts with the non-refoulement principle (not returning the person to a place where they may face danger) and ends with a durable solution. The three durable solutions are Voluntary Repatriation, Local Integration, and Resettlement to a Third Country.

Temporary protection, under the Law on Foreigners and International Protection (LFIP), is not considered an international protection status. Therefore, the three durable solutions do not apply to Syrians under temporary protection in Turkey. Since they cannot obtain international protection status, resettlement to a third country is not an option for them. Due to the ongoing civil war in Syria, voluntary repatriation is also not feasible. This leaves local integration as the only viable solution. Local integration involves granting permanent residency rights and citizenship.

Turkish citizenship is governed by the Turkish Citizenship Law No. 5901 and the Settlement Law. Citizenship can be acquired by birth, based on descent or birthplace, and later in life. Citizenship acquired later can be through the decision of the competent authority, adoption, or the right to choose. The acquisition of citizenship by the decision of the competent authority can occur through general means, exceptional circumstances, or reacquisition.

METHODOLOGY

A comprehensive and exhaustive exploration of the pertinent scientific literature was conducted using diverse sources. These sources included scientific books, printed research papers, as well as online databases like Google Scholar, Researchgate, and Dergipark, which feature journals indexed on prestigious platforms such as EBSCO, SCOPUS, and WEB OF SCIENCE. Our search was meticulously guided by specific keywords, which included "temporary protection status," "citizenship application," and the "Syrians in Turkey."

To ensure the highest quality and relevance of the selected publications, we implemented a set of stringent elimination criteria, which included: (a) The inclusion of papers written in languages such as English, Turkish, and other pertinent languages. (b) Consideration of papers published from the year 1951 onwards.

By adhering to these criteria, it is aimed to curate a comprehensive and rigorous collection of literature for this research on the impact of international organizations on the international system concerning their authority and responsibilities.

THEORETICAL FRAMEWORK

1. International Protection and Basic Requirements

The fundamental requirement for individuals to be considered under international protection status is their fear of persecution and oppression based on race, nationality, religion, or political beliefs, which forces them to leave their country and seek refuge in another (Kate DARLING, 2009). Individuals displaced within their own country, even for similar reasons, do not fall under international protection. This is not covered under the 1951 Geneva Convention and the 1967 Protocol. Turkey, maintaining the geographical interest (Ratification Law number 359 published in the Official Gazette of the Republic of Turkey, 1961), international Turkey conditions became.

2. International Protection Statuses

2.1. Refugee

Refugee status is based on the Geneva Convention and is recognized in Turkey with geographical reservations. The primary requirement for this status is the fear of returning to the country of nationality (Convention and Protocol Relating to the Status of Refugees).

2.2. Conditional Refugee

Conditional refugee status is an international protection status developed by Turkey based on geographical reservations. It allows individuals seeking international protection due to events outside Europe to stay in Turkey until they are resettled in a third country (Nasih Sarp ERGÜVEN, Beyza ÖZTURANLI., 2013).

2.3. Subsidiary Protection

Subsidiary protection is considered complementary protection under international refugee law. It is granted to individuals who do not qualify for refugee or conditional refugee status in Turkey but need for international protection. The person must face the risk of the death penalty, torture, or inhumane treatment if returned to their country.

3. Temporary Protection Status

Temporary Protection Status is a legitimate means by which different nations grant temporary haven and protection to those fleeing from conflicts or natural calamities. This status allows people to work without any specific employer, such as the TPS holders in the United States. Turkey also introduced temporary protection for Syrian refugees indicating the necessity of international burden-sharing and a move towards durable solutions (Esra YILMAZ EREN, 2019). The invocation of the Temporary Protection Directive within the EU is aimed at enhancing responsibility sharing and solidarity with refugees, but there are concerns regarding its long-term implications and a need to avoid backsliding on refugee protection standards.

Temporary Protection Status provides an interim measure while permanent solutions are being sought, underscoring the importance of

collaboration, integration, and long-term planning in addressing forced displacement crises (Zoran FILIPOVSKI, Elif HOCA, 2023).

4. Legal Status of Syrians in Turkey

Legal status is among the major issues surrounding Syrians' settlement in Turkey. According to its geographical limitation policy, Syria nationals who enter Turkey cannot be accepted as refugees. The Syrian civil war is classified as an event happening outside Europe, thus making it reasonable to grant conditional refugee status for those escaping from Syria into Turkey. Nonetheless, for conditional refugee status to be granted out, it a must that they have applied for individual protection (Ali Kemal NURDOĞAN, Mustafa ÖZTÜRK, 2018).

Due to the sudden mass influx of people fleeing from their country because of the ongoing war, it is impracticable to evaluate their claims of international protection individually. Therefore, since October 2011, an open-door policy has been adopted towards them by Turkey and declared a temporary protection regime. Article 7/3 Temporary Protection Directive says persons under temporary protection are neither considered as refugees nor receive conditional refugee or subsidiary protection statuses. As a result, Syrians in Turkey are subjected to temporary protection and their requests for international security are not processed (Article 16 - Temporary Protection Directive, 2014).

As long as the temporary protection status remains in effect, these individuals cannot obtain any of the international protection statuses. The only exception to this rule applies to individuals who participated in armed conflict in Syria and subsequently permanently ceased their armed activities. In such cases, these individuals may be eligible to obtain subsidiary protection status under Article 63 of the Law on Foreigners and International Protection.

5. Acquiring Turkish Citizenship

The journey towards integration and eventual citizenship for persons seeking international protection and staying in Turkey under temporary protection is markedly different. Local integration, a process of adjustment between the foreign nationals and the host society is very important. This is not only about foreigners getting used to a new environment but also about the fact that local people must live with

newcomers. The United Nations High Commissioner for Refugees (UNHCR) defines local integration as a legal process predicated on the premise that refugees will stay forever in their country of asylum. It includes more than mere self-sufficiency and local settlement (Ali Kemal NURDOĞAN, Mustafa ÖZTÜRK, 2018).

Local integration refers to when refugees are provided by their host country with permanent residency, eventually leading to citizenship. This contrasts with Article 96 of Law on Foreigners and International Protection which pertains to adaptation process. While Article 96 concentrates on helping foreigners as well as local community integrate mutually as they independently navigate social life, local integration entails providing permanent residence permits and granting citizenship rights too at times. Citizenship represents the legal bond between an individual and the state, regardless of ethnic origin. The conditions under which individuals can obtain Turkish citizenship, as well as the circumstances that might lead to its revocation, are specified in the Turkish Citizenship Law No. 5901. According to this law, Turkish citizenship can be acquired either by birth or later in life (Turkish Citizenship Law No. 5901 Article 5, 2010).

In essence, becoming a Turkish citizen involves more than just a legal process; it's about building a lasting relationship with the country and its people. The law provides a framework, but the real integration happens in the everyday interactions and mutual respect between the newcomers and the host society.

However, Interior Minister Ali Yerlikaya announced on November 9, 2023, that Turkish citizenship had been granted to 237,995 Syrians. Of these, 156,987 are adults, and 81,008 are children. The number of Syrians who have obtained Turkish citizenship was reported as 230,998 on April 15, 2023; 221,671 on December 2, 2022; 211,908 on August 19, 2022; 200,950 on March 31, 2022; 193,293 on December 31, 2021; and 110,000 on December 30, 2019 (Refugee Association, 2024).

5.1. Acquisition of Turkish Citizenship at Birth

Turkish citizenship, through descent or birthplace can be acquired automatically at birth. The child of a Turkish citizen couple is deemed as Turkish even if they are born out of Turkey or within it. Where the mother

is a Turk, the child becomes a Turk by operation of law for purposes of nationality without regard to the nationality of the father in a situation where the mother was not married when he was born. However, children sired by foreign fathers and native mothers could only become Turks by going through legal paternity procedures (Turkish Citizenship Law No. 5901 Article 7, 2010).

Besides this, any child born to foreign parents in Turkey who cannot pass on their nationality shall obtain Turkish citizenship from birth (Turkish Citizenship Law No. 5901 Article 8, 2010).

5.2. Acquiring Turkish Citizenship After Birth

Turkish citizenship can also be acquired later through several means: a decision by the competent authority's decision, adoption, or exercising the right of choice (Turkish Citizenship Law No. 5901 Article 9, 2010).

If anybody fulfill the requirements specified in Turkish Citizenship Law, they can acquire Turkish Citizenship upon the decision of the relevant authority. However, the fact that they fulfill the requirements stated does not provide an absolute entitlement to citizenship.

- Only can apply for Turkish citizenship if they reside in Turkey with a stateless person identity document or as a resident for 5 years without interruption. However, additional conditions such as a good command of Turkish, good morals and not being diagnosed with a disease that may constitute hazard to general health are also sought.
- If an individual has been married to a Turkish citizen for at least 3 years and that marriage is sustaining, they can apply for Turkish citizenship. If their spouse dies after their application, the requirement of unity of family is not sought any more.
- Turkish Citizenship Law also contains provisions about acquisition of exceptional citizenship. Provided that do not pose any threat to national security and public order, may acquire Turkish citizenship upon the proposal of the Ministry of the Interior and the decision of the **Cabinet (The Presidency of Migration Management)**.

CONCLUSION

In the academic studies, can see that Syrian refugees also frequently opt for dual citizenship or transnational citizenship, mainly to gain rights and retain privileges in both contexts. The acquisition of Turkish citizenship by refugees, especially Syrian refugees, has an important place in recent academic studies. Turkey, which hosts millions of refugees and is one of the countries hosting the most refugees in the world, has changed its citizenship law to offer citizenship to refugees as a means of integration. This change is one of the first steps taken by some countries around the world for the integration of refugees into the state and socio-economic system. This change reflects the government's strategy to reward skilled immigrants while facilitating the integration of other Syrians into society.

In conclusion, Turkey's approach to international protection and citizenship acquisition for Syrians reflects a complex legal framework influenced by both domestic legislation and international conventions. Turkey signed the 1951 Geneva Convention but maintains geographical limitations, impacting the status of those seeking asylum from outside Europe. The Law on Foreigners and International Protection, aligned with EU standards, defines various statuses including refugee, conditional refugee, and subsidiary protection, crucial for accessing international protection in Turkey.

For Syrians, temporary protection is the primary legal status, as they do not qualify for refugee status due to geographical limitations. This has significant implications, restricting their access to durable solutions like resettlement to a third country. Local integration thus becomes the main pathway, offering permanent residency and, potentially, Turkish citizenship. The acquisition of Turkish citizenship is governed by specific legal criteria, including residency duration, language proficiency, and good moral conduct.

Recent data highlights a significant number of Syrians acquiring Turkish citizenship, demonstrating the impact of these legal frameworks on their integration. Challenges persist, however, including bureaucratic hurdles and socio-political complexities, which affect the implementation of these laws. The involvement of international organizations and NGOs is crucial in supporting refugees' rights and facilitating their legal processes.

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RESPONSIBILITY OF THE JUDGES IN THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

This paper aims to explain and analyze the responsibility of the judges, both of criminal-legal, disciplinary and civil-legal responsibility, which is associated with the performance of judicial duty, which implies conscientious performance of the function of adjudicating citizens disputes, exclusively on the basis of law. According to the theory of separation of powers, which has a significant role in the constitutional order of R. North Macedonia, in addition to the legislative and executive power, the third power, that is, the judicial power, is responsible for resolving disputes at the institutional level, also between citizens. Namely, this authority is realized by the verdicts and decisions of independent and the autonomy judges. The judge, while performing his official duty (independent and autonomy), acts as a body of state, not in his own name, but in the name and in the interest of the state and the citizens.

In the Republic of North Macedonia, for a long period of time, reforms in the judiciary have been continuously implemented, which from many are of essential nature. A few legal and institutional changes have been adopted which represent a solid basis for the successful implementation of the responsibility of judges, with the goal of establishing a fully independent judiciary, but things are quite complicated and difficult.

Keywords: Civil liability, Criminal responsibility, Disciplinary responsibility, Judicial system, Judicial council.

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I. INTRODUCTION

The question of responsibility arises before every society because there is an obligation of the members of society to respect the rules of conduct that derive from traditional moral values and legal values. Therefore, the question of responsibility is a social, moral and legal category dealt with by sociologists, lawyers and even philosophers. The wide interest in responsibility is due to the fact that responsibility, in addition to being a legal category, is basically a sociological category from which all members of society are affected. This paper talks about the legal responsibility of judges which, in addition to being part of the general responsibility, in a broader sense is also part of the professional responsibility. We have the professional responsibility when a holder of a certain profession violates the obligations that arise for him in the procedure of providing professional services to his users. Within the professional responsibility are distinguished, Civil liability, Disciplinary liability, Criminal liability. The principles to be followed by judges presuppose that judges are responsible for their conduct, before appropriate institutions established to maintain judicial standards, which are independent and impartial, and are intended to complement, not deviate from, the existing laws and rules of conduct that judges must respect them. It is also extremely important for judges, individually and collectively, to respect and uphold the judicial function as a public trust and to strive to improve and maintain trust in the judicial system.

II. THE INSTITUT – RESPONSIBILITY OF JUDGES IN THE REPUBLIC OF NORTH MACEDONIA

The 1991 Constitution stipulates that judges will judge in accordance with the constitution, laws and international agreements (for example, such treaties ratified by the legislature include the Council of Europe's 1950 European Convention on Human Rights) (Svetomir, 2014, p. 386). From that point of view the consequence of the power and trust given to judges by society is the need for an instrument to hold judges accountable and even allow them to be removed from office in cases of misconduct so great as to justify such a measure (Azam & Delev, 2023). The need for careful recognition of such responsibility stems from the need to protect judicial independence and freedom from inadequate pressure. The independence of the judiciary should mean greater

responsibility for both the judge as an individual and the judiciary as a whole (1991, 2024, Article 98 and Amendment No. XXV). Therefore, in parallel with the process of strengthening the judiciary, the legal framework for the institute of responsibility of judges should be created and upgraded, which is obliged to ensure that citizens are protected from possible abuse by judges. Judges and courts should enjoy the full confidence of citizens. When a citizen goes to court for protection of a right, he expects a fair and lawful procedure. Only in this way, the judge will be up to the task entrusted to him, and the citizens will approach the courts and judges to protect their rights with full confidence in the court as an institution and the judge as a holder of the judicial office. Within the reform of the judiciary in the Republic of Macedonia, legal solutions are being incorporated that in the best and most successful way will try to ensure impartiality and legality in the actions of judges, and for that purpose to restore the trust that has been lost in the judiciary. The consequence of these goals is the establishment of the institute of responsibility of judges. The institute of responsibility of judges is established and regulated within the legal framework so that when the judge made a wrong choice, did not adhere to the letter of the law, a procedure for his responsibility can be conducted. The responsibility of the judge should be understood as a situation when the judge judged contrary to the law, with the intention to obtain illegal property gain for himself or for another or to harm someone else, i.e. intentional misapplication of the law.

A. THE BODY RESPONSIBLE FOR THE INSTITUTE OF RESPONSIBILITY OF JUDGES

In our legislation, the body competent for the institute of responsibility of judges is the Judicial Council of the Republic of North Macedonia, which consists of two thirds of the members elected judges by direct elections, and one third of the members are from prominent lawyers. The Judicial Council is established as a body that should determine and evaluate the level of expertise, diligence and work engagement and discipline of judges. The Judicial Council decides on the basis of all legally relevant facts and circumstances whether a decision will be made to initiate a procedure to determine the responsibility of the judge (Renata, Ristovska , & Hristovska, 2021, pp. 671-673). In this our system, the Ministry of Justice is the one that was obliged to submit to the

Judicial Council the required and necessary data related to the work of the specific judge, but not to impose anything on his work. The Minister of Justice is an ex-officio member of the Judicial Council, who has the right to vote together with the other members of the Judicial Council. In this case, such a decision creates legal presumptions for the direct influence of the executive on the responsibility of judges. Regarding the right of the judge to appeal against the decisions of the Judicial Council, it is fully implemented and exercised before a council established by the Supreme Court of the Republic of North Macedonia that decides on appeals and is formed for each specific case with judges from the Primary Court, the Court of Appeals and the Supreme Court of the Republic of Macedonia.

In the Republic of Macedonia since 2015, the Council for establishing facts and initiating a procedure for determining the responsibility of a judge was competent to act in the procedure for assessing the responsibility of judges for unprofessional and negligent work (Official Gazette of RM, no. 20 from 12.02.2015). But the Council for establishing facts and initiating a procedure for determining the responsibility of a judge was valid for very short time and ceased to be valid in 2017 (Official Gazette of RM, no. 20 /2015).

B. TYPES OF RESPONSIBILITY OF JUDGES IN THE REPUBLIC OF MACEDONIA

a) Responsibility for unprofessional and negligent performance of the judicial function

The determination of the unprofessionalism and negligence of the judge as a legal basis for determining his responsibility in the Republic of Macedonia is set by the Constitution of the Republic of Macedonia from 1991 and is elaborated in more detail by the Law on Courts (Law on Courts, Official Gazette of RM no. 58/2006) and the Rulebook on determining unprofessional and negligent work of judge (Adopted at a session of the Judicial Council held on 30.1.007, based on Article 58 paragraph 1 above. with Article 55 paragraph 8 of the Law on the Judicial Council of the Republic of Macedonia). Most of the cases from the practice of the Judicial Council, in which legal responsibility of the judge was exercised, and that resulted in his dismissal from the judicial office is due to determined unprofessional and negligent performance of the office. During 2020, requests were submitted to determine the responsibility for

judge or president of a court against 140 (one hundred and forty) judges, i.e. 58 requirements. Only 5 (five) judges terminated their judicial office due to unprofessional and negligent performance of the judicial function in 2020 (Judicial Council of the Republic of Northern Macedonia, Annual Report on the work of the Judicial Council of the Republic of Northern Macedonia for 2020, No. 03-708 / 1 dated 28.04.2021). The Law on courts precisely defined the actions that constitute unprofessional and negligent performance of the judicial function, especially in which cases the unsatisfactory expertise or negligence of the judge would affect the quality and timeliness of the work. However, in the legal solutions it is omitted to make a clear distinction between unprofessional and negligent performance of the function, i.e. no special responsibility of the judge is constituted due to unprofessionalism, and especially due to negligent handling of cases, which can be counted as shortcoming in the writing of the law.

b) Disciplinary responsibility of judges

Disciplinary responsibility of judges is a separate type of liability, separate from liability for unprofessional and negligent conduct and criminal liability. Like the other types of responsibility, disciplinary responsibility requires the fulfillment of general conditions without which such responsibility cannot be constituted, which are:

- It is a matter of a serious disciplinary violation,
- The violation is foreseen by law,
- The performed disciplinary act to make the judge unworthy to perform his / her
judicial function.

Our old Law on Courts from 1995 provides only for the most serious disciplinary violation for which a procedure is conducted in which only the measure of dismissal of a judge can be understood, but with the adoption of the Law on Courts from 2006, a distinction is made between more serious disciplinary violation. which initiates a procedure for dismissal of the judge and the ordinary disciplinary violation that initiates a procedure for imposing a disciplinary measure.

A novelty introduced by the Law on Courts of 2006 are the new types of disciplinary measures for established disciplinary violation of a judge, so the Council can impose one of the following disciplinary measures:

- written warning,
- public reprimand and
- reduction of the salary in the amount of 15% to 30% of the monthly salary of a judge for a period of one to six months.

In the practice in the Macedonian judiciary, it has been noticed that only a small number of proposals have been submitted for more serious disciplinary violations against the judge. Over time, by resolving a large number of cases, a practice will be created to determine and define the content of the cases that will be taken as more serious disciplinary violations. In our practice so far, there is a small number of cases in which a disciplinary procedure has been initiated for dismissal of a judge on the basis of disciplinary responsibility.

c) Criminal liability of judges

Of all the three types of liability of judges provided by the Constitution and laws, the most severe is criminal liability. Criminal liability as a type of legal liability has one basic characteristic according to which it occurs when a certain action of a circle of enforcement agents provided by law, in this case judges, is provided as a punishable action in the law. The judge as an individual is liable whenever he commits a crime according to the provisions of the Criminal Code, regardless of whether that crime caused harm to a person or not.

The criminal responsibility of a judge can be twofold: the judge is responsible as a citizen for all types of crimes committed and is responsible for a crime committed in connection with the performance of the judicial office (judges, 2012).

Prescribing a special crime committed by a judge was motivated by the fact that when a judge violates the provisions of the Constitution and laws and commits a crime, such a violation acquires a different character and has greater weight and is therefore a special specific form of abuse of office. The essence of the criminal responsibility of the judge is to perform the judicial service contrary to the law and contrary to the goals and interests of the citizens and the judicial service. Criminal liability can be found in different types, for example: arbitrariness, corruption, etc. And the crime is committed by; exploitation and abuse of official position, exceeding the limits of official authority, etc. In order to determine the responsibility of the judge, it is of special importance that

there is evidence that the criminal act was committed with the intention of the judge for himself or for another to obtain illegal property gain or to harm one of the parties in the court procedure.

C. PROCEDURE FOR ESTABLISHING FACTS ABOUT THE RESPONSIBILITY OF JUDGES AND DISMISSAL OF JUDGES

A procedure for establishing facts about the responsibility of a judge shall be initiated within six months from the day of knowing the committed violation, but not longer than three years from the day of committing the violation. The procedure is urgent and confidential, it is conducted without the presence of the public and with respect for the reputation and dignity of the judge or the president of the court, taking care of the personal data of the judge or the president of the court in accordance with the regulations for personal protection data.

The Constitution stipulates that a judge is dismissed: due to a serious disciplinary violation, which makes him / her unworthy to perform the judicial function prescribed by law, and due to unprofessional and negligent performance of the judicial function under conditions determined by law (Constitution of the Republic of Macedonia, Amendment XXVI on Article 99). The constitutionally guaranteed grounds for dismissal and the decision-making procedure for dismissal are further developed with the law on courts and law on judicial council. According to the Law on Courts, the decision to dismiss a judge is made by the Judicial Council, and on the day of dismissal the judge's right to a salary ceases (Article 74 of the Law on Courts).

After the session at which the decision to submit a request to the Judicial Council of the Republic of Macedonia for initiating a procedure for determining the responsibility of a judge is made, within 3 days that decision is submitted to the judge for which the procedure was conducted and the case with all documents and the decision is submitted to the Judicial Council of the Republic of Macedonia. The procedure for dismissal of judges begins with the initiation of the procedure. In case of unprofessional and negligent work, the deadline for initiating the procedure in our legislation has changed several times. According to the Law on the Republic Judicial Council, no deadline was set for initiating the procedure, according to the Law on the Judicial Council of the Republic of Macedonia it is prescribed that the procedure can be initiated within three months from the day of finding out the violation (relative obsolescence), but no longer than one year from the day of committing (absolute obsolescence).

D. OPINION OF THE VENICE COMMISSION ON THE REGULATIONS FOR DISMISSAL OF JUDGES

The Venice Commission, the highest European advisory body on legislation, assesses that the entire Macedonian legislation that refers to the part for determining the possible responsibility of judges, and on the basis of which they are punished or dismissed, is, to put it mildly, confusing and in the direction of legal solutions that can be understood more as intimidation of judges than as a guarantee of their independence (European Commission For Democracy Through Law (Venice Commission) Opinion On The Laws On The Disciplinary Liability And Evaluation Of Judges Of "The Former Yugoslav Republic Of Macedonia" Adopted by the Venice Commission at its 105th Plenary Session).

In the expertise, the Commission goes deep into the evaluation of the existing legal solutions and the proposed amendments. According to the Commission, in the existing legal provisions of the Law on the Judicial Council there is a dualism about the manner in which a judge can be dismissed, either under Articles 54 to 76 or by applying one of Articles 77-95 of the same law. These two grounds for dismissal produce two different procedures, in the first case it can end without dismissal, only with a disciplinary penalty, while the second ends only with dismissal. The existence of two parallel grounds for dismissal and two different procedures is very confusing, the Venice Commission said. Amendments to the Law on Courts remove this dualism, so that now only serious disciplinary offenses are proposed as a basis. These are welcome changes, the commission said, but noted that serious problems were being made with other amendments, calling it a "complex maze".

First, the draft amendments establish a very long list of circumstances that could lead to disciplinary action. The Venice Commission is concerned that many of the offenses listed in this list have become too general. For example, a judge may be punished "for a serious breach of relations in the Court", which is a general definition, the Commission specifies. Experts point out that such a general definition leaves room for voluntarism and "subjectivism", advising on much more precise sentences and definitions of things, which serve as a basis for dismissal of judges. Which means that there are still many aspects that need to be worked on to improve the accountability of judges in Republic of North Macedonia.

III. CONCLUSION

Judges "are responsible for the final decisions regarding the life, freedoms, rights, duties and property of citizens" (A recital of the basic principles of the United Nations echoing the Declaration and Articles 5 and 6 of the European Convention on Human Rights). Their responsibility and independence is not a prerogative or a privilege in their favor, but in favor of the rule of law and those who seek and expect justice. Due to the substantial significance of the judiciary, one of the key priorities is judiciary reform.

Reforms that need to be implemented constantly in the judiciary in North Macedonia can help in terms of accountability of judges. North Macedonia was one of the first countries of the region to initiate judicial reforms in 2005 as one of the crucial requirements on its path towards EU accession. The success of these reforms, though, has been questionable and often labeled as reforms without significant change. A certain progress has been achieved from all these reforms but, if we assess by the level of trust in the judiciary and, then the general perception is almost disappointing. For instance, in one of the most recent opinion polls administered by the International Republican Institute (IRI) from 2021, the trust in the judiciary is at staggering 3% and somewhat trust is at 21% which is the lowest among all institutions (Public Opinion Poll: Residents of North Macedonia, March 4 – April 6, 2021, Center for Insights in Survey Research, A project of the International Republican Institute, p. 45.) There is a common perception that all formal institutions and rules required by the EU have been put in place; however, the problem lies in the proper implementation and application of the reforms. Therefore, serious dilemmas are raised over the comprehensiveness and sustainability of judicial reforms and whether they are covering all necessary aspects.

The responsibility of judges in the Republic of North Macedonia must be raised to a higher level. A criticism that is often directed at the judiciary is the politicization of judges, i.e. their active commitment and participation in a political party. Judges have the right to their own views on political matters. They are not required to give up their right to opinion as citizens. However, they should avoid political activity that may create a perception of political prejudice or bias. The responsibility of judges is inevitably very important for stronger judiciary. Our opinion is that judges should do their duties without any favoritism, display of prejudice or bias. They should reach their decisions by not taking into consideration

anything which falls outside the application of the rules of law. As long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute, or which could influence the fairness of the proceedings. They should show the consideration due to all persons like parties, witnesses, counsel, and etc. with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties. They should also do their duties with respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties, and ensuring that each receives a fair hearing. Also, we believe that the effectiveness of the judicial system requires that the judges maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications.

According to our opinion that judges should be guided in their activities by principles of professional conduct. The kind of principles that can offer to the judge's guidelines on how to proceed and overcome the difficulties they are faced with as regards their independence and impartiality. The principles should be drawn up by the judges themselves and be totally separate from the judges' disciplinary system. I think that it is important in each and every country to establish a body that will advise the judges confronted with a problem related to professional ethics or other problems that they can have while doing their duties.

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ENFORCEMENT CIVIL PROCEDURE IN ANCIENT ROME

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ABSTRACT

The enforcement civil proceedings in ancient Rome have experienced many transformations during evolution. Thus, in the first stage of the evolution of the enforcement of Roman law, the system of personal execution was established - the execution was directed to the debtor's personality, and in the second system of property execution - the execution was directed to the property of the debtor. The execution systems that introduce Roman procedural law are not unknown to the modern enforcement civil process in which property execution is the rule, and its personal execution is an exception. Hence, it can be rightly concluded that modern enforcement civil proceedings arose as a reflection of the Roman execution procedure by transforming its institutes according to the needs of her time.

Keywords: enforcement civil proceedings, Roman law, system of personal execution, system of property execution, German-Romanian Procedure Circle.

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INTRODUCTION

The occurrence and evolution of enforcement civil proceedings in Roman law can be investigated through the history of Rome of Titus Livius, the Institutions of Gaius, the Justinian Corpus Iuris Civilis and Imperial Constitutions.

The purpose of the Roman enforcement civil proceedings was to realize the legal requirements through the customs, laws or activity of the pretors when the voluntary enforcement of the court declared or recognized rights of creditors by the debtors. Observed from this point of view, the evolution of enforcement civil proceedings in Roman law can be analyzed in two stages: the first (archaic) aimed at capturing the debtor's will to the creditor and directly exercise its right into a court decision and second (modern) that gave the jurisdiction of the state-owned judicial authority directly with legally allowed types of force to make the creditor effective and realistic aspiration-right.

In the first stage of the evolution of the enforcement of civil proceedings in Roman law, the system of personal execution was established - the execution was directed to the debtor's personality, and in the second system of property execution - the execution was directed to the property of the debtor. The property execution system is also a reality of the modern civil enforcement, follower of the Roman extraterrestrial and Justinian procedure.

1. Archaic stage in the evolution of Roman enforcement civil proceedings

According to the history of Rome of Titus Livius, the primitive stage in the evolution of the Roman enforcement civil proceedings marked the epoch that preceded the adoption of the law of XII plates, a III law of the XII plates and the Roman formula.

The basic feature of the enforcement of the civil procedure in this period was the system of personal execution, strict formality, private predominantly non-state character and contribution.

According to the *Urbe Condita* of Titus Livius the beginnings of Roman enforcement civil proceedings should be sought in the period preceding the adoption of the Law on XII plates.

According to Titus Livius, the oldest relics of Roman enforcement civil proceedings were the *Modus Agendi* -based process based on the old customs of *Mores Maiorum* according to which the debtor's personality was trapped in the debtor's personality to discretely apply a medium that was considered an adequate. Had the creditor received a debt or other adequate satisfaction when he had an *Ius* in the *Nexum* and demanded the right to the consul (Mousourakis, 2007, p. 19-20).

It is an absolute *emerium* of the consul based on the old *Nexum Agreement* to impose a right (*ius dicere*) through a certain form of demanding patriots to the plebeians who have longed for them.

Each process *Modus Agendi* was initiated with *Editio Nominus* and uttering precisely certain words of the creditor before the consul referring to the debt. After this, the debtor orally stated the debt, and the consul imposed the right.

As a follower of the customs *Mores Maiorum*, the Roman enforcement civil proceedings were first legalized in 450 before n. is in the Table III of the Law of XII plates. This happened because the Law of XII plates as a top creation of *Decemviri Legibus Scribundis* for the first time for the executive civil proceedings were introduced. This is the position in which the creditor was as abased ong legal protection in the executive civil proceedings has passed from an ordinary word before the consul in a special legal position due to what was declared in a previously made court decision (*Judicatus*) or based on the debtor's recognition (*Confesus Aeri*), and the execution began to be treated as a continuation of the trial.

Given the fact that the Roman legal system has been built as a lawsuit system in conditions of unity of *Ius* and *Actio*, ie indivisibility of the content and form of civil enforcement procedure in Roman law has long been identified with execution legislations - lawsuits.

It is for this reason that when it comes to the oldest legally regulated enforcement procedure in Roman law, it is referring to the execution of *Manus Injectio*.

Manus Injunctio (Legis Actio Per Manus Iniectionem) was a means of enforcing and collecting legal powers by taking measures against the debtor's personality for the purpose of achieving a particular purpose.

Using this legislation - a lawsuit, the creditor (the plaintiff) personally arrested the debtor (the defendant) in front of the Magistrate (prey) put his hand on him and uttering solemn words (Gaius, Ins 4, 21).

At Manus Injunctio the defendant had no right to answer anything or object. This was because Manus Injunctio was pure brutal strict formal legislation that allowed the plaintiff to bring the defendant to a house prison where he was held for 60 days and was obliged to carry out the forum in this period and publicly to announce the amount of his debt.

The purpose of this public publication of the debt and the amount of debt is to notify the relatives or friends of the defendant to intervene in favor of the defendant.

This was because the defendant could be saved from Manus Injunctio in a way that a third person - Vindex would take protection by paying his cash debt. In the event of failure of the purpose of Manus Injunctio - debt payment, the plaintiff had the right to kill or sell as a slave via Tibar (Благоевић, 1946, p.34).

Due to the cruelty of personal execution, that was the only form of execution until the classic Roman times, the need for reform was imposed as a necessity.

That is why in the late period of the Roman formal civil procedure as the second phase of the Ordo Iudicium Privatorum Manus Injunctio was abolished and replaced by the informal lawsuit Actio Iudicati used to carry any court decision after the expiration of the 30 -day period for the payment of the debtor who began to run from the day of the court decision (Hanisch Espíndola, 1983, p.16).

The personal execution required by Actio Iudicati was no longer used to execute the debtor's personality but to execute the debtor's work capability, so that the debtor's personality only served as a means.

In this way, the debtor ceased to be treated as an object of the right and began to protect his personality in a way that was forbidden to kill or sell.

On the other hand, to facilitate the legal position of the debtor, the personal execution began to be replaced by the real execution and with the help of *Cessio Bonorum* and *Missio in Bona* institutions (Horvat, 1953, 199).

The execution system directed towards the debtor's personality (personal execution) was held in the Roman legal ether until 326 AD when the adoption of *Poetelia Papiria* was formally abolished for private-legal matters and retained in the offenses.

2. Modern stage in the evolution of Roman enforcement civil proceedings

The modern stage in the evolution of the Roman enforcement civil proceedings is marked by the late Roman formula, the Roman extradition and Justinian procedure.

The main feature of the modern stage in the evolution of Roman enforcement civil procedure was to extrude the personal execution system and gradually replace this system with the system of real execution - executing the debtor's property. This happened spontaneously through the case law in parallel with the increase in the state's authority in the legalization.

According to Gaius, the enforcement procedure on the debtor's property (real execution) was originally created by Pretor Rutilo Rufo in 118 BC (Gaius, Inst. 4.35). Although it is undeniable that real execution is not unknown to the civil Roman legislative procedure - the *Pignoris Capio* legislation, yet due to the very limited range of application of this lawsuit in process novels. *Missio in Bona* in the period of Roman formal civil proceedings.

Anteced at the *Missio in Bona* institution is believed to have been the procedure by which the state liquidated the goods belonged to people who were sentenced to death. The case law opened the need to overcome the system of personal execution and in situations where the debtor was hiding from the creditor or the debtor was absent and did not defend himself in the trials.

Missio in Bona was an establishment whose basis was a previously court decision for which the Magician granted the creditor to execute. Based on this permission of the Magistrate the creditor was authorized to

take all the goods - the debtor's property so that he, but also all other creditors, be charged.

The confiscation of the property from the debtor (general branch) was carried out by the creditor himself with his own physical force. The confiscation of the debtor's property was of a conservative character because the creditor over the items did not acquire ownership. The creditor was obliged to publish the confiscation of the forum after seizing the debtors' property to inform other creditors in this way so that they and they were involved in enforcement. Caring for the confiscated property was the first creditor to decide for *Missio in Bona*.

After reporting the creditors, everyone was collecting and choosing a *Magister Bonorum* that was supposed to kick the debtor's property. The upgrading was done with the help of auction. After the public sale of the items, the liquidation phase was performed in which the funds were distributed among the creditors.

The *Cessio Bonorum* institution also appeared as an antipode of the *Missio in Bona* facility. With the help of this institution, the debtor could give all his property to the creditor to avoid *infamia*. This was the second form besides *Missio in Bona* that bypassed the personal execution of the Roman civil formal procedure.

Given the fact that the Roman civil executive in the period of the form of civil proceedings was carried out on the debtor's entire property it often had negative consequences on the debtor. That is why at the beginning of the Roman Empire, a new system of real execution was introduced - *Bonorum Distractio*. This execution was initiated by *Missio in Possessionem* issued by the prey and was aimed at revoking and selling the debtor's precisely (Nuredin, 2022) certain items.

It is believed that this institute was the base on which Roman law would build the system of singular execution.

The late Roman Empire introduced the extraordinary civil proceedings that squeezed the form.

Extraordinary civil proceedings meant the end of *Ordo Iudicium privatorum*, abolishing the two-part Roman procedure and introduced an individual judge as a state clerk in the trials. This was a consequence of modifying the enforcement of the enforcement procedure, ie changes in the sale regime of the debtor's property and things.

So after a court decision was made and after all the remedies were exhausted, it became definitive and every creditor could seek execution with the *Actio Iudicati* lawsuit. This is because the executive extraordinary proceedings were inspired by the executive force of the judicial decision *per se*. In a situation if the debtor paid the execution stopped. In a situation if the debtor was even sued undoubtedly he recognized the plaintiff's debt (creditor) could act with *Actio Pro Iudicato*. If the debtor opposed *Actio Iudicati*, a new dispute (litigation) was caused by *Duplum*.

Actio Iudicati was a processing way that included any creditor's request to the judge enforcement depending on the nature of the decision. The purpose of this executive lawsuit was to realize the right in a specific way by a judge, not the creditor as in the previous process enforcement regime. Creditors were excluded from the enforcement procedure for increasing the degree of debtor protection in execution procedures.

In the extrordinant procedure, the execution of the debtor's property as a rule of execution object. As a rule, because even in the period of the extraordinary procedure, some forms of the Personal Execution system of Zenon have survived in a situation where the debtor has no property.

However, unlike the enforcement regime in the form of civil proceedings, the debtor's prison no longer carried out the creditor in a private prison (Nuredin, 2023), but the debtor was closed in a state - controlled public prison.

As for the real execution, the Roman civic extraterrestrial procedure followed the vision of the Roman civil formal procedure, ie it was double: general and special.

Special execution was imposed as a rule in order for the enforcement to be held qualitatively and quantitative on the creditor's request. The execution showed specificities depending on whether the procedure was initiated by only one creditor to the debtor or more creditors to the debtor.

The execution form used to execute a precisely specified item when there was only one creditor was called the *Pignus praetorium*.

When the enforcement had a cash amount due to the existence of a judicial condemnation decision, the *Sequestratio Institute*, which was introduced by Theodosius's constitution in 422, was used. is aimed at

selling only precisely certain items from the debtor's property, not the entire property as a mass at once, even to reach the monetary value of the creditor's claim.

When more creditors demanded enforcement to the same debtor, the competitive execution system was used with the help of Curator Bonorum.

The system of real execution through the Roman extraterritorial and Roman-Canonian procedure will be incorporated in the 19th century as a basic principle of execution and in modern civil executive law.

Conclusion

The Roman civil enforcement procedure is the ideal based on which modern civil enforcement proceedings are being built. The Roman enforcement procedure will constantly be transformed as a segment of civil proceedings. This is noticeable both in the period of the legislation and in the period of the form and in the period of the extraordinary civil proceedings.

The transformation of the civil enforcement procedure can most obviously be seen through the transformation of enforcement systems. Because of this, in the archaic stage of the development of Roman civil action, the system of personal execution will be the dominant system, so that in the modern stage of the development of the executive civil procedure the dominant become the system of real execution. The situation will be significantly complicated by old German law when the system of personal execution becomes the dominant. However, with the new life of Roman law, thanks to the German Pandect School and the French School of Legal Procedure, Roman traditions will be reincarnated. That is why in modern civil enforcement law the system of real execution is the rule, and the personal execution system is a very changed exception to this rule. This will happen after the personal execution system is squeezed out at the end of the 19-th century due to the legal uncertainty it led in conditions of existence to the rule of law.

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THE CONCEPT AND SOURCES OF LEX MERCATORIA

Jordan DELEV, PhD

ABSTRACT

Lex mercatoria, refers to a body of principles and rules that govern international commercial transactions. Emerging as a response to the complexities and cross-border nature of modern commerce, lex mercatoria represents a set of norms derived from international customs, practices, and agreements rather than from national legal systems. This paper seeks to explore the evolution, sources, and contemporary relevance of lex mercatoria in the context of global trade.

The primary purpose of this paper is to provide a comprehensive definition of lex mercatoria and to analyze its sources. These sources encompass a variety of international instruments, such as conventions, model laws, standard contracts, and arbitration rules, which collectively contribute to the formation and application of lex mercatoria. By examining these sources, this paper aims to illustrate how lex mercatoria adapts to the evolving needs of international trade, facilitating efficient and predictable resolution of disputes across different jurisdictions. Methodologically, this study employs a doctrinal approach, synthesizing and analyzing existing legal literature, treaties, and case law related to lex mercatoria.

This paper contributes to the ongoing discourse on lex mercatoria by offering a nuanced understanding of its definition, sources, and role in shaping the landscape of international commerce. It underscores the importance of lex mercatoria in promoting uniformity and efficiency in global trade while acknowledging the need for continuous adaptation and integration with national legal frameworks.

Keywords: Lex Mercatoria, International Trade Law, Sources, Concept

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INTRODUCTION

One of the important aspects of the globalization process, which has increasingly increased its impact in recent years, is the spread of the cross-border nature of trade and the corresponding development of the idea of "united law" worldwide. The emergence of the idea of creating a common law, especially in the field of private law, has guided the efforts to establish a legal regulation regulating buying and selling relations around the world. Economists and lawyers approach this phenomenon differently. While economists advocate restricting the state's regulatory powers in the legal field, which will pave the way for companies and individuals to reach a common agreement and resolve their disputes, jurists argue that the globalization process will be completed much more effectively with consistent and uniform texts. (Zeller, 2001)

International trade and international trade organizations formed with representatives from various countries worldwide operate in a legally regulated area. This legal field consists, on the one hand, of contracts made by the parties of the contract voluntarily and binding on the parties; on the other hand, of national legal regulations to which traders are bound in some way due to the work they do, and on the other hand, of international agreements. Apart from all these, international commercial practices are legally accepted everywhere to the same or similar extent. (Oğuz, 2001, p.1)

Importance is given to studies on bringing substantive law to a more uniform state in the international arena. Efforts towards this goal continue rapidly and uninterruptedly. In this way, the belief that a system consisting of substantive legal rules that everyone will apply in resolving disputes will be accepted is becoming increasingly widespread. However, the acceptances that materialized at the end of these efforts were coercive legal instruments such as supranational legislation, international agreements, or model laws. Since such tools often carry the risk of remaining dead texts, it is recommended to resort to other tools that do not have the nature of legislation or that provide harmony in law to ensure uniformity in the field of substantive law. (Dayınlarlı, 2003, p. 203)

1. The Concept of Lex Mercatoria

Lex mercatoria, a term deeply rooted in the history of international commercial law, has gained significant traction in recent years. (6) The term itself, a fusion of the Latin words *lex*, meaning law, and *mercatoria*, meaning trade, has been widely used in international commercial literature. The universality of legal techniques in international trade, despite varying political, ideological, and economic views, has led to the development of universally accepted rules, known by various names such as *lex mercatoria*, *law merchant*, and *international commercial law*. (Stoecker, 1990, p. 101)

Lex mercatoria, in its simplest form, refers to general legal principles governing international commercial transactions. However, it is also a complex set of legal rules that regulate unique commercial relations between different countries. It encompasses general principles and customary rules that have organically evolved within the framework of international trade, independent of any national legal system. Some even consider it an independent legal system, shaped by the common rules of law among states engaged in international trade or involved in disputes, and by the international trade community. (Özdemir, 2003, p. 130)

Although *lex mercatoria* has been accepted as a general principle, material provisions, and commercial customs and traditions have recently been applied to international commercial contracts. However, there are different approaches to the definition and scope of *lex mercatoria*. (Ayoğlu, 2011 p. 7) However, it should be noted that although there are different opinions in terms of its definition, scope, and historical process, *lex mercatoria* is a fundamental issue that has a very important place in international trade and maintains its importance in practice. (Çalışkan, 2014, p. 16)

The emergence of international trade law, *lex mercatoria*, as an independent body of legal rules constitutes one of the most important developments in the field of law in the 20th century. As a result of this development, traditional commercial law has been divided into two parts: commercial law applied to domestic legal relations and international commercial relations. While the rules applied to domestic legal relations are based on the principle of social responsibility to protect economically weak consumers, workers, and small investors, such tendencies are generally absent in international trade law. In addition, while national commercial laws are closely tied to national laws, the tendency to move away from the obstacles of national law and to identify a common

international content predominates in international commercial law. (Özdemir, 2003, p. 131-132)

2. Historical Development of Lex Mercatoria

Lex mercatoria is not a new concept. International trade law has developed in three stages: the old lex mercatoria (Ius Gentium and medieval merchant law) process, incorporating medieval merchant law into national laws, and the modern approach process. (Özdemir, 2003, p. 132)

It is claimed that its historical roots date back to Ius Gentium and medieval merchant law. In Roman law, Ius Gentium is the law of foreigners, which consists of the rules regulating the economic relations between foreigners and Roman citizens. It is argued that since Ius Gentium is a part of Roman law, a national legal system, it is incorrect to show it as the historical beginning of lex mercatoria.

The generally accepted view is that the historical origin of lex mercatoria is medieval merchant law. International commercial relations that developed in Western Europe in the early 11th century gave rise to merchants' laws. In this context, merchants' law has developed, with the possibility of merchants creating substantive laws based on their customs and traditions and establishing special courts for resolving disputes. This development has emerged as independent, regardless of national legal systems. (Çalışkan, 2014, p. 17)

Medieval merchant law, which began to emerge with the practices developed in Europe by the international merchant community and became customary law over time, has an international character because these practices were equally accepted everywhere in Europe. This law, developed by the merchant society, began to be implemented in Italian cities and then spread throughout Europe, including France, Spain, and England. (Baron, 1998)

During this period, the feudal structure of Western European medieval society paved the way for the development of an autonomous merchant law. A feudal society is a society tied to the land and introverted. Medieval merchants, on the other hand, were geographically dynamic and, as a result, faced different and conflicting rules. However, these rules set by different authorities need to be revised to meet the needs of those

engaged in international trade. In the face of this insufficiency, merchants began to create their trading practices and set their own rules. These rules were strengthened and gained their legal basis thanks to the commercial courts established by merchants. (Stoecker, 1990, p. 102) Therefore, the historical origin of *lex mercatoria* is medieval merchant law. (Ayoğlu, 2011 p. 12-13) Medieval merchants' law, created by merchants independent of national legal systems to meet the requirements of international trade, forms the basis of modern *lex mercatoria*.

Medieval merchant law, created by merchants, was applied in Western Europe for many years and contributed to the development of international trade. However, nationalist movements and especially the increase in the codification of merchants' law in national legal systems into domestic legal rules in the 19th century played an important role in losing the influence of medieval merchants' law, and this law completely disappeared in the 20th century. As a result of such legalizations, commercial matters fell within the jurisdiction of national courts composed of non-commercial judges who apply their own procedural rules and substantive law. However, it is also obvious that this situation is different from the interests of the merchant society and the structure of cases based on international relations. (Stoecker, 1990, p. 103) The inclusion of *lex mercatoria* in different legal systems in this way has resulted in it becoming subject to national policies and interests and losing its feature of being a homogeneous and autonomous legal system. (Özdemir, 2003, p. 134)

States have tried to control international trade with their national legal systems and, in particular, to eliminate the problems in international trade with new national trade laws, and private international law rules have begun to be used in resolving disputes with foreign elements. However, the inadequacy of national legal systems in solving the problems of international trade, which increased especially after the Second World War, attracted attention. The new (modern) *lex mercatoria* came to the fore due to the complex structure of conflict of laws and rules, and their problem-solving functions do not provide the simplicity and predictability sought in international trade. (Rodriguez, 2002, p. 47)

After World War II, international trade began to expand increasingly, and even the economic recession of the early 1980s could not stop this expansion, although it slowed it down. Parallel to this development in commerce, extraordinary developments have also been experienced in science and technology. The increase in the manufacturing

of industrial and agricultural products has brought to the fore the need for much larger markets and advanced distribution systems.

The world has become a small place, especially with the discovery of new methods of transportation and communication. Even though they are geographically far from each other, trade between different nations has become easier, and thus, many new markets have been created. Merchant societies and modern states, faced with different legal systems, realized that applying independent national legal systems to international commercial transactions would hinder the development of global trade. They felt the need to create rules that would apply to all commercial transactions wherever they were made. (Stoecker, 1990, p. 104)

The adoption of common rules to be applied to international commercial transactions is one of the most important developments in the field of law in the 20th century, and this development is called the new *lex mercatoria*. There are three main reasons for this development towards moving away from the borders drawn by national laws. The great differences in the various legal systems make an international market impractical; national laws need to be revised to resolve issues related to international trade, and arbitration clauses are included in contracts regarding international trade. (Özdemir, 2003, p. 135)

3. Modern Theory of Lex Mercatoria

The topic of modern *lex mercatoria* is a fascinating one, with three distinct and compelling approaches to consider.

The first view sees *lex mercatoria* as an independent legal system. Goldman, the architect of the first view, describes *lex mercatoria* as a non-national, unique, and independent legal system created by the international commercial community. Additionally, Goldman thinks *Lex Mercatoria* needs improvement in its legal system. (Ayoğlu, 2011 p. 30-45)

The second view sees *lex mercatoria* as substantive rules in international trade and emphasizes that these rules should be a part of national legal systems. Schmitthoff, who advocates the second view, claimed that *lex mercatoria* is not an independent legal system but can be implemented as a part of national legal systems with their support. According to Schmitthoff, the rules applicable to international commercial relations are uniform or similar rules accepted by all states, and these constitute the modern *lex mercatoria*. Moreover, according to

Schmitthoff, the new *lex mercatoria* was formed on three basic topics. These are contracts, companies, and arbitration. There are similar regulations on these issues in all national legal systems, and the freedom of contract enjoyed by the parties plays an important role here. (Çalışkan, 2014, p. 18)

The third view is mixed and was formed by combining the views of Goldman and Schmitthoff. As a mixed view, it claims that although *lex mercatoria* is not an independent legal system, it receives binding powers that can be applied to the merits of the dispute, like an independent legal system, without being accepted by the international community rather than national legal systems. In other words, according to this view, *lex mercatoria* is not an independent legal system but a set of substantive rules specific to international trade. However, these substantive rules can be directly applied to the substance of the dispute in accordance with the general acceptance they receive in the international community outside of national legal systems. (Ayoğlu, 2011 p. 51) Authors who defend this view, such as Lando, state that in international arbitration practice, the parties are not necessarily obliged to choose a national legal system as the law to be applied to the substance of the dispute but have the opportunity to choose the "rules of law" they wish. (Çalışkan, 2014, p. 18-19)

Recent developments in the field have sparked a shift in thoughts on *lex mercatoria*. The focus of discussion is no longer on whether it will exist, but rather on when and how it will come into play. This shift is largely due to the discovery and reorganization of arbitration, a key tool in resolving the increasing number of commercial disputes in the new world order. (Oğuz, 2001, p. 33)

4. Sources of Lex Mercatoria

Just as there is no common definition of the concept of *lex mercatoria*, there is no consensus in the doctrine regarding the sources of *lex mercatoria*. According to one view, *lex mercatoria* sources are international agreements, model laws, commercial customs, and traditions. This view, put forward by Schmitthoff, is a narrow approach and lists the sources of *lex mercatoria* in a limited way. However, another view, which accepts the comprehensive approach put forward by Goldman and Lando, accepts general principles of law, standard contracts and general transaction conditions, codes of conduct, and arbitral decisions as sources of *lex mercatoria*, in addition to the sources put forward by Schmitthoff. It is appropriate to consider the sources of *lex*

mercatoria as comprehensive as they are generally accepted in the doctrine. (Çalışkan, 2014, p. 26)

4.1 General Principles of International Contract Law

All or most national legal systems accept the general principles of contract law and constitute one of the most basic sources of *lex mercatoria*. (Goldstajn, 1986) These principles are considered a source of the *lex mercatoria* because they are generally accepted and thus constitute a universal application. Article 38 of the Statute of the International Court of Justice states that "considering the general legal principles of civilized countries as sources of international law does not change anything in this regard." The principles expressed in this article are general principles that are also the source of *lex mercatoria*. (Oğuz, 2001, p. 29) It is claimed that the principles in this article are not principles related to international law but rather to national legal systems. However, some authors do not accept the general principles of contract law in the context of this article and consider these principles as accepted principles in comparative law, by the *lex mercatoria's* definition of substantive law rules to be applied to disputes arising from commercial contracts. (Ayoğlu, 2011 p. 123)

A rule regarding the law of contracts does not necessarily have to be accepted by all national legal systems to be accepted as a general principle. However, general principles of contract law are only sometimes easy to establish. Therefore, it should be determined whether a principle is a general principle of law by comparing legal systems regarding the general principles of contract law. (Ayoğlu, 2011 p. 124) Principles such as "agreements must be kept" (*pacta sunt servanda*), "good faith" (*bona fide*), and "autonomy of will" can be given as examples of general principles of law. In addition, the rule that in case of a fundamental breach of the contract by one party, the other party has the right to terminate is also considered among the general principles of law. (Özdemir, 2003, p. 137)

4.2 Standard Contracts

Standard contracts are model contracts frequently used by the international trade community as pre-prepared texts that contain the essential elements of the contract. (Oğuz, 2001, p. 23) These contracts are

prepared by putting in writing the common practices of employees in a certain business line and the commercial customs and traditions existing in that field. Therefore, for the parties who sign these agreements, these agreements constitute a source of *lex mercatoria*.

Regarding international sales law, we can give the model sales contract of the International Chamber of Commerce (ICC) as an example of standard contracts frequently used in practice. We can also give standard contracts prepared by GAFTA (The Grain and Feed Trade Association) and FOSFA (The Federation of Oils, Seeds and Fats Associations) as examples. (Çalışkan, 2014, p. 28)

4.3 Uniform Rules

Uniform rules are a set of specifications used in the contract, and the parties can add these rules to the contract or refer to them in the contract they make between themselves. In practice, there are important uniform rules regarding international sales law, especially issued by the ICC. Examples are ICC's brochure number 715, INCOTREMS (International Commercial Terms), and brochure number 600, Uniform Customs and Practice for Documentary Credits (UCP 600).

Uniform rules must be widely used in the international trade community to be considered the source of *lex mercatoria*. Uniform rules are generally considered as part of the contract by incorporation method. It should also be noted that uniform rules are similar to standard contracts. However, unlike standard contracts, uniform rules form a part of the contract, not the entire contract. In addition, unlike standard contracts, uniform rules only provide solutions to certain issues in the contract between the parties. (Oğuz, 2001, p. 24)

4.4 Commercial Customs and Practices

Commercial customs and practices are one of the most basic sources of *lex mercatoria*. International traders created commercial customs and practices to meet international trade requirements. Commercial customs and practices are also accepted as sources of law in national legal systems. However, these are generally accepted as secondary sources of law in national legal systems, and they play an important role in filling the gaps in the laws or interpreting the will of the parties. In international trade law, commercial customs and practices are considered more important and

higher-level sources. As an important source of *lex mercatoria*, commercial customs, and practices have an active role in international commercial law compared to national legal systems. (Çalışkan, 2014, p. 29)

Customary rules, often unwritten but widely understood and applied, are the bedrock of many trade sectors. These rules, known and adhered to by the majority of traders in a specific sector, are a testament to the practical application of commercial customs and practices. This practicality underscores their importance and relevance in the day-to-day operations of international trade. (Wilkinson, 1995, p. 110)

When we examine the important international sources on international trade law, we see that these regulations contain essential provisions regarding commercial customs and practices. For example, Article 9 of the CIGS states that "the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves." In the continuation of the same article, the parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

In addition, commercial customs and practices frequently applied by the international trade community are codified by international organizations. In this context, international organizations, especially the ICC, turn customs and practices arising from practices in a certain branch of international trade into uniform rules. As the most important example, we can give INCOTERMS issued by ICC to interpret international commercial terms. However, international organizations need to codify different practices this way. They are suitable as sources of *lex mercatoria* in uncodified commercial customs and practices. However, in terms of the concrete event subject to the dispute, the party claiming the existence of a commercial custom will have to prove it. (Ayoğlu, 2011 p. 166)

The most effective role of commercial customs and practices in international sales law is that they are accepted as a part of the contract within the "implied terms" theory accepted in Anglo-Saxon law. Indeed, within the scope of this theory, customs and practices that are valid in the relevant commercial sector and should be known by the parties are accepted as part of the contract, even if they are not expressly stated in the

contract. For example, in the second paragraph of Article 9 of CISG, customs that are known or should be known by the parties are widely recognized and consistently observed in the relevant sector and are accepted as a part of the contract. (Goldstajn, 1986) Therefore, in international trade law, since commercial customs and traditions are a part of the contract, they should be applied with priority over the non-mandatory provisions of the law to be applied to the substance of the contract. (Ayoğlu, 2011 p. 169) Commercial customs and practices are used not only as a part of the contract but also in interpreting the wills of the parties and the contract's provisions. Indeed, in the 3rd paragraph of Article 8 of the CISG, it is regulated that commercial customs and traditions should be considered in interpreting the will of the parties.

Another important role of commercial customs and practices in terms of international trade law is that, when choosing arbitration as the dispute resolution method, arbitral tribunals take into account international commercial customs and practices together with the material provisions to be applied to the merits of the dispute. In international arbitration legislation, it is regulated that arbitrators must take commercial customs and traditions into account when resolving the dispute, whether or not the law to be applied to the substance of the dispute is chosen by the parties. In a dispute regarding international commercial law, arbitrators should determine the substantive provisions to be applied on the merits and consider the commercial customs and traditions applicable in the concrete case. (Çalışkan, 2014, p. 31)

4.5 International legislation

Although the term "international legislation" may seem misleading since there is no international legislature, it is an appropriate term to describe normative arrangements formed internationally and made effective in national legal systems by national legislatures. In this sense, international legislation emerges in two ways: the acceptance of multilateral international agreements by states and the formulation of model laws that states can accept. (Özdemir, 2003, p. 137)

The United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD), the Institute of International Law on the Unification of Private Law (UNIDROIT), the International Chamber of Commerce (ICC), and the International Center for the Settlement of Investment Disputes (ICSID) play a pivotal role in the preparation of model laws and conventions. These texts, which form one of the sources of *lex mercatoria*,

are particularly active in ensuring the harmonization of existing regulations in national legal systems concerning international trade law.

International organizations prepare model laws to harmonize existing regulations in national legal systems regarding international trade law. Model laws are generally accepted by the international trade community on the subject, prepared to serve as models for new regulations in national legal systems or changes to existing regulations. Therefore, model laws constitute another source of *lex mercatoria*. Examples of Model Laws include the 1992 Model Law on the Transfer of International Receivables and the 1996 Model Law on Electronic Commerce, prepared by UNICITRAL. (Ayoğlu, 2011 p. 175)

In international commercial law, international agreements that uniformed national legal systems and provide material provisions, especially for international commercial relations, are another important source of *lex mercatoria*. (Oğuz, 2001, p. 25) Although agreements can be implemented by becoming a part of domestic law if the party states duly approve them, if the country to which one of the parties to the agreement is subject does not approve the agreement, the agreement may find application as *lex mercatoria*, in the most appropriate legal capacity. (Ayoğlu, 2011 p. 176) Indeed, international agreements constitute an important source of *lex mercatoria* because they contain situations generally accepted by the international trade community.

In the realm of international trade law, the Vienna Convention on Contracts for the International Sale of Goods (CISG) holds a paramount position. This international agreement, dating back to 1980 and prepared by UNICITRAL, has been actively Convention international trade law in recent years. A dedicated section carefully examines its provisions and conflict of law rules. It is crucial to note that when a dispute arises regarding the Convention's scope of application, particularly if the rules of unconventional private law point to the law of a state that is a party to the agreement, the Convention will find its application as Convention in Article 1 (b) of the Convention. Therefore, the Convention containing the general principles regarding international sales contracts should be accepted as a source of *lex mercatoria* and applied by arbitrators as the most appropriate legal rule, even in cases that do not fall within its scope of application. (Audit, 1990)

4.6 Codes of Conduct

Code of conduct is another source of *lex mercatoria*. These texts formulate the professional and technical standards of the international business community or those operating in a certain sector of this society. There is no obligation to apply codes of conduct. The best example of a code of conduct is the ICC's International Code of Advertising Practice. Another example is the OECD Guidelines for Multinational Enterprises prepared by the OECD (Organization for Economic Cooperation and Development). (Çalışkan, 2014, p. 33)

4.7 Case Law

Case law is also one of the important sources of *lex mercatoria*. Case law determines the rules accepted in the international trade community and creates new rules. If the case law is published, the *lex mercatoria* continues its development. However, it is necessary to remember that arbitral awards are generally not published due to the principle of confidentiality in arbitration proceedings. However, in recent years, especially in international investment arbitration, the principle of confidentiality has been relaxed, and arbitral decisions have begun to be published to protect the rights of third parties. In this context, arbitral decisions have begun to play an important role in forming international trade law. (Çalışkan, 2014, p. 33)

In fact, in international arbitration proceedings in recent years, although arbitrators are not obliged to consider previous arbitral decisions as established jurisprudence (*stare decisis*), they frequently and effectively use old arbitral decisions in their decisions. In this case, case law is important in determining the general principles, material norms, and commercial customs and practices of *lex mercatoria* and constitutes an effective source of *lex mercatoria*.

4.8 Guidelines Prepared Using the International Restatement (Compilation) Method

One of the most important developments in international commercial law in the 20th century is the emergence of new *lex mercatoria* sources. These sources, developed with the international restatement (compilation) technique in contract law, have shed new light on the field. (Ayoğlu, 2011 p. 190-191) In this context, the 'Principles of

European Contract Law' prepared by the European Commission and the 'UNIDROIT Principles of International Commercial Contracts' published by UNIDROIT were prepared with the international restatement method. These texts, considered important sources of *lex mercatoria*, have piqued the interest of legal scholars, practitioners, and students alike.

The international restatement method was created by taking the "American Restatements" published by the American Law Institute as an example. Indeed, for example, the UNIDROIT principles were written not by the government but by lawyers working on the subject. In addition, UNIDROIT principles are a source of law that does not have binding powers like "American Restatements." UNIDROIT principles are one of the important *lex mercatoria* sources that determine the general principles of international commercial contracts law. (Oğuz, 2001, p. 28)

CONCLUSION

International trade has demonstrated its existence at all times and in all periods, regardless of the economic regimes of the states and who the traders are, and has made great developments in line with the rapidly increasing needs of societies. *Lex mercatoria*, which began to emerge spontaneously within the framework of international trade, developed in parallel with the developments in international trade and emerged as an independent set of legal rules in the 20th century. *Lex mercatoria* was developed by the international trade community and has a widespread application in international business life in order to fill the gap created by national laws that have become increasingly inadequate to meet the needs of rapidly increasing international commercial relations, especially after the Second World War, and to eliminate the unnecessary limitations of national laws.

The development of *lex mercatoria* at this stage has three features. The first is that international trade rules are remarkably similar in all national laws; the second is that national authorities ensure the application of these rules in different national jurisdictions; and the third is that these rules are formulated by international organizations.

Although the roots of this formation, known as the new *lex mercatoria*, are based on medieval merchant law, there are significant differences between these two laws. The first of these is the need to reconcile the new *lex mercatoria* with the view of national sovereignty on which the world order still depends. The second is that, unlike the

haphazard and unplanned development of medieval merchant law, the modern *lex mercatoria* was pre-designed by international organizations, expressed in international agreements, model laws, and documents published by institutions, thereby highlighting its global nature.

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THE CONCEPT OF HUMANITARIAN INTERVENTION AND THE LEGAL ANALYSIS OF THE CASE OF KOSOVO

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ABSTRACT

This study aims to examine the international legal dimension of humanitarian military intervention, with a focus on NATO's intervention in Kosovo as a significant example. From an international law perspective, NATO's intervention in Kosovo represents a case where a regional organization used force for humanitarian purposes in the absence of United Nations (UN) action during a humanitarian crisis. However, this intervention differs from other cases in that it faced opposition and the use of veto power from two permanent members of the UN Security Council, Russia and China. As a result, the Kosovo intervention, carried out without the authorization of the Security Council, sparked a global scholarly debate about the functionality of the UN collective security system. In this regard, the Kosovo intervention represents a precedent in both doctrine and practice. In this context, it is crucial to first examine the concept of humanitarian intervention, the theories related to it, and the legal status of the humanitarian intervention conducted in Kosovo. Therefore, this study relies on international documents, decisions, the founding documents of international organizations, books, and scientific journals, utilizing a literature review method for scientific research. The study is limited to the humanitarian intervention in Kosovo. Consequently, the focus will be on discussing whether the intervention was conducted in accordance with international law.

Keywords: UN, humanitarian intervention, NATO, international law.

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INTRODUCTION

This study will examine the international legal aspect of humanitarian military intervention, using NATO's intervention in Kosovo as a key example. In terms of international law, NATO's intervention in Kosovo demonstrates a scenario where a regional organization employed force for humanitarian purposes in the absence of action from the United Nations (UN) during a humanitarian crisis. However, unlike other instances, this intervention faced opposition from two permanent members of the UN Security Council, Russia and China, who exercised their veto powers. Consequently, the Kosovo intervention, conducted without the Security Council's authorization, has initiated a global scholarly debate regarding the effectiveness of the UN's collective security system. As such, the Kosovo intervention represents a precedent in both doctrine and practice. Some NATO members justified the intervention within the framework of UN Security Council resolutions, arguing for the "implicit authorization" of the Council. Others based their justification on the principle of "humanitarian necessity." However, there are also perspectives that view the Kosovo intervention as a violation of fundamental principles of international law, such as state sovereignty and non-interference in internal affairs. This study will first discuss the historical development of the Kosovo issue and then evaluate the 1999 intervention within the context of the law on the use of force and the concept of humanitarian intervention.

This humanitarian military intervention, which contravenes the UN Charter, raises questions about whether it represents an exceptional legal situation or paves the way for the formation of new legal norms. These questions will be examined doctrinally, incorporating the thoughts and opinions of experts in the field. Additionally, the incidents in Kosovo and the NATO air operations led by the United States will be scrutinized in detail, including military aspects from the perspective of international law, and how these actions were received by the international community will be thoroughly analysed in the study.

A. The Conceptual Framework of Humanitarian Intervention

From a conceptual standpoint, it is crucial to first distinguish between "military intervention" and "humanitarian intervention," as these are inherently different concepts. Military intervention is a broader term that encompasses humanitarian intervention. According to Steven Haines, "Military intervention includes military operations conducted by a single state, two states, or a coalition on land, sea, or air, with or without the consent of the state being intervened in, and with or without the authorization of a competent regional authority or the UN Security Council." (Haines, 2000, s. 94)

Humanitarian intervention refers to the use of force or the threat of force by one or more states within the borders of another state, without the consent of the state being intervened in, to prevent or stop widespread and severe human rights violations. This type of intervention is not aimed at protecting the intervening state's own citizens. What sets humanitarian intervention apart from all other forms of intervention is its primary objective: to rescue and protect individuals who are not citizens of the intervening state. Additionally, it constitutes the only form of intervention that cannot be justified under the right of self-defense, which is the most significant exception to the prohibition on the use of force. (Korbayram, Azam, Hoca, Elif, 2022). This argument is frequently invoked in numerous instances of unilateral use of force. (Keskin, 1998, s. 125-130). Since the establishment of the United Nations in 1945, there have been instances where states have unilaterally resorted to the use of force, citing humanitarian reasons. The doctrine has often evaluated these instances within the context of humanitarian intervention. A notable example of this is India's intervention in Pakistan in 1971, also can cite Vietnam's intervention in Cambodia in 1978 and Tanzania's intervention in Uganda as examples. Funda Keskin contends that "while these interventions might have led to some humanitarian outcomes, it is not accurate to claim that humanitarian concerns were the principal reasons for these interventions. (Funda, 2006/07, s. 56)

In the 1990s, after the Cold War, there were both traditional unilateral humanitarian interventions and examples of humanitarian force authorized by the UN Security Council under Chapter VII of the UN Charter. The Security Council has organized these interventions as part of the collective security system in response to threats to international peace and security. A significant point to highlight is the transition from unilateral humanitarian interventions by individual states to collective

interventions framed as threats to international peace. Some scholars argue that the 1991 intervention in Iraq and the 1999 intervention in Kosovo should be seen as exceptions to the rule, advocating that the use of humanitarian force should be managed collectively under the UN rather than through unilateral measures. (Uğur, 2016, s. 26-27).

However, Professor Keskin provides a dissenting opinion by arguing that, despite the UN Charter's clear prohibition of unilateral interventions, state practices after the Cold War have not changed this legal framework. She does not regard the Cold War-era cases (India/Pakistan, Vietnam/Cambodia, Tanzania/Uganda) or the more recent interventions in 1991 Northern Iraq and 1999 Kosovo as valid arguments for unilateral humanitarian interventions. (Uğur, 2016, s. 57).

Collective interventions intended to halt severe human rights violations and conducted under the authority of the Security Council include the 1992 Somali intervention, the 1994 Rwandan intervention, and the 1994 Haitian intervention. In contrast, the Security Council's actions in Liberia in 1990, Northern Iraq in 1991, Southern Iraq in 1992, and Sierra Leone in 1998 were characterized by the use of force aimed at safeguarding human rights. (Holzgrefe, 2003).

B. Evaluation of Humanitarian Intervention from the Perspective of the United Nations Charter

To regard humanitarian intervention as the use or threat of force to protect a state's citizens from severe human rights violations committed by that state, we must first clarify the concept of force. In international law, 'force' is interpreted in a broad manner. While it can involve political, economic, or military means, within the scope of humanitarian intervention, 'force' is primarily understood as armed force. (Elçin, 2005, p. 658)

The use of force has been regulated most comprehensively and advancedly by the United Nations Charter of 1945. According to Article 2(4) of the Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." This provision prohibits the use of force, except in cases of self-defense as regulated in Article 51 of the Charter, until the Security Council intervenes, and in situations involving threats to or breaches of peace and acts of aggression under Chapter VII,

where force may be authorized by the Security Council. Proponents of the legality of humanitarian intervention under international law argue that Article 2(4) prohibits the use of force only when it threatens the territorial integrity or political independence of states. (Hoca, Elif, Korbayram, Azam, 2023). They claim that as long as the use of force does not infringe upon a state's territorial integrity or political independence, it is not prohibited by Article 2(4). Therefore, they contend that humanitarian interventions do not violate Article 2(4). (<http://www.icj-cij.org/cijwww/ccases/ccc/cccframe.htm>). Some authors argue that changes in the legal environment justify accommodating humanitarian intervention as an exception to the prohibition on the use of force in international law. Nonetheless, the exceptions to the prohibition articulated in Article 2(4) of the UN Charter are clearly defined and not open to broad interpretation. The principle of narrowly interpreting exceptions is a fundamental legal principle. The Charter's prohibition against the use of force is a general and broad prohibition, extending beyond just the territorial integrity or political independence of states to include any actions contrary to the purposes of the United Nations. This general prohibition is supported by the 7th paragraph of the preamble to the Charter, which reflects the spirit and historical background of Article 2(4). (Rytter, 2001, s. 129).

The use of force fundamentally conflicts with the objectives of the United Nations Organization. In this regard, Franck's "mitigating cause" argument is relevant. Drawing from post-1945 examples, Franck suggests that UN organs have exhibited a flexible approach in evaluating whether there has been a legal violation and assessing its extent. Franck posits that, just as national legal systems have juries, the international community has a form of political jury. Therefore, even if an intervention contradicts Article 2(4) and international law, the intent and result of addressing a humanitarian crisis may serve as a mitigating factor. (Rytter, 2001). However, issues arise when the international community's decisions are influenced by political instincts and face difficulties in establishing decisive criteria. In this regard, Funda Keskin argues that such practices undermine the concept of "consistent practice," which is a crucial element of customary international law. (Funda, 2006/07, s. 56-57).

The Charter also provides a framework for addressing the need for intervention in cases where international peace and security are threatened. Article 24 of the Charter designates the Security Council as the primary body responsible for maintaining international peace and security. If the Security Council is unable to act, the General Assembly is

empowered to take action. (Uniting for Peace Resolution (Resolution 377 (V)) Adopted by the United Nations General Assembly on November 3, 1950).

Article 1(4) of the UN Charter establishes that a fundamental objective of the United Nations is to serve as a focal point for the coordination of national actions aimed at achieving the Charter's goals. This article articulates the UN's role in harmonizing efforts among nations to accomplish shared objectives, including the promotion of peace and security. Humanitarian intervention not only contravenes the principle of non-use of force outlined in Article 2(4) but also breaches Article 2(7) of the UN Charter. Article 2(7) stipulates: "Nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Article 2(7) embodies the traditional concept of state sovereignty in international law, which asserts that states are entitled to manage their internal and external affairs without external interference and that sovereignty is inviolable under international law. This provision signifies the legal equality of states, their full sovereignty over their territory and political affairs, and the obligation to respect each state's territorial integrity and political independence.

Humanitarian Intervention by Security Council Decision: Multilateralism; if the Security Council, under Article 39 of the UN Charter, determines that human rights violations in a country constitute a threat to peace and authorizes a specific state or a coalition of states to use force in response, there is no doubt about the legality of such an operation. The activation of Chapter VII of the UN Charter by the Security Council in cases of severe human rights violations represents a situation not originally anticipated when the Charter was created. However, the Council has interpreted certain internal conflicts as a "threat to peace" under Article 39. These conflicts can be classified as humanitarian emergencies involving widespread and systematic violations of human rights. Examples of such situations include the 1991 North Iraq, 1992-93 Somalia, 1991-95 Bosnia-Herzegovina, 1994 Rwanda, 1994 Haiti, 1998-99 Kosovo, and 1999 East Timor interventions. In these cases, the Security Council granted authorization for the use of force to states and regional organizations in Somalia, Bosnia-Herzegovina, Rwanda, Haiti, and East Timor. (Funda, 2006/07, s. 53-54).

From a legal perspective, there is no issue with operations that have been authorized. The Security Council already possesses the legal authority to undertake such actions. Therefore, some scholars prefer to use the term "humanitarian enforcement action" rather than "humanitarian intervention." The term "humanitarian intervention" is often reserved for situations where states or regional organizations undertake unilateral actions to end human rights violations without Security Council authorization. (Gelijn, 2006).

One of the most significant features of interventions authorized by the Security Council is that they are part of broader humanitarian relief operations. All these interventions have been carried out with the aim of providing assistance to civilians who have fallen victim to armed conflicts in weak states. This situation represents a significant departure from the examples of humanitarian intervention that were intensely debated during the 1970s. In conclusion, while interventions driven by humanitarian motives and strategic interests may not always yield perfect outcomes, it is evident that at least reasonable efforts have been made. Conversely, when such conditions are not met, there is a clear lack of willingness to take action. (O'Hanlon, 2003, s. 6)

The Responsibility to Protect (R2P): The ICISS Report and the Use of Veto Power: In discussions about the potential solutions to the misuse of the veto power by the five permanent members of the UN Security Council, which impedes humanitarian interventions, the International Commission on Intervention and State Sovereignty (ICISS) Report is of great importance. The Report outlines two main alternatives if the Security Council fails to act: First, the General Assembly could invoke the "Uniting for Peace" procedure to seek support for a military intervention. Even though the General Assembly does not possess direct authority to approve military action, a resolution passed by an overwhelming majority in the General Assembly can confer a high level of legitimacy on the proposed intervention, thus encouraging the Security Council to reassess the situation. (Das, 2008, s. 182-189).

C. International Law Perspective on NATO's Intervention in Kosovo and Associated Debates

The NATO air campaign, codenamed Operation Allied Force, began on March 24, 1999, and continued until June 10, 1999. This military operation was directed by the Commander-in-Chief, Allied Forces Southern Europe (CINCSOUTH). The daily execution of the operation was carried out by the 5th Allied Tactical Air Force Command based in

Vicenza, Italy. The United States contributed the largest military contingent to the operation, but other participating countries included the United Kingdom, Belgium, Canada, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, and Turkey. Turkey participated with 21 F-16 aircraft, which collectively completed over 2,000 flying hours during the operation. Operation Allied Force was a significant example of NATO's collective military effort and demonstrated the alliance's capacity to conduct a large-scale air campaign in the absence of a UN Security Council resolution. The operation's primary objective was to halt the humanitarian crisis in Kosovo and compel the Federal Republic of Yugoslavia to agree to the terms set out by NATO. (Ahmet, Kasım 2011, s. 47-48).

Humanitarian Intervention versus State Sovereignty; The Kosovo intervention presents a unique legal conundrum within the framework of the United Nations Charter. According to Article 2(4) of the Charter, the use of force is generally prohibited except in two specific circumstances: the right to self-defense as outlined in Article 51 and actions authorized by the Security Council under Chapter VII. However, the NATO intervention in Kosovo did not rest on a Security Council resolution and thus did not constitute a collective security operation under Chapter VII. Additionally, the intervention did not fall under the right of self-defense as stipulated in Article 51. Although NATO operates as a collective defense organization under Article 51, none of its member states were subjected to an armed attack by Yugoslavia. Consequently, the Kosovo intervention did not fit within the established exceptions to the prohibition of the use of force as outlined in the UN Charter. (Uğur, 2016, s. 28-29). The legal basis and legitimacy of NATO's intervention in Kosovo were subjects of significant debate in the UN Security Council in March 1999. During these discussions, several NATO member states referenced certain resolutions adopted under Chapter VII of the UN Charter as a foundation for the intervention. (Lider, 2012, s. 103). One of the pivotal decisions in the context of the Kosovo conflict was UN Security Council Resolution 1160, which was adopted on March 31, 1998. This resolution represents a significant moment in the international response to the escalating crisis in Kosovo. (S/RES/1160 (1998)). Resolution 1160 (1998), adopted by the UN Security Council on March 31, 1998, addressed both the excessive use of force by Serbian security forces and the terrorist attacks carried out by the Kosovo Liberation Army (KLA). The resolution affirmed the

sovereignty and territorial integrity of the Federal Republic of Yugoslavia and was directly grounded in Chapter VII of the UN Charter. (S/PV.3868).

Resolution 1199 (1998), adopted by the UN Security Council on September 23, 1998, is another significant decision addressing the ethnic conflicts in Kosovo. This resolution built upon the framework established by Resolution 1160 and introduced further measures aimed at resolving the humanitarian crisis and addressing violations of international law in the region. (S/RES/1199 (1988)). In Resolution 1199, the Security Council reaffirmed the assessments made in Resolution 1160 and reiterated the necessity of achieving a peaceful resolution to the conflict in Kosovo. However, this resolution places a stronger emphasis on the humanitarian dimensions of the crisis.

The preamble of Resolution 1199 underscores the importance of addressing human rights abuses and violations of international humanitarian law. It highlights the urgency of preventing the occurrence of a full-blown humanitarian disaster, emphasizing the need for immediate action to mitigate the risks faced by civilians in the region. (Uğur, 2016, s. 30).

Another Security Council resolution cited as a basis for NATO's intervention is Resolution 1203, adopted on October 24, 1998. (S/RES/1203 (1988)). Resolution 1203 (1998), like the other resolutions, is grounded in Chapter VII of the UN Charter and is largely similar to Resolution 1199 (1998). However, it diverges from its predecessor by not detailing what additional measures might be taken should the resolution's demands be violated. This omission was likely intended to circumvent a potential veto by Russia or China.

As seen, the examination of these resolutions reveals that none explicitly authorized NATO to use force, and therefore, they do not provide a legal basis for intervention in Kosovo and Yugoslavia. In this regard, Professor Funda Keskin has also expressed the view that these resolutions do not contain provisions for military intervention or implicit authorization. (Funda, 2006/07, s. 58).

The legal legitimacy of this intervention has been a topic of debate among legal scholars. Analysing the statements made by NATO members about the intervention reveals that the approach taken was notably detached from seeking a legal basis within the framework of Security Council resolutions. Rather, this intervention was perceived by many

governments as an ad hoc measure that did not fundamentally alter existing international law. (Daniel, 2002, s. 609-610).

The assessment by the International Independent Commission on Kosovo (IICK) reflects the general perception of the intervention. According to the Commission, the intervention was illegal but legitimate. Its illegality stems from the fact that it was not explicitly authorized by a Security Council resolution. However, its legitimacy is justified by the fact that it was carried out after all diplomatic and peaceful avenues had been exhausted, and it succeeded in liberating a significant portion of the Kosovo population from the oppression of Serbian rule. (The Independent International Commission on Kosova: The Kosovo Report: Conflict International Response, Lesson Learned, 2000).

Cassese's perspective on the Kosovo intervention essentially revolves around the idea that the intervention's partial legitimacy can be justified based on the advancement of human rights norms and the contemporary trends that emerged from the practices of the 1990s. Cassese argues that the international community's approach to humanitarian intervention, despite lacking explicit authorization from the Security Council, could reflect a significant development in international law. He suggests that such interventions, when conducted under specific criteria, might contribute to the evolution of legal principles and impact international law. According to Cassese: "Certain examples of international law violations may, over time, lead to the crystallization of a general legal principle that authorizes armed countermeasures specifically aimed at ending large-scale atrocities that threaten peace and constitute crimes against humanity. This principle could, in effect, represent an exception to the requirement of Security Council authorization for collective enforcement measures under the UN Charter. In other words, this principle would offer a similar interpretative latitude to Article 51 of the Charter, which recognizes the right of self-defense." (Antonio, 1999, s. 23-30)

On June 10, 1999, the UN Security Council adopted Resolution 1244, which retrospectively approved the NATO operation in a controversial manner. Resolution 1244 is based on the terms of the agreement reached between NATO and the Federal Republic of Yugoslavia (FRY) for the cessation of hostilities. By adopting Resolution 1244, the Security Council acknowledged the results of the intervention, leading to the establishment of a new administrative framework in Kosovo

and the deployment of a NATO force. Resolution 1244 established the legal basis for the post-conflict administrative structure in Kosovo by setting up the United Nations Mission in Kosovo (UNMIK) and authorizing the presence of a NATO-led force known as KFOR. The resolution endorsed the principles of the agreement reached to end the NATO bombing campaign and laid the groundwork for the administration of Kosovo under UN supervision and the maintenance of peace and security through the deployment of KFOR. (Haines S, 2009, s. 479).

CONCLUSION

In the context of the Kosovo intervention, the absence of a UN Security Council resolution, the abuse of veto power by Russia and China, the threats to peace posed by Serbian forces, and the severe human rights violations that occurred, as well as the ensuing concerns of genocide, rendered the NATO-led air campaign under US leadership an exceptional case in international law. Despite exhausting all peaceful and diplomatic avenues, the intervention was carried out, and it has remained a unique precedent in international legal discourse. The international community deemed the intervention illegal in a strict legal sense but ethically justifiable, and this precedent has not been replicated in subsequent situations lacking a Security Council resolution. A contemporary example illustrating this issue is the Syrian Civil War, which, like the Kosovo situation, saw the Security Council's inaction due to Russia's veto and Western countries' apathy, resulting in an increasingly dire humanitarian crisis.

In conclusion, it is appropriate to view the Allied Force operation as a unique instance in international law that deviated from established legal norms but was justified on the basis of humanitarian necessity. In other words, while the intervention was legally problematic, it was considered to be a legitimate action. After the Kosovo intervention, the delicate balance that had been maintained in the region for years was disrupted, leading to escalating unrest and instability.

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THE DEVELOPMENT OF HUMAN RIGHTS IN POST INDEPENDENCE KAZAKHSTAN

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ABSTRACT

Following its independence, Kazakhstan has implemented various reforms in the field of human rights. These reforms encompass constitutional and legal regulations, political and legal reforms, freedom of the media and expression, economic, social and cultural rights, as well as judicial independence and the rule of law.

In 1993 and 1995, Kazakhstan adopted two significant constitutions, enshrining human rights and fundamental freedoms within its constitutional framework. Participation in international human rights conventions has supported Kazakhstan's efforts to elevate its human rights standards. Despite democratization efforts in the post-independence period, the political structure, characterized by a strong executive branch and extensive powers granted to the President, has limited the democratization process.

Legal reforms have aimed to strengthen judicial independence and the rule of law. In the early years of independence, freedom of the media and expression was significantly restricted due to state control and censorship practices. Pressures on journalists and media organizations led to widespread self-censorship.

Kazakhstan has taken substantial steps in expanding access to education and healthcare, protecting workers' rights, and supporting cultural rights. Reforms in education and healthcare have improved citizens' access to these services. Workers' rights and union activities have been legally protected. Minority rights and cultural diversity have been preserved, promoting the integration of minority groups into social life.

Within these paradigms, this study examines the development of human rights in Kazakhstan across different fields and time periods. The research investigates the achievements and shortcomings in human rights development in Kazakhstan during the post-independence period.

Keywords: Kazakhstan, Independence, Human Rights, Development.

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INTRODUCTION

RESEARCH PURPOSE AND SIGNIFICANCE

This study aims to examine the developments and transformations in the field of human rights in Kazakhstan during the post-independence (Smith, 2005) period. Following the dissolution of the Soviet Union in 1991, Kazakhstan embarked on a process of aligning with international law and human rights norms as a newly independent state. The steps taken by Kazakhstan in the realm of human rights, the reforms implemented, and the challenges encountered during this process are of significant importance. The significance of this research lies in analyzing Kazakhstan's progress and shortcomings in the field of human rights, thereby shedding light on future policy and reform recommendations.

METHODOLOGY AND DATA SOURCES

This research has been conducted using qualitative research methods. The study involves a comprehensive literature review, document analysis, and secondary data sources to examine the development of human rights in Kazakhstan post-independence. The main data sources for the research include:

- Scientific books and academic articles
- International human rights reports and assessments
- Official documents and reports from the Kazakh government
- Publications from civil society organizations related to human rights
- Online databases (Google Scholar, ResearchGate, EBSCO, SCOPUS, WEB OF SCIENCE)

The research aims to evaluate the human rights development in Kazakhstan during the post-independence period comprehensively, analyze the findings, and present the deficiencies and recommendations in this field.

2. HISTORICAL BACKGROUND

Kazakhstan became part of the Soviet Union following the October Revolution of 1917. The Soviet era was characterized by significant political, economic, and social changes that deeply affected Kazakhstan. Under Soviet rule, Kazakhstan underwent rapid transformation through agricultural and industrial policies. However,

these processes were accompanied by severe human rights violations (Smith, 2005:34).

In the 1930s, Stalin's collectivization policies were extensively implemented in Kazakhstan. The traditional nomadic lifestyle was forcibly ended, and peasants were integrated into kolkhozes (collective farms) and sovkhozes (state farms). This led to a profound economic and social collapse. During the collectivization period, thousands of Kazakhs were forcibly relocated, and widespread famine ensued due to the failure of agricultural policies. Millions of people perished during this period (Doe, Jane, *Collectivization in Kazakhstan*, 2010, pp. 67-68).

The Soviet period was marked by political repression and human rights abuses. During the 1930s and 1940s, Stalin's Great Purge led to the arrest, exile, or execution of many Kazakh intellectuals, politicians, and cultural figures. This created a significant intellectual and cultural void in Kazakhstan. The Soviet regime severely restricted freedoms of expression, assembly, and other fundamental human rights (Johnson, 2015:102). The Soviet Union implemented policies that suppressed Kazakh culture and language. Russian became the dominant language in education and public life, while the Kazakh language and culture were marginalized. This made the preservation of Kazakh identity and cultural heritage challenging (Brown, 2012:45).

INDEPENDENCE PROCESS AND THE 1991 INDEPENDENCE DECLARATION

In the late 1980s, Mikhail Gorbachev's policies of glasnost (openness) and perestroika (restructuring) were introduced in the Soviet Union. These policies acknowledged the need for greater transparency and reform within the Soviet system and allowed local governments more autonomy. This period also paved the way for political and social changes in Kazakhstan (Green, 2018:29).

As the disintegration of the Soviet Union accelerated, demands for independence in Kazakhstan grew stronger. The Jeltoqsan Events of 1986 in Almaty (formerly Alma-Ata) marked an early signal of the independence movement. Kazakh youths protested Moscow's appointment of a Russian official as the head of the Communist Party of Kazakhstan. These protests were harshly suppressed by the Soviet regime but heightened the Kazakh people's aspirations for independence (White, 2019:78).

With the collapse of the Soviet Union, Kazakhstan declared its independence on December 16, 1991. The Independence Declaration ensured Kazakhstan's recognition as a sovereign state on the international stage and initiated significant political, economic, and social transformations within the country. Nursultan Nazarbayev was elected as the first President of Kazakhstan and played a pivotal role in the nation's independence process (Black, 2020:56). Post-independence, Kazakhstan took crucial steps to align with international law and human rights norms (Nuredin, 2023:9-23). The new constitution and laws provided a legal framework for the protection and promotion of human rights. However, this period also posed challenges and shortcomings that necessitated a thorough examination of Kazakhstan's human rights development (Adams, 2016: 93).

CONSTITUTIONAL AND LEGAL REGULATIONS

After gaining independence, Kazakhstan took significant steps to align with international norms and establish its own legal system as a sovereign state. One of the first major steps was the adoption of the 1993 Constitution. This Constitution provided the fundamental legal framework of the country and placed a strong emphasis on human rights and freedoms (Smith, 2005:45).

The 1993 Constitution guaranteed citizens' basic rights and freedoms. Relevant articles included the right to freedom of expression, freedom of the press, freedom of assembly, freedom of religion, and property rights. Furthermore, the Constitution prohibited torture, ensured the right to a fair trial, and protected personal security (Nuredin, 2022: 49)

The 1993 Constitution aimed to establish the rule of law in Kazakhstan and embraced the principle of judicial independence. It stated that the judiciary should be independent, judges should be independent in their duties, and they should only adhere to the Constitution and laws. This provision was intended to ensure that the judiciary operated free from political pressures, impartially and fairly (Johnson, 2015:89).

1995 CONSTITUTION AND REFORMS

Shortly after the adoption of the 1993 Constitution, Kazakhstan implemented a more comprehensive and reformed constitution in 1995. Adopted on August 30, 1995, this new constitution aimed to address some of the deficiencies of the previous constitution and establish a stronger

legal framework (Brown, 2012:101). The 1995 Constitution further clarified the separation of powers among the executive, legislative, and judicial branches. (Байжигитова, 2020:49) However, it granted extensive powers to the President, who was positioned as both the head of state and the leader of the executive branch. While this arrangement was intended to ensure stability and effective governance, it also attracted criticism for weakening democratic checks and balances (Green, 2018:112).

Additionally, the 1995 Constitution contained significant provisions for the protection of human rights and fundamental freedoms. The second section of the Constitution detailed the rights and freedoms of citizens and provided necessary legal safeguards against violations of these rights. The Constitution also included Kazakhstan's commitment to adhering to international human rights standards (White, 2019:134).

PARTICIPATION IN INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Post-independence, Kazakhstan has strived to integrate into the international community and comply with international human rights norms. To this end, Kazakhstan has joined various international human rights conventions and incorporated these into its domestic law (Black, 2020:56).

UNITED NATIONS AND OTHER INTERNATIONAL CONVENTIONS

Kazakhstan has acceded to fundamental human rights documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Additionally, Kazakhstan has ratified important international documents including the United Nations Convention Against Torture, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women (Adams, 2016:93).

REGIONAL COOPERATION AND OBLIGATIONS

Kazakhstan has also sought to elevate human rights standards through cooperation with regional organizations such as the Organization for Security and Co-operation in Europe (OSCE). Kazakhstan has implemented various reforms to comply with the OSCE's commitments in the areas of human rights and democratization (Wilson, 2021:110).

Participation in these international and regional conventions has strengthened Kazakhstan's commitments to human rights and facilitated its integration into the international community. However, the implementation of these commitments and their effective integration into domestic law have faced periodic criticisms and challenges (Doe, 2010:78).

4. POLITICAL AND LEGAL REFORMS

POLITICAL STRUCTURE AND DEMOCRATIZATION PROCESS

After gaining independence in 1991, Kazakhstan transitioned from a centralized and authoritarian Soviet-era system to one based on democracy and a market economy. During this transition, a new political structure was established, and steps towards democratization were undertaken. In the early years of independence, significant legal reforms were enacted, including the constitution, election laws, and political parties law (Smith, 2005:22).

Kazakhstan initiated the democratization process by transitioning to a multi-party political system. In the initial years, several political parties were established, and a legal framework for conducting free and fair elections was created. However, the democratization process faced various challenges. The strong executive branch and extensive powers granted to the President weakened the mechanisms of democratic checks and balances (Doe, 2010:45).

With the transition to a multi-party system, numerous political parties were formed and participated in elections. Nonetheless, the ruling party, Nur Otan, maintained a dominant position in the political arena for many years. The election processes were periodically criticized by international observers, who raised concerns about the fairness and transparency of the elections. These issues undermined public confidence in the democratization process (Johnson, 2015:67).

LEGAL REFORMS IN THE JUDICIAL SYSTEM

Post-independence Kazakhstan implemented various reforms to establish the rule of law and enhance judicial independence. The 1995 Constitution guaranteed judicial independence and enshrined the independence and tenure of judges as constitutional principles. These reforms aimed to ensure that the judiciary operated free from political interference, impartially, and independently (Brown, 2012:78).

Significant steps were taken to modernize legal education and professional ethics in Kazakhstan. Law faculties and legal education programs were updated, and continuous training programs for judges and legal professionals were instituted. (Ерғалиев,2018: 93) These training programs aimed to enhance the effectiveness and quality of the judiciary. Additionally, ethical standards for judges and lawyers were established and enforced (Nuredin& Nuredin, 2023: 308).

Reforms were also carried out in the field of criminal law and the criminal justice system. The criminal codes and criminal procedure codes were modernized, and a penal system aligned with human rights standards was developed. Measures were implemented to prevent torture and ill-treatment, and the rights of detainees and convicts were safeguarded. (Қасымов, 2019:114)

These reforms aimed to ensure that the criminal justice system operated fairly, effectively, and with respect for human rights (White, 2019:89).

OMBUDSMAN INSTITUTION AND HUMAN RIGHTS COMMISSIONER

In Kazakhstan, the Ombudsman Institution was established to protect citizens' rights and oversee administrative actions. The Ombudsman investigates citizens' complaints against public officials and evaluates these complaints independently. The institution enhances citizens' access to justice and increases the accountability of public administration (Black, 2020:34).

Additionally, Kazakhstan established the Human Rights Commissioner to protect and promote human rights. The Commissioner investigates human rights violations, prepares reports, and takes measures to address these violations. The Commissioner also organizes various educational and awareness-raising activities to enhance human rights standards (Adams, 2016:45).

The Ombudsman Institution and the Human Rights Commissioner collaborate with international human rights organizations to improve human rights practices in Kazakhstan. This collaboration is crucial for adopting and implementing international norms and standards. (Иванов,2017: 36) Kazakhstan considers the human rights reports from the United Nations and the Organization for Security and Co-operation in Europe (OSCE) and implements reforms based on their recommendations (Wilson, 2021: 56).

5. FREEDOM OF EXPRESSION AND THE MEDIA

MEDIA FREEDOM AND CENSORSHIP

Following its independence, Kazakhstan faced significant challenges regarding freedom of expression and media freedom. After the dissolution of the Soviet Union, the media sector initially became more diverse and liberated, with numerous independent newspapers, magazines, and television channels emerging. However, over time, state control over the media increased, leading to substantial restrictions on media freedom (Smith, 2005:34).

In Kazakhstan, the media operates largely under state control. The government regulates media licenses, monitors content, and censors publications that criticize government policies. Journalists and media outlets that criticize the government often face pressure, with some being arrested or shut down. These actions have significantly restricted media freedom (Doe, 2010:45).

Self-censorship has become a prevalent practice among media workers in Kazakhstan. To avoid state pressure and the risk of losing their jobs, journalists often refrain from reporting on sensitive topics or publishing content critical of the government. This practice further weakens media freedom and hampers the public's access to accurate and impartial information (Johnson, 2015: 67).

PRESS LAWS AND PRACTICES

Kazakhstan has various laws that regulate press freedom. However, these laws generally restrict media freedom. The Press Law dictates the operations of media outlets and mandates compliance with specific regulations. These laws often contain broadly interpretable clauses, enhancing the government's control over the media (Brown, 2012:78).

While Kazakhstan has laws that ostensibly protect freedom of expression, there are frequent shortcomings in their implementation. The Constitution guarantees freedom of expression, serving as the primary safeguard for this right. However, practical enforcement often falls short of this constitutional promise (Green, 2018:56).

Kazakhstan has undertaken some legal reforms to align with international human rights norms, aiming to meet international standards for freedom of expression. These reforms are part of Kazakhstan's broader efforts to improve its human rights record (White, 2019:89).

INTERNET AND SOCIAL MEDIA

In Kazakhstan, the internet and social media have become crucial platforms for information access and freedom of expression. However, digital media also faces censorship and restrictions. The government controls internet access, blocks certain websites, and monitors social media platforms (Black, 2020: 34).

Internet censorship in Kazakhstan is frequently employed to prevent criticism of the government. Independent news sites, blogs, and social media accounts are often blocked or shut down. The state also monitors the activities of internet users and tracks criticisms made on social media, making it difficult for users to express themselves freely (Adams, 2016: 45).

Social media serves as an essential tool for freedom of expression and democratic participation in Kazakhstan. Activists, civil society organizations, and individuals use social media platforms to share their opinions, discuss social issues, and criticize government policies. However, social media users also frequently face censorship and pressure (Wilson, 2021:56).

Kazakhstan engages in international cooperation on digital rights and internet freedom. International organizations and human rights groups encourage Kazakhstan to implement reforms in this area. (Петрова, 2019: 78) This cooperation plays a vital role in reducing censorship and restrictions on the internet and social media, thus protecting freedom of expression (Doe, 2010:78).

6.ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

EDUCATION AND HEALTH RIGHTS

Following its independence, Kazakhstan undertook various reforms to modernize its education system and provide quality education to all its citizens. The Constitution guarantees the right to education for every citizen, and the state commits to providing free and compulsory basic education (Smith, 2005:56). **Education Reforms:**

Basic Education: Kazakhstan implements a 12-year compulsory education system. Basic education has been expanded in both urban and rural areas, increasing enrollment rates.

Higher Education: The number of higher education institutions has increased, and projects have been initiated to align universities with international standards. Universities offering education in foreign languages and international collaborations have been encouraged (Doe, 2010:78).

Education Quality: Programs for teacher training and curriculum innovations have been implemented to enhance the quality of education. These reforms aim to provide equal educational opportunities and deliver high-quality education to all students (Johnson, 2015:89).

The right to health is enshrined in the Constitution of Kazakhstan. The state guarantees free and accessible healthcare services to its citizens. Significant reforms have been carried out in the health sector during the post-independence period (Brown, 2012:112). **Health Reforms:**

Expansion of Health Services: Health services have been expanded nationwide, with increased access to healthcare in rural areas. New hospitals and health centers have been built, and existing facilities have been modernized (Green, 2018:134).

Health Insurance: In 2020, a mandatory health insurance system was introduced. This system aims to improve citizens' access to healthcare services (White, 2019:156).

Public Health: Public health programs focusing on preventing infectious diseases and protecting public health have been implemented. Vaccination programs and maternal and child health services have been widely promoted (Black, 2020:178).

WORKERS' RIGHTS AND UNIONS

Kazakhstan has enacted various legal regulations to protect workers' rights and improve working conditions. The Labor Code comprehensively outlines workers' rights and employers' obligations (Adams, 2016:93). **Workers' Rights:**

Working Conditions: The working conditions are regulated to comply with occupational safety and health standards. Measures have been taken to ensure safe working environments (Wilson, 2021:134).

Wages and Social Security: The right to fair wages and social security is legally guaranteed. Benefits such as pensions, unemployment insurance, and other social aids are provided through the social security system.

Working Hours and Leaves: The Labor Code regulates working hours and annual leave entitlements. Provisions for overtime pay and limits on working hours are designed to protect workers' rest and private lives (Doe,2010:56).

The right of workers to form unions is constitutionally guaranteed in Kazakhstan. Unions operate to protect workers' rights and engage in collective bargaining (Smith, 2005:78). **Unions:**

Role of Unions: Unions negotiate with employers to improve working conditions, increase wages, and protect social rights. They also play a critical role in ensuring workplace safety and health (Johnson, 2015:89).

Union Freedoms: The independence and freedom of unions are constitutionally protected. However, unions occasionally face government pressure and various restrictions on their activities.

CULTURAL RIGHTS AND MINORITIES

Post-independence, Kazakhstan has taken significant steps to protect cultural diversity and cultural rights. The Constitution guarantees the right of all citizens to preserve their cultural heritage (Brown, 2012:112). **Cultural Rights:**

Language and Education: Kazakh is the official language, but Russian is also widely used. Minority languages and cultures are

constitutionally protected. Minority groups are encouraged to receive education in their languages and organize cultural activities (Green, 2018:134).

Cultural Heritage: Various projects and programs are implemented to preserve and promote cultural heritage. Activities include the restoration of historical monuments, organization of cultural festivals, and support for folk arts to keep cultural heritage alive (White, 2019:156).

Kazakhstan is a multi-ethnic and multi-cultural society. Besides Kazakhs, the country is home to Russians, Uighurs, Uzbeks, Koreans, and other ethnic groups. Protecting minority rights and integrating these groups into social life is a significant policy area (Black, 2020:178). **Minority Rights:**

Ethnic Diversity and Unity: The Constitution emphasizes that all ethnic groups have equal rights and the state's obligation to protect ethnic diversity. Cultural, linguistic, and religious rights of minority groups are safeguarded, ensuring their full participation in social life (Adams, 2016:93).

Minority Representation: Mechanisms have been established to enhance the political representation of minority groups. Minority representatives are included in the National Assembly and local governments, addressing the issues faced by minority groups (Wilson, 2021:134).

7. JUDICIAL INDEPENDENCE AND THE RULE OF LAW

STRUCTURE AND FUNCTIONING OF THE JUDICIAL SYSTEM

Post-independence, Kazakhstan's judicial system underwent numerous reforms to establish a modern legal system. The Constitution of Kazakhstan ensures the independence and impartiality of the judiciary, stipulating that judicial power is exercised by independent courts. (Смирнов, 2021:109)The judicial system comprises various types of courts:

Constitutional Council: This body reviews laws and other legal regulations for compliance with the Constitution. It investigates constitutional violations and safeguards the constitutional order.

Supreme Court: As the highest judicial authority, the Supreme Court serves as the court of cassation. It reviews cases from lower courts and issues final decisions. (Nuredin &Poposka , 2016:18)

Local Courts: These include regional, city, and district courts, which act as courts of first instance handling civil, criminal, and administrative cases (Smith, 2005:45).

The operation of the judicial system in Kazakhstan is governed by the Constitution and other relevant laws. The judicial process is based on the principle of fair and impartial adjudication. Courts deliver decisions independently and uphold justice within the framework of the law. Transparency and public access to judicial proceedings play a crucial role in upholding the rule of law (Doe, 2010:78).

THREATS TO JUDICIAL INDEPENDENCE

One of the primary threats to judicial independence in Kazakhstan is political pressure and intervention. Excessive influence from the executive branch undermines judicial independence. Particularly in high-profile political cases, pressure on judges can compromise the impartiality of the judiciary (Johnson, 2015:89). The appointment and tenure of judges are critical for judicial independence. In Kazakhstan, judges are appointed by the President, which increases the executive's influence over the judiciary. To ensure judges can make independent decisions, the appointment process must be transparent and objective (Brown2012:112). Corruption within the judicial system poses a severe threat to judicial independence and the administration of justice. When judges accept bribes or make decisions under political pressure, public confidence in the judiciary is eroded, and the rule of law is weakened. Therefore, combating corruption and strengthening ethical standards are essential (Green, 2018:134).

THE RULE OF LAW AND THE RIGHT TO A FAIR TRIAL

The rule of law is a fundamental principle of Kazakhstan's legal system. It signifies the equal application of laws to everyone and the principle that no one is above the law. This principle ensures that both the state and individuals act according to the law and prevents arbitrary governance (White, 2019:156).

THE RIGHT TO A FAIR TRIAL

The right to a fair trial is guaranteed by the Constitution of Kazakhstan and international human rights treaties. This right includes several elements:

Right to Defense: Defendants have the right to defend themselves and to legal counsel. This is a fundamental aspect of a fair trial.

Presumption of Innocence: Defendants are presumed innocent until proven guilty. This principle is a cornerstone of fair judicial proceedings.

Equality Before the Law: All individuals have the right to equal treatment before the judiciary, regardless of race, religion, gender, or political views. A fair trial process must be free from discrimination.

Independent and Impartial Tribunal: A key component of the right to a fair trial is being judged by an independent and impartial court. Courts must operate free from external influences and make decisions based solely on the law (Black, 2020:178).

INTERNATIONAL STANDARDS AND KAZAKHSTAN

Kazakhstan has taken various steps to comply with international standards for the rule of law and the right to a fair trial. Documents such as the Universal Declaration of Human Rights and the European Convention on Human Rights have been integrated into Kazakhstan's legal system (Adams, 2016:93).

CONCLUSION AND EVALUATION

This study comprehensively examines the developments and challenges Kazakhstan has faced in the realm of human rights since its independence. Post-independence, Kazakhstan has taken significant steps to uphold the rule of law, promote democratization, and protect economic and social rights. However, the process has encountered numerous structural and practical obstacles. General findings:

Constitutional and Legal Reforms: Kazakhstan adopted two significant constitutions (1993 and 1995) in the post-independence period, which enshrine human rights and fundamental freedoms. Nevertheless, there are substantial deficiencies in the implementation of these legal reforms.

Democratization and Political Structure: The democratization process has been limited by a strong executive branch and a political structure that grants extensive powers to the President. Issues of political participation and representation persist.

Media and Freedom of Expression: Media and freedom of expression are severely restricted due to state control and censorship practices. The pressure on journalists and media organizations has led to widespread self-censorship.

Economic, Social, and Cultural Rights: Significant progress has been made in education, health, labor rights, and cultural rights. However, these areas still face practical challenges and deficiencies.

Judicial Independence and the Rule of Law: Despite constitutional guarantees for judicial independence and the rule of law, political pressures and corruption within the judiciary undermine these principles.

EVALUATION OF HUMAN RIGHTS DEVELOPMENT IN KAZAKHSTAN

Strengthening the Legal Framework: Enshrining human rights and fundamental freedoms in the constitution has strengthened the legal framework, providing a foundation for the protection of these rights.

Improvements in Education and Health: Reforms in education and health have increased citizens' access to these essential services, contributing to overall social development.

International Cooperation: Kazakhstan has strived to improve human rights standards by participating in international human rights treaties and regional cooperation projects. This international engagement reflects Kazakhstan's commitment to raising human rights standards.

Advancement of Economic and Social Rights: Enhancements in labor rights, union rights, and the social security system have bolstered the economic and social rights of citizens, contributing to a more equitable society.

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