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Danilo VUKOVIĆ, PhD*

EDITORIAL NOTE

In the recent decades, scholarly research on clientelism has flourished in Serbia and throughout the region of South East Europe. An important step in analyzing clientelism was the early research on clientelist networks in Serbia and Kosovo and Metohija under UNSCR 1244 (Cvejić 2016). This comprehensive study delineates clientelist networks and demonstrates how the strategies of politicians, businesspeople, and ordinary citizens converge in a dense network of national and local clientelist networks (Cvejić *et al.* 2016; Cvejić 2016; Stanojević, Babović, Gundogan 2017). Building upon another comprehensive database covering six countries and territories, Bliznakovski, Gjuzelov, and Popovijk provide a valuable overview of the clientelist machinery in Albania, Bosnia and Herzegovina, Kosovo and Metohija, under UNSCR 1244, the Republic of North Macedonia, Montenegro, and Serbia (Bliznakovski, Gjuzelov, Popovijk 2017). They effectively demonstrate the ability of political parties to approach large segments of societies with clientelist offers, simultaneously demonstrating a certain level of openness of the citizens to clientelist exchanges. The conference “Political Clientelism in the Western Balkans”, which took place in 2020 and resulted in an edited volume (Bliznakovski 2021b), was another step in creating a shared understanding of this phenomenon and a network of researchers.

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Furthermore, clientelism has been analyzed in specific sectors and countries. In Serbia, these are studies on clientelism in security service companies (Pešić, Milošević 2021) and social welfare (Stefanović, Vuković 2023). Other studies point out the instrumental values of political parties and clientelist networks for young people regarding milestone life events, such as finding a job (Stanojević, Petrović 2022). Clientelism in social protection has also been analyzed in the context of Bosnia and Herzegovina (Brković 2017) and Croatia (Stubbs, Zrinščak 2011). A study conducted in Bosnia and Herzegovina and Macedonia points out the narratives of “victims and accomplices”, depicting the political elites’ ability to impose clientelist relations, while at the same time indicating the sense of powerlessness and victimization of ordinary citizens who legitimize the clientelist networks (Piacentini 2021). The role of clientelist networks has been analyzed as channels for public sector employment in Montenegro (Muk 2021; Marković 2021), as drivers of high levels of party membership (Čakar, Čular 2023), and as a mechanism of society capture (Cvetičanin, Bliznakovski, Krstić 2024) and business capture (Bartlett 2021). On a more theoretical level, Bliznakovski differentiates between electoral and relational clientelism or patronage (Bliznakovski 2021a), Sotiropoulos analyses clientelist as a form of state-society relationship (Sotiropoulos 2023), while other authors point out the role of clientelist networks in establishing a parallel normative system and capturing institutions (Vuković, Spaić 2022).

Building upon this rich background, this issue of *The Annals of the Faculty of Law in Belgrade* provides an overview of recent research in the field. The papers collected in this thematic issue were presented at the regional work-in-progress Workshop on Clientelism, Rule of Law and Democracy, organized by the University of Belgrade Faculty of Law and *The Annals of the Faculty of Law in Belgrade* in June 2024. The workshop brought together sociologists, political scientists, and legal experts from Serbia, Montenegro, North Macedonia, and Croatia. Early versions of the articles were commented on and discussed by the authors and a group of experts, including Vujo Ilić, Luka Glušac, and Gazela Pudar Draško from the University of Belgrade Institute for Philosophy and Social Theory. Valuable insights were gained from Jelena Pešić, from the University of Belgrade Faculty of Philosophy, and Miodrag Jovanović and Goran Dajović, from the University of Belgrade Faculty of Law, as well as anonymous reviewers.

The issue opens with **Jovan Bliznakovski’s** article “Clientelist Linkages in the Western Balkans: Evidence from an Expert Survey (DALP II)”. The study leverages data from the 2023 expert survey conducted as part of the Democratic Accountability and Linkages Project II (DALP II) across six Western Balkan countries: Albania, Bosnia and Herzegovina, Kosovo

and Metohija under UNSCR 1244, Montenegro, North Macedonia, and Serbia. Bliznakovski analyzes party–voter linkages, encompassing both programmatic and nonprogrammatic strategies. The study reveals that political clientelism serves as a significant linkage strategy in the Western Balkans, often utilized in conjunction with other strategies at the party level. The degree of clientelist practices varies among political parties, with dominant parties – those holding power or having access to public resources – demonstrating the highest levels of engagement in such practices. This is characterized by a strong emphasis on enduring linkages between parties, brokers, and voters, the distribution of public resources, the use of negative inducements, and the targeting of various income groups. Building upon his earlier work (Bliznakovski 2021a) he argues that these practices align with the concept of relational clientelism, or patronage, which appears more dominant in the region compared to electoral clientelist mobilization. Moreover, clientelism in the Western Balkans extends beyond electoral strategies, functioning as a fundamental organizing principle of political parties.

Nemanja Stankov's article “Patterns of Authoritarian Recruitment in Clientelist Networks: A Comparative Study of Western Balkans” analyzes how brokers approach clients using a comprehensive database covering six countries and territories in the post-Yugoslav space. He presumes that the submissive tendencies of authoritarian citizens should facilitate voluntary compliance with brokers' demands, as the requests come from persons in positions of authority. His analysis points out that while clientelism is widespread across the region, the mechanisms of its implementation vary significantly. Clear evidence supporting the proposed direction of the relationship between authoritarianism and clientelist targeting was found only in Montenegro. Stankov analyzes in detail the relationship in specific country contexts, pointing out the need for further analysis and clarification of the factors contributing to the success of clientelist strategies.

Anja Gvozdanić's article “Youth Justification of Informality in the Post-Yugoslav Countries: Reflection of Political Socialization or Pragmatism?” analyzes which social factors contribute to the justification of informal practices among youths in the seven post-Yugoslav countries and territories. She demonstrates that the perception of the prevalence of informal social norms is particularly important, which suggests that informality among young people is perceived as a necessary adaptation to the inefficiencies and unresponsiveness of the formal institutions. Young people's engagement with informality can be understood as an adaptive strategy shaped by their socioeconomic environment, either as a personal approach or as a rationale for the informal strategies adopted by others. By testing various hypotheses

and predictors, the study identifies a consistent and robust predictor of the justification of informality across different countries: the perceived ubiquity of informal practices within society. This finding highlights that reliance on personal connections and informal methods to achieve objectives – such as securing employment or accessing public services – is often viewed as a practical response to the perception or reality that formal systems are inefficient, slow, or unresponsive.

The contribution from **Danilo Vuković and Marija Stefanović** deals with clientelist networks in the social protection system in Serbia. Using qualitative data collected through 27 social workers from 21 municipalities, they outline the structures, functioning, and impact of clientelist networks on the centers for social work (CSW). Their findings suggest that clientelist networks permeate CSWs and the line ministry, and capture these institutions. They have a prominent role in gaining public sector employment, as well as in the overall functioning of the institutions. In addition to administering social rights, CSWs also appear as mechanisms for vote buying (electoral clientelism) and provision of long-term services to the party, such as attending rallies, donating money, expanding the party network, etc. (relational clientelism). Furthermore, the authors demonstrate how clientelist networks capture institutions from within and operate in a parasitic manner, feeding off formal institutions without supporting their intended purposes.

All the articles in this thematic issue take an empirical approach to clientelism. They contribute to the ongoing debate in the social sciences and provide valuable data and analyses for further discussions. However, they also point out the need for further investigation into the motives and strategies of the participating actors, and the effects of both electoral and relational clientelism on the party system, public policies, and the rule of law.

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Clientelism, Rule of Law and Democracy

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Jovan BLIZNAKOVSKI, PhD*

CLIENTELISTIC LINKAGES IN THE WESTERN BALKANS: DALP II EXPERT SURVEY EVIDENCE**

This paper examines the role of clientelism as a mobilization strategy in the Western Balkans, focusing on its interplay with other linkage strategies and its two primary sub-types: electoral and relational clientelism. Drawing on data from the Democratic Accountability and Linkages Project II (DALP II) expert survey, the study covers six party systems: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia. The findings reveal that clientelism is one of the most frequently employed strategies in the region, characterized by durable linkages between parties, brokers, and voters, the distribution of public resources, significant use of negative inducements, and targeting across income groups. Relational clientelism, or patronage, emerges as the dominant form, extending beyond electoral goals to function as an organizing principle within party structures. This paper contributes to the understanding of clientelism in the region and highlights its implications for democratic accountability and governance.

Key words: *Clientelism. – Patronage. – Political mobilization. – Western Balkans. – DALP.*

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1. INTRODUCTION

Political parties in the Western Balkans and beyond employ a diverse range of strategies to engage and mobilize supporters. These supporters are mobilized primarily to secure votes during elections and, additionally, to participate in party organizational infrastructures. The literature broadly recognizes two general types of linkages resulting from mobilization activities: programmatic and non-programmatic linkages (Kitschelt 2000; Kitschelt, Wilkinson 2007; Stokes *et al.* 2013; Nichter 2018). Programmatic mobilization (and the corresponding linkage) is rooted in ideology, issue distinction, and clearly articulated party programs (Luna, Rosenblatt, Toro 2014), resulting in publicly known criteria for resource distribution (Stokes *et al.* 2013, 7). In contrast, non-programmatic mobilization lacks clear ideological or policy goals, relying instead on public signals that do not address distributive issues, even though parties may covertly engage in resource allocation. While programmatic mobilization is generally viewed as preferable from a democratic governance perspective (Stokes 2005), non-programmatic strategies have become widespread across various political systems.

Among non-programmatic linkage strategies, one is particularly significant worldwide – especially in what is commonly referred to as the “developing world”. This strategy, which has far-reaching social, political, and economic implications (Hicken 2011), is political clientelism, defined as the contingent exchange of material benefits for political support. Clientelism stands out as a central non-programmatic linkage because of its emphasis on covert resource distribution and its capacity to shape the relationship between parties and supporters in profound ways.

The “Western Balkans” is a political designation referring to six polities on the Balkan Peninsula aspiring to join the European Union: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia. These nations are often characterized by incomplete democratic institutions, pervasive corruption, and abuses of authority at the highest levels of government. Existing research on clientelistic linkages in the region spans various disciplines, often focusing on party–voter relations or interactions with other actors, such as private companies or civil associations (Cvejić 2016; Brković 2017; Stankov 2020; Bliznakovski 2020; *Political Clientelism in the Western Balkans* 2021; Cvetičanin, Bliznakovski, Krstić 2023; Imami 2023). Common findings highlight the involvement of public funds in clientelist linkages, increased clientelistic activity by ruling parties, and the durable nature of these connections. However, little research explores how clientelism operates in conjunction with other linkage strategies.

Additionally, most existing studies are limited in scope, focusing on specific polities in the region, sectors or actors. This paper addresses these gaps by providing a comprehensive analysis of the political parties' efforts in political clientelism in the Western Balkans and its interplay with other mobilization strategies, both programmatic and non-programmatic. Additionally, the paper examines the efforts political parties devote to two distinct sub-strategies of clientelism: electoral (one-time interactions, such as vote buying; Nichter 2008) and relational (continuous, iterative interactions; Gans-Morse, Mazzuca, Nichter 2014; Nichter 2018; Yıldırım, Kitschelt 2020).

The study draws on data from the second wave of the Democratic Accountability and Linkages Survey (DALP), conducted globally between 2022 and 2024, with data collection in the Western Balkans occurring during 2023. DALP II, an expert survey, measured various party targeting efforts, with a particular focus on clientelism. This data enables an analysis of the interplay between different mobilization strategies and clientelist sub-strategies within party portfolios. Existing empirical studies in political science on clientelism in the region (e.g. Stankov 2020; Bliznakovski 2020) and elsewhere (e.g., Brusco, Nazareno, Stokes 2004; Çarkoğlu, Aytaç 2015; Kramon 2016; Mares, Young 2018) often rely on general population surveys or field experiments to approximate levels of clientelist mobilization. However, these approaches struggle to differentiate between the clientelist efforts of individual parties or assess the diversity of mobilization strategies within parties. By contrast, the party-level data derived from the DALP expert survey allow for a more nuanced understanding of these issues, offering insights into the role of clientelism relative to other strategies and the reliance on different clientelist sub-strategies. Although expert surveys have limitations for inference, they provide valuable tools for advancing our understanding of political clientelism in the region and beyond.

The findings presented in this paper – derived from descriptive statistical analysis – indicate that political clientelism is one of the most widely utilized political mobilization strategies in the Western Balkans. The evidence suggests that clientelism is generally pursued through the distribution of state-sponsored benefits, the use of negative inducements (threats and sanctions toward clients), and the establishment of long-term linkages. Moreover, it engages individuals from diverse income groups and brokers who are durably connected to political parties by specific traits. Collectively, these findings indicate that relational clientelism (or patronage) is the dominant form of clientelism in the region, rather than electoral clientelism. More broadly, the findings suggest that clientelism serves not only electoral purposes but also the long-term goal of building and sustaining political party organizations.

This paper is organized as follows: the next section addresses conceptual issues. First, I discuss variations in political mobilization strategies, emphasizing the degree of (non-)programmatisms in clientelism compared to other strategies such as charismatic politics, populism, issue-based politics, and descriptive representation. Second, I elaborate on the varieties of political clientelism, distinguishing between electoral and relational (patronage) clientelism as two major sub-types. The subsequent section outlines the study's methodological design, including the measures derived from the DALP expert survey. Section four presents the findings, divided into those relating to the role of clientelism in overall party mobilization portfolios and those examining political clientelism specifically. The paper concludes with reflections on future directions for studying clientelism in the Western Balkans.

2. VARIETIES OF PARTY MOBILIZATION STRATEGIES

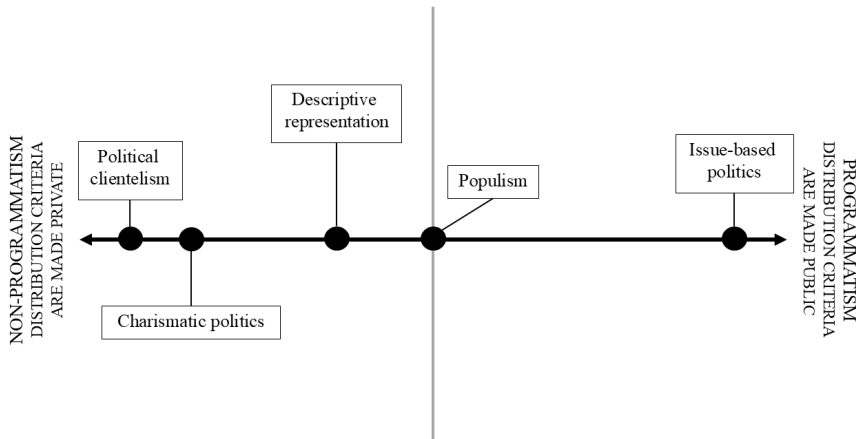
As outlined above, we may conceptually distinguish between strategies that rely on programmatic (publicly announced) distribution of resources and those that depend on non-programmatic (privately conceived) distribution. The former embodies the normative ideal of democratic politics in which political parties publicly announce their intentions pertinent to resource distribution (while arguing, for instance, for new legislation or a specific policy) and are expected to uphold their promises when in power. Moreover, if promises remain unfulfilled, this model would expect voters to “punish” the underperforming party in the elections. Therefore, the model of programmatic politics envisions politics as the competition of issue positions in which the parties attempt to capture voters with policy promises, and voters may “punish” parties if they fail to deliver, a game which gives control of the policy agenda to voters (for a broader conceptualization, see Luna, Rosenblatt, Toro 2014).

In contrast to programmatic politics, non-programmatic politics does not emphasize the public distribution of resources. Instead, parties either concentrate on instrumental ties, where resource distribution is privatized and directed toward loyal supporters or made conditional on previous or future political support (Stokes *et al.* 2013, 7). Alternatively, they focus on affective ties, which may be based on factors such as the charisma of leaders or certain descriptive characteristics of candidates or officials. Non-programmatic politics is a type of political mobilization strategy in which one of the central issues in politics – resource distribution – is eschewed

by political actors in the public arena, but resource distribution is often nevertheless performed (and in a way that directly affects political behavior) through private channels.

Although political parties can often be categorized as leaning toward either a non-programmatic or programmatic approach, they rarely rely exclusively on one strategy (Kitschelt *et al.* 2012). In practice, parties frequently combine elements of both approaches (Tzelgov, Wang 2016), using programmatic and non-programmatic signals to influence voters' electoral behavior. Rather than viewing political mobilization as a discrete category, it is more appropriate to consider it a matter of degree. This perspective emphasizes the extent to which parties rely on specific strategies rather than whether they employ them at all. Figure 1 illustrates this point, showcasing the primary mobilization strategies preliminarily observed in the Western Balkan region.

Figure 1. Strategies of party linkages with supporters



Source: author.

Figure 1 plots five strategies based on their levels of (non-)programmatism. These strategies include political clientelism, charismatic politics, and mobilization through descriptive representation, populism, and issue-based politics.

Political clientelism entails the reciprocal exchange of material benefits from politicians and candidates in exchange for political services provided by citizens (for a broader discussion on conceptualizing political clientelism see Bliznakovski 2021). Political parties and candidates, the patrons in the clientelist relationship, offer various material benefits such as cash handouts, consumable goods, employment opportunities, and access to

social benefits. In return, citizens and voters (the clients) engage in political acts ranging from simple electoral duties like voting and mobilization for grassroots organizing. Clientelist distribution is notably private, making it a prime example of non-programmatic political mobilization. Consequently, clientelism is positioned at the far left of the programmatic spectrum shown in Figure 1, underscoring its highly non-programmatic nature.

On the right-hand side of clientelism, moving toward increasing programmatism, we first encounter charismatic politics, followed by descriptive representation mobilization and populism. Charismatic politics relies on the personal charisma of leaders to build and sustain a political following (Kitschelt 2000). Although it does not directly address issues of resource distribution publicly (similar to clientelism), it differs from clientelism in that it does not engage in distribution at all, whereas clientelism operates covertly in this regard. Charismatic politicians may occasionally distribute resources to a small circle of associates, but this is not always the case, and its broader impact on political mobilization remains uncertain. Since charismatic politics lacks a distributive component, it is often combined with other strategies that directly address distributive concerns. Nonetheless, it is depicted in Figure 1 as incrementally more programmatic than clientelism due to its reduced emphasis on covert distribution.

The descriptive representation mobilization strategy targets voters by running candidates with specific demographic traits, such as ethnicity, language, race, and gender. While it does not directly address distributive issues, a party employing this strategy can, upon winning votes, secure positions within the state apparatus. This enables the distribution of both material and symbolic state resources to the particular demographic group it represents. Unlike clientelism and charismatic politics, descriptive representation indirectly publicizes distributive activities and implies distribution as part of its mobilization strategy, making it more programmatic than the former.

Populism is depicted at the middle of the non-programmatic vs. programmatic spectrum in Figure 1, due to its rhetorical emphasis on distribution. According to Mudde and Rovira Kaltwasser (2017, 6), populism is defined as “a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, ‘the pure people’ versus ‘the corrupt elite,’ and which argues that politics should be an expression of the *volonté générale* (general will) of the people.” When political parties or candidates employ populist rhetoric, they imply a direction of material and symbolic distribution toward “the people” at the expense of “the elite”. However, the specifics of this distribution often remain ambiguous, which positions populism at the middle of the spectrum in Figure 1.

In the spectrum of (non-)programmatic politics, issue-based policies are positioned on the far right, embodying the polar opposite of clientelism, which is located on the far left. Whereas clientelism involves private distribution, issue-based politics also entails distribution, but with the critical distinction of making it public. In issue-based politics, there is a concerted effort to articulate distributive stances, encompassing both material and symbolic aspects, and to actively promote party viewpoints publicly. This characteristic makes issue-based politics a prime example of a strategy for programmatic political mobilization.

The empirical inquiry in this paper is guided by the conceptualization of strategies illustrated in Figure 1. The conceptual framework presented in the graph should not be regarded as exhaustive; rather, it serves as an outline to guide the analysis conducted in this paper. Before moving to the empirical analysis, it is also essential to address the conceptual variations within clientelistic linkage-making.

2.1. Clientelist Political Mobilization

The notion that clientelist exchanges may vary in durability is not novel (e.g., Scott 1972; Eisenstadt, Roniger 1984). However, this idea has only recently been applied to contemporary political clientelism, distinguishing between electoral and relational forms (Nichter 2010; 2018; Gans-Morse, Mazzuca, Nichter 2014; Yıldırım, Kitschelt 2020). Electoral clientelism involves temporary exchanges aimed at influencing voter behavior during election campaigns. In contrast, relational clientelism entails long-term, iterative exchanges that establish enduring relationships between political patrons and clients. Empirically distinguishing between these two forms is important: the divergent dynamics of electoral and relational linkages require different strategic considerations by clientelist parties and their supporters, depending on the nature of the linkage. This distinction is relevant both for scientific analysis and for policy interventions.

One of the aims of this paper is to examine the nature of political clientelism in the Western Balkan region. The analysis seeks to provide insights into how the two forms of clientelism – electoral and relational – interact and overlap. While contemporary literature (with some exceptions discussed below) generally limits its focus to the durability of these sub-types, the fundamental difference in their durability invites further conceptual distinctions. In this subsection, I will outline additional dimensions of variation, incorporating both my own conceptual refinements and relevant contributions from the existing literature. The dimensions discussed are summarized in Table 1.

Table 1. Dimensions of variation between electoral and relational clientelism

<i>Dimension</i>	Electoral clientelism	Relational clientelism
<i>Duration of the relationship</i>	Short-term (a one-time transaction valid for one election cycle)	Long-term (a series of transactions: benefits from the side of patrons, services from the side of clients)
<i>Objective from the point of view of political parties</i>	Obtaining electoral services from clients-voters (votes, turnout, abstention)	Obtaining broader political services from clients relevant for party functioning (mobilization activities during campaigns, other services beyond campaigns)
<i>Reliance on negative inducements</i>	Less	More
<i>Types of benefits distributed</i>	“Petty” benefits for clients (small amounts of cash, consumer goods, preferential access to less costly public resources)	“Grand” benefits for clients (employment positions, more costly public benefits, procurement contracts, subsidies, scholarships)
<i>Typical income groups targeted</i>	The poor	The middle class
<i>Typical types of brokers engaged</i>	Emphasis on groups that are not typically durably related to political parties (e.g. community leaders; violent groups)	Emphasis on groups that are typically durably involved with political parties (e.g. civil servants employed via patronage; party loyalists)

Source: author.

From the perspective of political parties, electoral exchanges (one-time transactions) are primarily effective in influencing short-term voting behavior. Relational exchanges, on the other hand, can affect not only voting behavior but also the broader political engagement among supporters.

Relational clients, for example, often provide sustained services to political parties, including grassroots mobilization during campaigns and beyond. In this sense, relational clients are arguably more critical to a party's long-term success than electoral clients, whose contributions are limited to isolated exchanges. Thus, clientelist exchanges may vary based on the specific objectives pursued by political parties, which may be purely electoral or extend to broader efforts by the party organization.

Recent literature acknowledges that political clientelism varies based on the types of inducements employed by political patrons, as examined by Mares and Young (2016; 2018). A distinction can be made between positive inducements (rewards) and negative inducements (threats and sanctions through cutting access to benefits). Both are used in electoral and relational forms of clientelism. However, building on Mares and Young's (2018) argument that negative inducements are more commonly directed at party loyalists (i.e., "core voters") during election campaigns, I posit that threats and sanctions are more characteristic of relational clientelism than electoral clientelism. This distinction arises from the assumption that relational clients engage in repeated exchanges, receiving benefits consistently outside of election campaigns and facing threats during campaigns when their involvement becomes critical for political parties. In contrast, electoral clients, whose relationships with parties are short-term and campaign-specific, face fewer consequences for breaking these clientelist links. As a result, they are less susceptible to negative inducements, which political parties use less frequently in such cases.

Political clientelism also varies by the types of benefits distributed (Albertus 2012; Bliznakovski 2020). The conceptualization outlined in Table 1 suggests that political parties adapt their clientelist strategies by using different types of benefits to target various income groups. Lower-income individuals are more likely to engage in transactions involving modest benefits, as these align with their material needs and require minimal effort, time, and resources. They are also considered suitable for providing less costly electoral services, due to their limited individual and networking capacities. In contrast, higher-income groups are less likely to be attracted by "petty" benefits and are better positioned to contribute to the party organization, leveraging their resources and networks for sustained political engagement. As a result, electoral clients are often associated with lower-value benefits, such as one-time cash payments or consumable goods, which are empirically more characteristic of one-time exchanges. Conversely, relational clients are linked to higher-value benefits, such as stable employment or significant public goods, reflecting the more sustained and demanding nature of their engagement.

Much of the literature on political clientelism presumes a direct correlation between poverty and clientelist targeting (e.g., Brusco, Nazareno, Stokes 2004; Stokes 2005; Jensen, Justesen 2014; Çarkoğlu, Aytaç 2015; Kamp Justesen, Manzetti 2023). However, recent research calls this assumption into question, suggesting that middle-income countries exhibit a systematic inclination toward relational clientelism (Yıldırım, Kitschelt 2020). This finding provides valuable insights into macro-level dynamics, but there is currently a lack of evidence to support the extension of this concept to the individual level. Furthermore, most established empirical linkages between poverty and clientelism derive from the examination of vote buying or other strategies of electoral, and *not relational* clientelism (e.g., Brusco, Nazareno, Stokes 2004; Stokes 2005; Nichter 2010; Jensen, Justesen, 2014; Justesen, Manzetti 2023). Therefore, investigating the notion that middle-income groups are also significantly engaged in clientelist behavior warrants attention.

Finally, Table 1 posits that clientelism also varies by the type of brokerage networks utilized. Depending on the specific context, various groups may theoretically possess varying degrees of importance for either of the two subtypes of clientelism. However, brokers who, by virtue of their inherent characteristics, possess a close affinity with political parties, such as loyalists and civil servants (assuming that many of the latter are indebted to political parties for their positions), are likely to be more characteristic of relational clientelism than, for instance, groups that may exhibit a greater propensity to shift their allegiance, such as local or community leaders and violent groups. Thus, one may also distinguish between electoral and relational/patronage clientelism by observing the groups of brokers employed.

The conceptual framework developed in this section will serve as the foundation for the upcoming analysis. The empirical exploration in the fourth section will examine indicators such as the longevity of the clientelist relationship, types of resources engaged, income groups targeted, level of reliance on negative inducements, and types of brokers involved. Although the assumptions proposed in Table 1 will not undergo a rigorous empirical test, an attempt will be made to demonstrate a pattern that is more characteristic of relational rather than electoral clientelism throughout the Western Balkans.

3. DATA AND METHODS

This research explores the extent of clientelist politics and its associated sub-strategies – electoral and relational – within the Western Balkans. Drawing on data from the second wave of the Democratic Accountability and Linkages Project (DALP) expert survey (Kitschelt 2024), the study employs basic descriptive statistics to evaluate the efforts of political parties in various political and clientelist mobilization strategies. Within the survey, experts rated each political party based on various characteristics related to party traits and their linkage efforts. In this study, the individual expert responses are aggregated to produce mean values at both the party and party-system levels.

The survey received 105 responses from experts, with comparable participation rates across party systems. North Macedonia had the highest number of responses (23), while Montenegro had the lowest (12) (see Table 2 for the breakdown). The sample of experts who evaluated the parties was intentionally constructed, with relevant experts carefully selected and invited to participate in the survey. The resulting database is a valuable resource, offering systematic insights into party characteristics and linkage efforts in the Western Balkans. However, as with similar surveys, certain methodological considerations are warranted. Firstly, the non-probability selection process, involving both selection and self-selection biases, could potentially influence the results. Secondly, disparities in the number of responses across party systems create some imbalances, particularly when missing values are excluded during aggregation. While these limitations are inherent to such expert-based surveys, they do not detract from the overall utility of the dataset, which remains a crucial tool for understanding political clientelism and the related phenomena in the region.

Table 2. Breakdown of DALP II survey implementation
in the Western Balkans

	N obtained responses	N invited experts	response rate
Albania	19	61	31.1%
Bosnia and Herzegovina	16	61	26.2%
Kosovo	15	47	31.9%
Montenegro	12	38	31.6%
North Macedonia	23	62	37.1%
Serbia	20	64	31.3%
Total	105	333	31.5%

Source: DALP II dataset (unpublished); calculations by author.

The sample of parties was constructed while taking into account their recent electoral performance (encompassing electoral cycles between 2016 and 2023), including parties that had proven to be relevant for national politics, according to the number of votes or MP seats obtained. The list of all included political parties is provided in Appendix 1. The differing level of fragmentation among the Western Balkan party systems also creates imbalances in the number of observations used to construct the means at the level of the party system.

Yet, despite the above-mentioned limitations, and as we will see below, the findings are illuminating for unpacking political mobilization in the region. Expert surveys can be a useful tool complementing other more frequent methods deployed in the region to understand political mobilization, participation, and clientelist politics more specifically, such as general population or voter surveys.

3.1. DALP Items Used

The DALP II survey includes several items that enable us to analyze political clientelism within the Western Balkan context. Firstly, the survey features a set of questions designed to assess the extent to which political parties rely on specific linkage strategies, i.e., the effort exercised to

implement them. To measure the overall effort of party-voter clientelism, I rely on three survey items that assess the parties' efforts distribute consumable goods, preferential access to public social policy schemes and employment (each benefit corresponding to one item in Part B of the DALP II questionnaire). These three items are combined into an additive index, representing clientelism as an overall party-voter linkage strategy.

To account for the level of programmatic, issue-based politics, I use a measure developed by Kitschelt and Yıldırım (2024), which is a composite of various indicators of programmatism included in the DALP survey. For populism, I constructed an additive index comprising two items from Part D of the survey, measuring appeals based on (i) people-centrism and (ii) anti-elitism. Charismatic politics and descriptive representation are measured using single items from Part E of the survey. All survey items are detailed in Appendix 2, along with their coding information. To ensure comparability, the variables representing different linkage strategies are normalized between 0 and 1 and should be interpreted as reflecting a range from low to high effort.

The nuances of political clientelism are examined using another set of variables derived from Parts B and C of the DALP questionnaire. Most notably, the survey provides measures of the political parties' reliance on different positive clientelist inducements, including consumer goods, preferential access to public policy schemes, and employment opportunities. It also includes measures of the general use of negative inducements. Furthermore, the survey captures the longevity of clientelist linkages, the types of brokers employed, and the income levels of voters targeted using clientelist signals. The survey items related to clientelism are detailed in Appendix 2, along with coding information. These variables are not standardized and operate on different scales, which are specified in each analysis.

This paper adopts an exploratory approach, and all subsequent analyses rely on simple descriptive statistics to initially assess the data and draw preliminary conclusions on the relative use of clientelism compared to other strategies, as well as on the variation within different clientelist sub-strategies. In the following sections, I will present graphs showing mean values of party effort in different linkage strategies, including the reliance of political parties on negative inducements, the duration of linkages, the types of broker networks, and the profiles of voters targeted by clientelism. Alongside these graphical presentations, I will discuss emerging trends and dynamics in clientelistic and broader political linking throughout the Western Balkans.

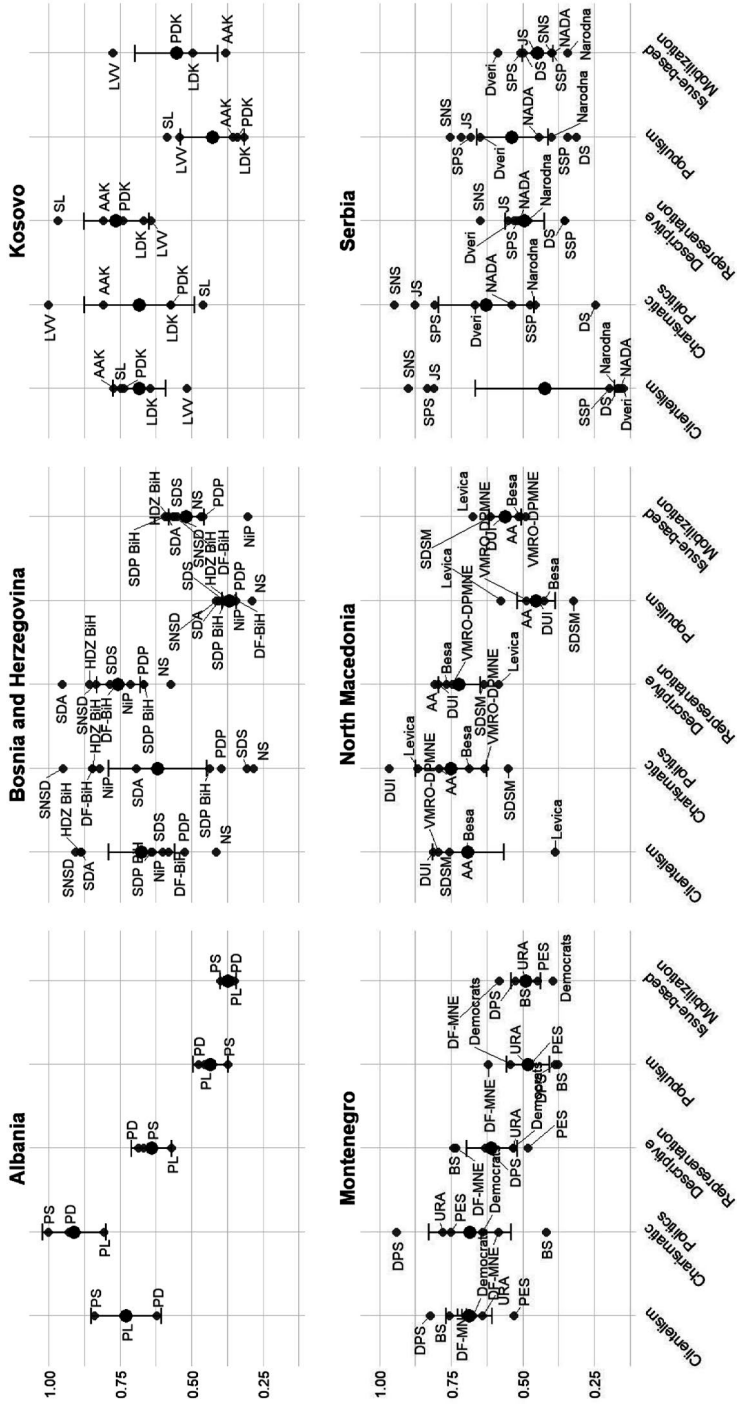
4. CLIENTELIST EFFORTS IN THE WESTERN BALKANS

This section examines the level of clientelist effort that Western Balkan political parties undertake in comparison with other strategies of political mobilization, such as charismatic politics, descriptive representation mobilization, populism, and issue-based politics. In addition, I also examined the reliance on the two strategies of clientelist mobilization through different measures that jointly give us a more reliable understanding of the nuances of political clientelism pursued in the region.

Examining the prevalence of clientelism in the mobilization strategies of political parties in the Western Balkans, a visual analysis of the data (see Figure 2) reveals a notable pattern that is fairly consistent across the region. Clientelism is among the strategies to which parties dedicate the most effort, alongside charismatic politics and descriptive representation, though the exact prominence of these strategies varies between party systems. Only in Serbia does clientelism appear, on average, as one of the least utilized strategies at the party system level. However, a closer look reveals that Serbia's party system includes three parties with exceptionally high scores on clientelism (relative to the region) and five others with exceptionally low scores, resulting in a downward bias in the aggregate party system measure. In all other party systems, clientelism is significantly present and is typically complemented by charismatic politics and descriptive representation, the latter being relatively more prominent in Bosnia and Herzegovina, Kosovo, and North Macedonia.

An examination of the data for each party system yields even more insightful conclusions. Notably, the parties scoring highest on clientelism within their respective systems are typically those that have dominated their political scene in recent years. In Albania, this is the PS, which has ruled continuously since 2013. In Serbia, the three parties supporting or participating in the SNS-led government since 2012 (SNS, SPS, and JS) all scored exceptionally high. In Bosnia and Herzegovina, the parties representing the three "constituent" peoples – Bosniaks, Serbs, and Croats (SDA, SNSD, and HDZ-BiH, respectively) – all rank significantly high relative to the region. Similarly, in North Macedonia, the three major parties that have frequently formed governments in various coalitions since the early 2000s (VMRO-DPMNE, SDSM, and DUI) also score high, as does the decades-long ruling the DPS in Montenegro. Finally, in Kosovo, traditionally dominant parties, such as the AAK, the PDK, and the SL (a minority party that has participated in most governments over the past decade) all scored near the upper quartile of the scale and relatively high compared to the regional average.

Figure 2. Efforts in various linkage strategies in the Western Balkans



Source: DALP II dataset (unpublished); calculations by author.

By the same token, the parties that are less frequent in government in the past decades have much lesser scores on clientelism across the board. This division is best present in Serbia, where all other political parties, apart from the biggest three, scored around the lowest decile of the scale. Other prominent examples of congruence between lower scores of clientelism and lower levels of participation in the executive power include the NS in Bosnia and Herzegovina, Levica in North Macedonia, and to some extent the LVV in Kosovo (taking into account that it only recently, in 2021, formed the government for the first time).

These preliminary findings suggest that clientelism is a strategy more widely pursued by parties in control of public resources, such as ruling political parties. Moreover, clientelism is extensively employed, comparable to charismatic politics and descriptive representation, and generally pursued with greater effort than issue-based mobilization or populism. Building on these takeaways, the analysis now turned to an examination of the sub-strategies of clientelism employed at both the party and party system levels, utilizing the various indicators available.

4.1. Clientelist Efforts Across Different Sub-Strategies

I estimated the prevalence of distinct sub-strategies of clientelist targeting in the region by utilizing a range of indicators. These indicators encompass the type of clientelist benefits distributed, the extent of negative inducements, the duration of relationships within the clientelist hierarchy, the types of intermediaries utilized, and the characteristics of the targeted voters. By synthesizing these insights, I aimed to ascertain the dominant form of political clientelism practiced in the region, not only at the regional level but also at the party system and party levels. In conducting this analysis, I was guided by the conceptual framework outlined in the first section.

When considering the types of directly distributed benefits to citizens (see Figure 3), the underlying conclusion at the regional level is that parties mostly rely on public resources as key benefits for distribution, primarily access to employment, and secondary, preferential access to public social benefits. Consumer goods seem less frequently utilized in clientelist targeting, especially in comparison with preferential access to employment, which scores high throughout the region. We find that employment scores a mean of over 3 (on a scale of 1 to 4) in five of the six Western Balkan party systems, with Serbia remaining the only exception due to the very low scores of the opposition political parties. However, the three biggest parties

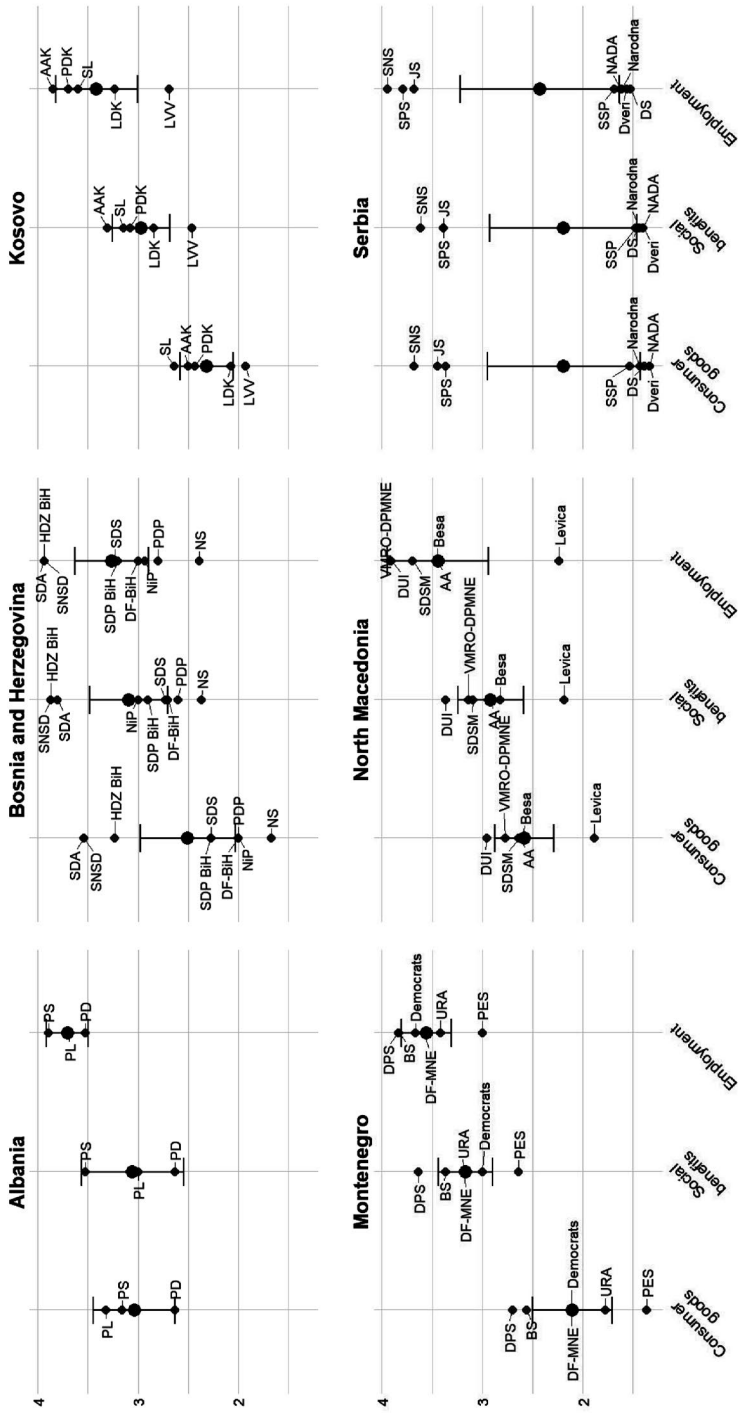
that endorsed the government in the past decade score an average of 3.81, a finding that leaves an impression of overreaching clientelist activity with employment positions as bargaining chips in Serbia too. The preferential access to public policy schemes averaged at least 3 in half of the six systems, with Kosovo and North Macedonia narrowly missing out on this criterion and Serbia's score being depressed due to the several opposition parties that practice clientelism to a much lesser extent than most of the other parties in the sample. The consumer goods indicator, however, surpasses the third level of the scale only in the case of Albania, and is visibly lower in four of the six party systems than the employment and preferential access to public policy schemes indicators, contributing to the evidence that clientelism in the region is mostly driven by the abuse of public resources, and less by the distribution of consumable goods.

It is noteworthy that long-standing client-based parties, such as those in Bosnia and Herzegovina (SDA, SNSD, and HDZ BiH) and Serbia (SNS, SPS, and JS), scored high and almost equally in all three indicators. This suggests a comprehensive targeting of the population with clientelist incentives, employing various sub-strategies to ensure favorable electoral outcomes. In Albania, two of the parties (PS and PL) exhibit a similar pattern.

Other systems display greater variability among political parties. In Kosovo, the AAK, the PDK, and the SL scored above 3 in all indicators except consumable goods, while the LDK achieved this value in only one indicator (employment). In Montenegro, several parties received ratings higher than 3 in both employment and social benefit provisions, but none exceeded this threshold in the consumable goods indicator. Finally, in North Macedonia, most political parties scored above 3 in the employment indicator, three in the social benefits provision, and none in the consumable goods indicators, with the DUI narrowly missing out.

Despite party system-specific variations, a consistent pattern that emerges is the prevailing reliance on public resources as benefits in the clientelist exchange. Conversely, consumable goods that cannot be directly classified as public resources are used less frequently, with some exceptions among the parties and systems. This observation suggests greater reliance on relational clientelism compared to electoral clientelism, a notion that will be further explored in the subsequent findings of this paper.

Figure 3. Benefits distributed via political clientelism in the Western Balkans



Source: DALP II dataset (unpublished); calculations by author.

Figure 4 presents the reliance on negative inducements throughout the region. Most of the biggest clientelist parties (per the analysis above) also show the greatest reliance on negative inducements, at least 3 on a scale of 1 to 4. These are the PS and the PL in Albania; the SNSD, the SDA and the HDZ BiH in Bosnia and Herzegovina; the SL in Kosovo; the DUI and the VMRO-DPMNE in North Macedonia; and the SNS, the JS, and the SPS in Serbia. The AAK, the PDK and the LDK in Kosovo all scored around 2.5, while the DPS in Montenegro scored 2.9 (with four other parties in Montenegro scoring around the 2.5 mark). These findings indicate significant reliance on negative inducements in the Western Balkans, and particularly by the biggest clientelist parties, indicating a characteristic of relational clientelism in comparison to the electoral. The extent of negative inducements, however, seems less pertinent than the extent of positive inducements, particularly when pinned against the measure of employment presented above.

The durability of clientelist ties is examined in Figure 5, which depicts the persistence of connections between parties, their clientelist brokers, and voters. Most of the parties previously labeled as devoting significant clientelist efforts tend to have the most enduring ties: the PS in Albania; the SDA, the SNSD, and the HDZ BiH in Bosnia and Herzegovina; the VMRO-DPMNE, the SDSM, and the DUI in North Macedonia; the DPS in Montenegro; and the SNS, the SPS, and the JS in Serbia. Notably, political parties generally maintain lengthier connections with brokers than with voters, except for the three parties in Albania and the LVV in Kosovo. Overall, experts rated the aforementioned parties at least 3.5 on a scale of 1 to 5 (where 1 means “short-term” and 5 “long term”), and all of the party systems scored at least that level in one of the two indicators (brokers or voters). This suggests that clientelist ties are predominantly durable throughout the region, aligning with the idea of relational/patronage clientelism.

Figure 6 plots the types of brokers that are most frequently employed by the political parties. Across the region, parties rely the most on civil servants and party members (who are expected to be compensated for their mobilization work), in addition to local/community leaders, and occasionally (and depending on the specific party) on individual connections of the politicians and party members who do not expect compensation. Violent groups are very rarely utilized.

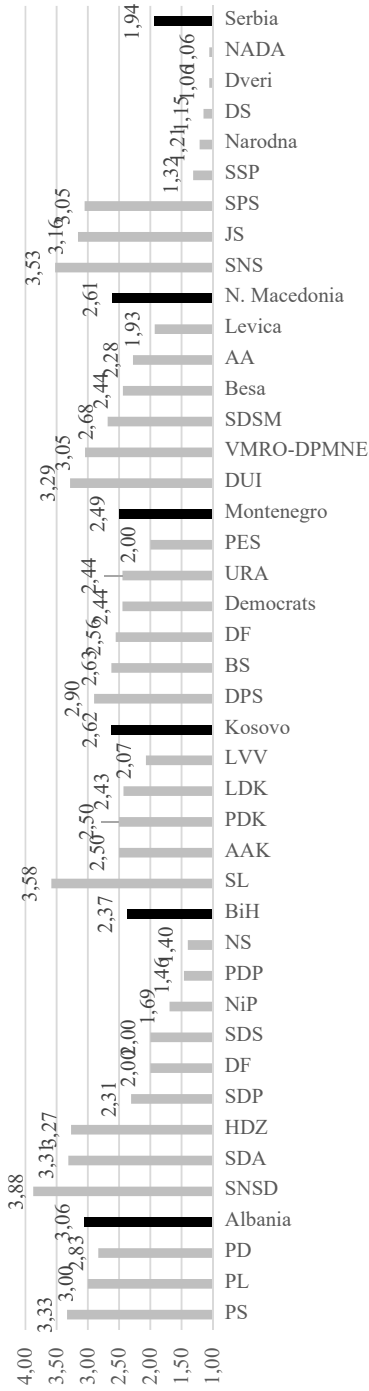
Civil servants are recognized as important with at least a mean of 4 (on a scale of 1 to 5) in all party systems, the same being the case for all (with the exception of Kosovo) when considering party loyalists who expect compensation, as well as all systems (with the exception of from Serbia and Montenegro) when considering local/community elites. The biggest

clientelist parties in the region generally rely on these three groups. Some of the major clientelist machines in the region also scored high (over 4) on the reliance on brokers who are individual connections of the politician: the PS in Albania; the HDZ BiH, the SNSD and the SDA in Bosnia and Herzegovina; and the DPS in Montenegro. A small number of parties (LVV in Kosovo and Levica in North Macedonia) scored high on intermediaries who do not expect compensation, while only the SNS in Serbia scored over 4 in the indicator “brokers as violent groups”.

While it is difficult to approximate on the basis of these finding alone, the combination of these and other findings given above once again suggest relational clientelism or patronage as the dominant clientelist linkage in the region. For instance, the civil servants who function as conduits of clientelist linkages are likely individuals who already receive clientelist benefits and perform clientelist mobilization as a part of a long-term linkage. The same goes for party members who expect compensation – they mobilize to be reciprocated as a part of an iterated exchange. The fact that these groups can be easily conceived as “relational” to political parties suggests a durable mode of operation.

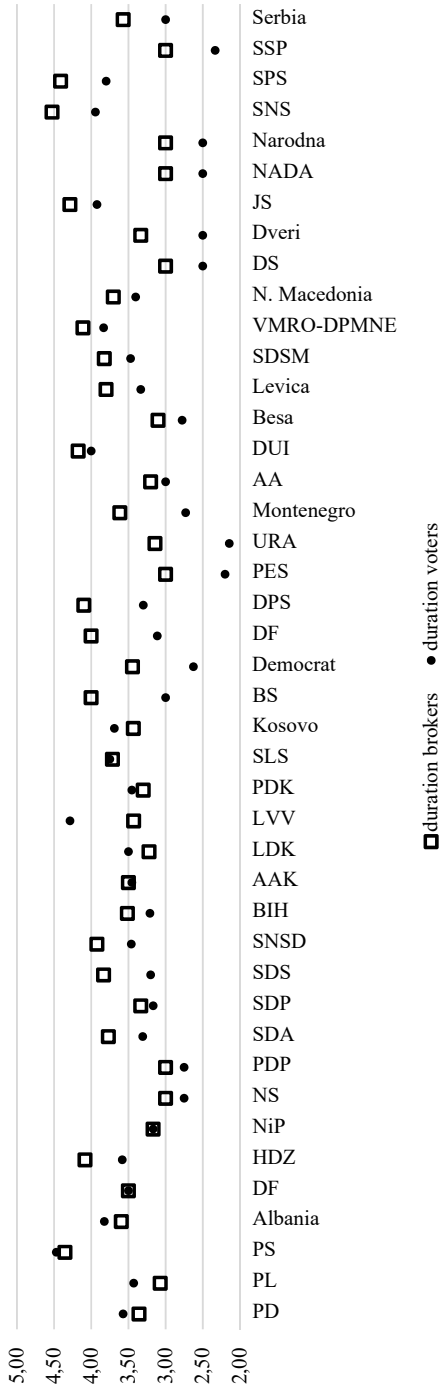
Finally, Figure 7 displays the primary targets of political parties, categorized according to income levels, utilizing small-scale positive inducements to convey the parties’ reliability when creating clientelist connections. Despite the common targeting of the poor with such incentives, many parties in the region also engage with higher-income groups, aligning with the expectations of a relational clientelism conceptualization. Examples include the SDP (Bosnia and Herzegovina), the AAK, the PDK, the LDK, and the SL (Kosovo), and the SDSM (North Macedonia), which target middle-income voters more than the poor. Several of the largest clientelist parties in the sample, such as the PS (Albania), the HDZ BiH (Bosnia and Herzegovina), the DPS (Montenegro), the DUI and the VMRO-DPMNE (North Macedonia), and the SNS and the SPS (Serbia), engage with the middle-income group at values of around 0.6 and above (on a scale of 0 to 1). This implies increased reliance on income groups beyond the poor, corresponding to the concept of relational clientelism. While the measure carries an important limitation in focusing on signaling rather than the actual targeting, it still offers evidence in favor of the notion that middle-income groups are significant participants in political clientelism throughout the Western Balkan region.

Figure 4. Reliance on negative inducements in the Western Balkans



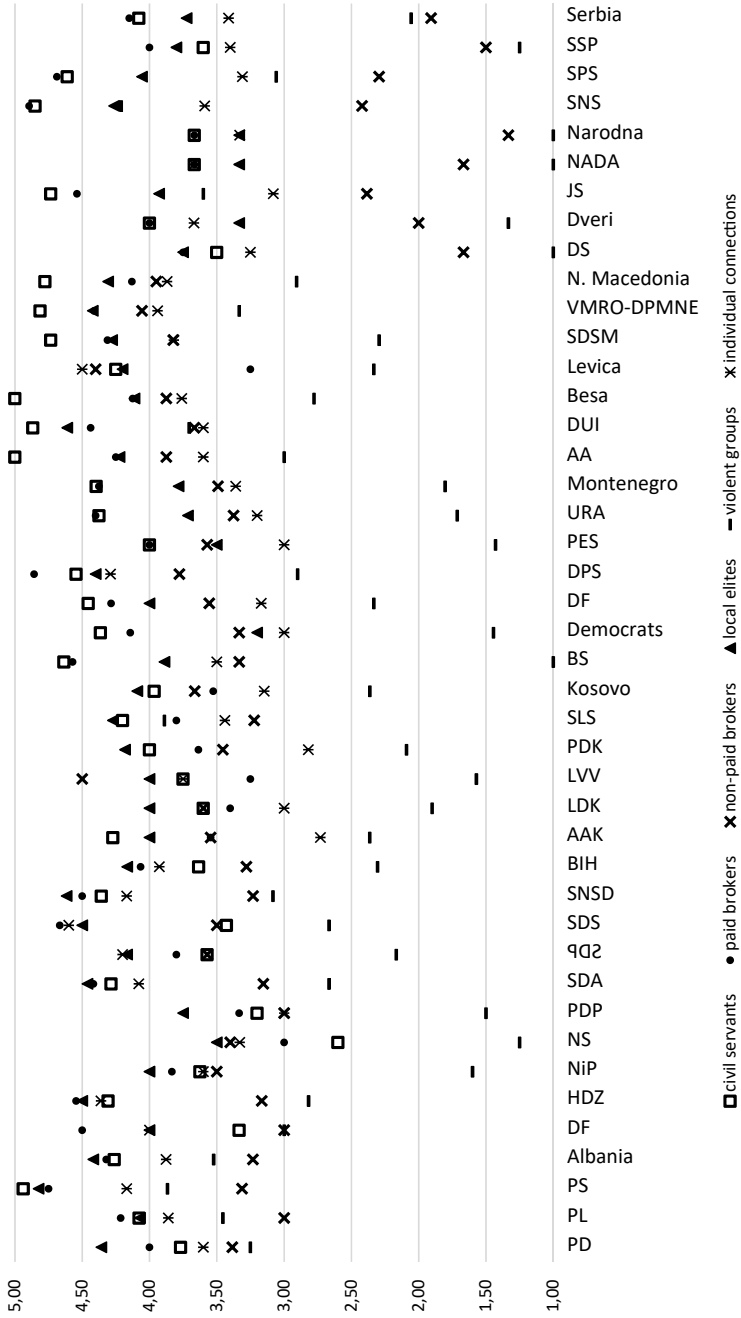
Source: DALP II dataset (unpublished); calculations by author.

Figure 5. Duration of linkages between parties and a) brokers and b) voters in the Western Balkans



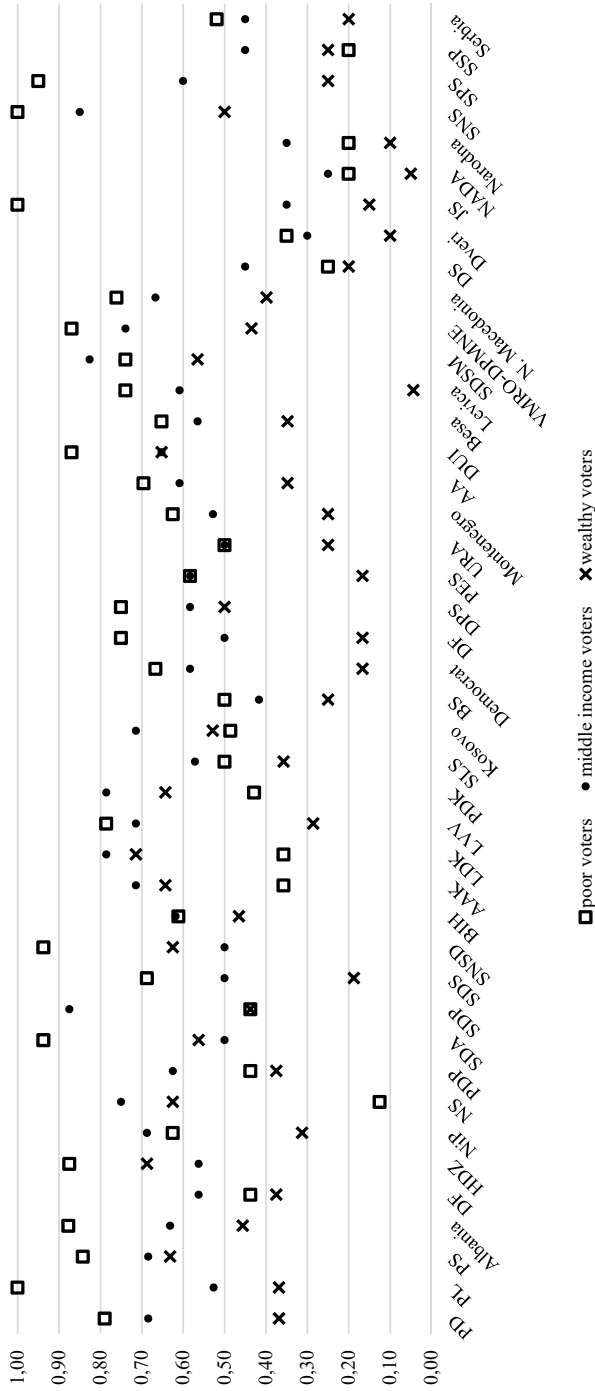
Source: DALP II dataset (unpublished); calculations by author.

Figure 6. Types of brokers engaged in political clientelism in the Western Balkans



Source: DALP II dataset (unpublished); calculations by author.

Figure 7. Voters “signaled” with clientelistic benefits in the Western Balkans, by income groups



Source: DALP II dataset (unpublished); calculations by author.

Overall, the findings in this subsection suggest that relational clientelism, or patronage, is more prevalent in the region's politics than electoral forms of clientelism. This does not imply that no political parties strongly practice both forms; however, the dominant pattern across the region is characterized by durable linkages with both voters and brokers, the distribution of public resources as key clientelist benefits, the application of negative inducements, engagement with specific broker groups long-affiliated with parties, and clientelist signaling directed toward diverse income groups, not exclusively the "poor". These findings indicate that political clientelism in the region serves not only to achieve electoral success but also to develop the organizational infrastructures of parties. Consequently, clientelist mobilization becomes deeply embedded in political life, extending beyond electoral cycles and influencing everyday politics.

5. CONCLUSION

This paper aimed to evaluate the prevalence of clientelist politics in the Western Balkans in comparison with other political mobilization strategies employed by parties. It also examined the extent to which parties relied on the two primary forms of clientelist mobilization: electoral and relational clientelism. To situate and guide the empirical analysis within the broader context of political science literature, the paper developed a conceptual framework that distinguished between different linkage strategies and the sub-strategies within clientelism. The empirical analysis drew on expert survey data on political parties in the region, collected during the second wave of the Democratic Accountability and Linkages Project (DALP).

The study demonstrates that political clientelism is a prominent linkage strategy in the Western Balkans, frequently employed alongside other strategies at the party level. The extent of clientelist engagement varies across parties, with dominant parties (those in power or with access to public resources) exerting the greatest effort. At the party system level, despite the idiosyncrasy of Serbia – where a significant gap in clientelist effort between ruling and opposition parties depresses the overall party system score but does not diminish the broader pattern – clientelism consistently ranks among the most commonly employed strategies across the region.

Furthermore, the findings indicate that political clientelism in the region is predominantly of the relational or patronage type, although electoral forms of clientelism are also significantly present. The durability of party–voter and party–broker linkages, the reliance on public resources (particularly access to employment, where the highest party effort is identified), the

significant use of negative inducements, the frequent engagement of specific broker groups, and the inclusion of diverse income groups beyond just the “poor” – all point to heightened relational clientelist activity.

What do these findings suggest for the further study of political clientelism in the region? Firstly, clientelism is extensively present across the six party systems, as evidenced by its relative prominence among other distinct linkage strategies. It places a significant burden on public resources, as inferred from the available data, and perpetuates an unfair advantage for ruling parties. This dynamic creates a cascade effect, exacerbating challenges in combating corruption at the highest levels. Entrenched political elites, who subjugate the population via clientelism (see Cvetičanin, Bliznakovski, Krstić 2023), secure reelection and influence the judiciary from their positions of power, thereby directly entrenching corruption.

Studying clientelism, therefore, has significant real-world implications. Understanding how it operates and assessing its effects are essential steps toward mitigating its adverse consequences and fostering more equitable and accountable political practices. Clientelism in the Western Balkans is undoubtedly a topic worthy of further study, and the disciplines that have already explored it in the region (political science, sociology, anthropology, and economics) offer valuable insights. These fields provide complementary perspectives, examining the phenomenon from macro-level dynamics to micro-level interactions. Future research should continue, and fostering greater dialogue between these disciplines is essential to developing a more comprehensive understanding of clientelism and its implications.

Secondly, the study of clientelism in the region should advance with a deeper understanding of the nuances of clientelistic linking, particularly the distinction between electoral and relational clientelism. As emphasized throughout this paper, these two sub-types exhibit divergent dynamics for those involved. For political parties (which are the unit of analysis in this study) they may represent a strategic choice between directing efforts toward voters *or* supporters who contribute more extensively to party organizations – a decision that can vary depending on specific contexts and circumstances. Conflating these two sub-types in empirical research can lead to significant issues in scientific inference, just as such conflation would hinder effective policy interventions. For instance, research that conceptualizes clientelism solely as vote buying may underestimate its true prevalence, while policies targeting vote buying alone may address only a fraction of clientelist transactions. Given the evidence presented in this paper – that relational clientelism is more commonly practiced across the region than electoral clientelism – ensuring conceptual clarity in research focusing on mechanisms and effects of clientelism becomes increasingly important.

While this paper is limited in its focus to specific aspects of political linkage-making in the Western Balkans, it lays the groundwork for further research to explore these dynamics in greater depth. The insights presented here contribute to advancing the knowledge on political clientelism and mobilization strategies in the region, and hold potential to inform policy interventions aimed at fostering accountability and mitigating the negative impacts of clientelist practices. By identifying key patterns and distinctions, this study highlights the importance of continued exploration of political linkages in the Western Balkans and beyond.

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Appendix 1. List of political parties included in the study

Party system	Name (English)	Name (original)	Acronym
ALB	Socialist Party of Albania	Partia Socialiste e Shqipërisë	PS
ALB	Democratic Party of Albania	Partia Demokratike e Shqipërisë	PD
ALB	Freedom party (formerly: Socialist Movement for Integration)	Partia e Lirisë (formerly: Lëvizja Socialiste për Integrim)	PL (formerly: LSI)
BIH	Party of Democratic Action	Stranka demokratske akcije	SDA
BIH	Alliance of Independent Social Democrats	Savez nezavisnih socijaldemokrata	SNSD
BIH	Croatian Democratic Union of Bosnia and Herzegovina	Hrvatska demokratska zajednica Bosne i Hercegovine	HDZ BiH
BIH	Social Democratic Party of Bosnia and Herzegovina	Socijaldemokratska partija Bosne i Hercegovine	SDP BiH
BIH	Serb Democratic Party	Srpska demokratska stranka	SDS
BIH	Democratic Front	Demokratska fronta	DF
BIH	People and Justice	Narod i Pravda	NiP

Party system	Name (English)	Name (original)	Acronym
BIH	Party of Democratic Progress	Partija demokratskog progresa	PDP
BIH	Our Party	Naša stranka	NS
KOS	Self-determination movement	Lëvizja Vetëvendosje	LVV
KOS	Democratic Party of Kosovo	Partia Demokratike e Kosovës	PDK
KOS	Democratic League of Kosovo	Lidhja Demokratike e Kosovës	LDK
KOS	Alliance for the Future of Kosovo	Aleanca për Ardhmërinë e Kosovës	AAK
KOS	Serb List	Srpska lista	SL
MNE	Democratic Party of Socialists of Montenegro	Demokratska partija socijalista Crne Gore	DPS
MNE	Europe Now Movement	Pokret Evropa sad	PES
MNE	Democratic Front	Demokratski front	DF
MNE	Democratic Montenegro	Demokratska Crna Gora	Demokrate
MNE	Civic Movement United Reform Action	Gradanski pokret Ujedinjena reformska akcija	URA
MNE	Bosniak Party	Bošnjačka stranka	BS
MKD	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity	Vnatreshna Makedonska Revolucionerna Organizacija – Demokratska Partija za Makedonsko Nacionalno Edinstvo	VMRO-DPMNE
MKD	Social Democratic Union of Macedonia	Socijaldemokratski sojuz na Makedonija	SDSM

Party system	Name (English)	Name (original)	Acronym
MKD	Democratic Union for Integration	Bashkimi Demokratik për Integrim (Albanian) / Demokratska Unija za Integracija (Macedonian)	BDI (Albanian) / DUI (Macedonian)
MKD	Alliance for Albanians	Aleanca për Shqiptarët (Albanian) / Alijansa za Albanicite (Macedonian)	ASH (Albanian) / AA (Macedonian)
MKD	The Left	Levica	Levica
MKD	Besa Movement	Lëvizja Besa (Albanian) / Dvizhenje Besa (Macedonian)	Besa
SRB	Serbian Progressive Party	Srpska napredna stranka	SNS
SRB	Socialist Party of Serbia	Socijalistička partija Srbije	SPS
SRB	United Serbia	Jedinstvena Srbija	JS
SRB	Democratic Party	Demokratska stranka	DS
SRB	People's Party	Narodna stranka	NS
SRB	Party of Freedom and Justice	Stranka slobode i pravde	SSP
SRB	National Democratic Alternative	Nacionalno demokratska alternativa	NADA
SRB	Serbian Movement Dveri	Srpski pokret Dveri	Dveri

Source: author.

Appendix 2. Survey items from DALP II used in the study

Aspect of political clientelism measured	Survey item	Survey questions (without clarifications and introductions)	Response categories
Clientelism via consumer goods	B1	How much effort do candidates and parties expend to attract voters by providing consumer goods?	A negligible effort or none at all (1) A minor effort (2) A moderate effort (3) A major effort (4) Don't know (5)
Clientelism via preferential access to social policy schemes	B2	How much effort do candidates and parties expend to attract voters by providing preferential public benefits?	
Clientelism via preferential access to employment	B3	How much effort do candidates or parties expend to attract voters by providing preferential access to employment opportunities?	
Clientelism via negative inducements	B9	How much do candidates or parties rely on the threat of withdrawing social and occupational benefits, access to utilities and physical violence to voters unwilling to support them?	Not at all (1) To a small extent (2) To a moderate extent (3) To a great extent (4) Don't know (5) The party does not threaten voters with withdrawing benefits (6)
Durability of clientelist linkages: brokers	C2	Is the relationship between parties, politicians and their local promoters who organize the targeted, excludable voter benefits a short-term or a long-term relationship?	[1-5 scale] All promoters are short term (1) All promoters are long term (5) Don't know (6)

Durability of clientelist linkages: voters	C3	Is the relationship between voters and local promoters who organize the targeted, excludable benefits on behalf of parties and their candidates a short-term or a long-term relationship?	[1–5 scale] All interactions are short term, bounded by the campaign season (1) All interactions are long-term, continuously throughout the electoral term (5) Don't know (6)
Types of brokers employed	C1	How important and common are the roles listed below to characterize those local promoters?	[1–5 scale] Unimportant (1) Very important (5) Don't know (6)
Types of brokers employed: civil servants	C1_1	Municipal and other civil servants who work to promote a candidate or party through targeted benefits to prospective voters	
Types of brokers employed: client brokers	C1_2	Party members who expect financial compensation for their promotion of the party's electoral fortunes through distributing targeted benefits to electoral constituencies	
Types of brokers employed: programmatic brokers	C1_3	Party members who work for candidates as political activists without expectation of personal material benefit, but help to organize assistance for prospective electoral party supporters	
Types of brokers employed: local and community elites	C1_4	Local elites and notable individuals who endorse candidates that provide targeted exclusive benefit to electoral constituencies.	

Types of brokers employed: violent groups	C1_5	Social groups and individuals using violence and extortion to mobilize candidate support	[1–5 scale] Unimportant (1) Very important (5) Don't know (6)
Types of brokers employed: individual associates	C1_6	Individual associates who are not party members: These promoters are individual followers and associates of politicians running in elections.	
Types of voters signaled with clientelist inducements	B12	Do political parties make special efforts to attract members of one or several of the following groups with such inducements?	Poor voters (1) Middle income voters (2) Wealthy voters (3) Don't know (4)
Mobilization strategy measured	Survey item	Survey questions (without clarifications and introductions)	Response categories
Charismatic politics	E1	To what extent do parties seek to mobilize electoral support by featuring a party leader's charismatic personality?	Not at all (1) To a small extent (2) To a moderate extent (3) To a great extent (4) Don't know (5)
Mobilization based on descriptive representation	E9	Parties may sometimes choose national election candidates based on descriptive traits, such as their native language, region of residence, gender, religion, ethnicity or race.	

Populism	D6	Assess the extent to which parties and their candidates depict political competition in their partisan rhetoric as a struggle between two sharply contrasting camps: the honest citizen-politicians who are spokespeople of popular demands, represented by one's own party, and an unresponsive, unaccountable and deceptive elite, assembled around the opposing parties.	[1–10 scale] [1] Politics as struggle between right and wrong, honest citizen-politicians and deceptive elites [10] Politics as competition among politicians representing different trade-offs, about which reasonable people can disagree in good faith. [11] No clear position [12] Don't know
	D7	Assess the extent to which parties and their candidates focus on common people in their discourse.	[1–10 scale] [1] Identifies with the common people and celebrates their authenticity [10] Refers more generally to citizens and their unique interests [11] No clear position [12] Don't know

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**RECRUITMENT OF AUTHORITARIAN INDIVIDUALS INTO
CLIENTELIST NETWORKS: A COMPARATIVE STUDY
OF THE WESTERN BALKANS**

Understanding how brokers choose clients for vote-buying exchange is one of the key issues in explaining the success of these illicit practices. Norm-based theories seek an answer to this question based on individuals' values and beliefs, which would make them suitable candidates for vote-buying. A recent addition to this literature suggests that there might be a distinct authoritarian feature among the targeted voters. Building on the findings of this study, this paper examines the relationship between authoritarian tendencies and the offer of clientelist exchange in six Western Balkan countries. Overall findings vary significantly across countries: in Montenegro, Serbia, and Albania some associations were found, albeit not all in the theoretically predicted direction. In Bosnia and Hercegovina, Kosovo, and North Macedonia authoritarian tendencies were not related to an offer of clientelist exchange. The results point to a highly contextualized importance of authoritarian tendencies for the success of clientelist exchanges.

Key words: *Authoritarianism. – Clientelism. – Targeting. – Values. – Western Balkans.*

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1. INTRODUCTION

During the 2023 local elections in Serbia, investigative journalists from the Centre for Investigative Journalism of Serbia (CINS) detailed the structure of the Serbian Progressive Party (SNS) call center, where (allegedly) initial employment was contingent on electoral support and which offered direct payments to employees on election day in exchange for proof of voting for the SNS (Milosavljević, Ćurčić, Kostić 2023). Unfortunately, this is not an isolated case, but a model of patronage politics that extends across the Western Balkans region and has taken root in almost every aspect of social life (see Drishti, Kopliku, Imami 2023; Gjuzelov 2020; Stanojević 2020; Marković, Marović 2020). The strategy of clientelism or patronage politics refers to a relationship between individuals, typically known as patrons and clients, where a quid-pro-quo exchange occurs – specifically, electoral behavior by clients (voting or abstention) in exchange for personalized, one-time or continued access to certain benefits (money, favors, jobs, etc.) (see Kitschelt, Wilkinson 2007). An important question that therefore arises is: who are the individuals or potential clients who are offered clientelist exchanges?

The scholarship on clientelism offers various answers to this question, ranging from the ideological affiliation of voters (Stokes 2005), their economic conditions (Stokes, Dunning, Nazareno 2013), or particular value sets they hold (Lawson, Greene 2014). This paper builds on a recent study (Stankov 2024) that argued that voters exhibiting authoritarian tendencies are more likely to be targeted for clientelist exchanges, as they are more likely to comply with brokers' demands. Particularly, the submissive tendency of authoritarian individuals should facilitate targeting through two different channels. First, authoritarian individuals hold a personality structure that is "based on their submission to [...] established authorities" (Altemeyer 1998, 52) which should prompt voluntary compliance with authorities' requests even if they are illegal; and second, voluntary compliance should provide for a scenario or clientelist resource distribution in which brokers do not have to establish complex systems to monitor compliance with the political demand. This proposition was tested in six Western Balkan countries, using the INFORM dataset for logistic regression modeling, and revealed a highly diverse mechanism of clientelism recruitment. The proposed mechanism of positive authoritarian association with clientelist targeting was clearly identified only in Montenegro, while in Serbia and Albania it was actually detrimental. Finally, no significant association was identified in North Macedonia, Bosnia and Herzegovina, or Kosovo.

Pursuing the answer to this question is important for at least two reasons. First, clientelism and patronage are based on the distribution of finite resources, meaning that brokers and patrons must decide who the eligible clients are. Apart from a study by Bliznakovski (2020), to the best knowledge of the author, no other systematic examination of the client profile in the Western Balkans region has been conducted. Second, widespread clientelist strategies distort the functioning of democratic institutions and severely hinder voter ability to hold elected representatives accountable and responsive (Ruth-Lovell, Spirova 2019). When patronage politics is widespread, “rather than voters holding parties and politicians accountable for their performance, it is parties and politicians that hold voters accountable for their vote” (Hicken 2011, 292). In this regard, it is crucial to understand which types of voters are susceptible to being held accountable for their electoral behavior and in which political contexts this strategy prevails.

2. CLIENTELIST TARGETING

As with many concepts in social science, clientelism can be understood in a variety of ways, often conflated with general corruption practices. The key feature that distinguishes clientelist exchanges from overall corruption is the focus on electoral support. When a dyadic relationship between brokers and clients is established (Hicken 2011), some form of offer in exchange for a vote is presented (Kitschelt, Wilkinson 2007). These offers can be one-time exchanges, typically in the form of vote-buying, or long-term, such as patronage. The type of exchange is largely conditioned by the resource’s brokers are able to provide (Yildirim, Kitschelt 2020).

Research on the demand side of clientelism, i.e. the brokers’ decisions on whom to target, can typically be organized into three different approaches. An implicit assumption in all these approaches is the brokers’ tendency to minimize the “effectiveness gap” – the discrepancy between the scale of offers and the commitment to a clientelist exchange (Kitschelt, Altamirano 2015). The first approach argues that socio-economic conditions are key in deciding whom to target. Poor voters are more frequently targeted because the utility of clientelist exchanges is higher for them than for wealthier voters (see Calvo, Murillo 2004; Stokes 2005), and the practice itself is less stigmatized (Gonzalez-Ocantos *et al.* 2012).

The second approach suggests that the ideological affiliation (or party allegiance) of voters is crucial when considering whom to target. The literature on this issue is mixed; some argue that swing and unaffiliated

voters are more cost-effective to target (Stokes 2005), while others contend that the embeddedness of core voters in party infrastructure makes them easier to target and their behavior easier to monitor (Calvo, Murillo 2004).

Lastly, the third approach proposes that brokers use in-depth knowledge of the voters and their social preferences when deciding whom to target. When surveillance and enforcement structures are absent (be it for the reasons of ballot secrecy or poor surveillance structures), clientelism can succeed when voters comply voluntarily (Kitschelt, Wilkinson 2007). Here, authors emphasize the importance of norms of reciprocity, indebtedness, and gratitude (Lawson, Greene 2014). This approach assumes that brokers possess detailed knowledge of clients (see, Finan, Schester 2012 on how well brokers in Peru know their constituencies). This aspect of norm-based targeting is particularly relevant in the Western Balkans context. Bliznakovski (2020) demonstrated that voters with networking resources are typically targeted in the Western Balkans, suggesting that such situations provide brokers ample opportunities to gather in-depth knowledge about the potential client's social tendencies.

However, the norm-based approach is not without its drawbacks. Carlin, Moseley (2015; 2022) demonstrated that individuals who hold democratic values are poor targets for clientelism, as they tend to hold accountable the parties that employ such strategies. For this reason, Stankov (2024) argued that if individuals hold authoritarian tendencies and submit “to the perceived established authorities in society” (Altemeyer 1998), this should outweigh their commitment to democratic governance. The paper follows this conceptualization of authoritarianism, viewing it as a personality structure mainly based in submissive tendencies towards established authorities, which is more likely a consequence of social learning where individuals submit to the social norms endorsed by the authorities (Altemeyer 1998, 48). On a slightly different note, Lavrič, Tomanović, Jusić (2019) demonstrated that commitment to democracy is not exclusionary of authoritarian tendency. Young individuals in Southeast Europe are at the same time inclined to support democracy and a strong authoritarian leader that will address societal problems and issues. This may be the consequence of the perception of institutional efficiency and general satisfaction with how democracy works within a particular country. For example, Ghergina, Saikkonen, Bankov (2022) showed that those who are dissatisfied with democracy are more likely to turn to illicit practices and accept clientelist offers. Lastly, Markowski (2019, 125) recently argued that the support for political clientelism in Poland is based in values, fueled by those individuals “raised in nationalist/authoritarian/Catholic tradition.” From

this perspective, the norm-based approach can still help us understand why voters voluntarily comply, but it shifts away from the dominant explanations based in values of reciprocity, indebtedness, and gratitude.

This paper builds on this line of work, examining whether authoritarian tendencies are associated with the offer of clientelist exchanges in the Western Balkans context. To reiterate the main point of Stankov (2024), the submissive tendencies of authoritarians should facilitate voluntary compliance with brokers' demands, as the request comes from a person in a position of authority. This line of argumentation assumes that brokers are knowledgeable of individuals preferences and that they are basing on those preferences their decision whom to target. Albeit it is a very strong assumption, previous research suggests such knowledge might be available to brokers. For example, in Peru brokers were able to correctly predict client's level of altruism (Finan, Schester 2012) and they are an integral part of vast social networks through which they can access client's tendency towards reciprocity (Ravanilla, Haim, Hicken 2022). Lastly, Bliznakovski (2020) showed that network resources, particularly familiarity with individuals in positions of power, are an important predictor of clientelist engagement in the Western Balkans. To reiterate, this literature suggests that through their engagement in social networks, brokers are able to collect information on potential clients, possibly including their authoritarian tendencies, albeit probably in a form of their proclivity to be cooperative and honor the clientelist exchange.

In reference to the nature of the demand, the criminal (illicit) nature should not be a deterrent, as authoritarian tendencies likely provide a mechanism for legitimizing illegal practices. For example, authoritarian individuals hold more positive attitudes toward torture (Benjamin 2016) and are more likely to support antidemocratic policies targeting outgroups (Dunwoody, Plane 2019). In this sense, authoritarian individuals do not adhere to preconceived social norms but instead adopt and submit to the norms that the "authorities endorse" (Altemeyer 1998).

In conjecture, this voter profile should be appealing to brokers, as it allows them to distribute finite resources more efficiently, without the need to establish a large and costly network for compliance monitoring.

H1: Authoritarian individuals are more likely to be targeted for clientelist exchanges.

3. WESTERN BALKANS CONTEXT AND CASE SELECTION

It is almost an accepted fact of life that all the Western Balkan countries have extensive patronage and clientelist networks, supported by Bliznakovski's finding (2020, 108) that almost 14% of individuals have been offered vote-buying exchange and an additional 9.3% of individuals across the region initiated clientelist transactions themselves, or in other words, engage in "clientelist benefit-seeking". However, this is not a phenomenon unique to the region. Szanyi (2022) argued that patronage and rent-seeking behavior are key features of the regimes in Poland and Hungary, where they aim to co-opt and monopolize the economy. What makes the Western Balkans particularly interesting is that patronage networks tend to be especially effective when the state is a major employer (Chandra 2007), a characteristic applicable to most countries in the region.¹

Furthermore, patronage networks are not goals in themselves but are instrumental in the process of state capture. According to Keil (2018), these networks have been utilized in Kosovo, Macedonia, Montenegro, and Serbia. Additionally, Chandra (2007) argues that when ethnicity is a major organizing principle of political life, it also becomes a channel for resource allocation through patronage linkages. The dismantling of such linkages would result in the loss of power and privileges. In this context, there are numerous accounts that demonstrate the viability of ethnically charged politics in each of the Western Balkan countries.

On a different note, Lavrič, Bieber (2021) demonstrated a longitudinal shift toward authoritarianism in public opinion in the Western Balkans, while also revealing that support for a strong leader is, in the eyes of surveyed individuals, compatible with democracy. In other words, these individuals accept the norm that strong leaders are both necessary and important for the functioning of democracy. Lavrič, Bieber (2021, 24) proposes that this may be a characteristic of a competitive authoritarian regime, where media and political elites actively shape public perception by normalizing the idea of a strong leader.

Taken together, the brief overview of the Western Balkans provided above supports the argument that the case selection is well-suited for the theory proposed in the previous section. The conditions enabling the development

¹ According to the World Bank report from 2018, 40% of the workforce in Montenegro was employed in the public sector (World Bank 2018). Additionally, data from the International Labor Organization shows that in 2021 the workforce percentages employed in the public sector were 23.3% in Serbia, 25.4% in Bosnia and Hercegovina, and 25.4% in North Macedonia (World Population Review 2024).

of clientelist networks are present and deeply entrenched in nearly every aspect of social life. On the demand side, authoritarian tendencies have been on the rise in recent years, which should allow for a robust empirical validation of the relationship between authoritarianism and clientelist targeting.

4. INDIVIDUAL CASES

In the case of **Serbia**, Cvejić (2016) has argued that clientelist networks permeate every level of society, including the electorate, fostering a practice of dependence that intensifies as one moves down the hierarchical pyramid from top clients to the smaller ones. According to Radeljić, Đorđević (2020), these networks function as a mechanism of state capture and are crucial for understanding the process of power maximization and preservation. Political parties are key actors in this system, with directed party employment serving as the main mechanism for resource distribution (Stanojević, Babović, Gundogan 2016). To illustrate the potential extent of this issue, it can be pointed out that Čakar, Čular (2023, 68) estimated that party membership in Serbia reaches up to 19.37%.

However, patronage alone does not capture the full picture. For instance, “clientelism and informal networks [are used] to pressure institutions and media outlets, altogether aimed at manipulating the public opinion” (Radeljić, Đorđević 2020, 603). Additionally, the private security sector operates in a seriously distorted market and is largely based on clientelist practices (Pešić, Milošević 2021). Once established, the system perpetuates its own survival. Along those lines Vuković, Spajić (2022, 535) argue that corruption and informal practices related to clientelism ultimately create a parallel normative system that regulates the behavior of clientelist actors. Their behavior, governed by informal social norms, is predictable and consistent, often running contrary to legally regulated norms. When informal norms are violated, a peculiar process occurs: formal state institutions are used to sanction the defectors.

Research on clientelism in **Bosnia and Herzegovina** has identified two key features that perpetuate the practice. First, the general ethnicization of politics has fostered the development of informal networks between ethnic parties and their ethnic electorates. These linkages are effective in securing electoral support but also act as a limiting factor for economic opportunity (Piacentini 2019). For this reason, Kapidžić (2019) argued that state-owned companies are crucial for maintaining what is termed ethnic oligopoly. Additionally, Obradović, Filić (2019) argued that beyond state-

owned companies, the welfare state system is entirely instrumentalized for clientelist purposes. Contrary to its intended goal, Obradović, Filić (2019) claim that the welfare system perpetuates inequalities to preserve clientelist networks. This occurs mainly through arbitrary assessment procedures and access to social transfers, and ultimately through the ability to threaten individuals with the withdrawal of benefits (for more on negative clientelist strategies, see Mares, Young 2019).

Second, political competition is not based on ideological differences but on the ability of parties to establish and maintain effective patronage and clientelist systems (Hulsey, Keil 2020). Therefore, it is essential for mobilizing and maintaining the electoral base. Similarly, new parties do not emerge with the aim of filling gaps in the ideological market, but due to party splits over internal disputes regarding the distribution of benefits (Hulsey 2015).

Like most Western Balkan countries, **Kosovo** features a competitive authoritarian regime that derives its political power from a network of clientelist dependencies (Beha, Hajrullahu 2020). Similar to the situation in Bosnia and Herzegovina, electoral competition in Kosovo is largely disconnected from ideological differences and policy-oriented programs, and is mainly confined to the arena of clientelist promises (Beha, Selaci 2018). Economic uncertainty, combined with the fact that the state is the largest employer in Kosovo, contributes to the entrenchment of these practices.

This is effectively illustrated by the Beha, Selaci (2018) report, which shows that Kosovo scored 0.928 (0 to 1 index) on a standardized index of patronage developed by Kopecky, Scherlis, Spirova (2012), based on expert interviews. Additionally, approximately 77% of the general public believes that employment is conditioned on clientelist relationships. Jackson (2018) notes that the problem is further exacerbated by the lack of credibility of formal institutions, especially due to their low capacity to deliver public goods. According to Jackson (2018), clientelist exchanges serve as a visible demonstration of capability because they involve tangible transfers that clients can immediately benefit from (e.g., jobs, money). In turn, this reliance on clientelist exchanges further undermines capacity development, creating a circular problem.

Montenegrin politics was dominated by the Democratic Party of Socialists (DPS) for more than 30 years, until the parliamentary election in August 2020. Keil (2018) argues that this period was marked by a significant degree of state capture, while Laštro, Bieber, Marović (2023) claim that clientelism was a primary mechanism ensuring the political dominance of DPS. Pursuing an explanation to how this system was maintained, some have argued that a mechanism of state-sponsored populism was employed to support and justify the clientelist state system (Džankić, Keil 2017).

Similar to the practices observed in Bosnia and Herzegovina, Laštro, Bieber, Marović (2023, 227) show that “[t]here is also a noticeable increase in expenditures for social benefits, in particular one-time assistance payments, in election years.” Direct money transfers were also common. For instance, in a videotape of the “envelope affair”, Duško Knežević recorded handing over an envelope containing 97,500€ to the Mayor of Podgorica, Slavoljub Stijepović, ahead of the 2016 parliamentary election (Radević 2024). Although the legal proceedings were halted due to a lack of evidence, it is a reasonable assumption that at least a portion of this money was used for direct money transfer through vote-buying.

The practice of one-time payments was widespread. Using a survey-embedded list experiment, Batrićević, Komar (2021) estimated that approximately 24% of Montenegrin voters were offered money in exchange for their votes, with gender playing a significant role in determining whom to target. Specifically, women were 18% less likely to be targeted than men. Regarding patronage, an illustrative example is a leaked audio recording published by the *DAN* daily newspaper in 2012 (Kosović 2013), in which high-ranking public officials can be heard discussing a strategy of employing one person to recruit four votes through family voting.

In **North Macedonia** clientelism is manifested across various aspects of society. The high rate of unemployment fosters an environment where political clientelism thrives, particularly within the informal economy, as individuals seek employment, especially in the public sector (Gjurovska, Kandžija, Miljanić 2018). State capture exacerbates the problem by deactivating controls and using patronage to purge non-loyalists from key positions. This includes practices such as packing anti-corruption agencies with party loyalists by the VMRO-DPMNE (Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity) or exploiting the cash-cows conditioned on patronage appointments in key positions that control public resource distribution (Auerbach, Kartner 2022).

Similar to the situation in Kosovo, Lyon (2015) highlights how decentralization facilitates the penetration of clientelist networks in North Macedonia. Clientelist promises are easier to fulfill at the local level compared to the national level. Lyon (2015) argues that, in such a system, challenger parties cannot establish credibility based on programmatic appeals; therefore, clientelism acts as a solidifying mechanism for the rule and power of existing parties. The widespread perception of clientelism and corruption is further evidenced by personal involvement, with 7.44% of surveyed individuals reporting being offered money for their vote (Markovikj, Gocevski 2018). In addition to vote-buying offers, Gadzovska, Spasovska

(2013) report that some villagers were blackmailed into providing electoral support by being denied access to state subsidies, while the VMRO-DPMNE party loyalists were granted up to 300 hectares of land.

Furthermore, in terms of specific aspects of social life, a 2015 whistleblower recording released by the opposition Social Democrats (SDSM) revealed a vast network of surveilled journalists – more than 100 individuals – and exposed transactions and quid-pro-quo relationships among editors with individuals across various branches of government, including the intelligence and security sectors (Micevski, Trpevska 2015).

Regarding the state of democracy in **Albania**, some authors argue that clientelism is the primary source of political and economic power in the system (Jusufi 2017). Kera, Hysa (2021) present an intriguing argument based on qualitative research focusing on the 2017 parliamentary elections, suggesting that there is a circular nature to clientelist relations in Albania. In the first step, clientelism is used to extract private funding for electoral campaigns, which is then used in the campaign to reinforces the clientelist networks themselves. A key enabling condition for this practice is the claim that clientelism is deeply embedded in Albania’s culture of informality (Luli 2021, Jusufi 2018), where social norms act as a substitute for legal rules (Luli 2021, 254). Luli (2021) further elaborates along those lines that clientelist and informal practices fueled by culture and social norms can be observed across various sectors, including the electoral system, judiciary, public administration, economy, and media. On a different note, Gërzhani, Schram (2009) demonstrate that clientelism is associated with asymmetrical assessments of government policies and vote choice, reflecting broader polarization in Albania (north vs. south). An illustrative example of clientelist favors exchanged for votes, which is not exclusive to Albania, is the distribution of legalization certificates and permits for illegally constructed dwellings in the four months leading up to the 2021 parliamentary election (Sqapi, Mile 2022).

5. DATA AND MODELING

This study utilizes survey data from the INFORM project, collected in face-to-face interviews across six Western Balkan countries in May 2017. The dataset includes various batteries of questions related to informal politics, including clientelism, and provides information that allows for the control of competing theoretical explanations. Relevant questions are recoded to fit the modeling requirements for binomial logistic regression.

Each model is fitted to separate country datasets, which allows for a more nuanced understanding of specific dynamics within each country, rather than relying on a general fixed-effects model with country-clustered standard errors. Models are also weighted by region, type of settlement, age, education, and gender.

For the *dependent variable*, I use a question that asked whether respondents were offered money or a favor in exchange for votes, which reflects one-time clientelist offers recoded into a dichotomous format. For the main *independent variable*, I use the respondents' value judgment on whether having a strong leader, who does not need to concern themselves with parliament and elections, would be best for the country. Response categories were recorded on a scale from one to five, with higher numbers indicating greater agreement with the statement.

To account for competing explanations mentioned in the review section of the paper, I include two variables related to the party allegiance of voters. First, a dummy variable indicates whether the respondent is or was a member of a political party. Second, I consider whether the respondent voted for the large parties that formed the government in the previous election. For norm-based explanations, particularly reciprocity, I include an item indicating the level of agreement with the statement that if one receives a favor from a political party, they are obliged to vote for that party. For socio-economic explanations, I use a question about monthly household income. Finally, a series of control variables are added, including whether the respondent is employed in the public sector (dummy variable), gender (dummy), level of education, age, type of settlement, and nationality, where contextually applicable.

6. RESULTS

The following section presents the results of estimating similarly defined models across each country in the Western Balkans which led to the estimation of 6 models. The overall finding indicates that support for a strong leader does not show any association with clientelist targeting in **North Macedonia, Kosovo, and Bosnia and Herzegovina**, when relevant controls are included in the analysis. However, notable findings emerge in the remaining three countries.

Serbia: Contrary to the theoretical expectations of this paper, support for a strong leader is associated with lower odds of being offered money or a favor in exchange for a vote, with a unit increase in support for a strong

leader being associated with a 18.9% decrease in targeting likelihood (Table 1, Model 1). The strongest predictor is party membership, indicating that clientelist exchanges in Serbia are primarily conducted through the party infrastructure, with a well-established network for monitoring and sanctioning dissent. The result would imply that that brokers in Serbia do not rely on voters’ intentions for ensuring successful clientelist exchange.

Montenegro: The results from Model 2 (Table 1) show that support for a strong leader is positively associated with receiving money or a favor in exchange for a vote. A unit increase in authoritarian attitudes corresponds to a 20.5% increase in the odds of being offered money. Among the six Western Balkan countries examined, Montenegro is the only case where the theoretical expectation is validated, providing some evidence to reject the null hypothesis.

Albania: The findings in Albania follow a similar pattern as in the case of Serbia when it comes to the expected relationship between authoritarianism and clientelist targeting. A more puzzling finding is that apart from household income and age, none of the expected predictors of clientelist offers are statistically significant.

In short, these findings highlight varying dynamics in clientelist targeting across the Western Balkan countries, with Serbia and Albania on the one end, and Montenegro on the other, showing distinct patterns of recruitment relative to theoretical expectations.

Table 1: Regression estimates of clientelist offers in the Western Balkans.

	Vote-buying offer					
	SRB	MNE	ALB	BIH	NM	KOS
Authoritarianism	-0.209* (0.105)	0.187* (0.086)	-0.158* (0.075)	-0.089 (0.089)	-0.002 (0.085)	0.060 (0.080)
Reciprocity	0.042 (0.103)	0.168* (0.076)	0.132 (0.083)	0.034 (0.078)	0.159 (0.087)	-0.271*** (0.083)
Income	-0.171 (0.090)	0.097 (0.061)	0.253*** (0.055)	0.025 (0.058)	-0.121 (0.079)	0.131* (0.063)
Party Membership	1.099*** (0.319)	0.404 (0.278)	-0.427 (0.375)	0.733*** (0.251)	0.574 (0.301)	0.340 (0.339)

Recruitment of Authoritarian Individuals into Clientelist Networks

Rural	1.048 ^{***}	-0.528 [*]	-0.096	0.093	-0.330	-0.577 [*]
	(0.326)	(0.233)	(0.196)	(0.228)	(0.296)	(0.249)
Public Sector	0.049	-0.481	-0.551	0.390	-1.008	0.165
	(0.405)	(0.336)	(0.433)	(0.346)	(0.571)	(0.382)
Education	0.172 ^{**}	-0.115 [*]	-0.088	-0.043	0.020	0.021
	(0.064)	(0.056)	(0.047)	(0.057)	(0.062)	(0.068)
Age	-0.038 ^{***}	-0.023 ^{***}	-0.014 [*]	-0.026 ^{***}	-0.014	-0.012
	(0.010)	(0.007)	(0.006)	(0.007)	(0.008)	(0.008)
Male	0.312	0.204	0.136	0.454 [*]	0.322	0.069
	(0.305)	(0.216)	(0.192)	(0.221)	(0.278)	(0.258)
Nationality: MNE		-0.143				
		(0.304)				
Nationality: BOS				0.447		
				(0.436)		
Nationality: SRB	-0.628	0.340		0.966 [*]		
	(0.424)	(0.340)		(0.455)		
Incumbent vote	-0.098	-0.075	-0.205	-0.063	0.201	0.156
	(0.332)	(0.243)	(0.199)	(0.268)	(0.302)	(0.276)
Constant	-0.491	-1.396 [*]	-1.074	-1.203	-2.040 ^{***}	-1.175
	(0.946)	(0.709)	(0.601)	(0.806)	(0.735)	(0.672)
N	620	550	693	657	750	579
McFadden Pseudo R ²	0.15	0.07	0.06	0.06	0.04	0.06
Log Likelihood	-172.150	-295.537	-370.050	-284.802	-213.778	-206.379

* p <.5; ** p <.01; *** p <.001

Source: author.

7. DISCUSSION

In exploring the relationship between support for a strong leader (authoritarianism) and the offer of clientelist exchange in the Western Balkans, it becomes evident that while clientelism is widespread across the region, the mechanisms of its implementation vary significantly. Although the modeling strategy employed captures certain patterns, it fails to fully encompass the nuanced contextual dynamics of each country. One possible issue may arise from the simple way in which authoritarianism was measured, with a single item that possibly fails to capture the complexity of authoritarian personality structure. Additionally, as the item focuses on the perception of country leader and their authority to conduct politics without parliament or elections, it may be conflated with the support for a specific strong leader currently in power. For this reason, the models were estimated with a control for incumbency vote in the previous election.

With regards to more substantive differences that arose in the analysis, e.g., in Serbia, clientelism may be deeply entrenched within the political system, with patronage networks extending from the ruling elite to local authorities. Contrary to expectations, individuals with strong support for a strong leader were less likely to receive offers of money or favors. This counterintuitive result suggests that clientelist exchanges in Serbia may be deeply embedded within existing party structures. The high estimate for party membership indicates that the party infrastructure itself plays a critical role in facilitating clientelism, potentially reducing the need for brokers to rely on voter compliance alone.

Conversely, in Albania, clientelism may manifest differently, possibly tied more closely to familial or regional affiliations rather than hierarchical political structures. Additionally, the political environment in Albania, characterized by frequent power shifts between left and right parties, may influence clientelist practices as neither party membership nor support for the incumbent parties were significant predictors of vote-buying offers.

In the three cases where authoritarianism failed to account for any association with vote-buying offers, the results are also quite mixed. In Bosnia and Hercegovina, party membership is a strong predictor as it is in Serbia, but the strongest predictor was Serbian ethnic identity, suggesting that ethnic-based resource distribution plays a significant role within the country. In Kosovo the only significant predictors are reciprocity and place of residence, where those who do not feel they owe it to the political party to return the favor are more frequently targeted, as are those who live in urban areas as opposed to rural. Lastly, the estimated model did not yield any significant predictors in North Macedonia.

In other words, while support for authoritarian leaders and clientelism may exhibit correlations, the specific mechanisms and contextual nuances within each country require deeper exploration. By acknowledging these differences, future research can offer more accurate insights into the complex interplay between authoritarianism, clientelism, and political behavior in the Western Balkans.

8. CONCLUSION

Clientelism, with its characteristic quid-pro-quo exchanges between patrons and clients, profoundly influences various facets of social and political life, including electoral behavior. This paper advances the understanding of clientelist dynamics by specifically examining the targeting of individuals for clientelist exchanges, focusing on those with authoritarian tendencies. Previous scholarship has offered various explanations for clientelism, ranging from socio-economic conditions to party allegiance and norms of reciprocity. This study contributes to this body of work by exploring the relationship between authoritarianism and clientelist targeting across six Western Balkan countries.

The findings reveal significant variation in clientelist recruitment mechanisms across the region. In particular, clear evidence supporting the proposed direction of the relationship between authoritarianism and clientelist targeting was found only in Montenegro, while it was actually in the opposite direction in Serbia and Albania. This result underscores a critical question: why does this relationship manifest distinctly in Montenegro, while other countries exhibit different patterns? The observed diverse mechanisms of clientelist targeting suggest that contextual factors, including political culture, party organization, ethnic relations, and alternation of power, play a crucial role in shaping clientelist practices.

Overall, while support for authoritarian leaders and clientelism exhibit correlations, the specific mechanisms and contextual nuances within each country require more detailed exploration. Future research should delve deeper into these differences in order to gain a comprehensive understanding of the complex interplay between authoritarianism, clientelism, and political behavior in the Western Balkans. Such an approach would enable the more precise identification of vulnerable voter groups and contribute to the development of strategies aimed at enhancing accountability and fostering responsive governance in the region.

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YOUTH JUSTIFICATION OF INFORMALITY IN THE POST-YUGOSLAV COUNTRIES: REFLECTION OF POLITICAL SOCIALIZATION OR PRAGMATISM?

Informal practices are rather widespread in post-Yugoslav societies, representing a complex problem with significant social, economic and political implications. The study investigates the factors that determine or contribute to shaping young people's benevolent attitude towards certain types of informality, by exploring the determinants of informality justification or permissiveness towards certain forms of informal practices. Firstly, justification of informal practices are observed as a reflection of youth political socialization, which imply their relation to the political system and democratic values. Secondly, this type of justification potentially stems from their rational evaluation of institutional performance by estimating the necessity of informality as a mechanism to navigate the perceived inefficiencies of formal institutions. By examining these dimensions, the aim is to detect the extent to which these two sets of factors contribute to young people's justification of informality in the post-Yugoslav context.

Key words: Youth. – Post-Yugoslav countries. – Informality. – Institutions. – Political culture.

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1. INTRODUCTION

This paper discusses the social factors contributing to the justification of informality among young people in the former Yugoslav countries. Generally, informality and permissive attitude towards such phenomena and practices are primarily viewed as ethical or moral categories. However, in societies with weak democratic institutions, which originated primarily top-to-bottom, this can also be regarded as both a cultural and rational category. As Krasniqi *et al.* (2019) point out, informality in the Western Balkans is pervasive – at least according to dominant public perception. There is a widespread belief that having connections and people in “the right places” is crucial for solving citizens’ everyday problems or needs related to various public and state institutions (Krasniqi *et al.* 2019). Considering the prevalence of various informal practices, including favouritism, bribery, and corruption, the use of connections to solve everyday problems, this paper examines the social factors that contribute to their justification. This paper employs two approaches; the first treats justification of informality as a reflection of the lack of “good citizen norms”, indicating a somewhat deficient political culture and political socialization, and the second approach argues that rational reasoning in relatively unfavourable socio-economic and socio-cultural contexts shapes the justification of informality.

The justification of informal practices and principles is a less researched topic, especially among young people.¹ Its empirical relevance lies in the fact that the readiness to justify informality is one of the strongest predictors of informal practices in the Western Balkan countries: Bosnia and Herzegovina (BIH), Kosovo, Montenegro, North Macedonia, and Serbia (Cvetičanin, Popovikj, Jovanović 2019). Furthermore, it is important to understand the mechanisms behind “tolerance of dishonesty”, because it can help us understand potential deviant behaviour that might stem from this kind of attitude (Knechel, Mintchik 2022). In this regard, young people are a particularly vulnerable social category. The transition to adulthood in post-Yugoslav societies is generally prolonged, meaning that taking on private and public social roles (e.g. parenthood, employment, active citizenship) is postponed due to structural challenges (e.g. more difficult access to education, labour market, challenging housing issues), and socio-cultural challenges (e.g. democratic backsliding) (Tomanović, Ignjatović 2004; Ilišin, Spajić Vrkaš 2017; Lavrič, Tomanović, Jusić 2019). These

¹ Given that the justification of informal practices is a relatively under-researched topic, particularly among young people, the referential theoretical framework predominantly draws on studies focusing on the general population.

challenges prevent optimal social integration and affirmation of young people in a society. Moreover, the social opportunities for youth's personal emancipation are predominantly defined by the socio-economic resources of their parents (Tomanović, Ignjatović 2004; Ilišin, Spajić Vrkaš 2017; Lavrič, Tomanović, Jusić 2019). Due to these unfavourable social circumstances, the contemporary generation of young people has fewer opportunities to use conventional channels of social promotion (Mojić 2012; Ilišin *et al.* 2013; Ilišin, Spajić Vrkaš 2017). In this context, young people in countries such as Serbia and Croatia tend to perceive that social advancement, or their success in life, is predominantly influenced by connections and acquaintances, rather than by individual effort and hard work, such as professional dedication or obtaining a university degree (Mojić 2012; Gvozdanović *et al.* 2019). A similar perspective is generally shared by youth across post-Yugoslav region regarding finding a job in their respective countries. While connections and acquaintances are recognized as important means of finding employment, it is noteworthy that young people from the six Western Balkans countries, compared to those from EU countries (Slovenia, Croatia), are more likely to believe that membership in a political party also plays a significant role in this process (Lavrič, Tomanović, Jusić 2019). For example, Serbia has the highest rate of party membership in Europe (12.2%) (Stanojević, Stokanić 2018), not due to a developed participatory political culture, but because membership in political parties is perceived as a key avenue for social advancement. Namely, weak institutions allow the ruling party to access state resources and distribute various benefits, including jobs, to their voters. Consequently, political party affiliation is seen as a crucial means of securing opportunities and upward mobility (Stanojević, Stokanić 2018).

The long-term unfavourable socio-economic and socio-political circumstances at the societal level, coupled with weak institutions, can create a framework that fosters the justification of informal practices. However, this paper focuses on individual-level factors, such as aspects of political socialization and the evaluation of institutional performance, to better understand how the justification of informality is shaped among young people in post-Yugoslav countries.

The first section of the paper outlines various perspectives on informality as well as its definition as socially shared rules that operate outside officially sanctioned channels (Helmke, Levitski 2004). In line with that, the following sections elaborate on the theoretical framework of the study of permissiveness to informality, as well as political socialization and institutional performance, which might be behind this permissiveness. The second section presents the study's methodology, while the third is devoted to the study's findings and their interpretation. Descriptive and

multivariate analyses are performed on seven databases consisting of nationally representative samples of young people, with justification of informality as a dependent variable and two main sets of factors (political socialization and perception of institutional performance) as predictors. The discussion and conclusion summarise the main findings. The key finding is that the perception of institutional performance, particularly the perception of the prevalence of informal social norms, represents a stable and strong predictor of justification of informality across the region.

1.1. Informality and its Effects

There is a certain difficulty in defining the term informality, both in sociological theories and everyday language, due to its commonplace nature and varied uses (Misztal 2002; Polese 2023). In everyday language, informality can mean a relaxed adherence to formal rules or dress codes, while it can also refer to unofficial actions that promote unfair practices, such as favouritism and nepotism (Misztal 2002). Helmke and Levitsky (2004) propose a conceptualization of informality with regard to rules and procedures that enable and regulate actors' behaviour in social interactions. They define it as "socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels" (Helmke, Levitsky 2004, 727). The nature of the social consequences of informal practices, which either circumvent formal rules or establish informal practices where formalized relationships are lacking, is ambiguous (Gordy 2018). In Southeast European countries, when formal institutions tend to be ineffective in enforcing formal rules, both citizens and entrepreneurs often turn to informal networks relying on "connections" and "trusted people", which serve as a substitute and "a default option", or simply "rules of the game" (Ledeneva, Efendić 2021). Some authors perceive informality, e.g. corruption, as a means of enhancing the efficiency of economic institutions, recognizing bribery as a way to simplify bureaucratic procedures (Enste, Heldman 2017). However, various informal institutions and practices have unfavourable consequences on a society's socio-cultural and socio-economic development, especially in developing countries. Studies show that informal practices can negatively impact societal aspects such as socio-economic development and foreign investment, as well as individual elements, such as social well-being and trust (Uslaner 2002; Enste, Heldman 2017; Šumah 2018; Feruni *et al.* 2020; Hajdini, Collaku, Merovci 2023).

1.2. Informality as a Social Norm

Informality, understood as a specific set of shared rules, essentially constitutes a set of social norms. Social norms are expectations held by the majority of group members that define the appropriateness or inappropriateness of certain actions (Coleman 1987). Talcott Parsons (1951) describes norms as representations of desirable courses of action, with future behaviours aligning with these desired actions. At an individual level, people tend to meet others' expectations of desirable behaviour, indicating a tendency towards conformity. From a functionalist perspective, this conformity sustains the functioning and integration of the social system and society as a whole. Conformity is achieved through the processes of socialization and internalization (Parsons 1951). Socialization is a lifelong learning process, and for it to be successful, one must internalize value patterns or shared values. Within a liberal democracy, socialization entails adopting a sense of what Natalia Letki calls civic morality, which involves responsibility towards fellow citizens and consideration for the public good (Letki 2006). In other words, norms and values need to become part of an individual's consciousness so that acting in their own interest simultaneously serves society and maintains the social system (Ritzer 1997). Social control, the mechanism of rewards and punishments, further supports conformity (Parsons 1951; Coleman 1987). The existence of norms is accompanied by sanctions for adhering to or violating them – both positive and negative, which can be internal (if adopted through socialization) or external (from others or the system). Therefore, anyone can be both the enforcer and the one being sanctioned (Coleman 1987).

Sanctions induce inhibitions and substitutions, meaning that if a person does not learn to refrain from actions that conflict with the norms, they face deprivation consequences, just as they do if they fail to replace "punishable" actions with normatively acceptable ones. Additionally, if there is a concrete behavioural model from whom one learns, it is adopted by imitation and identification (Parsons 1951). As Bicchieri (2016) observes, certain behaviour is considered effective and adaptive when there are enough people who make similar choices. However, the crucial factor is not the number of people imitating the behaviour, but rather the success of the behavioural outcome. Moreover, maintaining or respecting norms requires more than the presence of (internalized or external) sanctions that lead to a conscious calculation of costs and benefits resulting in the decision to violate or adhere to a norm. Norms also operate automatically and therefore conformity contains a kind of "default" component (Bicchieri 2006; 2016). In this sense, the belief or perception that certain practices are widespread in society normalizes their occurrence and perpetuates them. In this context,

if an informality holds the status of a social norm, it becomes more readily justified. It is therefore important to examine the underlying factors that contribute to this justification.

1.3. Political Socialization and Justification of Informality

The concept of social norms related to life in a democratic society is often defined within the framework of “good citizenship”, particularly its dimension of social citizenship, which involves a willingness to compromise for the sake of a harmonious communal life (Billante, Saunders 2002). This concept relates to civic responsibility for the public good, implying adherence to rules and fair and responsible behaviour. It leads citizens to prioritize public over private goals, thus deterring corruption and free-riding. The process of growing up and socialization of young people in democratically deficient societies, such as those in the post-Yugoslav region, tends to perpetuate a deficient political culture. This culture does not promote the adoption of competencies, values, and behaviours necessary for active citizenship aligned with a participative democratic culture (Almond, Verba 2000). It is therefore not surprising that young people in post-Yugoslav countries, although they generally support democracy as a political system, are at the same time very inclined to support an authoritarian leader who would firmly rule and solve existing social and political problems (Lavrič, Tomanović, Jusić 2019). In post-communist countries, such as the post-Yugoslav countries, corruption and the use of connections for accomplishing various tasks, being justified as almost a social necessity, strengthened the culture of privatism (Misztal 2000). According to Misztal, the culture of privatism involves achieving social and other securities through a network of informal connections, typically within the family and close friends circle. Informal practices such as corruption and clientelism has resulted in social disintegration, the weakened the role of the citizen, and a retreat into privacy. Additionally, Misztal (2002) identifies the presence of elements of an ethos called amoral familism in post-communist countries. Amoral familism is a behavioural pattern that Edward C. Banfield (1958) describes as being guided by the principle: “maximize the material, short-run advantage of the nuclear family; assume that all others will do likewise” (Banfield 1958, 85). This principle becomes a belief that most people behave this way or an “empirical social expectation” (Bicchieri 2016), which has a detrimental effect on building a democratic life in a community. Amoral familism reduces the engagement in public and collective affairs. Distancing or refraining from social and political engagement, focusing only on private matters, may further deepen existing informal practices in a community or a society.

The relatively low political interest and engagement among young people in post-socialist societies is often attributed to several factors: the lack of political attention to their interests, needs, and challenges; unresponsive institutions; and the widespread perception of politics as a dishonest and corrupt endeavour, which is particularly prevalent among young people in post-socialist countries (Torcal, Montero 2006; Roberts 2009; Ilišin, Spajić Vrkaš 2017; Lavrič, Tomanović, Jusić 2019; Stanojević, Petrović 2021). Political interest, understood as part of democratic political culture and as a form of political engagement, according to traditional interpretation, should have an enlightening effect when drawing various conclusions related to the political sphere. Namely, political interest serves as a good indicator of political knowledge (Rapeli 2022). Possessing strong political knowledge allows young individuals to gain deeper understanding of political life. Having in mind the social context burdened with widespread informality practices, it can be inferred that young people with more pronounced political interest have better insights and a set of information that can help them develop a more nuanced view of the socio-political environment and dominant social rules.

Hypothesis A1: Higher political interest is positively associated with justification of informality.

Within the framework of democratic political culture, “good citizens” are often identified as those who adhere to “good citizenship norms”. The set of citizenship norms consists of four types of norms (Zmerli 2010): the norm of participation (covering a wide range of civic and political behaviours), the norm of autonomy (implying an informed citizen who understands others’ political stances), norms of social order (willingness to accept state authority by respecting the law and refraining from harmful behaviours, prerequisites for a stable democratic society), and norms of social citizenship. Social citizenship norms imply social habits of solidarity, cooperation and public spiritedness (Zmerli 2010). In other words, citizens, through their actions in collaboration with others, typically within the framework of civil society, aim to contribute to the welfare of a broader circle of people. In this context, the justification of informality, as an attitude that justifies a social norm that is not aligned with democratic principles and social order, reflects the prevailing state of “good citizenship” within a society. Here, we start from the assumption that the norm of social citizenship contributes to the reduction of the justification of informality. The norms of social citizenship are conceptually similar to the concept of social capital as interpreted by Robert Putnam (2003; 2008). Citizen cooperation within horizontal networks of association in civil society provides the foundation for creating civility and social (generalized) trust, which are the connective tissues of society. In

line with this, some researchers describe this pro-social orientation as self-transcendence values, which emphasize public interest, civic solidarity, and the transcendence of particular interests (Robison 2022). Greater acceptance of self-transcendence values significantly supports the norms of social citizenship. In contrast to self-transcendence, self-enhancement values imply an ego-centric orientation, prioritizing the achievement of personal gain and material security (Robison 2022). It is expected that prioritizing material security over pro-social values or social citizenship norms is characterized by democratic deficits, associated with a higher justification of informal practices, especially in less affluent societies.

Hypothesis A2: Support for social citizenship norms is negatively associated with justification of informality.

Hypothesis A3: Self-enhancing values/materialistic orientation is positively associated with justification of informality.

Good citizenship norms, as defined in this paper, entail a “horizontal perspective”, which refers to relations among citizens in terms of general solidarity (Schnaudt *et al.* 2021). A good citizen is characterized by their commitment to supporting and caring for others in their community, including those in need, regardless of their ethnic or religious background (Schnaudt *et al.* 2021). Some authors have extended the norms of good citizenship to include liberal-democratic values such as tolerance and inclusive attitudes towards Others (Dalton 2015; Sandoval-Hernández *et al.* 2021). Inclusive attitudes towards Others, central to post-modernist values and particularly the self-expression value set (Inglehart, Welzel 1997), are a key indicator of a society’s progress in modernization and democratic development. This value set prioritizes individual autonomy, personal freedom, social trust, and tolerance, with its acceptance most clearly reflected in the majority’s attitudes towards minority groups. In comparative studies, one of the good indicators of a society’s alignment with post-modernist values, particularly those shared by individuals deemed “good citizens”, is its prevailing attitude towards the LGBT+ community (Inglehart, Welzel 1997; Hildebrand *et al.* 2019). Citizens in post-communist countries, on average, hold more negative attitudes towards the LGBT+ community than those in older European democracies (Fitzgerald, Winstone, Prestage 2014; Hildebrand *et al.* 2019). This trend is also reflected in the younger population. As part of their societal context, young people in less accepting social context tend to adopt views that are, on average, less accepting of LGBT+ individuals, compared to their peers in Western Europe, where societal norms are generally more inclusive.

Hypothesis A4: A more accepting view of the LGBT+ community is negatively associated with justification of informality.

1.4. Justification of Informality as a Rational Response to Institutional (Under)Performance

Post-socialist societies often exhibit significant corruption, pervasive perceptions of corruption, and lower levels of democratic development compared to other European countries (Smeltzer, Karppi 2024). It is worth noting that a systematic analysis conducted by Nicholas Charron (2016) points to consistency between perception of corruption, both by experts and citizens, and actual corruption levels across Europe. This consistency suggests that subjective public perception is aligned with the reality of corruption. This finding may point to the reliability of perception-based evaluations as indicators of institutional quality and governance effectiveness. Measuring informality, therefore, can serve as an indicator of the quality of governance and provide a more profound understanding of the relationships between the state and its citizens (Polese 2023). The efficacy of formal institutions as well as the economic development in the post-Yugoslav region has been slowed down and weakened by clientelism, party patronage, and other informal mechanisms that facilitate smoother service exchanges across various domains of life (Stanojević, Stokanić 2018; Cvetičanin, Popovikj, Jovanović 2019; Kotarski, Radman 2020; Bliznakovski 2021; Franić 2021; Račić 2021). Corruption and informal practices infiltrate nearly all sectors, bypassing institutional regulations in order to gain personal benefits and at the same time evading both legal and ethical implications of these acts (Cvetičanin, Popovikj, Jovanović 2019; Bliznakovski 2021). An analysis by Transparency International (Bak 2020) shows that the countries of the Western Balkans (Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia) exhibit strong characteristics of captured states, where powerful patronage networks control the functioning of the judiciary and other public institutions (Bak 2019). Despite being an EU member, Croatia is also considered a captured state, where (party) clientelism greatly determines institutional inefficiency and weak prospects for modern economic growth (Kotarski, Radman 2020).

Informal practices in everyday life although often depicted as path-dependent and a continuation of the communist culture of institutional functioning, are “temporal reactions to the post-communist reforms” (Ledeneva, Efendic 2021, 3). In this sense, it is not surprising that young people in Southeast Europe, and therefore in post-Yugoslav countries, generally report significantly lower levels of satisfaction with democratic practices in their countries compared to their peers in old European democracies (Van der Meer, Hakhverdian 2016; Foa *et al.* 2020). The vicious cycle between informality and the state of democracy is illustrated by research showing that greater dissatisfaction with the state of democracy and

democratic institutions leads to a greater likelihood of accepting clientelistic offers from politicians, such as money (Ghergina *et al.* 2021). Additionally, it is important to note that, as previously mentioned, institutions in this region are often hijacked or captured by political parties, typically the ruling party, which have transformed everyday necessities, such as employment and routine administrative tasks, into commodities exchanged for loyalty, votes, or favours (Bliznakovski, 2021). The strong presence of these practices or even widespread perception of informality erodes civic norms, trust and solidarity among people. At the individual level, when the significance of adhering to civic norms diminishes, opportunism is likely to spread. Opportunism reflects a deficiency in civic morality, as it is driven by norms that prioritize short-term material and other personal gains (Merguei, Strobel, Vostroknutov 2022), while neglecting ethical considerations (Elster 2007) and disregarding the broader social implications of such behaviour. For example, INFORM survey showed that giving gifts and money or using connections in healthcare as Krasniqi *et al.* (2019, 140) point – “are a fact of life throughout the region”. Similarly, Franić (2021) claims that using connections for getting things done in the Croatian healthcare system is “modus operandi” for significant part of people – 17% relied on personal connections during the 12 months preceding the study. The prevalence of opportunism and its rationalization is primarily determined by two factors: perceived lack of choices and “cultural reproduction of opportunism”, rooted in the perception that most people violate moral and other norms, which is further exacerbated by perceptions of corruption (Štulhofer 2000).

Hypothesis B1: Increased perception of presence of informal norms contributes to increased justification of informality.

Hypothesis B2: Poor evaluation of the country’s economy is associated with greater likelihood of justifying informality.

Hypothesis B3: Poor evaluation of the country’s democratic values is associated with greater likelihood of justifying informality.

2. METHODOLOGY

The comparative analysis is based on the data from an international youth research project, Friedrich Ebert Stiftung Youth Studies Southeast Europe 2018/2019, which was carried out in 2018. National surveys were conducted simultaneously in ten countries of Southeast Europe, however this article focuses on the comparison of the seven post-Yugoslav countries: Bosnia and Herzegovina (N = 1000), Croatia (N = 1500), Kosovo (N = 1200),

North Macedonia (N = 1038), Montenegro (N = 711), Serbia (N = 1168), and Slovenia (N = 1015). The youth samples are nationally representative and consist of respondents aged 14–29.

Descriptive and multivariate statistical analyses were conducted. Prior to incorporating factors into a multiple regression analysis, the unidimensionality of each factor was confirmed through principal component analysis. Subsequently, the items within each factor were combined into additive scales. The reliability of these scales was evaluated using the standardized Cronbach's alpha coefficient. These reliable scales were then used in multiple regression analysis to determine the extent to which the dependent variable's variation could be explained by its relationship with the independent variables or predictors.

2.1. Dependent Variable

Justification of informality was measured in the context of an instrument that was aimed at examining respondents' permissiveness towards various behaviours or phenomena on a ten-point scale (1 – never justified, 10 – always justified). The additive scale included two items: using connections to find employment and using connections to “get things done” (e.g. in a hospital, at different offices, etc.) (1 – never justified, 10 – always justified).

2.2. Independent Variables

2.2.1. Political Socialization Dimension

Social citizenship norms consists of two variables that measure how much participating in civic actions/initiatives and being active in politics is important to respondents (1 – not at all, 5 – very important), these two variables were transformed into additive scale.

Self-enhancement values (material values) consists of two variables that measure how much getting rich and looking good is important to respondents (1 – not at all, 5 – very important), these two variables were transformed into an additive scale.

Political interest – level of interest for politics on a five-point scale (1 – totally uninterested, 5 – totally interested).

Social distance/tolerance towards LGBT+ is measured using the question “How would you feel if homosexual person or couple moved into your neighbourhood?” on a five-point scale (1 – very bad, 5 – very good).

2.2.2. Institutional Performance/Rational Dimension

Perception of informality in society was measured in the context of an instrument that was aimed at examining respondents’ estimation of the importance of different factors when it comes to finding a job for a young person in their country, on a five-point scale (1 – not important at all, 5 – very important). The additive scale included two items: *acquaintances (friends, relatives)* and *connections with people in power*.

Assessment of the country’s economy consists of respondents’ assessments of the status of the *economic welfare of citizens* and *employment* in their country, on a scale from 1 to 5 (1 – very bad, 5 – very good); two items were transformed into an additive scale.

Assessment of the status of the country’s democratic values consists of respondents’ assessments of the status of democracy, human rights, equality and individual freedom in their country, on a scale from 1 to 5 (1 – very bad, 5 – very good); they were transformed into an additive scale.

Socio-demographic variables were used as controls in multiple regression analysis: *Gender (f)*, *Respondent’s education*, *Father’s education*,² *Religiosity*.³

3. RESULTS

3.1. Descriptive Analysis

The mean values for the young people’s responses across all post-Yugoslav countries reveal several trends. Young people on average express a moderate level of justification of informality, such as leveraging connections for employment or services, with an average mean value of 4.7. The assessment

² The level of the father’s education is a variable regarded as a good proxy for the social status of the youth (Ilišin, Spajić Vrkaš 2017; Ilišin *et al.* 2013).

³ *Religiosity*, measured by an additive 7-point scale, consisted of two variables: *How often do young people engage in prayer*, and *Apart from weddings and funerals, about how often do they attend religious services these days?* (1 – practically never, 2 – less than once a year, 3 – about once a year, 4 – only on special holidays, 5 – about once a month, 6 – about once a week, 7 – more than once a week)

Table 1. Descriptive statistics and reliability of scales used in multiple regression analysis by country
(M – arithmetic mean, SD – standard deviation and Cronbach's alpha)

COUNTRY	Justification of informality			Assessment of status of country's democratic values			Assessment of country's economy			Perception of informality			Political interest			Social citizenship			Self-enhancement			Tolerance/ social distance towards LGBT+				
	M	SD	C.α	M	SD	C.α	M	SD	C.α	M	SD	C.α	M	SD	C.α	M	SD	C.α	M	SD	C.α	M	SD	C.α		
Bosnia and Herzegovina	3.8	2.5	0.8	2.6	0.9	0.9	3.1	0.8	0.9	4.4	0.8	0.7	1.8	1.2	0.9	2.9	1.1	0.7	4	0.8	0.7	2.4	1.2	0.7	2.4	1.2
Croatia	5.7	2.6	0.9	3.1	0.9	0.9	3.2	0.8	0.8	4.2	0.8	0.8	2.2	1.1	0.9	2.4	1.1	0.6	4	0.8	0.7	3	1.4	0.7	3	1.4
Kosovo	3.6	2.9	0.9	2.5	1	0.8	3.3	0.7	0.7	4.2	1	0.7	1.9	1.2	0.9	2.4	1.2	0.6	4.2	0.8	0.7	1.9	1.3	0.7	1.9	1.3
N. Macedonia	4.1	2.8	0.8	2.7	1.1	0.9	3.1	0.9	0.8	4.3	1	0.6	2.3	1.3	0.9	2.6	1.4	0.6	4.1	0.9	0.8	2.1	1.4	0.8	2.1	1.4
Montenegro	5.6	3.5	0.9	2.7	1.3	0.9	2.9	1.2	0.9	4.2	1.1	0.7	1.9	1.3	0.9	2.4	1.3	0.7	4	1	0.8	2.1	1.4	0.8	2.1	1.4
Serbia	4.9	3.1	0.9	2.5	1	0.9	2.8	0.9	0.8	4.2	0.9	0.6	1.9	1.2	0.9	2.3	1.1	0.7	3.7	1	0.7	2.8	1.5	0.7	2.8	1.5
Slovenia	5.2	2.6	0.8	3.2	0.9	0.9	3	0.8	0.8	3.9	1	0.8	2	1.1	0.9	2.5	1	0.7	3.3	1	0.7	3.4	1.3	0.7	3.4	1.3
Post-Yugoslav countries	4.7	3	0.9	2.8	1	0.9	3.1	0.8	0.8	4.2	1	0.7	2	1.2	0.9	2.5	1.2	0.7	3.9	0.9	0.7	2.6	1.4	0.7	2.6	1.4

Source: author.

of the state of democratic values is relatively low, averaging 2.8, reflecting a general scepticism about the state of democracy, human rights, and individual freedoms. Economic conditions are viewed on average as good, with a mean value of 3.1. Perception of informality is high, with a mean value of 4.2, indicating that informal networks are perceived as crucial for securing jobs. Political interest is rather low, averaging at 2.0, suggesting a disengagement from political activities among young people in post-Yugoslav countries in general. Pro-social behaviour has a moderate mean value of 2.5, while self-enhancement, indicating a focus on material success, is relatively high, at 3.9. There is a considerable variation among young people in the region considering the indicator of social inclusivity towards LGBT+ people. On average, young people in Kosovo are socially exclusive, along with those in North Macedonia, Montenegro and BIH, while youth in Croatia express moderate social inclusion, and in Slovenia young people express highest inclination to inclusivity.

There are considerable variations among countries; for example, while there is a general trend of moderate acceptance of informality and rather critical stance on the state of democracy, economic assessments and political engagement vary widely.

3.2. Multiple Regression Analysis

The importance of social citizenship norms shows a significant negative association with the justification of informality in all countries except Montenegro and Kosovo. This suggests that youths who prioritize civic responsibility and adherence to social norms are less likely to justify informality. As a control to the social citizenship predictor, a higher level of self-enhancement or materialistic value orientation contributes to a higher level of justification of informality in all countries except Kosovo. It seems that for Kosovo, predictors related to value orientation are not relevant. Tolerance towards LGBT+ people is a bit weaker but a positive predictor only in BIH, Croatia, and Serbia. Also, political interest seems to be a weaker but positive predictor.

Regarding the set of indicators of institutional performance, significant negative associations are found between the evaluation of the economic state and the justification of informality in Croatia, North Macedonia, and Serbia. This suggests that in countries where economic conditions are perceived as poor, young people are more likely to justify informal practices. This finding supports the theoretical perspective that informality, at least in

Table 2. Multiple regression analysis with justification of informality as dependent variable

	Institutional performance/ rational dimension	BIH		Croatia		Kosovo		N. Macedonia		Montenegro		Serbia		Slovenia		All countries	
		β		β		β		β		β		β		β		β	
Socio-demographic variables	Evaluation of economy	.019		-.115**		.057		-.112**		-.059		-.128**		.013		-.079**	
	Evaluation of liberal-democratic values	-.142**		.154**		-.104**		.166**		.163		.110*		.136**		.137**	
	Presence of informal social norms	.160**		.091**		.103**		.086*		.152**		.081*		.169**		.120**	
Political socialization dimension	Importance of social citizenship	-.215**		-.060*		.009		-.137**		.021		-.172**		-.121**		-.132**	
	Self-enhancement	.065		.167**		.025		.094*		.252**		.120**		.105**		.084**	
	Tolerance/social distance	.107**		.091**		.026		.032		.132*		.083*		.029		.122**	
Socio-demographic variables	Political interest	.188**		-.021		.124**		.100*		.003		.007		.075*		.082**	
	Respondent's education	-.051		-.015		-.066		-.017		-.098		.003		.064		.005	
	Father's education	-.032		.052		.008		.080*		-.018		.060		-.026		.045**	
Socio-demographic variables	Gender (f)	.038		-.024		-.048		.012		-.042		.034		-.072*		-.020	
	Religiosity	.004		-.111		.098**		.012		-.057		-.103**		-.041		-.072**	
	Adjusted R-square	.118		.102		.044		.051		.120		.058		.093		.081	
Socio-demographic variables	F-ratio	11.16		15		5.03		4.78		5.40		4.61		8.61		46.98	
	df	11		11		11		11		11		11		11		11	

**p <0.01, *p <0.05

Source: author.

some countries, in specific contexts, can be a rational response to economic hardships, as individuals seek alternative means to achieve their needs in a challenging economic context.

The evaluation of the state of liberal-democratic values is a significant and positive predictor at the level of the entire cause, as in all countries except BIH and Kosovo. In other words, in most post-Yugoslav countries, young people who perceive the state of liberal-democratic values more favourable are more inclined to justify informality.

The presence of informal social norms positively correlates with the justification of informality across all countries, meaning that the social context in which informal practices are perceived as widespread contributes to the justification of the same informal practice by young people.

Socio-demographic variables are generally weak predictors; the respondents' education level has no role in shaping attitudes towards informality, while the father's education is relevant only in North Macedonia being a positive predictor. Gender is relevant predictor only in Slovenia with young men being more inclined to justify informality, to a lesser degree. Religiosity is both positive and negative predictor, in Kosovo and Serbia, respectively.

In some countries, the model explains a higher proportion of the variance (Montenegro 12%, BIH 12%), while in others, the variance is rather low (Kosovo 4%, N. Macedonia 5%) which means that factors outside of the model play a more significant role. This points to the importance of considering context-specific factors when analysing justification of informality and suggests that future research might explore other variables that could improve the explanatory power of the model in certain countries. The variance of 8% in total for all countries suggests that, at a regional level, the model is moderately effective in explaining the variance in the justification of informality.

4. DISCUSSION AND CONCLUSION

This study explores the predictors of the justification of informality among youth in seven post-Yugoslav countries, using multiple regression analysis. The dependent variable is the justification of informality, with predictors drawn from two dimensions: political socialization and institutional performance/rational reasoning. When the data is considered at the regional level, both sets of predictors significantly contribute to the justification of informality. Notably, predictors related to social inclusiveness

and the evaluation of democratic values are significant, but their effects are opposite to what was initially expected. The role of democratic political culture, particularly in terms of individual inclusiveness and societal-level democratic values, has proven to be more complex than anticipated. These findings challenge the assumption that such values inherently oppose attitudes towards justifying informal practices.

However, taken together, no discernible patterns have been identified that would suggest the existence of country clusters exhibiting similar patterns. When looking at the data for each country, the performance set of indicators represents better predictors of justification of informality. The role of the perception of the prevalence of informal social norms is especially emphasized, which suggests that informality among young people is perceived as a necessary adaptation to the inefficiencies and unresponsiveness of formal institutions. In this sense, *Hypothesis B1* was fully confirmed.

The assessment of the country's economy is significant in only three countries (Croatia, N. Macedonia, and Serbia), in the expected direction, therefore it can be said that *Hypothesis B2* is partially confirmed. Indeed, perception of the poor economic state in some countries contributes to a more favourable view of informality. These findings point to young people's adoption of informality as an adaptive strategy within their socio-economic contexts, either as their own approach or as a means of justifying the strategies employed by others. These norms persist due to the absence of effective social control mechanisms and sanctions (Coleman 1987), as well as due to conformity to informal practices, likely internalized through rational observation and evaluation of such behaviours, which are perceived as both widespread and effective (Bicchieri 2016). Informality is perceived by many as a necessary adjustment, therefore it reflects conformity to uncivil social norms when formal systems fail to meet societal needs.

On the other hand, although the assessment of the country's status of democratic values is a relevant factor in the majority of countries (except Montenegro), the direction of association is mixed: only in BIH and Kosovo is the association negative, as expected. In the other five countries, paradoxically, young people's better assessment of the state of liberal democracy is linked to a higher level of justification of informality. This suggests that in some contexts, positive democratic evaluations may coexist with a pragmatic acceptance of informality.

It is possible that a significant part of young people in SEE countries do not perceive informality as inherently detrimental to democracy and liberal values and vice versa – more democracy and more liberal values in a society

are seen as a threat to permissiveness to informality. It might be that young people regard informality as a pragmatic and flexible part of the democracy they live in and that they are satisfied with the status of democratic-liberal values, but when it comes to navigating public services (e.g. healthcare or bureaucracy), informal practices such as using personal connections to bypass institutional inefficiency are seen as necessary and even justified. These practices might be seen as an enhancement of the functioning of the system or they may be seen as complementary to the formal mechanisms – because they facilitate people achieving personal objectives more smoothly. This is a finding that warrants further exploration in future research. Therefore, *Hypothesis B3* is not confirmed.

In political socialization set of predictors, self-enhancement or materialistic values are the most consistent predictor across the Western Balkans (not significant in BIH and Kosovo), and its association with the dependent variable is as expected, therefore it can be said that *Hypothesis A3* (the materialistic orientation is positively associated with justification of informality) is partly confirmed.

The importance of social citizenship norms is, as expected, negatively associated with informality, but not in all countries: there is no significant association in Kosovo and Montenegro. Therefore, *Hypothesis A2* (the importance of social citizenship norms on individual level is negatively associated with justification of informality) is partly confirmed.

These findings are in line with studies that point to the importance of citizens' cooperation and solidarity for civiness (Putnam 2003; 2008; Zmerli 2010), which has an important role in reducing permissiveness towards informal practices, which, in turn, contribute to social disintegration and the weakening of the role of the citizen (Misztal 2000). A tolerant attitude, as a significant predictor in BIH, Croatia and Serbia, along with political interest, as a significant predictor in BIH, Kosovo, North Macedonia and Slovenia, have a limited role in forming the attitudes towards the justification of informality. *Hypothesis A4*, regarding the significant role of accepting the LGBT+ population in decreasing justification of formality, was not confirmed. On the contrary, tolerance towards Others, being the indicator of democratic orientation or a "good citizen", contributes to the justification of informality, at least in some countries. *Hypothesis A1*, which refers to higher political interest as a positive predictor, was partly confirmed since it is significant in three countries and in the expected direction – those who are more familiar with political goings-on are more permissive towards informality. This may reflect a pragmatic orientation among politically engaged young people about the pervasive nature of informality in their societies. It suggests that political interest does not necessarily translate to the rejection of informal

practices, as it would be expected, since political interest is part of being a good citizen, but this might instead indicate an informed pragmatism about their prevalence and necessity. Along these lines, the unexpected positive association between social tolerance and informality justification can call into question the view that some aspects of democratic political culture are highly context-dependent and that their role in forming good citizenship, which is expected to condemn informality, may be limited. Generally, these findings indicate that the attitude towards informality is highly context-dependent and that any interpretation of the results needs to take into account specific cultural, socio-economic and especially political factors, which shape attitudes towards informality in each country. The example of Japan, where widespread informal practices do not threaten the efficiency and stability of the state and economic system, can also point to this conclusion. In this case, informal practices are part of the traditional value system and hierarchical relations in society, where they are supported by a high level of trust, which enables a high level of social cooperation (Fukuyama 2000).

A common and solid predictor of the justification of informality across all countries is the perceived prevalence of informal practices in society. This points to the perception of using personal connections or informal practices to get things done (such as finding a job or navigating public services) as a pragmatic response to the fact and/or belief that these formal systems are rather inefficient, slow, or unresponsive. If resorting to informal practices is a rational choice driven by inefficient institutions, as many definitions of informality suggest, does the justification of informality share the same attribute? On top of that, the sense of disempowerment is rather present among citizens in SEE countries and should be considered as well. Many feel powerless in the fight against corruption. When asked how an average person can combat corruption, the most common response in Serbia, Croatia, and Slovenia was “nothing”, with 29%, 31%, and 39% of respondents, respectively, expressing this sentiment (Vuković 2021). The socio-cultural propensity to “give up”, i.e. the rather widespread attitude of civic disempowerment, may also serve as an additional factor that may significantly contribute to the growing permissiveness towards informality among young people in SEE today. This leads us to the specific question whether a culture of justifying informality exists among young people in post-Yugoslav countries. While the data does not provide a definitive answer, the perception of widespread reliance on informal channels could contribute to the belief that informality is both necessary and legitimate. In that sense, the justification of informality is not merely a product of rational choice, but also the result of a deeply embedded social discourse regarding the inefficiency of formal institutions. This social discourse may foster the development of a cultural norm in which resorting to informal practices becomes automatic

and normalized (Bicchieri 2006; 2016), even when it may not be necessary in reality. Consequently, informality may become expected and socially justified, despite not always being based on actual experiences.

Although the dimension of political socialization exhibits a somewhat weaker set of predictors compared to the assessment of institutional performance, the role of social citizenship norms, which young people acquire and internalize during their upbringing, should not be overlooked. The development of participative democratic behaviours and habits, through various forms of prosocial engagements that foster solidarity and awareness of one's citizenship role, can significantly contribute to shaping a more critical view of informality.

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**LEAVING NO ONE BEHIND: PARTY CLIENTELISM IN
SOCIAL WELFARE IN SERBIA*****

This article analyzes the functioning of party patronage and clientelism in the centers for social work. Building on previous research, based on qualitative research conducted in 2023 in Serbia, we examine parasitic relations of informal and formal institutions and their ability to nihilate the legal system and create a parallel or dual normative system. The initial step in institutional capture is party patronage and the deprofessionalization of public services. We further demonstrate how party cadre employed in public institutions create and reproduce clientelist networks and divert the working of the institutions. Finally, most public sector employees quietly comply with the expectations to work in the network's interest, creating a new culture of fear and professional and civic passivity. We argue that informal institutions of clientelism parasitize formal institutions and that capturing institutions and society transforms the internal norms of clientelist networks into social norms, creating a backbone of normative dualism.

Key words: *Clientelism. – Serbia. – Normative dualism. – Social welfare. – Centers for social work.*

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1. INTRODUCTION

Contemporary Serbia has been described as a hybrid democracy or competitive authoritarianism (Vladislavljević 2019) with a profoundly flawed rule of law (Vuković 2022). Typically, this is explained by referring to weak institutions (Kmezić 2017), lack of political will to achieve European standards (Dallara 2014), political instability generated by populist leadership (Bieber 2018), etc. However, living in Serbia is a testimony of ambivalence. We live in a relatively ordered society; our actions are constrained by the law, while our rights, property, and personal and physical integrity are reasonably well protected (Spasojević 2021). On the other hand, the actions of powerholders fall beyond the reach of legal institutions; they can violate laws and misuse public powers and resources with impunity. The critical role is played by party clientelist networks, which parasitize formal institutions and capture them.

The malfunctioning of public institutions is sometimes attributed to inadequate resources, poor management, and understaffing, as is the case with waiting lists for medical interventions (Subin 2024). In other situations, it is the result of vested interests of social and professional groups that block the transformation or adaptation of institutions, as in the case of education (Vuković 2017; Babović, Vuković 2014). Finally, such practices may stem from the political capture of institutions by the ruling parties. For example, it is believed that the reluctance of the Public Prosecutor's Office to address cases where there is a suspicion that state officials or politicians have violated the law is precisely a result of such institutional capture (Mandić 2020). In these cases, it becomes evident that different legal standards are applied to members of the political elite compared to ordinary citizens.

The first step in such institutional capture is party patronage, the practice of appointing party members to positions within the public administration (Christiansen, Piattoni 2003) or, more broadly, to positions within the state, which include civil service, public enterprises, governing boards, universities, advisory boards and commissions, regulatory bodies, and other posts (Kopecký, Scherlis 2008, 356–359). With the decline of mass political parties, appointing personnel to public administration has become a means for parties to strengthen their organization, solidify their networks within the public sphere, and thus ensure long-term influence over the policymaking process. However, the type of patronage observed in Serbia differs because it serves as a mechanism for extracting public resources through clientelist networks. The party's control over institutions facilitates these networks, which enable the unlawful allocation of public resources for the private benefit of its members.

Previous works (Vuković, Spaić 2022) claimed that clientelist party networks conquer institutions, creating *parasitic* relations between formal and informal institutions. The activities of these clientelist networks, which we identify as informal institutions,¹ are governed by unwritten and not fully explicit rules. However, members of the networks point to certain norms that reward loyalty, punish dissent, and exempt network members from legal accountability. These unwritten rules are essential in maintaining permanent clientelist networks and the continuous capture of institutions, leading to normative dualism or a dual state (Vuković, Spaić 2022).² In this article, we will (1) examine the functioning of local clientelist networks within the social welfare system and how they capture local centers for social work (CSWs); (2) demonstrate how CSWs operate in the interest of political parties, with managers and employees of the CSWs allocating the resources at their disposal to serve party interests (funds for cash benefits, referrals for benefits and services, employee salaries, and beneficiary data); and (3) show how CSWs participate in electoral clientelism by distributing money in exchange for votes. Additionally, we will explore their involvement in relational clientelism as a form of linking the society and the state (Bliznakovski 2021; Sotiropolous 2023; Magaloni 2014), as well as a mechanism for the ongoing paralysis of the system and the creation of parallel normative and institutional structures (Vuković, Spaić 2022; Vuković 2022).

Our analysis is based on the data obtained through qualitative research with employees and managers of the centers for social work and experts in social welfare (Stefanović, Vuković 2023). Altogether 27 participants (21 female and 6 male participants) from 21 municipalities were interviewed: case managers (12), supervisors (6), heads of services in centers (4), experts (2), acting managers (2), and managers (1). The interviews were conducted online or by phone, between May and August 2023. The conversations were recorded with the consent of the participants, transcribed, coded (using QDA miner software), and then analyzed. All interviews are anonymized.

¹ Formal institutions are sets of formal and informal rules and procedures that provide frameworks or guidelines for human behavior, thus constraining or enabling actor's behavior (Brinks 2003, 3–5; Helmke, Levitsky 2004, 725; Nee 2005, 55; Portes 2006, 241–242). Formal institutions thus consist of formal and informal rules, associated sanctions, and behavioral regularities. At the core of informal institutions are informal norms, which are, to reiterate, social rules usually unwritten but widely created, communicated, and accepted outside formal channels.

² The theory or concept of normative dualism refers to a case of unequal legal and civic status of individuals, depending on their ethnicity (Nazi Germany), race (USA before the civil rights movement), party affiliation (USSR, contemporary Serbia), membership or proximity to mafia (Italy, South America), or rebel groups (again South America).

2. THE THEORY: CLIENTELISM AND NORMATIVE DUALISM

2.1. Clientelism

Clientelism is the relationship between two individuals or groups known as patrons and clients. A person in a higher social position (the patron) utilizes their power and influence to secure protection or benefits for an individual in a lower socio-economic position (the client) who, in return, provides support and assistance to the patron (Scott 1972, 91; Munro 2010). They exchange money, contracts, job positions, services, etc. Clientelist relationships are a form of instrumental friendship, as two individuals or groups, despite unequal social power, engage in a close mutual relationship based on some form of reciprocity. However, clientelism can also be perceived as a relationship of political subordination in which a person wielding political power receives support in exchange for goods or services.

In traditional societies, clientelism entailed the exchange of services between clients and patrons, i.e., between peasants or farmers on one hand and lords or rulers on the other. Patrons provided protection and support to their clients, and clients worked for the patrons, fought, and provided them with political services (Scott 1972, 98–99). In contemporary democratic society, clientelism has retained the dimension of exchange, but now clients offer primarily political services while patrons distribute protection and various economic resources. The critical difference between traditional and contemporary clientelism is that today, patrons distribute benefits by controlling the state apparatus and public resources (Bliznakovski 2021, 276).³

Researchers typically distinguish between electoral and relational clientelism. Electoral clientelism is an ad hoc relationship of short duration, while relational clientelism is a long-term relationship with a broader “catalog” of inducements, “ranging from party patronage in employment to giving away long-term or permanent benefits, usually at the expense of public resources. Unlike electoral clientelism, these practices are much more nuanced and are often situated within a grey area of the political domain; their influence on the election outcome lies somewhere between legality and illegality” (Bliznakovski, Gjuzelov, Popovijk 2017, 7; Yildirim, Kitschelt 2020).

³ Clientelist networks have been identified in both developed and underdeveloped countries; they include politicians, the electorate, businesspersons, members of the judiciary and bureaucracy (Trochev 2018; Grzymalla-Busse 2010; Cook 2014; Bliznakovski, Gjuzelov, Popovijk 2017; Babović, Vuković 2018).

Clientelism has a disruptive effect on both democracy and the rule of law, violating their fundamental pillars: free and fair elections – by forcing citizens to disclose their ballots or vote under coercion or blackmail; vibrant civil society – by encouraging people to refrain from civil or political activism (Fox 2008, 41–42); and equitable procedures and the principle of equal treatment under the law – by diverting institutions away from public and citizens’ interest (Kitschelt, Wilkinson 2007). Due to the political and economic power ingrained within them, networks of clientelism manage to impose their interests on institutions, conditioning them to work in line with these interests (Aliyev 2015, 190ff). Consequently, institutions are prevented from making lawful decisions and operating efficiently (Fox 2014; Peruzzoti, Smulovitz 2006; Vuković, Babović 2018), which erodes public support for democracy and the rule of law, and undermines trust in institutions.⁴

2.2. Informal Norms and the “Dual State”

An extensive body of literature demonstrates that the norms or instincts of reciprocity powerfully shape clientelist exchange. Ethnographic accounts of clientelism produced over the last seventy-five years are drenched in the language of obligation. Clients regularly report feeling indebted to the politicians who provide them with benefits and act accordingly (Lawson, Green 2014, 65) or describe their relationships with patrons as that of debt and obligation. Particularly, the members of the inner clientelist circle emphasize the notions of care, trust, solidarity, and reciprocity (Auyero 2000, 73–74). Clients report their obligation to meet the patron’s requests even if they do not explicitly ask and emphasize that it is a form of gratitude. And, like elsewhere in the world, this South American study shows that people who receive gifts or benefits *know* that they have to fulfill the requirements

⁴ On the other hand, Beatriz Magaloni insists on the positive aspects of clientelism. She states, following Huntington, that authoritarian rulers who used clientelism were significantly more stable and often less repressive than rulers who had no established linkages with civil society. Corruption and clientelism might hence be conceived as strategies to tame political violence, and in this sense, they might not have a negative effect on development. A second positive aspect of clientelism relates to the lack of political linkages that prevail in many young democracies. Clientelism entails a form of electoral accountability, even if limited. Machine and voter are linked through an ongoing relationship that entails mutual obligations. Although this relationship is asymmetrical and based on inequality, it is often better for the poor than having no linkage with an elite patron at all. Magaloni concludes that we need to take voters’ strategies more seriously and understand why voters invest or willingly engage in this form of exchange (Magaloni 2014, 260).

of the politicians (e.g., attend rallies) to be able to secure benefits in the future (Auyero 1999, 308–309). In other words, they attend rallies because they are concerned about the sanctions.⁵

Studies in Serbia have shown the same (Cvejić 2016). Members of clientelist networks can be exempt from legal accountability, but they do abide by certain informal norms of these networks. They seem to be aware of them when they enter clientelist networks, willingly or under pressure, and there appears to be a shared expectation among members that norms will be respected.⁶ Violating the informal rules of clientelism and corruption brings disapproval, pressure, criticism, and sanctions.

Those who dare to break the rules within the system by, for example, becoming disloyal or greedy, threatening the patron's position, or causing excessive political and media damage, face consequences within the informal order. Consequences may include loss of support within informal networks and the benefits derived from that support, loss of membership in the party or affiliated organizations, or loss of protection within the legal system. Suppose the offense is significant or involves violating informal rules deemed particularly important within the order, such as the rule of loyalty. In that case, individuals are excluded from the informal order that shields them from the legal system (for an illustrative example, see Štetin Lakić 2021).

Just as adhering to informal rules provides protection from the legal system, a kind of limited immunity for actors in informal institutions, violating informal norms entails the removal of protection from the legal system.⁷ The degree of protection is directly proportional to the significance

⁵ To generate normative compliance, givers may try to instill in recipients a belief that the candidate is good or worthy (Schaffer 2002, 5).

⁶ Pressure to join networks can be exerted by state authorities through the manipulation of permits and approvals, delaying their issuance, threats that contracts will not be renewed, or sending a message to state-owned companies and institutions not to cooperate with uncooperative actors. This sends an implicit or explicit message that the only way to operate and conduct business, for example, in a given local government, is to informally pay politicians and officials or provide other services. Still, the most common form of pressure to respect informal rules relies on regulatory and coercive state bodies, such as inspections and the police. In addition to direct coercion, there is also implicit pressure, a "general atmosphere of pressure" – a widespread belief that involvement in party structures and exchange mechanisms is the only way to run a private enterprise at all (Stanojević, Gundogan, Babović 2016, 233–234).

⁷ Members of the network who respect informal rules, in turn, enjoy a privileged status: for example, the quality of work or services they provide to state organs is not scrutinized (Pešić, Milošević 2021, 124), or they are exempt from inspection

of the actors in clientelist structures – lower-positioned actors may be subject to judicial prosecution. However, even then, they may have a certain degree of political protection, whereas, for more powerful actors, this is far less likely. By entering these limited circles of the political and economic elite, one becomes bound by these rules, which can carry immunity from legal norms.

This duality in applying formal and informal norms has been described as a normative or legal duality or the dual state. The concept of the *dual state* was first introduced by Ernst Fraenkel in the context of Nazi Germany (Fraenkel 2017). This framework has since been effectively applied to analyze legal duality and normative systems in the Soviet Union (Sharlet 1977; Sakwa 2010), contemporary Russia (Sakwa 2010; Hendley 2011), Latin America (O'Donnell 1994), southern Italy (Catino 2015), Serbia (Vuković, Spaić 2022; Vuković 2022), and other regions. In a dual state, two institutional and normative orders coexist – one in which laws are observed and public institutions function in accordance with the law, and another in which public institutions are dominated by the ruling party, a criminal organization, or a business. In the latter, institutions operate based on informal norms, and the application of the law is subject to the discretionary power and specific interests of politicians.

In our previous work (Vuković, Spaić 2022), we argued that informal norms of clientelist networks govern the actions of political and economic elites and individuals associated with them. These informal norms regulate exchanges between network members, define their status and behavior toward external actors, and enforce sanctions. Sanctions may be applied entirely through informal means or by invoking formal institutions. This is possible due to the *parasitic* relationship between informal and formal institutions. In addition to the existing typologies of these relations (Helmke, Levitsky 2004),⁸ we argue that existing parallel informal institutions are parasitic to the formal ones. Building on this argument, the following section will analyze the mechanisms of clientelist networks within social

control (Stanojević, Gundogan, Babović 2016).

⁸ *Complementary informal institutions* increase the efficiency of formal institutions; enabling informal institutions to change the outcomes of formal institutions without being illegal; *competitive informal institutions* produce effects contrary to the effects that formal rules should have (e.g., clientelism and corruption); *substitutive informal institutions* arise when formal institutions are inexistent or while achieving the exact effects that formal institutions would achieve if they were functional (Helmke, Levitsky 2004, 728–729).

protection systems, illustrating how these networks infiltrate and capture formal institutions, thereby reinforcing informal institutions and the parallel normative order.

3. CLIENTELISM IN THE SERBIAN SOCIAL PROTECTION SYSTEM

The primary focus of this analysis is local centers for social work responsible for assessing applicants' eligibility for cash benefits or social services in a given municipality. CSWs themselves are structured within two founding entities: the ministry in charge of social welfare and the local self-government. Both institutions participate in appointing managers and financing CSW operations. CSWs are tasked with administering social rights as defined by national laws on social and family protection. Personnel engaged in these duties are paid from the national budget. Additionally, the CSWs implement municipal policies such as cash assistance and services under the purview of local self-government, with staff in these roles paid from the local self-government budget.

In both cases, the CSW evaluates applicants for cash benefits and determines their eligibility. There are two material benefits: the national financial social assistance program and the local social assistance scheme. The national program uses a rigorous means-tested procedure facilitated by software that links various national databases (e.g., tax offices, cadasters, police) to assess the applicant's income and assets accurately. This approach has faced criticism for its rigid eligibility criteria and invasive methods, potentially excluding vulnerable individuals who must meet strict technical requirements but still need support. Additionally, concerns about privacy violations and misuse of sensitive personal information have been raised due to the extensive data collection involved in verifying eligibility. In contrast, the local scheme is administered by CSWs through personal assessments by social workers. Unlike the national program, it lacks sophisticated testing mechanisms and relies on direct knowledge of the applicant's living conditions, allowing for significant discretion by welfare services.

Local social welfare budgets and programs fuel local clientelist networks in social welfare. Our research has revealed a hierarchical model of relationships and several vital actors, each with a specific role and a certain level of power. In this chain, the action of higher authorities is aimed at the party "capture" of the institution and control of lower authorities. In the following section, we will present party patronage mechanisms and exchanges between political patrons and clients/employees in the public sector and beneficiaries of social welfare programs.

The following paragraphs describe the key members of the clientelist networks in social protection: municipal party leadership, the CSW manager, public employees, and beneficiaries (citizens).

The political party's leadership is at the top of the clientelist network. The *president of the municipality* (or the mayor) is the most common channel of party influence. They exert pressure on the manager and staff of the CSW directly or through intermediaries (e.g., municipal politicians and officials, members of the local community councils). This influence encompasses both party work (e.g., they give instructions on party activities, quotas for rallies, quotas for secured votes, etc.) and professional work (they influence, directly or indirectly, professional decisions in the centers, particularly those financed by the municipality and related to the distribution of material aid).

The *manager of the CSW* is the main link between the party and the institution, appointed by the local self-government, the "gatekeeper" of the network that "opens the door" for political influence and abuse of public resources for party purposes, works on strengthening and developing the clientelist network (e.g., through party employment), exerts pressure on other employees in the hierarchical chain, participates in enabling the abuse of public resources (e.g., fixing public bids for eligible companies, use of state-owned premises and vehicles for party activities) and personal data on beneficiaries.

Professionals working at the CSW (social workers, lawyers, etc.) are usually engaged through the party, or they are sometimes cooperative (out of fear) and do not oppose the party's requests. They play an essential role in the implementation of bribery of the electorate through material assistance given or promised to the most vulnerable; they participate in the "donation system" and support party activities (rallies, collecting votes).

Employees hired by the municipality are also most often employed through the party. They are used as the "party army" in political activism (they attend rallies and participate in other party activities) or as "secured votes." They also participate in the "donation system", which implies diverting money from the state to the party treasury (5% of their salary is deducted in favor of the party). They receive benefits through days off, promotion opportunities, project participation, or salary increases.

Beneficiaries or *ordinary citizens* are "secured votes" and the "party army", who attend party gatherings, collect votes, share promotional materials, etc.

3.1. Party Patronage and Institutional Capture

The appointment of managers based on party affiliation is described as a routine practice across the entire public sector. Public institutions at the local level are perceived as “political prey”; some interviewees emphasized that it is always clear which political party influences a specific institution at the local level. The role of the manager of CSW lacks appeal due to the nature of the institution, substantial responsibilities, extensive media scrutiny, challenging working conditions, and limited resources available to these establishments. Some interviewees highlighted that individuals are often appointed to the manager’s position as a form of “punishment” (for instance, being transferred from the managership of public companies) or as younger and inexperienced “party loyalists” who are yet to demonstrate their allegiance to the party.

Of course, since I have been in the center, there have always been suitable people. There has never been someone who deserved it due to their knowledge, expertise, and professionalism. (supervisor, 51, 23 years working at a CSW)

Interviewee: And everyone complains about the managers, of course.

Interviewer: Do they mention that managers are appointed according to their political affiliation?

Interviewee: Yes, and most of them do not hide it, but consider it normal. My favorite case is when the manager of the CSW complained that he had been transferred there, from the position of manager of the public utility company, as punishment. (expert, 49, 18 years of experience in social protection)

Managers often assume posts despite a lack of competence, formal qualifications, and necessary work experience, relegating them to the position of “party managers”. They function as “gatekeepers of the clientelist network”, the primary intermediary between the political party and the institution, facilitating political influence and ensuring that public resources and personnel remain under party control. Some managers lack familiarity with tasks mandated by the ministry but exclusively handle responsibilities financed by the municipality (local material benefits and services), fostering clientelist relations with municipal representatives. Additionally, parties often appoint individuals lacking integrity to leadership roles, presuming they will be compliant and unlikely to oppose party directives. Consequently,

in portraying their managers, interview participants emphasized their subservient and compliant demeanor and readiness to compromise in favor of political interests.

He is a defectologist and a special education teacher with no work experience in social welfare. He came directly to the manager's position. [...] His main concern was not to upset the municipality and local government. The rest didn't matter to him as long as the municipal affairs were going well. They don't understand what we do through the ministry or what tasks are assigned to us. The most important things for them are some financial benefits and social housing – local services for which the municipality provides funds. That's how I understood his role and tasks in his office. [...] The current manager is a sociologist by profession [...]. Everything she knows about social work is material assistance; she hasn't done anything and doesn't even have a license. (supervisor, 60, 30 years working at a CSW)

Furthermore, parties intentionally hire more employees than necessary (especially for technical and administrative tasks, under temporary and occasional employment contracts or with fixed-term contracts), creating a competitive atmosphere among employees who must compete for jobs. In such cases, employment contract extensions often go to those most involved in party activities.

First of all, they are scared at the existential level. Second, many are still on a fixed-term contract; that's how they blackmail them. [...] Perhaps they won't have a job next month. They are forced to go to the rallies by bus because they tell them – your contract expires in two months, and I have three more people I can hire. Therefore, either find another job or get on a bus. That's the story. Or bring 3–4 people with you: grandmothers, grandfathers, uncles, aunts, whoever wants to, and whoever can sign there, and be put on their lists. (expert, 58, 35, years of experience in social protection)

Political influence and party clientelist networks are most pronounced at the top (primarily management) and at the bottom (unskilled, technical staff) of the hierarchical pyramid within the centers. Party staffing and employment are the primary mechanisms for strengthening the party network and control over employees and public resources. They also serve as a means to exert party control over the implementation of social policy measures. Political parties frequently resort to interim appointments as an

additional method of control that secures the loyalty of their personnel. Although these mechanisms are not exclusively a characteristic of the current political nomenclature, our respondents suggested that clientelist relations have been intensified and normalized in the past decade.

Party control of the public sector restricts the professional and personal freedoms of employees, fostering a culture of “silence” and “non-confrontation”. This culture creates symbolic boundaries that dictate acceptable actions and thoughts. These boundaries determine which topics can be addressed and how to discuss them; although often implicit, they have tangible effects on behavior and decision-making, shaping what individuals view as acceptable and unacceptable within institutions.

This phenomenon first appears at the top, in the relevant ministry, and is then transferred and adopted by all instances in the centers – chief executives, managers, and other employees. The respondents particularly pointed out that there is little space for critical review of the state of affairs in social protection and that this topic is entirely taboo.

Those people who sit in the ministry, people with whom I cooperated, which includes great experts, who are obviously in positions that are not so attractive, so no one touches them because someone has to do some work in that ministry too. [...] And when those in the ministry are not allowed to say anything, people doing some work watch as ministers and managers are replaced all over Serbia... Anyone with any intelligence will see they are not allowed to say anything. (professional worker, 37, 12 years working at a CSW)

Interviewer: Do you, as employees, dare to express personal criticism, point out flaws in the center, or highlight issues within the Ministry? How much freedom do you have?

Interviewee: We cannot point out what is not working in the Ministry. It hasn't brought us any good, and it won't. (professional worker, 39, 15 years working at a CSW)

The experience of pressures and the long-term abolition of the autonomy of professionals in the public sector strengthened the “culture of non-confrontation” among other employees. It occurs both among older and younger employees. Both seem to have accepted the implicit limits to autonomous action, i.e., informal norms stemming from party networks that limit their freedom and independence in work, thinking, and action.

Interviewer: *What do you think about your other colleagues? Do they hold back? Do they engage in self-censorship?*

Interviewee: *I think there is some of that, especially among the older colleagues, which is very strange to me. I think there is more of that among them than the younger ones.*

Interviewer: *How do you explain that, given that the older ones probably have permanent placement contracts?*

Interviewee: *Yes, I don't know. I have no explanation for that. I've thought about it a lot because I always believed that, especially for them, with 30 years of work experience in social welfare, when someone unfamiliar with social welfare comes in, whether they're a manager or whatever, one shouldn't step back. It's never been clear to me why they would step back. I think, in general, regarding social welfare, not just the centers – I don't understand how these older colleagues allowed everything to happen in social welfare. They have never, not for a moment, said, "Stop, this is too much; it can't go on like this" – like people in education, for example. They went on strike and stopped work; we can't take this anymore. That's what's missing in social welfare. As for why, I don't have an answer." (professional worker, 31, 8 years of work experience)*

[...] In general, I think that people in social protection are very inert and terrified. Whenever the ministry is mentioned, they shrug as if someone was about to cut their heads off. So, no one is making a fuss. (professional worker, 37, 12 years of work experience)

Fear and self-censorship, as well as censorship by managers, limit professional discussions among the CSW employees. As is the case generally, there are limits to free speech and things that are not said publicly. Employees sometimes "know" where the limits of opposition to those in power are, even though no one has explicitly set those limits for them. When faced with aggressive personal or political control of a public institution, professionals often withdraw and become passive.

I cannot say that they don't have the freedom to criticize, but no one hears them. (supervisor, 51, 23 years of work experience)

To conclude, party control over public institutions creates a professional culture of "silence" and "non-confrontation". This culture permeates the social welfare hierarchy, from the relevant ministry to the CSWs. Ministry

employees do not question decisions made by ministers and other leaders; managers and employees do not question the ministry's decisions; and CSW employees do not question the decisions and views of managers and the municipal leadership. The study records direct censorship and self-censorship, indicating normalization and acceptance of these limitations.

3.2. Party Work

Party work takes various forms, from direct political activism, such as attending political rallies and securing votes, to professional decisions that favor party interests. In some CSWs, attending rallies and other events, such as the opening of factories, is imperative. Employees are given days off or one-time payments⁹ as a “reward” for participating in party activities, which they experience as a “moral duty” towards the party and their superiors.

People always go. Someone gets away; someone says they are sick. You have good people and good colleagues, my colleagues who are from some families... who are experts, and they call them... you have those who are [employed] through the municipality. It happened that some colleagues refused, and there were no consequences. (professional worker, 44, 15 years working in a SWC)

In addition to undergoing pressures to engage in party activism, CSW employees must prioritize (outside of procedures) certain cases involving individuals associated with the party.

There was a bunch of those abnormal things. As I am part of the team for financial aid, I remember that at one point the former manager asked me to provide an opinion for a family with no papers that had just the name and phone number. I refused to do that. “You have to, you have to!” she insisted, and I said there’s no way. Since she was pressuring me, I wrote a report based on the available data and suggested the manager consider it. I never allowed myself to do something I thought shouldn’t be done. Then the younger ones came, and they were writing everything for everyone, and decisions were being passed

⁹ As one of the participants points out, this benefit is enjoyed by the so-called VIPs, employees who are agile and loyal members of the party.

for people for whom they had no data. No basic information, no data whatsoever. (professional worker, 39, 15 years working at a CSW)

The pressures related to campaigns, with the previous manager, were terrible. He couldn't do anything more blatant here. And then the atmosphere itself. And in other centers, I think they were on fire during the election campaign. From using one-time aid to motivate members, to I don't know what... some rewards. Pressures to resolve certain cases, which didn't have to be related to material assistance." (manager, 60, 17 years working at a CSW)

At some CSWs, "doing work for the party" has been fully integrated into the daily routine. The interviewees testified about their colleagues who consider it their duty to do everything their superiors ask of them. Cooperativeness thus becomes a "virtue" above professionalism and ethics in such a work climate.

Interviewer: So, someone presumably comes to her, who knows her, has contacts, and wants a certain case to be resolved in a way that suits them. Then, they contact the institution's manager, and she tries to influence the case manager?

Interviewee: Yes! Now, if the case manager agrees, everything is fine. But if they disagree, she changes the case manager and finds someone she thinks will solve it properly, and that's how the problem is resolved. (supervisor, 51, 23 years working at a CSW)

Centers are also used to finance the ruling party. One mechanism is the "donation" system, which has been publicly discussed for quite some time.¹⁰ In our study we recorded cases in which employees on fixed-term contracts must repay a portion of their salary (5%) to the party. This obligation also extends to managers. When they attempt to avoid it, they face political pressure and sanctions.

We had a manager who naturally wanted to avoid giving money to the party. Why do that? She had gone to school in Belgrade, and she has a university degree... Why would she give anything? And then she was called upon; there was such a fuss

¹⁰ Rujević 2017; Kosić 2017.

about the dismissal, and the woman had to cash out and pay 20,000 dinars to the party. (professional worker, 48, 29 years working in a SWC)

And they pay that 5% every month.

Interviewer: Do those employed under a permanent contract pay, or everybody pays?

Interviewee: Only these younger ones are used, under a permanent contract.” (professional worker, 39, 15 years working at a CSW)

The interviewees testified that their managers often used the official vehicles for their party activities, but also that they carried out campaign activities during working hours (e.g., they visited households and distributed humanitarian packages, they distributed party promotional material to employees of the center, but also to beneficiaries), as well as that they used official premises for party activities (calling “safe” and capillary votes from the office, etc.).

Besides CSW employees, external service providers, such as foster parents and home caregivers (Serbian: *gerontodomaćice*) also suffer pressures for party activism. They are often explicitly blackmailed with losing their licenses if they refuse to participate in party activities. Also, a bizarre case was recorded in which a foster mother was warned because her activities on social networks were “unacceptable for the party”.

3.3. Vote Buying

Vote buying has been a persistent phenomenon in the Serbian political scene, with CSWs often implicated in securing votes through material aid and benefits. The interviewees testified to this, noting that previous administrations employed similar clientelist tactics. An interviewed expert explained that political parties can access almost all beneficiary data, bribing potential voters among vulnerable groups, and pressuring beneficiaries to participate in various party activities.

[...] they handle all sorts of data. What is the protection of this data? The [Unique Master Citizen Number] is the most meaningless of all... They have all the data. They can also call these people by phone; they have all the lists. That’s how it started, you know, from the distribution of firewood, so they

started distributing firewood to people's houses. You know, they bring firewood, they have a list of the vulnerable people. That's it, here we distribute firewood, give us a list of the vulnerable people, that's how it started, I think, in the municipalities. Well, then, when they started distributing firewood and packages, they had to ask for concessions.

Interviewer: And what kind of concessions did they ask for?

Interviewee: Well, I mean, political concessions. I mean that they vote, that they bring two, three more [people] to vote, that... You understand that they go to the rally, that... I mean, that is what is expected of them. (expert, 58, 35 years working in a SWC)

Nevertheless, some study participants also noted that the practices of “bribing” voters from the most vulnerable strata, through one-time financial aid, have become more frequent and unscrupulous:

Unfortunately, we find ourselves in a situation where one-time aid is distributed to people who do not meet those criteria and is distributed on the order of the municipality president. Unfortunately! It's so noticeable now, more than before, in a way that earlier it used to happen, how should I say, through written requests, and then the beneficiary would go personally. You couldn't recognize it; you just considered that request like any other citizen's request. However, now it has become so, I don't know how to describe it... bold and arrogant. (professional worker, 63, 35 years working at a CSW)

In addition to having a long tradition and becoming more intense, the participants have the impression that the illegitimate and illegal practices of political influence on the most vulnerable categories are increasingly being normalized. The account of one interviewee, from whom a political party activist explicitly requested the list of beneficiaries (at the behest of the municipality president, who was also a member of the same party), illustrates that such practices are perceived as legitimate assistance to beneficiaries.

It's not even that we give lists. I was asked that once from [a humanitarian organization founded by a political party]. When the organization was formed, a woman from that party – we all know each other here – came to me knowing that I work on social assistance. She told me they had founded [the

humanitarian organization] and wanted to help. I told them, great, nice, very nice. Right, she said something like: “They just need the lists.” [...] I said, we are already helping these people, but I can’t give you that information. And then she told me: “But I was sent from above.” [...] Well then, I went upstairs, I rarely go to his office [president of the municipality]. I go there to tell him, not knowing who she was... I state her name, and I give the name of the organization. He says “I sent her.” Surprised, I said, “you sent her. You also know that this data are protected and unavailable.” He asked how we help these people. “Why can’t we know who these people we help are?” I say, “but this is data that is... They receive the assistance from the Republic.” He says, “but we support them in other ways, too.” I say, “but this is simply illegal.” He asks me, “who? I know it is so, and you find it in writing.” I said it without much thought, but I did. He just nodded and said, alright then.

Interviewer: So they still found a way to get that data through the manager? Interviewee: The manager gave them [...] .” (professional worker, identity concealed)

In this case, the informal way of working, in which abuses and document falsification are “legitimized”, has completely replaced formal procedures and frameworks. This example is specific because the CSW is located in the municipal building, right under the office of the municipal president, and the dynamics of relations in the clientelist network are even more apparent.

When loyal managers are appointed to lead the centers and loyal or coerced professionals are employed, these centers can become hunters of secured voters. Social welfare centers have shared lists of socially vulnerable citizens with other organizations (e.g., civic associations, local communities, local governments, etc.). The citizens who are on these lists receive various forms of assistance, and in return, they are asked to vote for the ruling party or attend rallies.

Party activists organize voters, with rewards, such as one-time financial aid or other benefits and services, distributed at the centers. Sometimes, money or aid packages are transferred to the Red Cross or local communities and distributed to recipients. This type of aid may also be conditional on voting or attending political gatherings.

Interviewer: During elections, were you required to gather a certain number of signatures or grassroots votes?

Interviewee: *They only give you a number of the people, not a list.*

Interviewer: *How do they know you've collected those votes?*

Interviewee: *They don't. They didn't ask me to photograph the ballots, if that's what you're asking.*

Interviewer: *Not just that, they give people a quota, to collect ten grassroots votes – how do they know you've gathered those votes?*

Interviewee: *They have a call center and check, 'Are you voting for [party name]?' They say yes, and that's it.*

Interviewer: *Do you submit a list of people for them to call?*

Interviewee: *Yes. However, the same lists are held by other parties. I don't know how this can be eradicated or made to work differently. Everyone does it. [...] It was, "If you don't like it, you can leave." I wanted to step away from that position. In the end, I stayed because we did many good things for the center. [...] For example, yesterday in Belgrade, I had to attend. I mean, no one will cut my head off, but it wouldn't be good if I didn't go."*

(acting manager, 38 years old, 10 years of experience at the Social Welfare Center)

Vote-buying has become so normalized that citizens openly come to the center to claim the money they "earned" by voting for the ruling party. In this chain, municipal presidents serve as the party's channel, influencing the center managers, supervisors, or the employees responsible for distributing material aid.

The last elections were insane. People came into the office, most of them illiterate. I asked, "How can I help you?" They said, "I came for my five thousand." "How? Why? What exactly do you need?" "They told me to come for five thousand." People don't even know why they came or what they need.

Interviewer: *And who told them that?*

Respondent: *The party officials. [...] Even those who said, "It's for voting," came. (social worker, 39 years old, 15 years of experience at the Social Welfare Center)*

The main actors in these operations are the centers' managers and employees who were hired through party connections. Some are on fixed-term contracts and engage in party activities to secure their jobs. Others receive promotions, salary raises, participation in projects, days off, and other rewards.

4. CONCLUSION: A CASE FOR NORMATIVE DUALITY?

Clientelist networks cover large segments of society, from the public sector, sports and culture to the commercial sector, and set clear “rules of the game”, demanding loyalty to the party and participation in the exchange. The relationships between patrons and clients are entirely personal and informal. These relationships are founded on reciprocity and solidarity. Patrons provide disadvantaged citizens with various benefits, such as financial aid, employment opportunities, and medical assistance. In return, citizens participate in political activities such as attending rallies, casting votes, or otherwise supporting the political party represented by the patron. The provision of benefits occurs through informal channels, with patrons leveraging their networks of contacts, or through collaboration with formal institutions, such as healthcare or local government bodies.

The patron–client relationship (between the political party and CSW manager) permeates and replicates the entire hierarchical structure within the institution. Managers, acting as patrons, establish their networks of clients among the employees and service beneficiaries. These networks ensure a cadre of party activists and voters, and serve as a foundation for corrupt practices. Members of the clientelist network participate under coercion or without an explicit demand from their superiors – they anticipate deriving some benefit from it or avoiding potential sanctions.

Social workers are aware of these rules and are inclined to follow them. The study participants stated that it is clear to them what may or may not be said or done, precisely because of fear of reprisals from politicians or party representatives; they know who can win a public bid, the conditions for getting a job, etc. Informal norms provide instructions for both actors within clientelist networks and others, replacing formal norms and becoming the basis of institutional action.

Clients risk being deprived of benefits if they fail to comply with the patron's requests or demonstrate expected tokens of appreciation. This deprivation may occur either through the cessation of support from (1) the informal network, when patrons assess the costs and benefits of a particular

relationship, or (2) formal institutions captured by the party's clientelist network, who then deny rights and services to the client. Although some interviewees have resisted political pressures without consequences,¹¹ in some cases the "uncooperative" and "disobedient" are still punished. The punishment can be the obstruction of career advancement, financial losses, opportunity costs, etc. (for details, *cf.* Stefanović, Vuković 2023).¹²

This parasitic relationship between the formal and informal spheres is enabled by the predominance of the political sphere over economic, cultural, and other spheres of social life, making the political currency a key tender in every market, from business to education, culture, and even religion. The strength of informal structures is such that they can monitor and regulate even the private lives of citizens, e.g., their interactions and activities on social media. This has been analyzed as society capture (Cvetičanin, Bliznakovski, Krstić 2024), business capture (Burtlet 2021), and weakness of a non-differentiated society opposed to the dominant state (Vuković 2022; Lazić 2011). All these accounts testify to the strength of informal norms, weak resistance, and widespread voluntary compliance.

The integration of captured state and public institutions into clientelist networks not only expands the scope for both exchange and punishment but also fundamentally alters the nature of these formal institutions. Modern party clientelism, as noted previously, diverges from its traditional counterpart in distributing public resources and using public institutions as mechanisms for enforcing sanctions. In such cases, formal institutions support the workings of informal institutions and contribute to the certainty and consistent implementation of sanctions, imposed by informal order but executed by captured formal institutions. Paradoxically, the interest of the informal structures is to keep the basic functioning of formal structures not only for elementary service delivery and securing electoral support, but also for enforcing informal norms and sanctions associated with them and even legitimizing the entire system.

¹¹ For example, when they assess that these requests go against their professional ethics and personal morals.

¹² In a wider perspective, looking at the totality of party clientelist networks in Serbia, it seems that formal sanctions are applied only when public sanctions will not jeopardize the informal power structure. For more details, *cf.* Vuković 2022.

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ARTIFICIAL INTELLIGENCE IN EDUCATION – CURRENT CHALLENGES

Artificial intelligence has already led to changes in education, and its influence will continue to grow. However, its implementation in education is not just about introducing new technologies – it requires reflection and the introduction of new educational practices, ethical considerations and the essential strengthening of critical thinking to properly evaluate the reliability of sources and the accuracy of information offered by artificial intelligence. This paper aims to highlight the positive and negative aspects of the use of artificial intelligence in education, focusing on the current challenges, especially ethical and legal ones. The regulatory environment in this field is becoming increasingly dynamic, either through the adaptation of existing or the adoption of new comprehensive laws and legal frameworks at both the national and international levels, to ensure the ethical, non-discriminatory, sustainable and verifiable use of artificial intelligence in education.

Key words: *Artificial Intelligence (AI). – Education. – Generative Artificial Intelligence (GenAI). – Artificial Intelligence in Education (AIEd). – European Union Artificial Intelligence Act.*

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*'Powerful AI systems should be developed only once we are confident that their effects will be positive and their risks will be manageable.'*¹

1. INTRODUCTION

The application of artificial intelligence (AI) by algorithms that are able to imitate humans in classifying information and making predictions (UNESCO 2023a, XXIII) is no longer considered science fiction, fringe technology or something that humanity is yet anticipating; we already use AI on a daily basis. From making our 'simple' everyday decisions easier by communicating with our phone or laptop (e.g. asking them to choose the travel route or translate a text), to the most serious AI applications across various industries, medicine, robotics, agriculture, cybersecurity, weather forecasting, etc. – AI is already today changing our lives on so many levels.

The answer to the initial questions and concerns about how machines can be made to use language, form abstractions and concepts, solve problems reserved for humans, and improve themselves in the process has already been given (McCarthy *et al.* 1955, 12). The interdisciplinary and adaptable nature of AI is constantly changing and expanding, making it impossible to establish a universally accepted definition (see e.g. UNESCO & COMEST 2019; Wang 2019, 1). However, despite different disciplinary approaches and various definitions (see Holmes *et al.* 2022, 95–96), AI is always regarded as a machine system that is capable of intelligent behaviour, uses a certain degree of autonomy, analyses its environment, and takes action to achieve certain goals (European Commission 2018). AI focuses on machines that can perform a wide range of human skills and abilities (Sheikh, Prins, Schrijvers 2023, 15). It imitates features of human intelligence, such as language, learning, perception, problem-solving, reasoning, and even creativity (UNESCO & COMEST 2019). For a given set of human-defined goals, AI can produce outcomes such as content, predictions, recommendations and decisions that affect the environments they interact with (EU AI Act, Art. 3 para. 1). In a post-pandemic world of rapidly changing labour markets, growing unemployment, migration and an ageing workforce, all followed by

¹ Pause Giant AI Experiments: An Open Letter, initiated by Elon Musk, Steve Wozniak and many prominent AI scientists and researchers on 22 March 2023. <https://futureoflife.org/open-letter/pause-giant-ai-experiments/>, last visited November 4, 2024.

ultimate technological advancement, all countries face the need to develop new knowledge, skills and competencies (UNESCO *et al.* 2016, 42), especially in the context of AI implementation. It seems that the way we approach AI today will determine our future.

There is no doubt that AI will also influence education and learning; it is already changing the educational structure on all levels and is impacting all educational stakeholders. It is bringing new technologies into the classroom all over the world. Today, some see it as the ‘new-new-norm in a post-pandemic learning environment’ (Crawford *et al.* 2024, 883). It offers – but at the same time also requires – new knowledge, skills and competencies that are likely to become even more vital in the years to come. Emerging significantly in the 1980s, AI in education (AIEd) has evolved into an academic field focusing on research into how AI can support learning processes (Holmes *et al.* 2022, 5, 19). It can be defined as ‘the integration of AI technologies into educational settings’ (Farahani Shahvaroughi, Ghasmi 2024, 2) or ‘learning with AI’ (Holmes *et al.* 2022, 5). AIEd has grown exponentially in recent years, illustrating its enormous complexity by focusing on different educational stakeholders. It can be divided into learner-supporting AI, teacher-supporting AI, and institution-supporting AI (for more, see Holmes *et al.* 2022, 20–24). It can be introduced as a set of tools that combines AI and the learning sciences (education, psychology, neuroscience, linguistics, sociology, and anthropology) and encourages the development of adaptive learning environments (Luckin *et al.* 2016, 18). The list of specific AI technologies used in education is growing by the day (see e.g. University of San Diego 2024). These newly introduced technologies are appealing because they offer flexible, inclusive, personalised, engaging, and effective tools (Luckin *et al.* 2016, 18), such as intelligent tutoring systems, chatbots, robots, and various automated assessments. They can all support and enhance education (Thomas *et al.* 2023, 1; Farahani Shahvaroughi, Ghasmi 2024, 1).

At the same time, recent developments and wider use of new ground-breaking generative AI technologies (GenAI) and chatbots (such as ChatGPT, Gemini, Copilot, Learnt.AI, Elicit, Jasper, Claude, etc.) raise new concerns about their application in education (see e.g. Clarizia *et al.* 2018; Smutny, Schreiberova 2020, 1; Adiguzel, Kaya, Cansu 2023, 2). GenAI can imitate human logic, writing, and even creativity (Vizologi, 2023). As an ‘intelligence’ capable of interacting with a user by responding to questions, the chatbot mirrors some human thought processes. It understands the content of the dialogue on a particular topic and can engage in a human-like conversation using text or voice. Considered an ‘easily accessible’ new source of information that people rely on, even uncritically, it could also be

seen as a tool that calls into question the importance of some knowledge, skills and procedures in education, even basic ones such as math, grammar, writing, and logic (World Economic Forum 2024, 4). However, despite its potential, GenAI has its own limitations; it is not able to develop new ideas or find new solutions to real-world challenges, has no sense of humour, and does not understand the social relationships behind language. Despite its impressive performance, it only repeats language patterns found in its training data (mostly texts from the Internet) and cannot be relied upon for accuracy. Despite the ability to provide generated and seemingly reliable answers, these can be false and unreliable (UNESCO 2023b, 16–17).

Therefore, one of the goals of AIEd is to develop the ability of AI users to critically evaluate source reliability, recognise the accuracy of information, and competently distinguish between facts and misinformation (World Economic Forum 2024, 12). Embracing a cautious approach toward the use of AIEd seems like a ‘common sense course of action’ (Giannini 2023, 6). Such action needs to focus on overcoming challenges, reducing drawbacks and tackling potential misuse; to be effective, action must be undertaken at both the national and international levels. Countries are adapting to changes at different paces and through various modalities (some of these efforts will be briefly mentioned in this paper), following, among other things, a significant number of international initiatives, normative instruments, standards, principles, and guidelines, which is continually growing rapidly. From the UNESCO Beijing Consensus on AI and Education, and the Recommendations on the Ethics of AI, to the latest legal frameworks, such as the EU Artificial Intelligence Act – they all point to the path that should be taken.

Given that due to the rapid development of AI it is difficult and likely impossible to precisely outline all the potential advantages and disadvantages that AIEd brings (which at any given moment may present current challenges), the list of examples of the positive and negative aspects of implementing AIEd provided later in this paper is by no means exhaustive. These examples have merely been selected to illustrate new possibilities but also disadvantages and challenges that AIEd already entail for all educational stakeholders – and will continue entail in the future. For the purposes of this paper, the advantages and disadvantages will be primarily presented in relation to the most important stakeholders in the educational system: pupils and students (learners), and teachers and professors (educators). Although the application of different forms of artificial intelligence may vary across different educational structures, this paper will focus on the most common challenges that can be identified as common to all levels of education at this stage of AI development and implementation.

2. POSITIVE ASPECTS AND LONG-TERM BENEFITS OF IMPLEMENTING AIED

AI undoubtedly creates new opportunities, promotes progress, and strengthens the potential of educational stakeholders. If used to create an educational environment and collaborative learning, it could benefit everyone involved, serving as a valuable tool to enhance educational institutions (Walter 2024, 3) and helping fulfil their primary mission of teaching, learning, and research (Aldosari 2020, 149).

AIED should not detract from the importance of teaching but enrich it (Lynch 2017). It offers specialised tools and resources that address various learning challenges and has the potential to make different levels of education more accessible and inclusive. It could be used in early childhood education in the form of interactive games that teach children basic academic skills (Lynch 2019) and prepare them for the ‘AI era’ in their later education.

One of the greatest potentials of AI is its adaptability to individual learning needs and ability to tailor instruction to the learner’s specific needs, strengths and weaknesses. Those who have struggled to keep up in a ‘traditional’ classroom can now benefit from that AI potential; it breaks down barriers to learning and promotes a more inclusive, adaptive and meaningful learning experience (Walter 2024, 3). For the purposes of this paper, the term ‘traditional’ will encompass all forms of teaching and knowledge acquisition that do not involve the use of AI. Naturally, it is understood that this is a constantly evolving concept, encompassing various traditional ‘roles’, tools and methods of teaching and acquiring competencies, knowledge and skills. What is considered common today (such as the use of calculators, computers or the Internet) was certainly challenging to a broader range of educational stakeholders not too long ago. Unfortunately, in some parts of the world, such technology remains unattainable even today (United Nations 2024, 17, 43). The global application of AI will likely follow a similarly uneven path, but its development can no longer be overlooked.

Today, integrating AI into the curriculum does not mean every learner must become an AI expert. Rather, the focus should be on raising awareness, curiosity, and basic understanding (World Economic Forum 2024, 12) and promoting AI literacy (Holmes *et al.* 2022, 26–32). Some authors believe that AIED has the potential to improve educational processes by developing fundamental skills such as critical thinking, creativity (Luckin *et al.* 2016, 33), computational and communication skills (Vázquez-Cano¹, Mengual-Andrés, López-Meneses 2021, 16), and collaborative learning (Adiguzel, Kaya, Cansu 2023, 5).

GenAI also allows learners to receive meaningful and immediate feedback. Such 'formative' (Crawford, Cowling, Allen 2023, 9) or 'personalised' (Lynch 2017) AI feedback offers the opportunity for immediate self-reflection, i.e. mirroring, which can prompt learners to change their behaviour in the interest of better productivity (Porter, Grippa 2020, 6). Even if self-reflection is not always a pleasant task, it can boost self-confidence if used correctly (Crawford, Cowling, Allen 2023, 9). Based on a series of short ideas provided by AI, it can encourage the creation of personalised learning material, which could also benefit the learner's productivity and overall performance, allowing them to reach their full potential (Peters 2018, 551). Using AI in this way assumes that learners can understand the text provided by the AI and have the basic knowledge to assess its accuracy. Thus, AI, which draws on existing knowledge and skills, can contribute to the quality and efficiency of learning (Crawford, Cowling, Allen 2023, 9), overall academic performance, confidence, and satisfaction (Adiguzel, Kaya, Cansu 2023, 1, 5).

In addition to its impact on learners, AI technology will ultimately also change the 'traditional' role of educators. In a time when technology is developing at a (nearly frighteningly) rapid pace and consequently changing our environment, authors who emphasise the potential of AIEd argue that we must first move beyond the imaginary science fiction scenarios where AI replaces educators and removes the human element from teaching (University of San Diego 2024). On the contrary, AIEd has the potential to improve the pedagogical skills, performance and overall competence of educators. It can also speed up and simplify their 'usual' daily tasks. AI can provide educators with information on practices and the scope of AIEd required to achieve the best results (Aldosari 2020, 147). It has the ability to increase the speed, productivity and efficiency of scientific research and activities. It could be used for faster searches in databases, editing texts, designing research processes, easier application for projects, etc. With a critical review and evaluation of the results obtained, AI can undoubtedly contribute to the productivity and effectiveness of scientific and professional research.

Educators (could) benefit from using tools that make their daily work easier. Intelligent tutoring systems, automated assessment systems, and customised learning platforms are just some of the educational applications where AI is already being used (Adiguzel, Kaya, Cansu 2023, 1). Like human tutors, an 'intelligent tutoring system' can assess different individual learning styles, levels and prior knowledge to help build skills and provide personalised feedback, tailored support and instruction. Automated assessment of written work is a popular, albeit complex, example of how machine learning can support assessment (UNESCO 2023a, 7–12). It can do

much more than just grade an exam, especially in online courses with a large number of participants. It can collect information to help improve teaching (Adamopoulou, Moussiades 2020, 14), collect data on a learner's exam performance, and identify gaps in course content based on it. For example, if a high percentage of learners give an incorrect answer to a particular question, AI can identify this as part of the curriculum that requires targeted improvement of the teaching materials and methods by the educators (Porter, Grippa 2020, 6). Turnitin, which is best known for plagiarism checking, also offers AI products for language comprehension assessment of subjective written work. The tool can sort written assignments into batches so that the educator only has to correct a mistake once or give hints instead of repeatedly marking, commenting, or grading the same mistake (Newton 2021).

The storms of digital disruption will undoubtedly challenge educators to prove their relevance, maximise value for stakeholders, and find ways to 'reinvent' themselves. They need to upskill and evolve to enable personalised learning (rather than a one-size-fits-all approach) and achieve better outcomes for all. Despite certain 'fears', AIEd should keep educators at the centre and not remove them to the margins of the system (UNESCO 2023a, 23). Human interaction and collaboration in the classroom must remain crucial and cannot be replaced by human-machine interaction alone (UNESCO 2019, 12). AIEd should not be seen as a threat to educators or their replacement, but as a tool for providing better education.

3. NEGATIVE ASPECTS AND LONG-TERM DRAWBACKS OF IMPLEMENTING AIED

Despite the increasing (and for some people – especially youths – exciting) possibilities of AIEd, some major concerns remain. Even if we agree that these concerns are mainly the result of confronting the rapidly evolving 'unknown', this simply means that further, sustained and effective steps need to be taken to fully understand the challenges brought about by AIEd (Gillani *et al.* 2023, 99; Rudolph, Tan, Tan 2023, 379), especially its negative implications.

Among the most obvious challenges are the ability of education systems to adapt to the 'demands' of new technologies, the potential misuse, the overuse of big data and learning analytics, the risks of excessive profiling of learners, the potential harms of algorithm-driven discrimination, bias and exclusion, the violation of learners' rights and privacy through the potential

commercialisation of data, etc. (Council of Europe 2019, 9). It is, therefore, crucial to develop and use new technologies with caution, prudence, and appropriate human oversight (Gillani *et al.* 2023, 107).

As it stands, both educators and learners are still barely aware of the limits and dangers of technology (Walter 2024, 3). Excitement about the potential use of AIED and its ability to enhance learning, support educators, and promote more effective personalised learning may also be followed by the unease of facing the unknown.

On the other hand, the use of digital technologies in education in many parts of the world is not just a question of wishes and fears. Some education systems are simply not capable of taking a step forward in the age of AI; they are outdated and – due to the lack of socio-economic strength of society – do not adapt quickly or effectively enough to the demands of new technologies (United Nations 2024, 16–17). AI education assumes some basic benefits of modern life, such as mere access to electricity. However, in 2021, 770 million people, almost 9% of the world's population, did not have access to electricity. One in four elementary schools worldwide has no electricity (UNESCO 2023a, 125–126).

Even if technological advances enable the use of AI in the classroom, the question of educators' readiness, skills or even willingness remains controversial. Some lack the minimum qualification and have never worked with AI tools in their own training (United Nations 2024, 16); others have not been exposed to AI technology for most of their professional lives and do not even have a basic knowledge of AI implementation. They may be reluctant to learn something 'too advanced' and unfamiliar (Walter 2024, 3). Given the new teaching tools and methods, educators themselves also need advice, guidance and training to master the new challenges at their own pace. This could lead to frustration as technology is changing too quickly, and it is difficult for some educators to keep up with the pace of change. The fear of stepping out of one's comfort zone and making major systemic changes may be understandable. However, the opportunity to implement and utilise the best features that could make tasks easier or more effective and enhance the learning experience should no longer be ignored (Lynch 2017).

On the other hand, the transformation of education systems through AI brings some disadvantages that might have long-term effects. Learners could use the technology uncritically and let the machine do the necessary cognitive work. This could lead to situations in which learners are unwilling to 'go deeper' and research the new content but instead minimise their efforts and simply embrace the information offered by the AI. The consequence of such behaviour could be failure or underperformance and even academic

dishonesty. Technology that makes every piece of information easily accessible (at one's fingertips) can, at the same time, pave the way for its misuse (Crawford, Cowling, Allen 2023, 1).

On the other hand, an attempt to combat or prevent the misuse of AI technologies by learners in the classroom might be seen as futile by educators (Crawford, Cowling, Allen 2023, 2), especially those who are not yet familiar with the new technologies (see e.g. Amigud, Dawson 2019, 98–108; Butler-Henderson, Crawford 2020, 6–7; McCabe 2016, 187–198). This was particularly evident during the pandemic, when all levels of education faced remote learning and testing, where one of the major challenges for examiners was verifying the identity of the person taking the exam, especially during written exams. More recently, research paper mills and contract fraud have entered the realm of education, continuing to challenge the system's ability to recognise the authenticity of papers (Crawford, Cowling, Allen 2023, 6).

When ChatGPT² was introduced in November 2022 (Duarte, 2024)³ several school districts in the United States, Australia and the United Kingdom banned the use of chatbots, fearing it could trigger 'a tsunami of cheating' and consequently affect learners' ability to learn (Heaven 2023). The truth is that since its launch, ChatGPT has redefined educational paradigms and ushered in the 'new era' of GenAI. Its capabilities and performance might even be intimidating to those who do not understand the process (Rudolph, Tan, Tan 2023, 365). Even though ChatGPT can provide a unique, immediate and simple human-like answer to a specific question (Vizologi 2023) and perform tasks that make life easier for those involved, its use brings new challenges (Ropek 2023);⁴ its performance is highly debated. Studies on ChatGPT's performance, for example, show varying results: from conclusions that it can be considered a 'successful student', since it passed university exams in various disciplines such as law, economics, medicine (Rudolph, Tan, Tan 2023, 365), psychology (Roivainen 2023), and critical and higher-order thinking (Susnjak 2022, 5–13), to quite different conclusions that it

² The latest GPT (Generative Pre-training Transformer) language model is GPT-4o, released in May 2024. GPT-5 is expected to be launched in late 2024 or early 2025.

³ Between November 2022 and March 2024, OpenAI released a series of ChatGPT updates that increased its popularity. In July 2024, it reached more than 180 million users.

⁴ As noted by the New York City Education Department spoke-person, after ChatGPT was banned in New York: 'While the tool may be able to provide quick and easy answers to questions, it does not build critical-thinking and problem-solving skills, which are essential for academic and lifelong success'.

underperformed in law, mathematics, and medicine (Lo 2023, 5). The global situation regarding the use of chatbots in education is still not uniform, and the debate remains.

The fact is that AI is only as good and reliable as the information and values introduced and integrated by programmers (Perry, Turner 2019). It is also as ethical as its creator and can reproduce deep-rooted prejudices. The widespread use of AI could exacerbate the inequalities that already exist in the education system and the biases inherent in AI algorithms (Adiguzel, Kaya, Cansu 2023, 1). It can be misused or even manipulated (Newton 2021);⁵ it calls into question even the protection of human rights, which is a particularly sensitive issue when discussing the protection of children's rights (see Holmes *et al.* 2022, 49–51). AI can easily manipulate existing data to distort it and use it to spread misinformation, promote hate speech and create false images or videos of people in degrading or compromising situations. These 'deepfakes' are sometimes difficult to recognise and distinguish from the real ones, putting the person/object in a very awkward situation (UNESCO 2023b, 17). In most cases, deepfake goes unnoticed unless the user has in-depth knowledge of the area in question (UNESCO 2023b, 8). Program bugs, biases, and 'hallucinations' (i.e. factually incorrect answers), as well as the tendency of users to over-rely on the information provided by AI or to place too much (even unreasonable) trust in computers, to some extent disregarding their own judgment (Kazim, Tomlinson 2023, 9), could ultimately lead to more bias, prejudice or even discrimination in the real world.

4. OPEN QUESTIONS AND EXPECTATIONS

AI is clearly changing education. Its integration requires a systematic approach that will incorporate the structural conditions, wealth and 'AI readiness' of the given society. The mission of schools and universities today goes beyond their traditional educational tasks; they must keep pace with technological developments by developing and introducing new educational and teaching methods and sustainable policies (Aldosari 2020,

⁵ An MIT team conducted a study in which they created a gibberish essay that met all the requirements – and the AI gave this text a high score. In another study in Spain, an AI bot answered more than 38,700 exam questions. 91.7% of the answers were correct, which is a great result. However, this also means that 3,200 answers were incorrect or incomplete (Newton 2021).

145).⁶ Beyond algorithmic thinking, AIEd requires a focus on creativity and technological skills to foster innovation and critical thinking, while AI and traditional teaching, as ‘fundamentally a human activity’, complement each other (University of San Diego 2024). This requires a paradigm shift in the ‘AI-related’ perception of education and the introduction of a new educational environment – more dynamic, interactive, and focused on tailored learning (Walter 2024, 1–2). This shift could mean ‘a major advancement in educational practices’ (Walter 2024, 3).

Therefore, the question arises as to whether traditional teaching, in which the educator shares the same message with a group of learners regardless of their individual strengths, weaknesses, or progress, can meet the demands of a new age (Noble *et al.* 2022, 199–208). ‘Chalk and talk’, as good as they (still) are, simply no longer seem to be enough for today’s generation. The current children and young people engaged with new technologies much more than previous generations. It has become untenable to resist the changes we are already facing. Growing up with new technologies, AI included, inevitably imposes new technology-driven demands and expectations of education.

It should also be borne in mind that the current generation of learners (of all ages within the education systems) will one day be working in an environment where AI already is or will become a reality, a part of the ‘way of life’. The question also arises as to whether systems that are unable to meet the requirements of the (inevitable) use of AI in education are, at the same time, able to adequately prepare young people for integration into the labour market. In recent years, criticism has been voiced that ‘traditional’ education provides inadequate skills and is not suitable for the demands of the AI-driven era (King *et al.* 2016, 2, 8). In the long term, labour market demand will inevitably determine the path of AIEd. In order to make competent workers, education must be adaptive and able to meet the dynamic challenges of the labour market (UNESCO & COMEST 2019). The new generations, those who have grown up with technology will most likely even demand such an approach. According to some voices, they deserve nothing less (King *et al.* 2016, 15).

⁶ The concept of promoting sustainable development by 2030 at the universal level is outlined in the General Assembly Resolution Transforming Our World: the 2030 Agenda for Sustainable Development (A/Res/70/1), 25 September 2015. The 2030 Agenda contains 17 sustainable development goals (SDGs) and 169 related targets to address humanity’s most important challenges. One of the most important drivers for creating sustainable societies is inclusive and equitable quality education, which has been formulated as SDG 4.

While some relatively recent information from the field (results of a survey conducted by UNESCO in 2023) indicates that out of 450 schools and universities that responded to a worldwide survey, less than 10% have developed any kind of institutional policy or formal guidelines for the use of AI, it can be assumed that the situation in the field of AI will continue to change (most likely – rapidly in the coming years, especially after the adoption of legal frameworks such as the EU Artificial Intelligence Act).

Therefore, it is of utmost importance that educational institutions stay up-to-date and offer adequate curricula to respond to the demands of new technologies and provide sustainable competencies, knowledge, critical thinking, and new skills for tomorrow's labour market (Marr 2024). A more dynamic and effective educational environment, built on personalised learning platforms, where learners are actively involved in the learning process rather than being passive recipients of information (Walter 2024, 3), can increase their engagement, self-confidence and intrinsic motivation (Xia *et al.* 2020).

5. BUILDING A NORMATIVE FRAMEWORK FOR AIED

It is obvious that AI has changed the face of education in recent years. UNESCO Assistant Director-General for Education Stefania Gianini raised an important question: how will education shape our reception and steer the integration of new technology? (Giannini 2023, 8). Not just existing ones but also the ones we do not know about as they are still being invented. In the given case, in order to create sustainable, ethical and innovative AI-powered education systems, it is necessary to understand the way AI is used in education. Therefore, it is the role of the education systems to define the path and standards for how the influence of technology is understood, and, more importantly, how it is allowed to influence us and our world (Giannini 2023, 4). Adopting laws, policies, rules, recommendations, guidelines, and other measures aimed at making AI tools simpler, more transparent, and more ethical is the best way to further develop education systems.

AI systems do not operate in a lawless world (High-Level Expert Group on AI 2019, 6). New technologies are required to respect established norms, values, rights and obligations. Like any other tool, AI offers many benefits and numerous opportunities but also harbours many dangers, some of which are already clearly visible, while others have yet to be discovered. The use

of AI raises new ethical, educational, practical, and political (Rudolph, Tan, Tan 2023, 368), security (Pocock 2024),⁷ privacy (McCallum 2023a, 2023b),⁸ and legal issues that require careful consideration.

To date, AIED has been the subject of various international observations and reports (for a list, see Holmes *et al.* 2022, 99–100). Governments are recommended to adjust existing and adopt new comprehensive data protection laws and legal frameworks to ensure ethical, non-discriminatory, fair, transparent and verifiable use and re-use of learners' data (UNESCO 2019, 8–9), some of which will also be reflected in the education sector. As far as legal protection is concerned, the situation has changed in recent years. According to the latest information (Ponomarov 2024),⁹ policymakers are rapidly introducing reforms for AI governance. The regulatory landscape in this area is becoming increasingly dynamic, with different enforcement strategies being pursued around the world. While some countries (e.g. the United States, the United Kingdom, China, and EU) are often in the spotlight, others are also making efforts in an attempt to maintain the best balance in AI governance (Ponomarov 2024). Some countries are developing comprehensive AI regulations (e.g. Brazil, Canada, China, and India), while others have opted against such an approach and have introduced various guidelines and frameworks (e.g. Japan, the United States), or have decided to apply the existing regulations for AI oversight (e.g. Australia, Switzerland, the United Kingdom) (Ponomarov 2024).

Regarding the implementation of AI in education in international law, the 2019 Beijing Consensus on AI and Education (UNESCO 2019) was the first global commitment to systematically address this issue.¹⁰ The document

⁷ As the implementation of AI could be considered potentially a threat to state security and the cybersecurity of users, 36 countries have decided (in May 2024) that the risks associated with making an AI tool such as ChatGPT available to the public are too high and have banned the use of the platform altogether.

⁸ Italy was the first Western country to ban ChatGPT in late March 2023 due to a data breach. This highlighted privacy concerns and the lack of age verification, which could harm minors. The ban was lifted a month later after new user warnings and an age verification tool were implemented.

⁹ For more information see Ponomarov 2024. This website provides information on the various AI policies (EU, the United Kingdom, Switzerland, the United States, Canada, Brazil, China, Japan, India, and Australia), including references to existing laws and regulations.

¹⁰ The Beijing Consensus on Artificial Intelligence and Education was adopted at the International Conference on Artificial Intelligence and Education, 'Planning education in the AI era: Lead the leap', held in Beijing in May 2019. The Conference gathered a significant number of participants, including heads of state, UN agencies, academic institutions, representatives of civil society, and the private sector.

introduces AI as a tool that can accelerate the delivery of open and flexible education systems that contribute to sustainable societies and benefit the future of humanity (UNESCO 2019, 3). The complexity, rapid development, and diversity in the implementation of AI are addressed through recommendations given both to national and international stakeholders, its numerous benefits are emphasised, and the ethical challenges it raises are tackled (UNESCO 2019, 3–4).

At the moment, GenAI lacks a ‘moral compass’. AI programmes, as has been mentioned already, are as ethical as their creators. Their rapid development is a challenge to their ethical implementation, respect and protection of cultural diversity and has the potential to disrupt ethical norms and values (UNESCO 2021, 7). That could lead to biases, explicit or violent language, data privacy violations, discrimination, etc. GenAI models are created from large amounts of data, often ‘collected’ from the internet, and are usually used without the owner’s consent, which is a violation of intellectual property rights (UNESCO 2023b, 15). Therefore, there is a lively debate about the ethics of AI, and more and more education programmes now include courses on AI ethics in their curriculum.

In April 2019, the European Commission introduced the Ethics Guidelines for Trustworthy AI (High-Level Expert Group on AI 2019) to clarify ethical issues in using AI and avoid even unintentional harm. Trustworthiness is seen as a prerequisite for people and societies to develop, deploy and use AI systems, focusing on three components: a) AI should be lawful and comply with all applicable laws and regulations; b) it should be ethical and ensure compliance with ethical principles and values; and c) it should be robust, both from a technical and social perspective, as AI systems can unintentionally cause harm even with good intentions (High-Level Expert Group on AI 2019, 4–5). Ethical culture and mindset towards trustworthy AI should be developed through public debate, education and hands-on learning (High-Level Expert Group on AI 2019, 9). The Guidelines recognise that AI could improve the quality of education at all levels, as well as the pace of learning. It could be seen as a tool to combat educational inequalities and to create personalised and adaptable educational programmes, which could help everyone acquire new knowledge, skills and competencies, in accordance with their abilities (High-Level Expert Group on AI 2019, 33).

In November 2021, UNESCO also published the Recommendations on the Ethics of AI (UNESCO 2021). It is based on the recognition of the dynamic positive and negative impact of AI on all aspects of our lives, including education, and highlights fundamental ethical concerns (e.g. the exacerbation of prejudices that could lead to discrimination, inequality, threats to social, economic and cultural diversity, and further deepen existing divides and

inequalities in the world). The scientific community and the education system in general must be encouraged to promote AI education programmes, their developments, opportunities, challenges and consequences and – in particular – their impact on human rights, especially children’s rights. The state itself should promote research into the responsible and ethical use of AI technologies in education, in order to increase the opportunities and mitigate the challenges and risks. Such initiatives should be accompanied by an appropriate assessment of the quality of education and the impact of AI technologies on all stakeholders (UNESCO 2021, 33–35).

The European Union Artificial Intelligence Act is the first comprehensive legal framework on AI.¹¹ It addresses various risks of AI and emphasises Europe’s leading role in this field. It aims to promote trustworthy AI by ensuring that AI systems comply with fundamental rights, safety and ethical principles and by addressing the various risks arising from the use of AI (European Commission 2024). The EU AI Act entered into force in August 2024, but it will be fully applicable on 1 August 2026 (EU AI Act, Art. 113). However, some parts of the Act will be applicable earlier.¹²

In an attempt to introduce a proportionate and effective set of binding rules for AI systems, the EU AI Act has enacted a clearly defined risk-based approach that aims to tailor the nature and content of such rules to the intensity and scope of the risks that AI systems may pose (EU AI Act, para. 26). Depending on the level of risk posed by AI, the Act sets out four categories of risks: unacceptable, high, limited, and minimal. AI technology used in education or vocational training that can determine a person’s access to education and employment¹³ is classified as a high-risk system.

¹¹ Regulation EU No. 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

¹² According to the EU AI Act, Art. 113, Chapters I and II will apply from 2 February 2025; Chapter III Section 4, Chapter V, Chapter VII, Chapter XII, and Art. 78 will apply from 2 August 2025, with the exception of Art. 101; Art. 6 para. 1 and the corresponding obligations in this Regulation will apply from August 2, 2027.

¹³ It is AI technology that determines access or admission, assigns individuals to education and vocational training institutions or programmes, assesses the learning outcomes of individuals, determines the appropriate level of education for an individual, and significantly influences the level of education and training that individuals have access to or receive, or monitors and detects prohibited student behaviour during exams. EU AI Act, para. 56 and Annex III(3).

The EU AI Act recognises the importance of using AI in education to promote high-quality digital education and to acquire the necessary digital skills and competencies, including media literacy and critical thinking, and to enable individuals to participate effectively in the economy, society and democratic processes. However, various high-risk AI systems that are used in education and training can significantly impact an individual's educational and career path. If such systems are improperly designed and deployed, they can be intrusive and violate the right to education by bringing to the surface historically established patterns of discrimination (e.g. against women, older people, people with disabilities, or people of certain races, ethnicities or sexual orientations) (EU AI Act, para. 56 and Annex III).

Such high-risk systems should only be placed on the market, put into service or used in the EU if they comply with certain mandatory requirements. These requirements should ensure that high-risk AI systems available in the EU, or whose products are used in the EU, do not pose unacceptable risks to important public interests recognised and protected by EU law (EU AI Act, para. 46). Generative AI, such as ChatGPT, is not classified as high-risk in the EU AI Act, but must comply with transparency requirements and EU copyright law, i.e. a) disclosure that the content was generated by AI; b) designing the model to prevent it from generating illegal content; c) publishing summaries of the copyrighted data used for the training. High-impact general-purpose AI models that could pose a systemic risk, such as the advanced AI model GPT-4, need to be thoroughly assessed, and any serious incidents need to be reported to the European Commission (European Parliament 2024).

As AI is a rapidly evolving technology, this Act takes a future-proof approach, allowing regulations to adapt to technological changes. AI applications should remain trustworthy even after they have been placed on the market. This requires continuous quality and risk management by providers (European Commission 2024). The implementation of the EU AI Act remains to be seen in the years to come.

6. CONCLUSION

AI is transforming education around the world: learners are using it as a powerful learning and research tool, and educators are relying on it to create engaging and personalised lessons and to reduce their administrative work. AI can enrich education and change it in a great, exciting and positive way; it can boost creativity in the educational environment, benefit learners and educators on different levels, and help the education system become better and more personalised.

However, caution is (still) required, as AI can also bring additional, as yet unknown challenges. It brings a number of concerns that could have a negative impact on education and learning. To name but a few: the (in)ability of the education system to adapt to the demands of new technologies; the (in)ability or (un)willingness of educators to adopt new teaching methods; the (non)existence or (in)effectiveness of legal norms; the creation of ethical concerns; the overall impact of AI on human critical thinking, etc. As generative AI increasingly simplifies educational processes, there is criticism that AI is being used as a shortcut in the acquisition of (non-existent) knowledge, calling into question the learning process as we know it. The ‘rise of the machines’ and the willingness of learners to accept readily available information as true and relevant could undermine the core of education based on curiosity and critical thinking. But the question is: is the fear that the use of AI could undermine education, contribute to a tsunami of misinformation and prejudice, and lead to learners around the world relying more and more on technology than on their own minds even justified? That remains to be seen.

Considering that AI will continue to have an (even significant) impact on education and will eventually change the system we are familiar with, we should be (cautiously) open to its use in building a more sustainable and ultimately more successful education. This approach requires competent and constant human oversight and joint efforts by policymakers, AI content creators, researchers, educators, and learners. Existing human rights principles must not be ignored; they must be taken into account in early development and further application. Stakeholders need to be aware of the existing (and future) challenges and learn how to use technology to strengthen the education system, respond appropriately to its associated disadvantages, and harness its benefits. Measures such as banning chatbots like ChatGPT, threatening penalties for their use, and insisting on pen-and-paper controls because of the potential abuse and disadvantage of AI are most likely ineffective in the long term and already outdated in 2024.

AI should not be seen as displacing or undermining human intelligence but as a new ‘tool’, like others that have already been introduced, such as calculators and computers, which have changed the way new knowledge has been acquired. If we embrace that AI is ‘a mirror that reflects us to us’ (Newton 2021),¹⁴ this novelty will only be a step forward in human evolution and not the replacement or negation of the human mind. It is up to humanity to accept and exploit the advantages as much as possible, but also to ensure

¹⁴ Eric Wang, Senior Director of AI at Turnitin, said ‘Many people think AI is smarter than people. But the AI is us. It’s a mirror that reflects us to us.’

that the associated disadvantages are foreseen and overcome. As the ‘wheel’ of AI seems to be turning faster and faster, adopting clear guidelines and creating an effective legal framework will undoubtedly facilitate the educational transformation we are currently experiencing.

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UNDERSTANDING THE RESIDUAL NATURE OF THE FREEDOM TO PROVIDE SERVICES: DELINEATING THE SCOPE OF APPLICATION

*Freedom to provide services is specific in relation to rest of the fundamental freedoms of the European Union (EU) internal market in a way that, save for certain specific situations, it applies to cross-border activities of a commercial nature only in situations in which (provisions regulating) other freedoms are not applicable. Apparently, this so-called “residual nature” of the freedom to provide services makes understanding the borderlines between free provision of services and the rest of fundamental freedoms of the EU internal market even more important, since it causes additional need for establishing such difference in various situations. This article aims to provide additional guidance in that regard. It does so primarily in the context of the *ratione materiae* scope of application, by scrutinizing some of the most relevant case law of the Court of Justice of the European Union (CJEU) and offering corresponding comments and conclusions.*

Key words: *Fundamental freedoms of the European Union internal market. – Free provision of services. – Residual nature. – Scope of application. – Delineation.*

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1. INTRODUCTION

With respect to development of the law of European Union (EU) internal market, and more specifically, to corresponding case law of the Court of Justice of the European Union (CJEU), it is long noted that it was the free movement of goods that initially took the lead (Oliver, Roth 2004, 439), whereas the rest of the freedoms were occasionally subjected to legal standards emerging from the free movement of goods case law. As is also known, this changed decades ago.² On the other hand, the one tendency that persisted throughout the decades is the ‘residual nature’ of the freedom to provide (and receive) services. Generally, it means that provisions of the Treaty on Functioning of the EU (TFEU) regulating freedom to provide services will apply to a cross-border activity of a commercial nature only in situations in which provisions regulating other freedoms of the EU internal market are not applicable. This was initially stipulated and reflected in the very definition of the notion of services, under Article 60 of the Treaty of Rome,³ which remained intact and is now embedded in the Article 57 TFEU. According to it, ‘services shall be considered to be “services” within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons’.⁴ Importantly, the CJEU has underlined, however, that this should not and does not mean that the freedom to provide services is a priori of secondary, i.e. lesser importance than other freedoms of the EU internal market. More specifically, in *Fidium Finanz*,⁵ the CJEU explained that the cited formulation ‘does not establish any order of priority between the freedom to provide services and the other fundamental freedoms’. Consequentially, it also underlined that ‘the notion of “services” covers services which are not governed by other freedoms, in order to ensure that all economic activity falls within the scope of the fundamental freedoms’. Among else, the practical

² A good example in this regard would be the principle of horizontal direct effect of the TFEU provisions regulating the internal market freedoms. Namely, the tendency of assigning the horizontal direct effect to these provisions have started with what is today Article 45 TFEU and then continued with (currently) Articles 49 and 56 TFEU, regulating freedom (right) of establishment and freedom to provide services (Stuyck 2010, 108–109).

³ The Treaty establishing the European Economic Community (1957).

⁴ Article 57(1) TFEU.

⁵ See CJEU, Case C-452/04, *Fidium Finanz AG v. Bundesanstalt für Finanzdienstleistungsaufsicht*. ECLI:EU:C:2006:631, par. 32.

implication of these stances may be found in the CJEU case law related to situations in which a potential restriction of the free movement in the internal market potentially involves two or more (fundamental) freedoms.⁶

Although its existence could simply be the result of numerous instances of cross-border provision of services being covered and thereby protected by the TFEU provisions regulating other fundamental freedoms of the internal market, the above elaborated residual nature of the freedom to provide services is explained by some as a consequence of the fact that the cross-border provision of services did not initially represent a significant portion of economic activity within the EU internal market (Cuyvers 2017, 376).⁷ That, however, dramatically changed since the decades following the Second World War. For instance, according to the European Commission (2023),⁸ services currently represent the single most dynamic economic activity in the EU, which accounts for approximately 75% of gross domestic product (GDP) and employment. Hence, due to the rise of the tourism industry, development and subsequent commercialization of electronic and information technologies, as well as other factors contributing to the rise of the post-industrial economy since the end of the 20th century, it is the provision of services that represents the most important segment of the EU internal market nowadays, at least in terms of sheer turnover value. Regarding new challenges related to the above phenomenon, it is important to note that the rise of the service industry does not result only in the increased number of factual situations that may be classified as cross-border provision of services, but is also the cause of the increased number of situations in which the interconnection between the freedom to provide services and other freedoms of the internal market is more complicated and thereby more challenging. These include, for instance, various situations of interplay between the free provision of services and the free movement of goods, which are caused by tendencies termed by some authors as ‘servitisation of products’ and ‘commodification of services’.⁹

⁶ See *infra* 4. Freedom to Provide Services and the Free Movement of Goods.

⁷ This is elaborated in more detail further below (see *infra* 2. Freedom to Provide Services and Right of Establishment).

⁸ Moreover, according to European Commission (European Commission 2023), in addition to the categories of services statistically covered, many additional services are embedded also in the value of different categories of goods.

⁹ These expressions are generally used to denominate the tendency of increased interdependence between goods and services in the modern-day economies, which in turn leads to increased difficulties in categorizing some commercial products as either goods or services. For more on this issue, see *infra* 4. Freedom to Provide Services and the Free Movement of Goods.

Finally, since they are among the most progressive – in terms of incorporating digital information and other new technologies, as well as in terms of following other trends leading to exponential growth of service industry – the national economies belonging to EU internal market are also among the most affected by the above elaborated and similar tendencies. In turn, this makes understanding the residual nature in particular, and the scope of the freedom to provide services in general, additionally important. Therefore, the aim of this article is to help depict the key borderlines, i.e. key delineation criteria between free provision of services and the rest of the fundamental freedoms of the EU internal market, as well as to establish to what extent the CJEU case law remained coherent in light of the above explained challenges. Given the context, this is done primarily in terms of the *ratione materiae* scope of application,¹⁰ by scrutinizing some of the most relevant contemporary CJEU case law, as well as by offering corresponding comments and guidelines.

On the face of it, the abovementioned effort may be seen as revisiting an old and already settled issue. However, tendencies such as the above mentioned ‘servitisation of products’ and ‘commodification of services’, as well as intensive commercialization of new technologies in general, gradually lead to the emergence of new challenges in terms of drawing the demarcation lines between the scopes of application of the fundamental freedoms. As suggested by De Sousa (2015, 59), these challenges can and have been seen by some as the reason for advocating a joint approach to interpreting and implementing the fundamental freedoms of the internal market. Certain corresponding tendencies can even be found in the CJEU case law and are therefore analysed in the following chapters.

It is important to underline that the notion of services is not analysed in detail in this article. More precisely, analyses regarding delineation of the scope of application between the freedom to provide services and the rest of the fundamental freedoms of the EU internal market are provided based on the assumption that the notion of services, including their commercial nature, has been sufficiently researched and correspondingly elaborated in academic literature (see, for instance, Wiberg 2014, 179–218; Reich, Nordhausen, Scholes 2015, 171–183). However, since, along with their cross-

¹⁰ There are specific but not as much challenging differences between the freedom to provide services and the rest of the EU internal market freedoms in the *ratione personae* context, which occasionally even overlap with those in *ratione materiae* context (e.g. in case of the free movement of workers). There are also some in the *ratione temporis* context. However, in view of the aforementioned, the focus of this article is on the most challenging aspect, the differences in the *ratione materiae* context.

border (i.e. interstate) nature,¹¹ their commercial nature does represent the key to understanding the notion of services under the TFEU rules establishing the freedom to provide services, in order to better understand the conclusions put forward in the next part of this article, the following should also be underlined. Over the years, the CJEU has demonstrated the preparedness to expand the scope of application of the TFEU provisions, introducing the prohibition of impeding free provision of services within the EU internal market to services inherent to welfare states (e.g. education, healthcare, etc.), the actual commercial nature of which may be questioned in some instances (see, for instance, Barnard 2019, 295–297; Rodin 2009, 46). Put differently, in order for a (cross-border) service to fall under the scope of application of Article 56 TFEU, it is not necessary (a) that its value directly corresponds to remuneration provided for it, (b) that the services provider is a commercial, i.e. for-profit entity, or (c) that the recipient of services is the one providing the remuneration, meaning that it may be done by other entities, such as social welfare funds.

2. FREEDOM TO PROVIDE SERVICES AND RIGHT OF ESTABLISHMENT

When speaking of the famed concept and corresponding classification of the ‘four freedoms’ of the EU internal market, on the face of this classification, there is often no room for the right of establishment, which seems to be tacitly subsumed under the broader notion of freedom to provide services. However, in spite this apparent absence from the omnipresent list of the four freedoms of the EU internal market, the right, i.e. freedom of establishment is a very important regulatory and legal concept in general.¹² The right of establishment seems to be considered by some authors, such as Meškić, Samardžić (2012, 291), most closely linked to free movement of workers, since both enable free movement of persons within the EU internal market, obviously, for the purpose of pursuing an economic activity as an employed or a self-employed person. However, based on the manner of their positioning

¹¹ It is needless to reiterate and further elaborate herein that the TFEU rules regulating (i.e. forbidding restriction of) the freedom to provide services apply only to instances of provision of the services involving multiple Member States, more specifically, when the cross-border element is present.

¹² It is worth noting herein that even in the official version of the TFEU (Consolidated version of the TFEU, Arts. 49–55), the terms ‘right of establishment’ and ‘freedom of establishment’ are used interchangeably, which only incentivizes doubts about the nature and position of this legal concept in EU law.

and treatment in general by the key EU institutions,¹³ among else, it is safe to conclude that the right of establishment is most closely related to free provisions of services. It was therefore a logic choice to start by underlining the distinction between these two concepts.

A physical or legal person can lawfully invoke the protection accorded to it by Article 49 TFEU et seq. establishing general prohibition on restrictions to freedom of establishment in the EU internal market and other supplementing rules (e.g. on scope, exceptions, competencies) in numerous instances in which the economic activity representing the de facto object of protection is conducted, so as to include the providing of cross-border services, as defined in the EU law. Put differently, cross-border provision of services, as a type of economic activity exercised by EU citizens and companies per se, may not be used as the line of separation between the freedom to provide services and the right of establishment, since both freedoms may apply to situations revolving around or being reduced exclusively to provision of services. Therefore, as underlined by numerous authors, such as Solanke (2023, 521), Barnard (2019, 296), and Cuyvers (2017, 380), it is in fact the type of presence in the host state of the provider of services that counts in this regard far more than any other separation criterion.¹⁴

The landmark decision on defining the nature of the establishment, i.e. the type of presence required in order for a person and its cross-border economic activity to fall under the scope of the right of establishment, is the one in *Gebhard*.¹⁵ According to this decision, '[a] national of a Member State who pursues a professional activity on a stable and continuous basis

¹³ For instance, on its official page (European Parliament 2024), the European Parliament presents these two as a single concept, particularly emphasizing the significance of the Directive 2006/123/EC i.e. 'the Service Directive' (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ L* 376 of 27/12/2006), which largely regulates provision of services and the right of establishment in the EU internal market as a single concept (for more on the Service Directive, see Rodin 2009, 33–61). The European Commission does practically the same by naming Chapter 3 in the accession negotiations with the candidate countries 'Right of establishment and freedom to provide services' (European Commission 2024). Finally, as emphasized by Cuyvers (2017, 382), even the CJEU has occasionally demonstrated a similar approach by opting not to decide on whether the circumstances of the case are to be subsumed under services or establishment, but simply applying both, apparently as a single concept under the broader notion of the freedom to provide services (see, for instance, Savković 2019, 85–88).

¹⁴ For more on other potential criteria, i.e. lines of separation between the freedom to provide services and right of establishment, see Hansen (2000, 83–90).

¹⁵ CJEU, Case C-55/94, *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* ECLI:EU:C:1995:411

in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State comes under the chapter relating to the right of establishment and not the chapter relating to services'.¹⁶ Therefore, the establishment and corresponding participation in the economic life of the host state must be of stable and continuous nature. However, as is also known, according to decision in *Gebhard*, 'the fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question'.¹⁷ Put differently, as was supported by the subsequent case law,¹⁸ a service provider who has established business presence in another, i.e. host Member State, by way of creating and maintaining some sort of business infrastructure (e.g. business premises, consulting rooms operated by various types of representatives, etc.) may still remain in the position that does not fall under the scope of the freedom of establishment. Therefore, the question remained, at which point does such a person come under the protection of Article 49 TFEU establishing the freedom of establishment?

A significant fact in answering the question above is that, also in *Gebhard*, the CJEU maintained that the temporary nature of cross-border provision of services should be assessed based on its regularity, periodicity or continuity.¹⁹ However, it was subsequently confirmed in *Schnitzer* that not even these clarifications were precise enough to provide universal and at the same time sufficiently clear line of separation.²⁰ To that end, although there is no decisive criterion at this time, the author finds that the criterion of foreseeability of the limits of the duration of the service provider's infrastructurally supported presence in the host state could be particularly important, which was somewhat implicitly put forward by the CJEU even before *Gebhard*, in *Steymann*.²¹ Namely, given the above described situation,

¹⁶ *Ibid.* para. 1.

¹⁷ *Ibid.* para. 27. The same was subsequently reiterated in other decisions (see CJEU, Case C-145/99 *Commission v. Italy* ECLI:EU:C:2002:142, para. 22)

¹⁸ See CJEU, Case C-215/01 *Bruno Schnitzer* ECLI:EU:C:2003:662, para. 30; CJEU, Case C-208/07 *Petra von Chamier-Glisczinski v. Deutsche Angestellten-Krankenkasse* ECLI:EU:C:2009:455, para. 74.

¹⁹ *Ibid.* para. 27.

²⁰ This was admitted by the CJEU in *Schnitzer* (see CJEU, Case C-215/01 *Bruno Schnitzer* ECLI:EU:C:2003:662, para. 31).

²¹ CJEU, Case C-196/87, *Udo Steymann v. Staatssecretaris van Justitie*, ECLI:EU:C:1988:475, para. 16.

it seems that national courts deciding on whether freedom to provide services or freedom of establishment provision of the TFEU should apply in a specific case would be well guided if they were to apply to such situations a test based on whether a reasonable person is able to foresee the end of the otherwise (relatively) stable economic presence of the service provider in the host state, or not. Obviously, in the former case, it would be the TFEU provisions on freedom to provide services that would be applicable in terms of protection of the general concept of free movement in the EU internal market, whereas in the latter case the TFEU provisions on freedom of establishment would apply.

Finally, in *Trojani*,²² the tribunal also used the notion of ‘non-foreseeable duration’ of the service provider’s presence in the host state, but it also implied that there may be a difference between it and the notion of an ‘activity carried out on a permanent basis’, in a way that the former is a less obvious form of establishment in the host state than the latter.²³ Hence, although there is no evidence of the CJEU further elaborating the difference, this could still be worth considering as a potentially important development in relation to expanding the notion, i.e. the concept of the establishment and thereby the scope of application of the corresponding freedom. However, at this point at least, it is not so easy to imagine what would be the specific difference between the notions of ‘non-foreseeable duration of the service provider’s presence in the host state’, on the one side, and the notion of ‘activity carried on a permanent basis’, on the other. Put differently, in what way and in which cases could a stable economic presence in the host country – which is of an unforeseeable duration – still be considered as not being of a permanent nature?

It remains to be seen what specific meaning, if any, will be accorded by the CJEU to the two apparently very similar notions elaborated above. However, following is important to understand. As a rule, both in the case when the acting court finds there is an ‘activity carried on a permanent basis’ and/or when it finds there is an ‘activity of non-foreseeable duration’ of the service provider’s presence in the host Member State, it would be the TFEU provisions on prohibition of the restrictions of freedom of establishment that would apply, and not the TFEU provisions introducing prohibition of the restrictions on freedom to provide services. It is therefore more important to comprehend and specify correspondingly the notion denominating the less obvious, i.e. the weaker form of establishment out of these two, which is the

²² CJEU, Case C-456/02, *Michel Trojani v. Centre public d’aide sociale de Bruxelles*, ECLI:EU:C:2004:488.

²³ *Ibid.* para. 28.

‘activity of non-foreseeable duration’. Namely, in case that such a presence of a service provider is established in the course of proceedings before a national court, there would hardly be any need for further investigating whether it may also be qualified as ‘activity carried on a permanent basis’, since the TFEU provisions on prohibition of restriction of the freedom of establishment would apply in any case. To that end, a suggestion is made herein that ‘activities of non-foreseeable duration’ should include any cross-border economic activity in which 1) the acting court is not able to find, with a sufficient level of certainty, whether this economic activity is envisaged by the service provider as a business venture of a limited duration, or 2) even if so, when it is scheduled/going to end. Consequently, regarding the key issue in this part, which is understanding borderlines between the scope of application of the TFEU provisions on freedom of establishment and that of the TFEU provisions on freedom to provide services, any economic activity including cross-border provision of services that meets the above enumerated criteria would be presumed to fall within the scope of application of the TFEU provisions on freedom of establishment.

3. FREEDOM TO PROVIDE SERVICES AND FREE MOVEMENT OF WORKERS

The principal difference between the scopes of the freedom to provide services and the free movement of workers in the *ratione materiae* context stems from the position of a person participating in an economic activity by providing cross-border services of a commercial nature. The key to understating this delineation criterion is understating the concept, i.e. notion of worker under EU law, which is, of course, a *sui generis* notion and a legal concept of EU law that does not necessarily correspond to the notions of worker in the legal systems of the Member States.²⁴

Unfortunately, the notion of worker is not defined in the regulatory instruments belonging to the primary and secondary EU law, although some attempts have been made recently in that direction.²⁵ However, a definition

²⁴ The CJEU first stated in *Hoekstra* (CJEU, Case C-75/63 *Mrs M.K.H. Hoekstra (née Unger) v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* (Administration of the Industrial Board for Retail Trades and Businesses) ECLI:EU:C:1964:19) that the notion of worker is a separate and genuine term of EU law, which is not related to national laws.

²⁵ As explained by Risak, Dullinger (2018, 10), the European Commission (EC) has proposed the definition of worker in the Proposal of the Directive (EU) 2019/1152 (Directive (EU) 2019/1152 of the European Parliament and of the Council of 20

has been provided in the CJEU case law, which is already considered by some as the formal (and not only de facto) source of EU law.²⁶ More specifically, the definition of worker has been provided in the landmark *Lawrie-Blum* case,²⁷ according to which the essential feature of an employment relationship, and thereby of the formal status of worker, is that for a certain period of time a person performed services both for and under the direction and supervision of another person in return for which remuneration was received.²⁸ Therefore, as explained by authors such as Ludera-Ruszel (2020, 169) and Barnard (2017, 377), it is the reality of the relation between the workers and their superiors (i.e. direction providers, supervisors) that counts in this regard, meaning that there has to be clear subordination, whereas the existence of a formal employment contract is of no decisive relevance. In summary, as put forward by Georgiou (2022, 197), also based on the seminal definition in the *Lawrie-Blum* case, in addition to (a) the existence of subordination, the other two decisive criteria for establishing that a natural person may be granted the status of worker under EU law, as well as corresponding protection, are (b) performance of effective and genuine economic activities and (c) the existence of remuneration for the work provided.

Over the decades, the CJEU has developed and correspondingly employed a very broad definition of worker, primarily in terms of the type of work performed and circumstances under which the work is performed,²⁹ meaning that, for instance, the definition of worker includes professional sportspersons,³⁰ as well as part-time workers, as long as their work satisfies the key precondition by way of involving ‘the pursuit of effective

June 2019 on transparent and predictable working conditions in the European Union, *OJ L* 186 of 11/7/2019), which follows closely the concept, i.e. definition of worker created in the CJEU case law. According to it, the worker should have been defined as a ‘natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration’. However, there is no such definition in the official text of this directive.

²⁶ Regarding the arguments for considering CJEU case law as the formal source of EU law, for instance, see Kaczorowska (2018, 140).

²⁷ CJEU, Case C-66/85 *Deborah Lawrie-Blum v. Land Baden-Württemberg*, ECLI:EU:C:1986:284.

²⁸ *Ibid.* paras. 14 and 17.

²⁹ This is important to underline in order to emphasize that the differences stemming from such a definition of worker, between the free movement of workers and the free provision of services, still remain in the sphere of the *ratione materiae* scope of application.

³⁰ CJEU, Case C-13/76 *Gaetano Donà v. Mario Mantero*, ECLI:EU:C:1976:115, para. 12.

and genuine activities'.³¹ Also, the educational component of the work performed (internships, apprenticeships, traineeship, etc.) does not exclude the application of Article 45 TFEU establishing the general prohibition on restrictions to free movement of workers,³² if the accompanying pursuit of effective and genuine remunerated activities can be established. Finally, not even persons belonging to professions questionable from the point of view of public morality, such as prostitution, have been a priori excluded from the general notion of workers by the CJEU, if the provision of such services is permissible in the host state.³³

On the other hand, despite the general tendency towards broadening the scope of the notion of worker, there are certain limits to it. Hence, all the above expansions of its scope are only 'to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary'.³⁴ However, at which point 'marginal and ancillary activity' ends and the 'performance of effective and genuine economic activity' starts is particularly difficult to answer in general. Put differently, based on the comprehensive research of the relevant case law, a conclusion can be reached that there are simply no universal criteria to be applied in this regard. Therefore, one can only bear in mind the borderline situations/cases, primarily those in which the CJEU has already refused to accord the status of worker and draw conclusions on a case-by-case basis. In that regard, particularly notable is the judgment in *Betray*,³⁵ according to which the work performed in an institution providing job opportunities for persons being treated for drug addiction 'merely as means of rehabilitation or reintegration for the persons concerned' is not to be regarded as genuine and effective activity.

³¹ CJEU, Case C-66/85 *Deborah Lawrie-Blum v. Land Baden-Württemberg*, ECLI:EU:C:1986:284, para. 21.

³² CJEU, Case C-109/04 *Karl Robert Kranemann v. Land Nordrhein-Westfalen*, ECLI:EU:C:2005:187, para. 18.

³³ CJEU, Case C-10/05 *Cynthia Mattern and Hajrudin Cikotic v. Ministre du Travail et de l'Emploi*, ECLI:EU:C:2006:220, para. 22.

³⁴ CJEU, Case C-53/81 *D.M. Levin v. Staatssecretaris van Justitie*, ECLI:EU:C:1982:105, para. 17; CJEU, Case C-66/85 *Deborah Lawrie-Blum v. Land Baden-Württemberg*, ECLI:EU:C:1986:284, para. 22.

³⁵ CJEU, Case C-344/87 *Betray v. Staatssecretaris van Justitie*, ECLI:EU:C:1989:226, para. 17.

Moving forward in drawing the line between the scopes of application of the free movement of workers and the freedom to provide services, or other cross-border economic activities of the self-employed persons,³⁶ it seems that the subordination criterion is less challenging to apply than the performance of genuine and effective economic activity criterion. Namely, there was little or no doubt expressed regarding the concept according to which this particular criterion generally involves the existence of employer's control in terms of timing, place and content of the work done by the employee.³⁷ However, the one question that was put forward and investigated in the relevant case law was where the subordination relation ends and the situation of self-employment begins?

The most frequently cited judgment with the view to providing an answer on the above question is the one in *Asscher*.³⁸ According to the CJEU stance enshrined therein, a person, despite being a full time employee in a company as one of its directors, was not to be regarded as the worker under EU law since he was at the same time the sole shareholder, which eliminates the subordination criterion from the equation, according to the CJEU.³⁹ However, over the years, the (sub)criterion termed by Georgiou (2021, 109–137) as 'business risk-assumption' had become particularly important in this context. According to this criterion, which was also created as the result of the CJEU case law, it is important to establish whether the purported workers are sharing the commercial risks of the business with their employers or not.⁴⁰ As the relevant CJEU case law demonstrates, if the former is found to be the case, notwithstanding the control in terms of timing, place and manner of execution of the work tasks exercised by the purported employers, employees would not be considered workers in accordance with EU law.⁴¹ Put differently, in spite of the relation of subordination being established, because they share commercial risk with their respective employers for the business venture they are involved in, those persons would be considered

³⁶ As explained in the previous segment of this article, depending on other circumstances, self-employed persons may also be protected by the TFEU provisions on freedom of establishment and free provision of services.

³⁷ For a more detailed analyses, for instance, see Risak, Dullinger (2018, 37).

³⁸ CJEU, Case C-107/94 *P. H. Asscher v. Staatssecretaris van Financiën*, ECLI:EU:C:1996:52.

³⁹ *Ibid.* para. 26.

⁴⁰ See Georgiou (2022, 200).

⁴¹ For instance, see: CJEU, Case C35/96 *Commission of the European Communities v. Italian Republic*, ECLI:EU:C:1998:303, para. 37; CJEU, Case C-413/13, *FNV Kunsten Informatie en Media v. Staat der Nederlanden*, ECLI:EU:C:2014:2215, Opinion AG Wahl, para. 45.

self-employed persons and would thereby fall under the scope of application of the TFEU provisions regulating freedom of establishment. Consequentially, it would still not be necessary to employ the concept of the residual nature of the freedom to provide services in order to ensure that such persons' cross-border economic activity is protected by the TFEU provisions regulating fundamental freedoms of the internal market.

Finally, as regards the existence of remuneration for the work performed, historically, this has been the criterion that posed the fewest challenges, according to research of the relevant case law undertaken for the purpose of this article. Namely, as explained by Weiss, Kaupa (2014, 152), even the form and the amount of the remuneration received is irrelevant, presumably, as long as it is of any financial value. Nevertheless, it is worth reiterating that some of the more recent CJEU case law indicates that even the origin, i.e. source of the remuneration for work that includes an educational component may not be taken as the reason to disqualify a trainee or an apprentice from being regarded as a worker under EU law.⁴²

In summary, the following conclusions can be made regarding key borderlines between the scopes of application of the TFEU provisions on free movement of workers and freedom to provide services. Out of the three cumulative criteria for subsuming a person involved in a cross-border economic activity under the notion of worker (and thereby generally excluding the need for employing the concept of the residual nature of the freedom to provide services), which were all initially established in the *Lawrie-Blum* judgment,⁴³ the concept of effective and genuine economic activity seems to be the hardest to grasp, whereas the subordination and particularly remuneration criteria (i.e. requirements) pose few problems in reality. As regards the effective and genuine economic activity criterion, it has already been reiterated that there is no universal solution adopted regarding when such type of work begins and 'marginal and ancillary activity' ends. However, based on the relevant case law, it seems that the conclusion can be put forward that, first of all, it is the purpose of the analysed work that should be scrutinized and taken into consideration by the courts of the Member States. More specifically, if the purpose of the assessed work is

⁴² CJEU, Case C-229/14 *Ender Balkaya v. KieselAbbruch – und Recycling Technik GmbH*, ECLI:EU:C:2015:455, paras. 51–52. In this case, the CJEU found that the sole fact that remuneration was secured, i.e. paid for out of public funds (i.e. 'public training grant'), instead by the respective employer, should not preclude national courts from considering persons remunerated in that manner as workers under EU law. For additional elaboration on this issue see Komendová, Horecký (2021, 58–59).

⁴³ See *supra* note 26.

predominantly of a commercial, i.e. lucrative nature, a person performing such work may be regarded as a worker under EU law. If creation of profit for the respective employers is not established as the dominant purpose of the assessed work, then the likelihood of persons performing such work being considered workers under EU law rapidly decreases.

4. FREEDOM TO PROVIDE SERVICES AND FREE MOVEMENT OF GOODS

Understanding the difference between the freedom to provide services and the free movement of goods in terms of their material scopes of application (i.e. the *ratione materiae* context) essentially comes down to understanding the difference between the notions of services and goods in EU law. As elaborated in detail by Vilímková (2016, 39–48), predominantly due to the lack of corresponding definition in the formal sources of EU law, understanding the notion of goods and subsequently the difference between that and the notion of services became an issue in the relatively early stages of the internal market development. Hence, as early as the 1960s, in *Commission v. Italy*,⁴⁴ the CJEU defined goods as ‘products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions’.⁴⁵ In *Commission v. Belgium*⁴⁶ the tribunal further elaborated the same definition, i.e. notion, by including in it products having not only positive but also those with negative commercial value, such as the non-recyclable waste.⁴⁷

The cited definition(s) had been subsequently taken by many to indicate that, under EU law, the notion of goods is reduced to tangible objects (e.g. see Sganga 2021, 156; Smith, Woods 2005, 37; Snell 2002, 23.). Nevertheless, research into the relevant case law may lead to the conclusion that this issue is still not closed to different interpretations. For instance, in *Gemeente Almelo and Others v. NV Energiebedrijf Ijsselmij*,⁴⁸ despite it being of intangible nature, the CJEU has held that electricity can be considered a good for the purpose of establishing applicability of the TFEU provisions

⁴⁴ CJEU, Case C-7/68, *Commission v. Italy*, ECLI:EU:C:1968:51.

⁴⁵ *Ibid*, par. 2.

⁴⁶ CJEU, Case C-2/90, *Commission v. Belgium*, ECLI:EU:C:1992:310.

⁴⁷ *Ibid*, para. 28.

⁴⁸ CJEU, Case C-393/92, *Municipality of Almelo and others v. NV Energiebedrijf Ijsselmij*, ECLI:EU:C:1994:171.

on the free movement of goods. However, in view of the elaboration of the reasons for including electricity within the notion of goods under EU law in the cited case, as well as in view of the rest of the CJEU case law dealing with (in)tangibility issue, as explained by Vilímková (2016, 45), it would seem fair to say that the described status of electricity could be seen as an anomaly rather than a doorway through which other exceptions in the form of intangible goods would follow.

The above is a description of the most noteworthy challenges that were put before the CJEU in terms of differentiating between the notions of goods and services. However, during the past few decades we have witnessed two evidently converging tendencies. Both were eloquently termed by Verbruggen (2014 203) as ‘servitisation of products’ and ‘commodification of services’ in an attempt to highlight the growing ‘interdependence between goods and services in modern-day capitalist economies’. Put differently, there are services being provided in the form of supply of goods (e.g. different service software being supplied via physical carriers such as modems), as well as goods the sale of which is inextricably linked with the corresponding services (e.g. maintenance, customer support, performance monitoring, etc.). In turn, the said convergence has led to a streak of case law in which the CJEU was effectively forced to draw additional borderlines between the notion of goods and the notion of services, on a case by case basis, in order to establish lines of separation between the scopes of application of the TFEU rules establishing the freedom to provide of services and those establishing the free movement of goods in the internal market. Generally, in view of this author, the resulting case law, although sometimes criticized as inconsistent (e.g. Smith, Woods 2005, 46), successfully provided most of the needed guideless, particularly in the fields of TV signals⁴⁹ and games of chance.⁵⁰ However, given that the converging tendencies of ‘servitisation of products’ and ‘commodification of services’ are its most important contemporary

⁴⁹ In *Sacchi* (CJEU, Case C-155/73, *Giuseppe Sacchi* ECLI:EU:C:1974:40, para. 6), the tribunal maintained that by reason of its nature, the transmission of television signal must be regarded as a service, although it also underlined that it is not ruled out that services normally provided for remuneration may come under the provisions relating to free movement of goods.

⁵⁰ In *Shindler* (CJEU, Case C-275/92, *Customs and Excise v. Schindler*, ECLI:EU:C:1994:119, para. 22), the tribunal maintained that advertising and sending lottery tickets falls under the scope of the TFEU provisions on free provision of services, since they are no more than ‘specific steps in the organization or operation of a lottery and cannot, under the Treaty, be considered independently of the lottery to which they relate’. Put differently, as the CJEU also stated in the same paragraph, in that situation, ‘the importation and distribution of objects are not ends in themselves’.

challenge in drawing the line of separation between the scopes of the two freedoms, the biggest challenge before the CJEU was to provide a solution for the situations in which the purported restrictions scrutinized by the national courts seemingly hinder both the freedom to provide service and the free movement of goods.

The basic rule in terms of overcoming the above described challenge was provided in *Herbert Karner Industrie-Auktionen GmbH v. Troostwijk GmbH*.⁵¹ In this judgment, the CJEU expressly explained that, '[w]here a national measure relates to both the free movement of goods and freedom to provide services', the national court 'will in principle examine it in relation to one only of those two fundamental freedoms if it appears that one of them is entirely secondary in relation to the other and may be considered together with it'.⁵² Importantly, however, the same was subsequently reiterated in at least one of the cases/judgments dealing with situations in which 'the overlap' involves some other freedoms of the internal market.⁵³

On the other hand, there are also instances in which interconnection between the two freedoms is such that neither can be considered entirely secondary in relation to the other. Made bluntly aware of this fact by way of the cases presented before it, the CJEU did not fail to provide guidance for these instances, too. Hence, in *Canal Satélite Digital SL*,⁵⁴ the CJEU explained that where the circumstances of the case do not allow the regarding of one of them as entirely secondary in relation to the other, the purported restriction must be examined simultaneously in the light of both. Generally, this can be considered a positive development, i.e. a solution from the point of view of the functionality of the internal market, given that it entails more stringent scrutiny of the allegedly restrictive measures by way of exposing them to simultaneous examination against two distinctive sets of TFEU provisions that are prohibiting two equally distinctive types of restrictions. In practice, of course, this will result in the potential restriction ending up weighed against the stricter out of the two, or even more, regulatory frameworks of the competing internal market freedoms. In view of this author, however,

⁵¹ CJEU, Case C-71/02, *Herbert Karner Industrie-Auktionen GmbH v. Troostwijk GmbH*, ECLI:EU:C:2004:181.

⁵² *Ibid*, par. 46. This was also confirmed in subsequent case law (e.g. CJEU, Case, c-403/08 *Football Association Premier League Ltd and Others v. QC Leisure and Others* and CJEU, Case c-429/08, *Karen Murphy v. Media Protection Services Ltd* ECLI:EU:C:2011:631, par. 78)

⁵³ See *Fidium Finanz* (*supra* note 4), par. 34. Specifically, it deals with the overlap between free provision of services and the free movement of capital.

⁵⁴ CJEU, Case C-390/99 *Canal Satélite Digital SL*, ECLI:EU:C:2002:34, para. 33.

this is still a good thing, since presumably the most favourable regulatory regime, with regard to enabling the functionality of the internal market, will be put into practice in each specific case.

5. FREEDOM TO PROVIDE SERVICES AND FREE MOVEMENT OF CAPITAL

Although this article aims to contribute to the understanding of key borderlines between the freedom to provide services and the rest of the internal market freedoms; unlike others, the free movement of capital and payments will not be analysed separately in this regard. Namely, as noted by Schön (2016, 37), the corresponding case law shows that, so far, there has been little difficulty in differentiating between the two freedoms on the practical level. At least partially, this could be the case because of the simple fact that the free movement of capital is the youngest of the internal market freedoms.⁵⁵ However, the more than three decades since the full incorporation of the free movement of capital and payments into the EU legal order is sufficient to allow for the conclusion that the need for analysing the overlap between this freedom and the freedom to provide services is at least not as challenging and thereby pressing as in the case of the remaining internal market freedoms.

On the other hand, given the already elaborated particularly strong interconnection between freedom of establishment and freedom to provide services,⁵⁶ it should be underlined that drawing the line between free movement of capital and the freedom (right) of establishment can be particularly challenging (e.g. see Hamulák 2012, 142; Adefeldt *et al.* 2010, 19–31).

6. CONCLUDING REMARKS

As elaborated in more detail in the preceding parts, in spite of decades of persistent efforts to draw (strict) demarcation lines between the scope of application of the freedom to provide services and those of the rest of the fundamental freedoms of the internal market, they still tend to overlap

⁵⁵ It was introduced as one of the EU internal market freedoms by way of the Maastricht Treaty, which went into effect on January 1, 1993.

⁵⁶ See *supra* Part 2. Freedom to Provide Services and Right of Establishment.

in a significant number of potential situations. Furthermore, considering intensive commercialization of digital information technologies and other contemporary trends in the internal market constantly adding further complexity to European economy, it seems that such overlaps are becoming more complicated and are occurring even more frequently than before. This was and still is particularly so in terms of the *ratione materiae* scope of application, which was consequentially the main reason for shifting the focus of this article accordingly.

Regarding the manner in which the CJEU responded to the above challenge, the preceding analyses confirm that the CJEU has managed to successfully overcome the vast majority of them by gradually developing, at least for the most part, logically coherent case law and the set of legal rules stemming directly from it. However, the case law focused on differentiating between goods and services and correspondingly on delineating between the scopes of application of the freedom to provide services and the free movement of goods seems to be particularly indicative in that regard, mostly because it resulted in an apparently successful and straightforward solution for situations in which there is an overlap between the internal market freedoms. Put simply, given the circumstances of the case, if one of these two freedoms is of entirely secondary importance in relation to the other, in principle, the alleged restriction will be examined in relation to the regulatory framework of the latter freedom. If the above is not the case, the alleged restriction is to be examined in relation to both freedoms, i.e. TFEU provisions regulating corresponding prohibitions. Importantly, based on the relevant case law, it is also safe to say that this logic, i.e. approach does not only apply to situations in which the overlap exists between the scopes of application of the freedom to provide services and the free movement of goods but also to situations in which the overlap exists between the scopes of application of other fundamental freedoms of the internal market.

Finally, it must be reiterated that the above approach is in fact a confirmation of the already underlined CJEU's stance that the (regulatory) concept of the residual nature of the freedom to provide services does not serve to establish any order of priority between it and the rest of the fundamental freedoms of the internal market. Namely, if any such order of priority existed, the overlap between the scopes of applications of the freedom to provide services and the rest of the freedoms of the internal market would be resolved differently, that is, by a priori discarding the possibility of analysing circumstances of the case against the TFEU provisions on freedom to provide services.

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LEGAL PRINCIPLES OF THE 1982 PIL ACT AND FILLING THE LEGAL GAPS IN THE CONFLICT OF LAWS MATTER IN SERBIAN PRIVATE INTERNATIONAL LAW: A DIFFERENT PERSPECTIVE**

Despite the aspiration to comprehensively regulate legal relations, legislators can hardly avoid the occurrence of legal gaps, which may also arise due to the longevity of a statutory act that can no longer properly keep up with the development of a specific area of law. In Serbian Private International Law, the methods of filling legal gaps are regulated in Article 2 of the 1982 PIL Act, which provides three sets of principles: principles of the Act itself, the principles of the Serbian legal order, and the principles of PIL. However, certain international sources of Serbian PIL have engendered an unusual effect of hierarchical relationship with statutory conflict-of-laws rules, thus generating a different perception of gap-fillers (i.e. nationality principle, weaker party protection). In the paper, the author examines these issues, considering (to some extent) how legal gaps emerge in this branch of law, as well as the limits of characterization.

Key words: *Legal gaps in Private International Law. – Legal principles of the 1982 PIL Act. – Legal principles of the Serbian legal order. – Universal application of conflict-of-laws rules.*

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1. INTRODUCTION

Legislators commonly strive to exhaustively regulate legal matter by legal norms. However, there are several reasons for the emergence of legal gaps; in some cases, they can be the result of an oversight in the process of drafting the law (Čolović 2024, 288), but sometimes legal gaps are the consequence of the legislator's hesitation to regulate those issues for which there was no generally accepted theoretical standpoint at the time when the normative issue emerged (Đorđević 2020, 9). Legal gaps may also arise due to the long-standing validity of a legal act in a matter that has undergone certain changes in terms of legal relations, which may be increasingly varied and diverse in scope.

In Serbian Private International Law (PIL), there is a theoretical opinion that the legal gaps in the Act on Resolving Conflict of Laws with the Regulations of other Countries (1982 PIL Act)¹ are the result of the legislator's deliberate oversight, who thus avoided to standardize legal relations that the domestic legal scholars were still hesitant about at the time (Đorđević 2020, 9). By all accounts, it also seems that the 'farsighted' (then Yugoslav) legislator counted on the longevity of this statutory act (which has been in force for forty-one years at this moment), and took into account the likelihood of legal gaps, given that the number of cross-border civil and commercial relations and their diversity were necessarily on the rise (Dika, Knežević, Stojanović 1991, 12; Stanivuković, Živković 2023, 66). Consequently, Article 2 of the 1982 PIL Act regulates the methods of filling legal gaps (in terms of conflict of laws), including the application of three options: the principles of the 1982 PIL Act itself, the principles of the domestic legal order, and the principles of Private International Law. The first two groups of principles originate from the national legal system, while the legal principles in the third group essentially have a universal character, which implies the application of generally accepted principles of Private International Law. Yet, the legislator did not stipulate the principles in any of these three groups. Although this may be understandable in terms of the principles governing the domestic legal order (which are regulated as general legal principles by other legal acts and thus extend beyond the scope of Private International Law), the principles of the 1982 PIL Act and the generally accepted PIL principles are left to interpretation. In this

¹ Zakon o rešavanju sukoba zakona sa propisima drugih zemalja [Act on Resolving Conflict of Laws with the Regulations of other Countries], *Official Gazette of the SFRY* 43/82 and 72/82-corr, *Official Journal of the FRY* 46/96, and *Official Gazette of the Republic of Serbia* 46/2006.

regard, there should be no hierarchical relationship between all these sets of principles, since their application is conditioned by the adequate filling of legal gaps in each specific case. This is only possible if the principles are set alternatively (Dika, Knežević, Stojanović 1991, 13). Still, it should be borne in mind that the aforementioned principles are applied only to fill the legal gaps in the conflict of laws area; in terms of international jurisdiction and recognition and enforcement of foreign judgments, the problem is approached in a different way, by applying other relevant regulations.

When it comes to applicable law, Serbian PIL theory traditionally interprets the conflict-of-laws rules of the 1982 PIL Act in such a way that the statutory principles include the principle of nationality in succession, personal status and family relations, the principle *in favorem negotii*, the principle *in favorem victimae*, the closest connection principle, the parallelism of international jurisdiction and applicable law, and the principle of non-discrimination (Stanivuković, Živković 2023, 67). However, some international sources of Serbian Private International Law (both 'old' – ratified by the former Yugoslavia, and 'new' – ratified by Serbia as an independent state) and the specific features of their conflict-of-laws rules have brought about situations where the hierarchical relationship with the statutory conflict-of-laws rules produces quite unusual consequences. This result necessarily calls for a different approach when interpreting certain legal principles on filling legal gaps. In the paper, the author aims to consider these changes, primarily by observing the problem of the absolute validity of the principle of nationality in succession, family and status matters, the principle *in favorem victimae*, and the closest connection principle. Although a more detailed consideration of the ways and reasons for the emergence of legal gaps in the PIL subject matter is not the main goal of this paper, it is necessary to provide a brief overview of these issues.

2. EMERGENCE OF LEGAL GAPS IN PRIVATE INTERNATIONAL LAW

In Serbian and Croatian general legal theory, the concept of a legal gap implies a number of situations, including the legislator's omission, the imprecision or ambiguity of the legal norm (Stefanović 2013, 5–6), the occurrence of the so-called technical gaps (Visković 2001, 235),² etc. The emergence of legal gaps in Private International Law triggers the following

² Visković explains that a technical gap implies the absence of a legal norm that the application of some other (existing) legal norm depends on.

dilemma: does a legal gap exist only when a specific legal relationship cannot be subsumed under one of the legal categories of the existing conflict-of-laws rules (through a common or functional characterization), or does it exist even when the application of thus obtained conflict-of-laws rule would not produce a satisfactory result? *Stricto sensu*, a legal gap would surely imply a situation when, after characterization, we are left with no conflict-of-laws rules under whose legal category the relevant legal relationship could be subsumed (Đorđević 2020, 22). In this regard, there is no doubt.³

Yet, there are situations where, generally speaking, there is a legal category of the conflict-of-laws rule under which a specific factual relationship may be subsumed. However, the ultimate result may be unsatisfactory or even unacceptable for several reasons. The connecting factor in the conflict-of-laws rule (attained by characterization of the legal category) may lead to the applicable law, ultimately resulting in a substantive law solution. Nevertheless, the general legal principles that are commonly applied to the disputed legal relationship in the domestic legal order may get 'lost in translation' when turned into the language of conflict of laws. For example, the 1982 PIL Act does not contain a legal category that would directly relate to civil protection against domestic violence.⁴ In that regard, we refer to the example already discussed by some Serbian PIL scholars (Marjanović, Bordaš 2021, 74–77). Strictly following the common characterization, it can be concluded that the civil law protection of parents (as victims) against violence allegedly committed by their child can be subsumed under the legal category envisaged in Article 40 of the 1982 PIL Act, designated as '*relations between parents and children*'. This statutory conflict-of-laws rule provides for the application of *Kegelsche Leiter* (Kegel's ladder). First of all, it leads to the application of the law of the country of common nationality of the parents and child. If this is not possible, the law of the country of their common domicile becomes applicable and then, as a last resort, the law of the Republic of Serbia⁵ or (in some cases) the *lex nationalis* of the child.⁶ However, in terms of civil law protection against domestic violence in the

³ A typical example of a legal gap *stricto sensu*, usually referred to in Serbian PIL textbooks, is trust (i.e. Stanivuković, Živković 2023, 253, 255; Varadi *et al.* 2022, 123).

⁴ At the time of the drafting of the 1982 PIL Act, this problem was not even recognized to the extent that it is today; thus, the absence of this legal category is understandable.

⁵ If these persons are not domiciled in the same country and one of them is a Serbian national (Art. 40 para. 3 of the 1982 PIL Act).

⁶ If neither the parent nor the child has the nationality of the Republic of Serbia (Art. 40 para. 4 of the 1982 PIL Act).

Serbian family law system, the principle of special urgency (from the civil procedural law standpoint)⁷ and the general legal principle of protection of the weaker party (from the substantive law standpoint) are applicable. The aforementioned statutory rules could be, above all, in direct conflict with the general legal principle of protection of the weaker party since the relevant connecting factor is not directed exclusively at the victim. Moreover, these conflict-of-laws rules open the door for the application of foreign law, which inevitably triggers the mechanism of obtaining information about the foreign law. As this process may take a while, it may ultimately result in a factual situation where the command of the conflict-of-laws rule violates the principle of special urgency of procedure. Furthermore, the principle of special urgency of this litigious proceeding could also be perceived as a direct *echo* of the principle of protection of the weaker party, but in the procedural sphere (Marjanović, Bordaš 2021, 74–77). Therefore, the question may be raised as to whether it is possible to insist on the application of any existing conflict-of-laws rule that was attained by the characterization in order to avoid a legal gap at the expense of violating general legal principles.

The cause of this dilemma is not limited to the discussion about the categorical (*in abstracto*) inadequacy of the conflict-of-laws rule, i.e. its connecting factor, which could result in proposals for legislative changes but the conflict-of-laws rule would still apply (*dura lex sed lex*). Also, the dilemma is not about the presence of a so-called value gap, which implies a legal norm that is unjust or wrong in terms of value and thus has to be changed *de lege ferenda* (Tomić 2020, 118). If the problem in this case only tackles the *ratio* of the legal category (Đorđević 2019, 469) of the aforementioned statutory conflict-of-laws rule (*'parent-child relations'*), whose application is inadequate in case of a contested relationship between a child and only one parent, it could be concluded that it is a value gap. The inadequacy of the statutory rule in this case could be explained as follows – the statutory rules would require taking into account also the nationality or domicile of the parent who is not involved in the domestic violence since it refers to the common nationality/common domicile of *both* parents and the child.⁸ If they do not have a common nationality or common domicile, then Serbian law becomes applicable if the child or one of the parents is a Serbian national (Dika, Knežević, Stojanović 1991, 136–137).⁹ Despite the apparent value-related deficiencies, the application of these conflict-of-

⁷ Porodični zakon [Family Act], *Official Gazette of the RS* 18/2005, 72/2011 – another act and 6/2015, Article 285.

⁸ Article 40 paras. 1 and 2 of the 1982 PIL Act.

⁹ Article 40 para. 3 of the 1982 PIL Act.

laws rules would still be possible. However, the aforementioned conflict-of-laws rules (for the sake of avoiding a legal gap) are not only burdened with value-related challenges but are also contrary to general legal principles, i.e. the legal order and even *public policy* of Serbia. Namely, the protection of the weaker party (as a general legal principle) and the principle *in favorem victimae* (derived thereof) constitute part of the Serbian PIL public policy because they both pertain to fundamental legal principles that protect basic social values, in accordance with Article 4 of the 1982 PIL Act.

Moreover, in case of a need to ensure civil-law protection against violence of a spouse or another person who is (in that context) covered by the term 'family member' in the Serbian Family Act,¹⁰ there is a legal gap *stricto sensu* in the 1982 PIL Act because there is no conflict-of-laws rule whose legal category could include such a case (Marjanović, Bordaš 2021, 79).¹¹ It seems justified that cases where common or functional characterization (entailing a broader interpretation of legal categories) leads to the application of a PIL rule whose command is contrary to the general legal principles (otherwise applicable in the given case) should be treated as a legal gap as well. Otherwise, the result could be paradoxical – the characterization would lead to the application of a conflict-of-laws rule that ultimately contradicts the legal principles of the forum state's public policy.¹² In such situations, the characterization would have to be abandoned and the issue should be treated as a legal gap. Moreover, this case of a legal gap probably goes beyond the scope of ordinary cases of contradictory provisions in different regulations, which also represent a legal gap according to Stefanović (2013, 6).

¹⁰ Article 197 para. 3 in conjunction with Article 10 of the Family Act.

¹¹ Only if the child is a victim, the conflict-of-law rule envisaged in the 1996 Child Protection Convention could be applied since the list of the protection measures is not exhaustive. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, *Official Gazette of the RS – International Treaties* 20/2015, Article 3.

¹² There is a similar example in some of Serbia's bilateral agreements in the field of Private International Law, which contain conflict-of-laws rules whose legal categories include only family relations concerning illegitimate children. Such rules are contrary to the principle of equality of legitimate and illegitimate children, envisaged in Article 64 para. 4 of the Constitution of the Republic of Serbia and more closely defined in the Family Act. In such circumstances, given that the principle of equality of children is part of Serbia's public policy, conflict-of-laws rules establishing the applicable law in family relationships involving only illegitimate children must be considered null and void (Marjanović, Đorđević Aleksovski, forthcoming).

In a nutshell, the concept of a legal gap should also include situations where the characterization of the legal category of the existing conflict-of-laws rule would lead to establishing the applicable law in a way that cannot ensure the observance of the fundamental general legal principles, especially in cases where it would further encroach on the public policy of the adjudicating state.

3. 'TACIT' AMENDMENTS OF THE 1982 PIL ACT

Conventions adopted under the auspices of the Hague Conference on Private International Law (HCCH) represent the most important multilateral international sources of the Private International Law of the Republic of Serbia. From the total of thirteen Hague conventions that are binding for Serbia,¹³ five conventions unify conflict-of-laws rules, either exclusively or in conjunction with the rules on international jurisdiction and the rules on recognition and enforcement of foreign court decisions. Hence, one convention regulates the matter of testamentary succession (the 1961 Convention on the Conflicts of Laws Relating to the Form of Testamentary

¹³ Convention on Civil Procedure, *Official Gazette of the FPRY – International Treaties and other Agreements* 6/62; Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents, *Official Gazette of the FPRY – International Treaties and other Agreements* 10/62; Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, *Official Gazette of the FPRY – supplement* 11/1962; Convention on the Law Applicable to Traffic Accidents, *Official Gazette of the SFRY – supplement* 26/1976; Convention on the Law Applicable to Products Liability, *Official Gazette of the SFRY – International Agreements* 8/1977; Convention on International Access to Justice, *Official Gazette of the SFRY – International Treaties* 4/1988; Convention on the Civil Aspects of International Child Abduction, *Official Gazette of the SFRY – International Treaties* 7/1991; Convention on Taking of Evidence Abroad in Civil and Commercial matters, *Official Gazette of the RS – International Treaties* 1/2010 and 13/2013; Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *Official Gazette of the RS – International Agreements* 1/2010 and 13/2013; Protocol on the Law Applicable to Maintenance Obligations, *Official Gazette of the RS – International Agreements* 1/2013; Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *Official Gazette of the RS – International Agreements* 12/2013; Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, *Official Gazette of the RS – International Treaties* 20/2015; Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, *Official Gazette of the RS – International Agreements* 4/2020.

Dispositions),¹⁴ two conventions regulate the matter of non-contractual liability for damage (the 1971 Convention on the Law Applicable to Traffic Accidents – Traffic Accidents Convention,¹⁵ and the 1973 Convention on the Law Applicable to Products Liability – Products Liability Convention),¹⁶ and two conventions regulate the area of family law – the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children¹⁷ (Child Protection Convention) and the 2007 Hague Protocol on Law Applicable to Maintenance Obligations (Protocol).¹⁸

The mechanism of conflict-of-laws rules of these conventions rests on the principle of universal application, which is not a common principle in international treaties because it represents a deviation from the principle of reciprocity, which is considered as a characteristic feature of international treaty law (Živković, Marjanović 2019, 266). The principle of universal application enables the unification of the conflict-of-laws matter in a way which exceeds the usual reciprocal application of the convention; thus the applicable law applies even in cases where the conflict-of-laws rule refers to the law of a third country, i.e. a country that is not bound by a specific convention. In addition to its international origin, the thus-tailored conflict-of-laws rule fully follows the universal nature of statutory conflict-of-laws rules. As explained by some Serbian PIL scholars, just as the statutory conflict-of-laws rule has a global reach and is valid *erga omnes*, the conflict-of-laws rule of a multilateral international treaty gives a universally applicable command to the court of the state that is a party to the treaty. In terms of universal application, the only difference regarding its effect is that, in case of statutory conflict-of-laws rules, it is *implied* due to the nature and purpose of the statutory act, while the same principle must be *expressly* provided for in the convention (Marjanović 2019, 36–37). If this is not the case, conflict-of-laws rules continue to be applied according to the principle of reciprocity, as a basic principle of international treaty law. In other words, when it comes to their field of application *ratione loci*, the aforementioned Hague conventions have an *erga omnes* effect in terms of the unification of conflict of laws.

¹⁴ *Official Gazette of the FPRY – supplement 11/1962.*

¹⁵ *Official Gazette of the SFRY – supplement 26/1976.*

¹⁶ *Official Gazette of the SFRY – International Agreements 8/1977.*

¹⁷ *Official Gazette of the RS – International Treaties 20/2015.*

¹⁸ *Official Gazette of the RS – International Agreements 1/2013.*

The correlation of the *universal application* principle and the rules on the *hierarchical relationship* between the international and internal sources of law leads to the derogation of the corresponding statutory conflict-of-laws rules (Marjanović 2019, 37). The absence of the principle of reciprocity in terms of validity of the conflict-of-laws rule makes them equal (in terms of function, value and purpose) to the statutory conflict-of-laws rules of each contracting state. Although the international and statutory conflict-of-laws rules have a different origin (international or national), they both have an *erga omnes effect*, thus the final judgment on their relationship is provided by the universal rule on the hierarchical relationship of internal and international legal sources. As the international treaties are higher on the hierarchy scale, their conflict-of-laws rules derogate from the corresponding statutory (internal) conflict-of-laws rules (Marjanović 2019, 37).

However, this does not mean that the statutory conflict-of-laws rule must be completely unenforceable. The field of application of an international treaty may refer to a narrower or broader matter in comparison with the legal category of a specific statutory conflict-of-laws rule (Marjanović 2019, 37). Therefore, the court of the contracting state must check whether there are issues in the specific case that are not included in the field of application *ratione materiae* or even *ratione personae* of the specific convention. Hence, two outcomes are possible. First, there are situations where the applicable law is reached by following the convention's conflict-of-laws rule only because the subject matter is comprehensively regulated by the relevant convention (*positive scope of application of the convention*). In such a case, the derogation of the statutory conflict-of-laws rule is absolute. For example, the conflict-of-laws rules of the Protocol set aside the conflict-of-laws rules envisaged in Articles 36, 39, 40 and 42 of the 1982 PIL Act, to the extent that they refer to maintenance obligations. Namely, the conflict-of-laws rules of the Protocol determine the law applicable to all types of legal maintenance for which there were corresponding rules of the 1982 PIL Act. The latter outcome occurs in cases where a (civil or commercial) legal relationship is excluded from the field of application of the specific convention (*negative scope of application of the convention*); in such a case, the statutory conflict-of-laws rule is still applicable.¹⁹

¹⁹ For example, as the Convention on the Law Applicable to Traffic Accidents (1971) does not envisage recourse claims between the responsible persons, Article 28 of the 1982 PIL Act may still be applied, provided that this issue is not regulated by contract (Marjanović 2019, 133).

The choice of the relevant conflict-of-laws rule in these situations is not always easy for the court. The task is further complicated by the legislator's silence about the resulting derogations of the statutory conflict-of-laws rules and giving way to the convention's conflict-of-laws rules. The exception (to a certain extent) is the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions considering that its conflict-of-laws rules are incorporated in Art. 31 of the 1982 PIL Act. However, it was done in a way that can lead the Serbian court or public notary astray because the Convention provisions were incorporated in the 1982 PIL Act only partially, without any indication that the origin of the conflict-of-laws rules is the Convention and not the original statutory drafting.²⁰

Looking at the (still) unchanged text of the 1982 PIL Act, confusion regarding the validity of the statutory conflict-of-laws rules that are set aside by the relevant Hague Conventions is expected due to the lack of the explicit provisions on their (complete or partial) derogation *erga omnes*. The consequence is that the wrong conflict-of-laws rule, and thus the wrong applicable law, is the reason for claiming ordinary and extraordinary legal remedies. Although the 1982 PIL Act regulates the hierarchical relationship of its rules with other special pieces of legislation and international treaties (in Art. 3), this provision is not sufficiently indicative in cases of universal application of the treaty's conflict-of-laws rules. In the author's opinion, the rule set out in Article 3 of the 1982 PIL Act was primarily drafted to regulate the hierarchical relationship regarding an international treaty based on the principle of reciprocity, as a rule of international treaty law (Živković, Marjanović 2019, 266), and not on the principle of universal application of its conflict-of-laws rules (which is an exception to the principle of reciprocity). In addition, the court's navigation of this labyrinth of the already perplexing conflict-of-laws matter is all the more challenging because, in some cases, statutory conflict-of-laws rules have completely ceased to be valid, while in others the derogation is not absolute. Consequently, these '*tacit*' statutory amendments also have an impact on the interpretation of the legal principles of the 1982 PIL Act that should be applied to fill the legal gaps.

²⁰ For details on the omissions made by transposing the Convention solutions in the 1982 PIL Act, see Marjanović 2019, 260–267.

4. THE INFLUENCE OF 'TACIT' AMENDMENTS ON THE 1982 PIL ACT PRINCIPLES AND THE PRINCIPLES OF THE SERBIAN LEGAL ORDER

4.1. The Nationality Principle as the Principle of the 1982 PIL Act – What is Left?

As previously noted, the interpretation of the conflict-of-laws rules of the 1982 PIL Act generated a number of principles, which are the cornerstones of governing the conflict-of-laws matter. In this sense, the nationality principle (i.e. applying the law of the state of nationality) comes to the fore in matters of personal status, succession and family relations (Stanivuković, Živković 2023, 67). The aforementioned '*tacit*' amendments to the 1982 PIL Act have no impact on the application of this principle in terms of the succession and personal status relationships. However, things are somewhat different when it comes to family law matters. Namely, the conflict-of-laws rules of the Child Protection Convention, as well as the Protocol, are derogated from the corresponding statutory conflict-of-laws rules. In particular, the derogation includes the 1982 PIL Act rules governing the relationship between parents and children (Art. 40 of the 1982 PIL Act), but also the rule on placing a minor under guardianship in cases involving the custody of children without parental care (Art. 15 of the 1982 PIL Act).²¹ Likewise, all statutory conflict-of-laws rules governing the issue of law applicable to maintenance have been set aside. This again includes Article 40 of the 1982 PIL Act, which was also applied to this issue, due to its extremely broad legal category. For the same reason (broad legal category), this also applies to those statutory conflict-of-laws rules that are *inter alia* related to issues of maintenance of spouses (Art. 36 of the 1982 PIL Act), spouses whose marriage is void or who are divorced (Art. 38 of the 1982 PIL Act), as well as extramarital partners (Art. 39 of the 1982 PIL Act). Likewise, the conflict-of-laws rule provided for in Article 42 of the 1982 PIL Act has been completely derogated from because it has a narrower legal category and exclusively refers to law applicable to

²¹ Article 40 and, to a certain extent Article 15, of the 1982 PIL Act have been derogated due to the autonomous notion of the parental responsibility envisaged in Article 1 para. 2 of the Child Protection Convention (the notion includes 'parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child'). Article 15 of the 1982 PIL Act envisages the conflict-of-laws rule regarding guardianship in general (when the ward is a minor or an adult). However, its application has been partially derogated by the conflict-of-laws rules of the Child Protection Convention. This derogation includes only cases where the ward is a minor.

maintenance of blood relatives (except for parents and children) and in-laws.²² In addition, a partial derogation applies to the statutory conflict-of-laws rule on guardianship and the relationship between the guardian and the (only minor) ward (Art. 15 of the 1982 PIL Act), which also implies the law applicable to the scope of the maintenance obligation between the guardian and the ward (including if the public guardianship authority exercises the right to recourse).²³

When observing the statutory conflict-of-laws rules in the matter of personal status and family relations, after the introduced derogations, it can be concluded that the principle of nationality remained intact in relation to the issue of contractual capacity,²⁴ guardianship (of an adult ward) and relations between guardians and (adult) wards,²⁵ declaring a missing persons to be deceased,²⁶ marriage,²⁷ nullity of marriage,²⁸ paternity and maternity,²⁹ and establishing and terminating adoption.³⁰ In contrast, along with nationality, another connecting factor (to some extent) may be domicile (as the current or last common domicile of spouses/extramarital partners), which may be applied when determining the applicable law for divorce,³¹ the personal and statutory property relations of the spouses (both in marriage and in cases where the marriage has ended or is invalid),³² the spouses contractual property relations³³ and property relations of extramarital partners,³⁴ as well as the effects of adoption.³⁵

²² On the other hand, the conflict-of-laws rules of the Protocol refer to 'maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child regardless of the marital status of the parents'. Article 1 para. 1 of the Protocol.

²³ Article 15 of the 1982 PIL Act, in conjunction with Article 11 para. 1(f) of the Protocol.

²⁴ Articles 14 paras. 1 and 3 of the 1982 PIL Act.

²⁵ Article 15 para. 1 of the 1982 PIL Act.

²⁶ Article 16 of the 1982 PIL Act.

²⁷ Article 32 of the 1982 PIL Act.

²⁸ Article 34 of the 1982 PIL Act.

²⁹ Article 41 of the 1982 PIL Act.

³⁰ Article 44 of the 1982 PIL Act.

³¹ Article 35 of the 1982 PIL Act.

³² Articles 36 and 38 para. 1 of the 1982 PIL Act.

³³ Article 37 of the 1982 PIL Act.

³⁴ Article 39 of the 1982 PIL Act.

³⁵ Article 45 of the 1982 PIL Act.

Given that the 1982 PIL Act does not envisage an autonomous characterization of family and status relationships, the solution to the characterization problem should be sought in the Civil Registry Books Act³⁶ (CRB Act). It should be borne in mind that the problem of characterization of these relations as family or status relationships is also evident in the Serbian judicial practice, when recognizing and enforcing foreign court decisions, given that the recognition of personal status decisions is exempt from some statutory conditions.³⁷

In this sense, according to the explicit provision of the CRB Act, personal status issues are birth, marriage, and death, and related facts, which are entered in the corresponding registry books.³⁸ From the point of view of the 1982 PIL Act, this would mean that marriage, nullity of marriage, divorce, paternity and maternity, establishment and termination of adoption must be qualified as personal status relations. Therefore, family relations *stricto sensu* include issues of personal and statutory property relations of the spouses, their contractual relations, and property relations of extramarital partners. In all these relations, the statutory conflict-of-laws rules still apply. Similarly, the issues covered by the Child Protection Convention's autonomous concept of parental responsibility (parental authority, other similar relationships that determine the rights, duties and responsibilities of parents, guardians or other legal representatives to the child's personality and property)³⁹ may also qualify as family relations as well as the subject matter of maintenance as envisaged in the Protocol. The exception is the extension and deprivation of parental rights (the Child Protection Convention), which would fall under personal status issues (under CRB Act).⁴⁰

Although it could be said that nationality is prevalent in all those family relationships where the applicable law is still determined by statutory conflict-of-laws rules (family relations *stricto sensu*), its primacy is not absolute. Although the domicile appears to be a subsidiary connecting factor in the relevant statutory rules, it is present to such an extent that

³⁶ Zakon o matičnim knjigama [Civil Registry Books Act], *Official Gazette of the RS* 20/2009, 145/2014 and 47/2018.

³⁷ For illustration, see Decision of the High Court in Subotica 3R. 29/17 from 13 June 2017). In the process of recognizing a foreign judgment on divorce of persons who are citizens of the country of origin of the decision, the High Court examined the conditions that are not an obstacle to recognition in this case: exclusive international jurisdiction of the Serbian court, reciprocity and public policy in accordance with Art. 94 of the 1982 PIL Act (Marjanović 2022, 305).

³⁸ Article 2 of the CRB Act.

³⁹ Article 1 para. 2 of the Child Protection Convention.

⁴⁰ Article 45 para. 1 (3) of the CRB Act.

its application cannot be ignored. All cases where the applicable law is determined on the basis of nationality (as the primary connecting factor), domicile (as a subsidiary connecting factor), or on the basis of the law of the Republic of Serbia (as the last resort when the previous ones do not give results), involve the application of the Kegel's ladder or a hierarchical sequence of subsidiary connecting factors. This type of connecting factor has the immediate goal of preserving the closest connection principle (Đorđević, Meškić 2016, 42). A series of connecting factors must be observed in line with the rank determined by the legislator, particularly considering that the intensity of the closest connection decreases from the first connecting factor (in which it is most present) to the last connecting factor (where it is almost non-existent). Therefore, from the point of view of the 1982 PIL Act, in case of family relations *stricto sensu*, we may talk about the application of the closest connection principle rather than the nationality principle. In the author's opinion, the conflict-of-laws rules which are based on a Kegel's ladder lose their neutrality and subject to the legislators' deliberate decision, are directly aimed at achieving a specific result. Due to the purpose of this type of conflict-of-laws rules, one goal may be to preserve the closest connection principle; another goal may be to avoid contradictory results that could be reached by the cumulative application of several different laws. This second goal is evident due to the fact that the relevant statutory conflict-of-laws rules introduce common nationality, common domicile, last common domicile, and the Serbian law (as a last resort) as connecting factors.

4.2. Best Interest of the Child, Principle of Parallelism, and Closest Connection Principle as Principles of the Serbian Legal Order in Cross-Border Parental Responsibility Matter

The 'tacit' derogation of statutory conflict-of-laws rules in parental responsibility matter is much more significant than it is indicated by the sheer number of statutory conflict-of-laws rules. This is a consequence of the wide fields of application of the Child Protection Convention. In the Children Protection Convention, the autonomous concept of parental responsibility entails parental authority, as well as any other similar relationship which determines the rights, duties and responsibilities of parents, guardians or other legal representatives to the child's personality and property.⁴¹

⁴¹ Article 1 para. 2 of the Children Protection Convention.

On the topic of the dominant connecting factor, the habitual residence of the child has primacy. In this context, the conflict-of-laws rules envisaged in the Child Protection Convention do not expressly include the nationality as a connecting factor.⁴² In principle, in part of the general PIL theory, nationality is perceived as a connecting factor that, due to its inextricable connection with the state's sovereignty, indicates the private interest of an individual in *stability*, while habitual residence involves the person's interest in *integration*; both of these connecting factors also entail dilemmas when determining the predominance one interest over the other (Dutta 2015, 322). When it comes to the conventions' conflict-of-laws rules, which are derogated from the corresponding provisions of the 1982 PIL Act, the dominance of the habitual residence is in the service of preserving the *closest connection principle* in the Child Protection Convention.

In the matter of parental responsibility, the habitual residence of the child, as a connecting factor, is considered to be a categorical (*in abstracto*) embodiment of *the best interest of the child principle*, which the Child Protection Convention directly refers to in the Preamble.⁴³ Namely, the habitual residence (and the underlying expressed interest in integration) prevails in cases where no decision has been made on parental responsibility but where this issue is regulated *ex lege*, by agreement or by a unilateral legal act.⁴⁴ In these cases, the law of the country of the child's habitual residence is also applicable to the exercise of parental responsibility.⁴⁵ This concept is somewhat different from the concept provided in Serbian family law. Namely, according to the Child Protection Convention, the exercise of parental responsibility concerns the conditions under which the holder of parental responsibility exercises their rights and duties when undertaking specific actions pertaining to the child's person or property (Lagarde 1996, 581). This conflict-of-laws rule is equally valid when a (court) decision is made, although in such a case another principle comes to the fore in determining the applicable law – the principle of *lex fori in foro proprio* (Marjanović 2015, 243), which represents the point of intersection between the best interest of the child principle, the principle of parallelism of international jurisdiction

⁴² With the exception of the escape clause, which does not refer to *lex nationalis* but to the application of the law that corresponds to the protection of the best interest of a particular child in the particular case, Art. 15 para. 2 of the Child Protection Convention. In some cases, it may coincide with *lex nationalis*.

⁴³ Preamble to the Child Protection Convention reads: 'Confirming that the best interests of the child are to be a primary consideration...'

⁴⁴ Article 16 of the Children Protection Convention.

⁴⁵ Article 17 of the Children Protection Convention.

and applicable law, and the closest connection principle. Although it leads to the application of *lex fori* and is connected to the convention rules on international jurisdiction, this conflict-of-laws rule of the Child Protection Convention also rests on the principle of universal application.⁴⁶

Considering all the above, one can observe a significant weakening of the nationality principle application in parental responsibility relations. At the same time, the Child Protection Convention's conflict-of-laws rules could be interpreted in favour of the application of the principle of the child's habitual residence and the principle of *lex fori in foro proprio*. However, in the author's opinion (based on the inductive reasoning), these two principles emerge from the *best interest of the child* principle and the *closest connection principle* (both of them embodied in the child's habitual residence). Likewise, in author's opinion, even the principle of parallelism of international jurisdiction and applicable law (*lex fori in foro proprio*) here coincides with the closest connection principle and the best interest of the child. One can even conclude that all of abovementioned legal principles (best interest of the child, principle of parallelism and closest connection principle) are mutually complementary since they apply simultaneously in the Child Protection Convention.

The aforementioned principles stemming from the Child Protection Convention became an integral part of the second group of principles mentioned in Article 2 of the 1982 PIL Act – the principles of the legal order of the Republic of Serbia (regarding PIL). The principle of the best interest of the child is already part of this group of principles, as it was incorporated in both substantive and procedural law following the ratification of the Convention on the Rights of the Child (CRC).⁴⁷ However, Serbian PIL entails its direct application in the sphere of conflict of laws, on the basis of the Child Protection Convention. In this sense, the best interest of the child principle is put into effect through the application of the child's habitual residence, and by applying the closest connection principle, embodied in *lex fori in foro proprio*.

⁴⁶ The only exception to the universal application is the conflict norm from Article 15 para. 3 of the Convention, which applies only if the child moves from one contracting state to another and establishes a new habitual residence (Lagarde 1996, 583).

⁴⁷ Convention on the Rights of the Child, *Official Gazette of the SFRY – International agreements* 15/90 and *Official Gazette of the FRY – International agreement* 4/96 and 2/97.

The principle of parallelism does not distort the scope of application of the closest connection principle even when the Serbian court relies on the statutory rules on international jurisdiction. Namely, some of the Convention's rules on international jurisdiction apply in accordance with the reciprocity principle (i.e. Arts. 5, 8 and 9 of the Children Protection Convention). If the conditions for the application of the Convention's norms on international jurisdiction are not met, the corresponding norms on international jurisdiction in the 1982 PIL Act apply. They are formulated so that the (common) nationality of the parties stands side by side with the domicile of the defendant, while the presence of the (common) Serbian nationality and (common) domicile of the defendant and the child in Serbia entail the exclusive jurisdiction of Serbian courts.⁴⁸ Therefore, even the simultaneous application of the statutory rule on international jurisdiction and the Convention's conflict-of-laws rule (in order to exercise the principle of *lex fori in foro proprio*) could not result in maintaining the nationality principle as primary.

4.3. Principle of Protection of the Weaker Party and the Closest Connection Principle as the Principles of the Serbian Legal Order in Matters of Non-contractual Obligations and Maintenance Obligations

It is considered that the principle of protection of the weaker party is predominantly embodied in Article 28 of the 1982 PIL Act, regarding the law applicable to non-contractual liability for damage, as the principle *in favorem victimae* (Stanivuković, Živković 2023, 67; Varadi *et al.* 2022, 442; Pavić, Jovanović 2020, 444–445). Due to the impact of the Convention on the Law Applicable to Traffic Accidents and the Convention on the Law Applicable to Products Liability, the 'tacit' derogation of statutory rules influenced certain changes, while in the area of family relations this principle also comes to the fore on the basis of the Protocol.

The conflict-of-laws rules envisaged in the Traffic Accidents Convention and the Products Liability Convention primarily embody the principle of closest connection, while the principle of protection of the weaker party is almost completely marginalized. The application of *lex loci delicti commissi*, the law of the country of registration of the vehicle (which should coincide with the victim's habitual residence), the law of the country where the

⁴⁸ Article 66 of the 1982 PIL Act.

unregistered vehicle is habitually stationed, and the principle of assimilation in the matter of traffic accidents⁴⁹ are directly aimed at exercising the principle of proximity (Essén 1968, 16). Similarly, *lex loci damni* for products liability, and even the habitual residence of the directly injured party and the principal place of business of the responsible person are all directly aimed at exercising the closest connection principle as well (Dollinger 2000, 483). The habitual residence of the directly injured party is generally not an independent connecting factor but part of aligned connecting factors; the alignment of connecting factors brings tort closer to the applicable law. The principle of protection of the weaker party is directly expressed only in one case – through the principle of ubiquity (Reese 1972, 263).⁵⁰ Therefore, the application of the conflict-of-laws rules from these two Conventions (in terms of the non-contractual liability to which they are applied) partially derogates from the provision of Article 28 of the 1982 PIL Act. Just like in the parental responsibility case, the predominant application of the closest connection principle has thus become the principle of the Serbian legal order in these PIL matters.

Although family law matters are usually not considered through the principle of protection of the weaker party, the conflict-of-laws rules of the Protocol governing maintenance obligations are based on this principle in compliance with the closest connection principle. Namely, the connecting factors that are incorporated into the Protocol's conflict-of-laws rules on maintenance (and which completely abrogated the statutory conflict-of-laws rules) lead to the application of the law that is most closely related to the case. In that respect, the primary conflict-of-laws rule introduces the principle of protection of the weaker party predominantly through the habitual residence of the maintenance creditor, who is traditionally perceived as the weaker party.⁵¹ However, even the conflict-of-laws rules regarding the privileged creditors embody the same principle in conjunction with the closest connection principle (in the case of the reversed cascade order of the conflict-of-laws rules),⁵² since the application of the more favourable conflict-of-laws rules depends on the age of the creditor (Bonomi 2013, 33).

⁴⁹ Articles 4–6 of the Traffic Accidents Convention.

⁵⁰ Article 6 of the Products Liability Convention provides that the injured party may, under certain circumstances, choose to apply the law of the state where the damage occurred or the state of the principal place of business of the responsible person.

⁵¹ Article 3 of the Protocol.

⁵² Article 4 of the Protocol.

In the case of a special rule with respect to (ex-)spouses, the primary conflict-of-laws rule is not applicable if one of the parties objects and the law of another state, in particular the state of their last common habitual residence, has a closer connection with the marriage.⁵³ The dominance of the closest connection principle over the principle of protecting of the weaker party in the latter situation is evident since the escape clause is introduced due to the 'indiscriminate application of the rules inspired by *favor creditoris* is seen in certain States as being excessive' (Bonomi 2013, 41).

In terms of the maintenance obligations, the only exception from both principles is embodied in party autonomy. However, the choice of the applicable law is the most restricted in the case of designation of the law applicable for the purpose of a particular proceeding,⁵⁴ precisely because the creditor may be a minor whose special protection as the weaker party is greatly needed (Bonomi 2013, 51). On the other hand, party autonomy has a broader effect in cases where the proceeding is not yet instituted or about to be instituted.⁵⁵ The choice of applicable law is now aimed at securing the stability and predictability of the applicable law (Bonomi 2013, 55). Still, the party autonomy in this case is also restricted by the connectivity requirement, which could be perceived as the implementation of the closest connection principle.⁵⁶ Finally, party autonomy is not introduced in the Protocol in order to completely set aside the principle of protection of the weaker party. Hence, the court has a duty to assess whether the parties were fully informed and aware of the consequences of their choice. The chosen law does not apply where the application of that law would lead to manifestly unfair or unreasonable consequences for any of the parties.⁵⁷

⁵³ Article 5 of the Protocol.

⁵⁴ Pursuant to Article 7 of the Protocol, the parties can choose only *lex fori* as applicable law.

⁵⁵ Article 8 of the Protocol.

⁵⁶ Pursuant to Article 8 of the Protocol, the maintenance creditor and debtor may at any time designate one of the following laws as applicable to a maintenance obligation:

- a) the law of any State of which either party is a national at the time of the designation;
- b) the law of the State of the habitual residence of either party at the time of designation;
- c) the law designated by the parties as applicable, or the law in fact applied, to their property regime;
- d) the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.

⁵⁷ Article 8 para. 5 of the Protocol.

The principle of nationality⁵⁸ is completely marginalized in the Protocol. In this regard, the nationality as a connecting factor comes into consideration only in several situations: a) as the last resort for privileged creditors;⁵⁹ b) in a special rule on defence where it appears as a subordinated connecting factor (in addition to the habitual residence)⁶⁰ and within the connectivity requirement related to the choice of the applicable law.⁶¹ Moreover, the Protocol introduces the possibility for the contracting state to make a statement that it will apply the law of the relevant person's country of domicile instead of the law of the country of their nationality.⁶²

Finally, it is worth remembering that the Protocol's conflict-of-laws rules have completely set aside the corresponding rules of the 1982 PIL Act as the Protocol regulates the law applicable to all maintenance obligations whose legal ground is a family relationship (marriage, parent-child relationship, kinship, and affinity).⁶³ Consequently, the protection of the weaker party, in conjunction with the closest connection principle, is of primary consideration in the matter of maintenance obligations. In terms of our PIL, these principles became part of the principles of the Serbian legal order.

5. CONCLUSION

When looking at the bigger picture and analysing relevant Hague Conventions in the Serbian legal order, it should be born in mind that the Serbian Constitution endorses a *monistic approach* to international law which is apparent in the wording of its Article 16 para. 2 and Article 194 paras. 1 and 3 (Krstić 2015, 25; Đurović 2009, 342). The Constitution recognizes two sources of international law – generally accepted rules of international law and confirmed international treaties, which are an integral part of the legal order of the Republic of Serbia and are directly applicable,⁶⁴ giving additional arguments to the claim of a monistic approach. However, there

⁵⁸ With indirect exception of the escape clause, which does not refer to *lex nationalis* but to the application of the law that corresponds to the protection of the best interest of a particular child in the particular case, Art. 15 para. 2 of the Child Protection Convention. In some cases, it may coincide with *lex nationalis*.

⁵⁹ Article 4 para. 4 of the Protocol.

⁶⁰ Article 6 of the Protocol.

⁶¹ Article 8 para. 1(a) of the Protocol.

⁶² Article 9 of the Protocol.

⁶³ Article 1 of the Protocol.

⁶⁴ Article 16 para. 2 of the Constitution of the Republic of Serbia.

is terminological inconsistency as to the meaning and scope of the phrase '*opšteprihvaćena načela međunarodnog prava*' which could be translated to 'generally accepted rules of international law'. It is not sufficiently clear from the wording whether this phrase encompasses both general principles of law and international customary law as sources of international law, or just one of them.

When it comes to the hierarchy of legal norms itself, the Constitution does not contain a general formulation on the primacy of international law, but Article 194 stipulates the hierarchy of sources of law. It is expressly provided that the Constitution represents the highest legal act. Unfortunately, the hierarchical position of generally accepted rules of international law is unclear and the question arises as to whether their legal force is equal to the legal force of the Constitution itself, or lies directly below the Constitution on par with confirmed international treaties (Marković 2006, 37; Đurović 2009, 344).

If one accepts the first scenario, then both the 2006 Serbian Constitution and *generally accepted legal principles of international law* have the highest legal force. One would then presume that this position of generally accepted principles of international law would serve its gap-filling function well (Vázquez-Bermúdez 2022, 16–28). However, the part of the Constitution that refers to the judiciary prescribes that courts judge on the basis of the Constitution, laws and other general acts, when provided for by law, *generally accepted rules of international law* and confirmed international treaties.⁶⁵ Court decisions are based on the Constitution, the law, the ratified international agreements and the regulations adopted on the basis of the law; *generally accepted rules of international law* are clearly omitted. Therefore, according to the valid provisions of the Constitution, the generally accepted rules of international law are the source of law in the Republic of Serbia, they are directly applied, courts can judge based on them, but not rule referring to them. This inconsistency in the regulation of the relationship between internal and international law does not seem acceptable for the highest general legal acts of modern democratic states and undoubtedly causes confusion in the application of international law by domestic authorities (Novaković 2013, 225).⁶⁶

⁶⁵ Article 142 para. 2 of the Constitution of the Republic of Serbia.

⁶⁶ Serbian courts extremely rarely refer to international law in their judgments, even when it comes to the convention in the matter of human rights (Novaković 2013, 225).

Nevertheless, we have seen that the provisions of the ratified conventions of the Hague Conference on Private International Law, aimed at unifying the conflict-of-laws rules based on the principle of universal application, derogate from the corresponding conflict-of-laws rules of the 1982 PIL Act. The author refers to the derogation as tacit because the courts or competent administrative bodies (i.e. social care centres) usually do not expect the rules on the conflict of laws envisaged in the international treaty to be applied universally, but rather based on the reciprocity principle. Therefore, a clear intervention by the national legislator regarding the derogation of the relevant statutory rules in the 1982 PIL Act would be more than welcome. At the same time, it would make the 1982 PIL Act more ‘user-friendly’. It could be done easily by introducing new statutory provisions that would refer to the application of the relevant convention instead of statutory conflict-of-laws rules. Likewise, it could be argued that the derogation of statutory rules could be achieved based on the hierarchy rule between the national legislation and international treaties, as envisaged in the Serbian Constitution. Yet, it is better to include a provision in the 1982 PIL Act, which would give the clear instruction to the court and administrative bodies that the relevant conflict-of-laws rules stemming from the analysed Hague conventions universally apply to all the states (*erga omnes*).

It should be also emphasized that the Hague conventions in family matters ratified by Serbia (the Child Protection Convention and the Protocol) are, at the same time, a part of *acquis communautaire*. Both of these *acquis*, including the legal principles that can be derived from them (by inductive reasoning), became part of second group of legal principles envisaged in Article 2 of the 1982 PIL Act – the principles of the Serbian legal order.⁶⁷ In that respect, Serbia is obliged by the Stabilization and Association Agreement with the EU (Stabilisation and Association Agreement)⁶⁸ to develop its international cooperation, including through aligning its laws more closely with those of

⁶⁷ It should be noted that the general legal principles of the EU could be understood to be in conjunction with Article 6(3) TEU. This provision holds that ‘[f]undamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States’ constitute the general principles of EU law. Concerning non-contractual obligations, Article 340(2) TFEU comes to the fore referring to the ‘the general principles common to the laws of the Member States’. For more details, see Neuvonen, Ziegler 2022, 15.

⁶⁸ Sporazum o stabilizaciji i pridruživanju između Evropskih zajednica i njihovih država članica, sa jedne strane, i Republike Srbije, sa druge strane, *Official Gazette of the RS – International Treaties*, 83/2008 [Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, *OJ L* 278, 18 October 2013].

the EU. More precisely, Serbia has agreed to ensure that its existing laws and future legislation will gradually be made compatible with the EU *acquis* and that such laws will be properly implemented and enforced.⁶⁹ The general principles of the EU law could also emerge from international legal order or within specialised international or transnational legal orders. In general international law, general principles of law may serve, among other functions, as gap-fillers; the same goes for the general legal principles of the EU, although with some specific features (Neuvonen, Ziegler 2022, 18–19).

However, even an EU-sceptic would come to the same conclusion on the derogatory effects of the legal principles of these two *acquis* Hague conventions on the analyzed legal principles of the 1982 PIL Act since the ratified international treaties make up part of the Serbian legal order, in which they apply directly pursuant to the clear provision of the Constitution. The broad scope of these two Hague Conventions *ratione materiae*, in conjunction with the principle of universal application of their conflict-of-laws rules, have changed the landscape of the 1982 PIL Act. Likewise, it should be emphasized that the Products Liability Convention and Traffic Accidents Convention, ratified by the former Yugoslavia, are not part of *acquis*, but they are still part of Serbian legal order with the same derogatory effects (although only partially due to the broad scope of Article 28 of the 1982 PIL Act). Consequently, these international sources of Serbian PIL generate a different perception of the principles that serve to fill legal gaps, given that all of the analysed Hague Conventions principles are incorporated into the principles of Serbia's legal order.⁷⁰ It should be also be born in mind that these principles do not contradict the nationality principle which is still of primary consideration in status and succession relations as a principle of the 1982 PIL Act. In family matters, the relevant Hague Conventions have simply derogated the statutory conflict-of-laws rules, thus introducing the best interest of the child principle (parental responsibility matters) and the principle of protection of the weaker party (maintenance obligation matters), both in conjunction with the closest connection principle, instead of nationality principle. In non-contractual matters, the relevant Hague Conventions have introduced the closest connection principle.

The best interest of the child is expressed in the Child Protection Convention, through the primary importance of the principle of territorial approach (through habitual residence), as well as through the principle of

⁶⁹ Article 72 para. 1 of the Stabilisation and Association Agreement.

⁷⁰ If they were not ratified, one could argue that they could be taken into account as a part of private international law principles (third group of principles in Art. 2 of the 1982 PIL Act).

parallelism (through the principle of *lex fori in foro proprio*). By inductive reasoning, both principles lead to the implementation of the closest connection principle. Moreover, the principle of the best interest of the child can be interpreted as an *echo* of the protection of the weaker party principle, delicately tuned for the field of child protection, since children are considered to be a weaker social group (Fuentes, Domiguez 2015, 89). Although the exact legal nature of the best interest of the child in EU law remains uncertain, it is a general principle of the EU law, deriving from the Treaty of European Union⁷¹ and the EU Charter of Fundamental Rights⁷² (Goldner Lang 2022, 563–565). In the latter case, it is acknowledged that this EU principle originates from the international law (CRC) and has, among other features, a gap filling function in the EU law (Goldner Lang 2022, 567).⁷³ Likewise, the interpretation of Protocol's conflict-of-laws rules on maintenance obligations speaks in favour of the application of the principle of protection of the weaker party and the closest connection principle as a gap filling method (in the EU PIL as well).⁷⁴

The interpretation of the remaining statutory conflict-of-laws rules, which determine the law applicable to family relations *stricto sensu*, 'spoils' the image of the predominance of the nationality principle (as a principle of the 1982 PIL Act) since the domicile principle cannot be completely ignored. In this respect, it would be better to give preference to the principle of closest connection (embodied in the Kegel's ladder, incorporated in the remaining statutory provisions) than to opt for one (nationality) or the other connecting factor (domicile) since they are almost on equal footing in these cases.

⁷¹ Article 6(3) TEU.

⁷² Article 24(2) of the EU Charter (Charter of Fundamental Rights of the European Union, *OJ C* 326, 26 October 2012).

⁷³ The best interest of the child is also heavily embodied in the EU PIL, more precisely in the Brussels II ter Regulation in matter of parental responsibility (Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), *OJ L* 178, 2 July 2019). It is followed by the closest connection principle as the specific principle of PIL. See especially recitals 19 and 20 of the Brussels II ter. On the relation of the Brussels II ter with the Child Protection Convention see Article 97 of the Brussels II ter.

⁷⁴ The weaker party protection principle is embodied in the EU Maintenance Regulation (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, *OJ L* 7, 10 January 2009). See especially recital 19 of the Maintenance Regulation. In addition, the Maintenance Regulation expressly refers in Article 15 to the application of the Protocol in terms of applicable law.

In the matter of traffic accidents and products liability, the principle of the closest connection has been reinstated as the principle of the Serbian legal order in terms of PIL. In that context, it suppresses, to a certain extent, the principle of protection of the weaker party. However, these cases are outnumbered by the other types of torts/quasi-torts to which Article 28 of the 1982 PIL Act still applies. Therefore, the principle *in favorem victimae* still remains the dominant principle of the 1982 PIL Act for filling legal gaps in the area of non-contractual liability for damage.

Finally, the Serbian courts and administrative bodies should focus on finding the best possible solution for filling the legal gaps based on Article 2 of the 1982 PIL Act, as a main goal, regardless of which group of principles they opt for from the framework of this trio of legal principles – the 1982 PIL Act principles, principles of Serbian legal order or PIL principles (Dika, Knežević, Stojanović 1991, 13). The search for the best approach in filling legal gaps also does not exclude the possibility of testing the possible solution from the perspective of several legal principles, as long as they are mutually complementary. We have already seen that this is achievable on the examples of the closest connection principle in conjunction with the best interest of the child or the weaker party protection. Feasible matching of different legal principles (stemming from the 1982 PIL Act, from the Serbian legal order, or from PIL) calls for *in concreto* approach by the competent authorities.

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As suggested by Craswell (2003, 254 and n. 11) – *where note 11 is **not** on page 254*.

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(see, for example, Corcoran 2004; Mullen 2000)

(see especially Demsetz 1967)

(Scott and Coustalin 1995)

One author

T(ext): Following Ely (1980, page), we argue that

R(eference list): Ely, John Hart. 1980. *Democracy and Distrust: A Theory of Judicial Review*. Cambridge, Mass.: Harvard University Press.

Two authors

T: As demonstrated elsewhere (Daniels, Martin 1995, page),

R: Daniels, Stephen, Joanne Martin. 1995. *Civil Injuries and the Politics of Reform*. Evanston, Ill.: Northwestern University Press.

Three authors

T: As suggested by Cecil, Lind, Bermant (1987, page),

R: Cecil, Joe S., E. Allan Lind, Gordon Bermant. 1987. *Jury Service in Lengthy Civil Trials*. Washington, D.C.: Federal Judicial Center.

More than three authors

T: Following the research design in Turner *et al.* (2002, page),

R: Turner, Charles F., Susan M. Rogers, Heather G. Miller, William C. Miller, James N. Gribble, James R. Chromy, Peter A. Leone, Phillip C. Cooley, Thomas C. Quinn, Jonathan M. Zenilman. 2002. Untreated Gonococcal and Chlamydial Infection in a Probability Sample of Adults. *Journal of the American Medical Association* 287: 726–733.

Institutional author

T: (U.S. Department of Justice 1992, page)

R: U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. 1992. *Civil Justice Survey of State Courts*. Washington, D.C.: U.S. Government Printing Office.

No author

T: (*Journal of the Assembly* 1822, page).

R: *Journal of the Assembly of the State of New York at Their Forty-Fifth Session, Begun and Held at the Capitol, in the City of Albany, the First Day of January, 1822*. 1822. Albany: Cantine & Leake.

More than one work

Clermont, Eisenberg (1992, page; 1998, page)

More than one work in a year

T: (White 1991a, page)

R: White, James A. 1991a. Shareholder-Rights Movement Sways a Number of Big Companies. *Wall Street Journal*, April 4.

Multiple authors and works

(Grogger 1991, page; Witte 1980, page; Levitt 1997, page)

Chapter in a book

T: Holmes (1988 page) argues that

R: Holmes, Stephen. 1988. Precommitment and the Paradox of Democracy. 195–240 in *Constitutionalism and Democracy*, edited by John Elster and Rune Slagstad. Cambridge: Cambridge University Press.

Chapter in a multivolume work

T: Schwartz, Sykes (1998) differ from this view

R: Schwartz, Warren F., Alan O. Sykes. 1998. Most-Favoured-Nation Obligations in International Trade. 660–64 in vol. 2 of *The New Palgrave Dictionary of Economics and the Law*, edited by Peter Newman. London: MacMillan.

Edition

T: Using the method of Greene (1997), we constructed a model to show

R: Greene, William H. 1997. *Econometric Analysis*. 3d ed. Upper Saddle River, N.J.: Prentice Hall.

Reprint

T: (Angell, Ames [1832] 1972, 24)

R: Angell, Joseph Kinniaut, Samuel Ames. [1832] 1972. *A Treatise on the Law of Private Corporations Aggregate*. Reprint, New York: Arno Press.

Journal article

In the list of references, journal articles should be cited in the following manner: surname and name of the author, number and year of the issue, title of the article, title of the journal, volume number, pages.

T: The model used in Levine *et al.* (1999, page)

R: Levine, Phillip B., Douglas Staiger, Thomas J. Kane, David J. Zimmerman. 2/1999. *Roe v. Wade* and American Fertility. *American Journal of Public Health* 89: 199–203.

T: According to Podlipnik (2018, page)

R: Podlipnik, Jernej. 4/2018. The Legal Nature of the Slovenian Special Tax on Undeclared Income. *Annals of the Faculty of Law in Belgrade* 66: 103–113.

Entire issue of a journal

T: The fairness or efficiency benefits of bad-faith laws are discussed at length in *Texas Law Review* (1994)

R: *Texas Law Review*. 1994. *Symposium: Law of Bad Faith in Contrast and Insurance*, special issue. 72: 1203–1702.

Commentary

T: Smith (1983, page) argues that

R: Smith, John. 1983. Article 175. Unjust Enrichment. 195–240 in *Commentary to the Law on Obligations*, edited by Jane Foster. Cambridge: Cambridge University Press.

T: Schmalenbach (2018, page) argues that

R: Schmalenbach, Kirsten. 2018. Article 2. Use of Terms. 29–55 in *Vienna Convention on the Law of Treaties: A Commentary*, edited by Oliver Dörr, Kirsten Schmalenbach. Berlin: Springer-Verlag GmbH Germany.

Magazine or newspaper article with no author

T: had appeared in *Newsweek* (2000).

R: *Newsweek*. 2000. MP3.com Gets Ripped. 18 September.

Magazine or newspaper article with author(s)

T: (Mathews, DeBaise 2000)

R: Mathews, Anna Wilde, Colleen DeBaise. 2000. MP3.com Deal Ends Lawsuit on Copyrights. *Wall Street Journal*, 11 November.

Unpublished manuscript

T: (Daughety, Reinganum 2002)

R: Daughety, Andrew F., and Jennifer F. Reinganum. 2002. Exploiting Future Settlements: A Signaling Model of Most-Favored-Nation Clauses in Settlement Bargaining. Unpublished manuscript. Vanderbilt University, Department of Economics, August.

Working paper

T: (Eisenberg, Wells 2002)

R: Eisenberg, Theodore, Martin T. Wells. 2002. Trial Outcomes and Demographics: Is There a Bronx Effect? Working paper. Cornell University Law School, Ithaca, NY.

Numbered working paper

T: (Glaeser, Sacerdote 2000)

R: Glaeser, Edward L., Bruce Sacerdote. 2000. The Determinants of Punishment: Deterrence, Incapacitation and Vengeance. Working Paper No. 7676. National Bureau of Economic Research, Cambridge, Mass.

Personal correspondence/communication

T: as asserted by Welch (1998)

R: Welch, Thomas. 1998. Letter to author, 15 January.

Stable URL

T: According to the Intellectual Property Office (2018),

R: R.S. Intellectual Property Office. 2018. Annual Report for 2017. <http://www.zis.gov.rs/about-us/annual-report.106.html> (last visited 28 February, 2019).

In press

T: (Spier 2003, page)

R: Spier, Kathryn E. 2003. The Use of Most-Favored-Nations Clauses in Settlement of Litigation. *RAND Journal of Economics*, vol. 34, in press.

Forthcoming

T: One study (Joyce, forthcoming) includes the District of Columbia

R: Joyce, Ted. Forthcoming. Did Legalized Abortion Lower Crime? *Journal of Human Resources*.

Cases

F(ootnote): CJEU, case C-20/12, Giersch and Others, ECLI:EU:C:2013:411, para. 16; Opinion of AG Mengozzi to CJEU, case C-20/12, Giersch and Others, ECLI:EU:C:2013:411, para. 16; Supreme Court of Serbia, Rev. 1354/06, 6. September 2006., Paragraf Lex; Supreme Court of Serbia, Rev. 2331/96, 3. July 1996., *Bulletin of the Supreme Court of Serbia* 4/96, 27.

T: Use abbreviated reference for in-text citations of cases (CJEU C-20/12, or Giersch and Others; Opinion of AG Mengozzi; VSS Rev. 1354/06) consistently throughout the paper.

R: Do not include cases in the reference list.

Legislation

F: Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013, Art. 2 (3); Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast), OJ L 180 of 29/6/2013, Art. 6 (3); Zakonik o krivičnom postupku [Code of Criminal Procedure], *Official Gazette of the RS*, 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, and 55/2014, Art. 2, para. 1, it. 3.

T: Use abbreviated reference for in-text citations of pieces of legislation (Regulation No. 1052/2013; Directive 2013/32; ZKP, or ZKP of Serbia) consistently throughout the paper.

R: Do not include legislation in the reference list.

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