

THE INFLUENCES OF GLOBALISATION ON NATION STATES AND LAW

Abstract

This paper, primarily, discusses the concept of globalization. It shows general characteristics that make globalization a unique and omnipresent phenomenon. Furthermore, it investigates the influence of globalization on nation states, with particular emphasis on developing countries. Special attention was given to the question of the influence of the American legal system on European law within the process of globalization. The paper presents different stances of American authors concerning this subject. In addition, the paper presents different models of achieving globalization in the field of law. This paper demonstrates that globalization leads to reduced sovereignty of the state, legal deregulation, the weakening of states' legal jurisdiction in the field of control of business operations and the inconsistencies in the implementation of human rights.

Key words: *globalization, law, effect of globalization on law, nation state.*

1. THE CONCEPT OF GLOBALIZATION

It is not simple to define the concept of globalization considering the variety of its manifestations, its multidimensionality and omnipresence. Depending on the focus of a specific analysis and the point of view, certain characteristics can be inferred and identified. These characteristics can be valid, to a greater or lesser extent, but even so they represent only a part of the picture, a piece of the mosaic of this all-pervading modern phenomenon.

Some authors equate globalization with the internationalization of society and economy, thus referring to it as a „universalization of global culture“, a “westernization” of societies based on European and American models or as a „deterritorialization of geography and social space”.¹ In the widest sense, globalization represents the expanding, deepening and

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¹ J. Ku, J. Yoof, *Globalization and Sovereignty*, Berkeley Journal of International Law, 2013, vol. 31, No. 1, 212.

acceleration of global interdependence in all aspects of modern society, from culture to criminality, from finances to spirituality (Held). In a more narrow sense of the word, globalization represents the growth of transnational companies and the expansion of the global market (Soroš).² There are authors who believe that the basic indicator of globalization is represented by striving for profit maximization. The dictatorship of profit, as stated by these authors, is the main indicator and initiator of globalization.³ One could make an attempt to prove a hypothesis that globalization represents a form of contemporary neocolonialism and that it, primarily, favors the big and the mighty.

It is noteworthy to mention the understanding that considers globalization a global trend within which interactions among people are intensified and the market is integrated. Its results are not coincidental, but driven by clearly recognizable political, economical and technological changes that remove barriers in order to simplify contacts across national borders. The process is not completely new, but it was intensified during the nineties of the twentieth century as a result of three significant factors,⁴ which will be covered in this paper.

2. GENERAL CHARACTERISTICS OF GLOBALIZATION

There is an interdependence among the three mentioned macro-processes: economic liberalization, political liberalization and new information and communication technologies, and only when unified all three processes achieve synergy and universal effect, which in turn combined with a multitude of additional and accompanying processes and consequences forms the existing picture of globalization.

Economic liberalization is a process that leads to the opening of the market for the free flow of goods, capital, money, and business ideas. It reduces the significance of national borders and barriers in the fields of trade, production and investments. Free flow of capital and profit maximization are basic values spurred by economic liberalization. The literature indicates that

² Cited from: M. Stojadinović, *Političko nasilje i globalizacija - Izazovi razvoja demokratije, Bezbednost*, 2015, 2, 94.

³ V. Forrester, *Die Diktatur des Profits*, Deutscher Taschenbuch Verlag, München, 2002.

⁴ S. Fukuda-Parr, *New Threats to Human Security in the Era of Globalization*, *Journal of Human Development*, Vol. 4, No. 2, July 2003, 168.

the process of economic liberalization is strongly supported by the International Monetary Fund and the World Bank.⁵

Political liberalization represents the support (additional impulse) of liberalization in the field of world trade, giving it strong support and backing it with political means. Therefore, political liberalization is the other side of the coin, and it operates in the function of economic liberalization and maximization of profit with a number of other accompanying phenomena. Roman Terrill suggests that globalization forces states to adopt economic and political reforms and to meet the demands of dominant players on the world's financial market, placing explicit emphasis on the USA.⁶

It would not be possible for the two mentioned processes (economic and political liberalization) to have the existing strength and influence in the world without the third process, which is reflected in new information and communication technologies. The appearance of the Internet and fast and inexpensive means of communication have increased the trade of goods and money transfers in real time and significantly contributed to the economic globalization, but also to the strengthening of scientific cooperation, exchange of ideas, culture and value system patterns. The literature indicates that economic liberalization, modern communication technologies and money transfer lead to „the compression of space and time and the depletion of interstate borders“ (Giddens).⁷

Certain authors introduce the interesting hypothesis that the heart of globalization lies in the forming of the free world market, the appearance of non-state entities, out-of-state entities (economic and political) and entities that are above state level, and their relationship with nation states. Those entities that are out of state and above the state level (transnational economic companies, international financial institutions, organizations and associations that are above the state) become significant actors in the economic and political sense. Those entities overcome state borders (they are not limited by them) and have an ex-territorial and global orientation which results in capital, technology and investments (easily) crossing interstate borders. This process is defined in various ways: as globalization, transnationalization, postnationalization or denationalization of capital.⁸

⁵ *Ibid.*

⁶ R. Terrill, *What Does "Globalization" Mean?* Transnational Law & Contemporary Problems, 1999, Vol. 9, 224.

⁷ Cited from: S. Fukuda-Parr, *op.cit.*, 170.

⁸ L. Cao, *The Transnational and Sub-National in Global Crimes*, Berkeley Journal of International Law, 2004, Vol. 22, issue 1, 59-60.

3. THE INFLUENCE OF GLOBALIZATION ON NATION STATES

In the globalization process, as in economic and political liberalization, developing countries willingly participate through financial deregulation of the market, that is, its opening for foreign capital and goods, even if it is against their national interests. Examples given in the literature are Mexico, Argentina and Thailand. Apart from opening the market and business opportunities for the citizens of these countries, these changes have also exposed the national economies to fierce competition from the global market, which leads to social insecurity and safety issues.⁹ The Government of Serbia had done the same thing when it applied a unilateral trade agreement with the EU and liberalized import, which had a negative effect on national economy.¹⁰

Globalization leads to the weakening of state borders, to the reduction of protective national trade (bureaucratic) barriers (customs, contingents for the import and export, import quota, etc.),¹¹ whose role was to preserve domestic production and the national market. The concept of (protected) national markets is fading away, while foreign business entities appear on national markets holding the same rights as domestic ones.

Changes caused by globalization to the nation state, on a regional and local level and in the lives of ordinary (average) people are numerous and multifold. Considering the fact that globalization is a global phenomenon, it does not stop at economic and political liberalism and the opening towards the world market. It entails imposing, that is, acceptance and adoption of cultural patterns and value systems coming from abroad (fashion, music, attitudes on sexuality, marriage and family, minorities, etc). A significant role in this process is played by the Internet, the film industry, television, the political aspects of globalization as well as non-governmental organizations financed, primarily by foreign countries, etc. Globalization means a free market of ideas and values. Globalization and the import of foreign capital that has, to say the least, equal rights as national capital (sometimes even more rights), includes purchasing national media by foreign companies,

⁹ I. Warde, *The War on Terror, Crime and the Shadow Economy in the MENA Countries*, *Mediterranean Politics*, Vol. 12, No. 2, July 2007, 169.

¹⁰ Sporazum o stabilizaciji i pridruživanju i prelazni trgovinski sporazum. See <http://www.pks.rs/SADRZAJ/Files/CMIP/Brosura-SSPiPrelaznitrgovinskisporazum.pdf> dostupan 14.6.2016.

¹¹ R. Terrill, *op.cit.*, 218.

which enables them to have a direct influence on people's views and attitudes. Furthermore, when describing the influence of globalization on cultural values of people, the term „cultural hegemony” is used in the sense of spreading and domination of ideas, tastes, styles, which are present in other parts of the world, especially in the USA.¹²

It is considered that one of the consequences of globalization is the reduced sovereignty of states in the typical sense of the word, as it was understood in the nineteenth or twentieth century (as the absolute monopoly in the exercise of power and the monopoly in nation state's use of force on its territory). It is mentioned that globalization causes the erosion of nation state, provoking questions about the understanding of democracy, sovereignty and participation. Consequently, the terms „internationalization” and „transnationalization” on nation state level (from the aspect of „contemporary interpretation” by certain authors) mean bilateral or multilateral „cooperative activities of national actors”, so national quality is not necessarily lost.¹³

The consequences of globalization are expressed on nation state level as a reduction of sovereignty, deregulation, that is, weakened influence of the state (government) in certain areas which were traditionally in its domain (capital flow, national currency rate, interest rates, foreign investments, earnings). To describe this situation foreign literature uses the terms „internationalization”, „transnationalization” of nation states, i.e. „postnationalization”. Sometimes, it even uses the term „denationalization” of nation states.¹⁴

Negative consequences of globalization reflected on nation state level are also the bankruptcy of companies and entire industrial branches that are unable to endure international competition on the (open) national market, and consequently, lead to the increase of unemployment, the increase of social tensions, social stratification, disappearing of the middle class, etc.

4. THE INFLUENCE OF GLOBALIZATION ON THE EXPANSION OF CRIMINALITY

The collapse of unprofitable industries, which were unable to endure international competition, leads to the increase of poverty in the world, social tensions and a dramatic rise in the unemployment rate. One of the negative

¹² *Ibid.*, 217.

¹³ L. Cao, *op.cit.*, 59.

¹⁴ *Ibid.*

consequences of globalization is the increase of social differences, the emergence of a small number of the extremely rich and a big number of the extremely poor. This reflected on the increase of criminality on local community level, primarily in developing countries. The inflow of refugees towards developed countries also caused the increase of the criminality rate in developed countries, which were previously considered safe.

The intensification of international trade facilitated international communication including the expansion of the Internet, cheaper international passenger transport; simplified bank payments and money transfers have had a strong impact on the spreading of organized crime (illegal drug trade, human trafficking, etc). The strengthening of international trade and multinational companies has significantly contributed to the rise of corruption to an international level. Intensified international trade cooperation and facilitated international financial transfers have opened up new possibilities for legalizing „dirty money” acquired through organized crime or corruption and in turn its integration (or return) into economy, especially in developing countries,¹⁵ which is also evident in Balkan countries.¹⁶ With the aim to control „globalized corruption”, appropriate conventions were brought in the United Nations and within Europe in order to provide a standardized, that is, legally „globalized” answer to the universal problem.¹⁷

Furthermore, globalization has actualized the danger of international terrorism, which can, to a certain extent, be considered a consequence of the increased imperialistic policies of rich states. The intensification of international terrorism, especially Muslim fundamentalism, has had a recurrent impact on certain basic principles of globalization.

¹⁵ For example: B. Nurgaliyev, B. Simonović, *Police Corruption in Kazakhstan: The Preliminary Results of the Study*, Review of European studies, 2015, vol. 7, no 3, 140-148.

¹⁶ B. Simonović, G. Bošković, *Symbiosis of Politics, the Shadow Economy, Corruption, and Organized Crime in the Territory of the Western Balkans: the Case of the Republic of Serbia*, in: *Corruption, fraud, organized crime, and the shadow economy* (eds M. Edelebacher, P. Kartcoski, B. Dobovšek), (Advances in police theory and practice). Boca Raton, FL: CRC Press, 2016, 111-123.

¹⁷ B. Simonović, *Suzbijanje korupcije - standardi Ujedinjenih nacija i Evropske unije i zakonodavstvo Srbije*, u: *Krivično zakonodavstvo Srbije i standardi Evropske unije* (ur. S. Bejatović), Kragujevac: Pravni fakultet, Institut za pravne i društvene nauke, 2011, 95-123; C. Roelofse, B. Simonović, Ph. Potgieter, *Comparative Study of Corruption and Government Efforts to Combat it Across Borders: the case For South Africa and Serbia*, *Internal Security*, 2014, vol. 6, issue 2, 7-28.

Ward mentions that globalization has led to the appearance of a new term that is marked as „market fundamentalism”. Unhindered trade represents a dominant structural principle of the global political economy. This author suggests that this philosophy was dominant in the period from The Fall of Berlin Wall until the terrorist attack in New York of September 11, 2001, after which the questions of money laundering and the control of financing terrorism arose.¹⁸ After the mentioned terrorist attack, discussions about the need of controlling money flow on the world market in order to prevent the financing of terrorism were intensified. Fifteen years after the New York attack this is still an open topic and has influence on globalization and money flow control on the global financial market.

5. DOES GLOBALIZATION INCLUDE THE INFLUENCE OF AMERICAN LAW ON EUROPEAN LAW?

Viewed from a historical aspect, the law has always been adjusted to go in line with the strongest political and economic influences. It has always been under the influence of powerful countries and it has followed the leading ideas of imperialistic forces. The shaping of the law was not influenced by the strength of the logic of the legal arguments and the interpretation of the law, but the strength of the sword and the political influences. Therefore, „globalizations” in accordance with the given historical, social and technological possibilities, have always influenced the law of nation states. Roman law set the foundations for the development of the law on our continent precisely owing to the strength and power of the Roman Empire and its rule over Europe. Strong European countries such as Germany, the Austro-Hungarian Empire and France had definitely shaped the law of the nineteenth and twentieth century in the European countries, including the Balkans. When the political influence of the Soviet Union started to gain momentum on this territory, the law of the Balkans changed accordingly. On the other hand, the imperialistic force and influence of Great Britain have left a lasting impression on the legal system in North America, Australia and all other countries that were under its colonial influence.

It is believed that, in recent legal history, American law influenced European law within the globalization process. In his paper covering this topic, the American jurist Wolfgang Wiegand uses the term „reception” of American law in Europe, emphasizing the analogy with the process of reception, i.e. the „spreading of Roman law as *ius commune* on the territory

¹⁸ I. Warde, *op.cit.*, 233.

of legal systems of continental Europe in the middle ages".¹⁹ The author is of the opinion that the processes of Americanization of Europe can be discerned from the end of World War II, mostly in the countries of Western Europe, and were contributed to largely by the expansion of the English language, which got the status of a second language in many countries. Apart from that, he emphasizes the influence of American universities, where many jurists were educated who later on had great influence in their home countries, which lead to the reception of American law. A political and economic domination of the USA in Europe after World War II is mentioned by this author as an additional factor.²⁰ Apart from that, other contributors to the Americanization of European law were new business concepts transferred to Europe from the USA (e.g. leasing, factoring, franchising) as well as multinational companies.²¹ In the elaboration of his idea this author writes about „the reception of American law in Europe“, the „legal hegemony of the USA“, and the „legal imperialism of the USA“. According to him, the reception is manifested in both the adoption of practical legal procedures and in the integration of basic legal concepts.²²

Other American jurists also accept the idea of the convergence of European law towards the American legal model, that is to say, that the American legal style is spread on other countries of the world as a form of a globalization process in the field of law. Unlike mentioned above, these authors see other reasons for the merging, assimilation of the legal systems with the American model such as economic liberalization and political fragmentation that disrupted traditional approaches to legal regulation and as such generated functional pressures and political incentives, thus directing national law towards American legal model.²³

Kagan, one of the most significant American authors, who has written several papers regarding this question, does not agree with the opinion that, in the globalization process, there is a significant influence of Anglo-Saxon and American law on nation state law of European countries. His arguments are that European legal culture and the political organization of European nation states generate processes that hinder their convergence with the

¹⁹ W. Wiegand, *The Reception of American Law in Europe*, *The American Journal of Comparative Law*, Vol. 39, No. 2 (1991), 230.

²⁰ *Ibid.*, 235.

²¹ *Ibid.*

²² *Ibid.*, 240.

²³ R. Kelemen, E. C. Sibbitt, *The Globalization of American Law*, *International Organization*, Vol. 58, No. 1 (Winter, 2004), 103-104.

American concept of law. With this aim, he elaborates the topic further, stating six basic reasons why this claim is not valid. According to Kagan, global competition and neoliberalism demand similar legal solutions. The fact is that similar conditions appear on the market of interdependent economies and they demand similar legal solutions, which is why this context can be viewed as convergence between American and European law (legal convergence). Therefore, according to Kagan, existing similar conditions are caused by similar global processes and lead to similar legal solutions, or acceptance of those legal solutions, which have proven to be effective in solving the same problem in other legal systems. On the other hand, the difference between the American and the European approach to law will persist for many decades on.²⁴

Bermann also disagrees with the idea of an Americanization of European law and starts from the premise that the cultural differences are so big that one cannot speak of a transfer of law. On the other hand, in both parts of the world, there are liberal democratic models based on the rule of law, which makes the systems similar in some aspects, so transfer of certain legal solutions is possible. Additionally, legal solutions suggested through international organizations, whose members include both the USA and Europe, open legal dialogue and exert influence on the adoption of legal solutions in both America and Europe, which also opens the question of their convergence. For instance, there are business fields as well as security issues (corporate business, bank operation, control of serious crimes and terrorism, etc.) that require a similar or exactly the same legal regulation.²⁵

On the other hand and at the same time, American and English authors indicate that Anglo-Saxon law has gone through (significant) changes in the globalization process and that under the influence of European law, first of all, EU law, the countries with a Anglo-Saxon legal system were introduced with elements of European continental law. For example, Sir Williams writes about the Europeanization of the Common Law system and the national

²⁴ R. Kagan, *Globalization and legal change: The "Americanization" of European law?*, *Regulation & Governance* (2007) 1, 99-120.

²⁵ G. Bermann, *Americanization and Europeanization of Law: Are there Cultural Aspects?* Source web address: <http://www.lawschool.cornell.edu/international/conferences/ASCL-2007-Annual-Meeting/upload/CornellConferenceBermann.doc>. Paper available on 10. 6. 2016.

legal system of Great Britain since this country joined the EU and adopted the European Convention on Human Rights.²⁶

We consider that it is valid to discuss the process of an Americanization of European law, that is, the law of European countries. Over the last two decades under the influence of Anglo-Saxon law, significant changes were introduced to European law, the Balkan region and Serbian law as well. Complete institutes were imported from the Common Law system that were previously unknown in European continental law and practice. For example, the criminal procedural law has undergone dramatic changes. Court investigation as a typical European model was abandoned and prosecution investigation started to be applied²⁷, the plea bargaining was implemented²⁸, the institute of cross-examination was introduced, the principle of truth was abandoned²⁹ etc. Over the last twenty years, the foundations and the basic principles of this branch of law in Serbia were changed in order to accept Anglo-Saxon legal solutions.

Here we must start a discussion with American jurist Kagan. Kagan criticizes the author's premises that speak of the Americanization of European law. He denies the existence of political pressure on Europe, or certain countries within it, to accept American legal institutes. He states that the basis of the globalization of law is market liberalization and adjusting of the states to given economic realities.³⁰ Attempting to prove his hypothesis, in the part dealing with criminal procedure, he states that European law has certain institutes that are similar to American institutes. However, he also suggests that they are essentially different from American models, so we

²⁶ D. Williams, *Courts and Globalization*, Indiana Journal of Global Legal Studies, 2004, Volume 11, Issue 1, 65.

²⁷ B. Simonović, M. Šikman, *Neka iskustva u realizaciji tužilačkog koncepta istrage u Republici Srpskoj*, Pravni život, 10/2009, 453-465.

²⁸ B. Simonović, V. Turanjanin, *Sporazum o priznanju krivičnog dela i problem neistinitog priznanja*, Pravni život, 10/2013, 17-31; B. Simonović, V. Turanjanin, *Sporazum o priznanju krivice i problemi dokazivanja*, u: *Kriminalistički i krivično procesni aspekti dokaza i dokazivanja: zbornik radova* (ur. M. Matijević), Banja Luka: Internacionalna asocijacija kriminalista, 2013, 17-31.

²⁹ B. Simonović, *Istina, izvesnost i Zakonik o krivičnom postupku Srbije iz 2011. godine*, Pravni život, 9/2012, 801-814. B. Simonović, *Istina i Zakonik o krivičnom postupku Srbije*, u: *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije* (ur. S. Đorđević), Knj. 3. Kragujevac: Pravni fakultet Univerziteta, Institut za pravne i društvene nauke, 2015, 187-199.

³⁰ R. A. Kagan, *op.cit.*, 100.

cannot speak of direct reception of American institutes. As an example to confirm his hypothesis he mentions the plea bargaining.³¹

When it comes to Serbia and Balkan countries, it cannot be denied that there is some political pressure to adopt legal solutions typical for American law, which have fundamentally changed legal concepts in terms of certain legal solutions in the countries of the region. In the work groups for the drafting of the laws, (when there was political interest) American citizens, legal experts were very important and resourceful members of the committees, which with the help of political influence worked on the adoption of certain Anglo-Saxon solutions. An undisputable example is the adoption of the Law on Criminal Procedure of The Republic of Serbia. Kagan states that certain solutions adopted from American law are significantly different in Europe (some are fundamentally different) from the American model. When it comes to the mentioned institute - the plea bargaining - or the concept of prosecution investigation, the differences between the legal solutions in certain European and Balkan countries are minimal in comparison to ideas imported from the American legal system. „Imported“ ideas have completely changed the concept of certain laws, which are no longer in line with the concept of the traditional European-continental legal system.³²

Denying the influence of American law on European law, some authors say that these two legal systems are essentially different also in terms of the social dimension. The American model is clearly neoliberal and it has only a market and a competitive dimension (which is especially characteristic in the areas of business conditions of the market and labor law). On the other hand, the European model of globalization of law has kept its strong social dimension, which American law does not have. Rosamond lists a range of regulations adopted by European Union law, in which the social dimension of the law has to be preserved and is compulsory for member countries (he mentions the 'European social model', 'moral frame', 'basic labor standards', and 'corporate social responsibility').³³ It is important to notice that all the regulations that the author mentions are more than ten years old (they are from the year 2001). There is no doubt that the globalization and the

³¹ *Ibid.*, 111.

³² See, for example: V. Turanjanin, *Sporazum o priznanju krivičnog dela*, doktorska disertacija, Pravni fakultet, Univerziteta u Kragujevcu, 2016, 265-390.

³³ B. Rosamond, *Globalization, the ambivalence of European integration and the possibilities for a post-disciplinary EU studies*, *Innovation: The European Journal of Social Science Research*, Volume 18, Issue 1, 2005.

Americanization of European law have their own course. European law lost its social dimension after 2010 and it has been accepting the characteristics of neoliberal law. The best proof of this hypothesis are the protests in some European countries (France and Belgium in the spring of 2016), where the laborers protested on the streets strongly opposing the introduction of legislation to abolish their social and working rights, of which Europe was very proud of in the past. The laws and regulations on the rights of workers in Balkan countries have undergone the same changes, and they have a neoliberal character since recently, although most countries from the region are not EU members yet.

6. MODALITIES OF GLOBALIZATION OF LAW AND NATIONAL LAW

Processes of globalization affect every aspect of people's lives, including the law. Global influences are mostly visible in the areas of international business, trade and finance, human resources, environment protection, health, nutrition, pharmacology, international communication and transport, safety, organized crime control, corruption, international terrorism, etc.

It is necessary to bear in mind that adopting foreign laws can be conducted in several ways. The first way would be adopting legal solutions without adapting them, or introducing minor or major adjustments. The second way would be adopting the idea and the principle of a legal solution, that is, accepting the legal institute and not mere copying of norms (legal solutions). Therefore, within the global influence and under the influence of big countries' laws, developing countries not only „copy“ legal norms, but they also „transplant“/„adopt“ legal approaches, that is, cultural standards or values.³⁴ This way of „transferring“ the law can lead to problems for the implementation of law in the country that adopted it because the imported law might not be in accordance with that country's system of values and legal tradition, so the transfer itself can be inefficient or even lead to unwanted and unplanned effects. This is especially visible in adopting, for instance, the model of the organization of some civil service or crime prevention programs. The same programs, legal solutions, models of organization and operation can be efficient in one system, and inapplicable or even harmful in another one.

³⁴ D. Williams, *op.cit.*, 57-69.

The American jurist Stevens differentiates four mechanisms that affect the globalization of law.³⁵ The first mechanism refers to the behavior of individual subjects in private (commercial) business. A natural person as a company's representative or a legal entity concludes a contract with international companies and arranges for arbitration in the case of a dispute. The system supports private sector growth and it bypasses states and state bureaucracy. The second mechanism refers to the cases when one jurisdiction adopts a different law to an already existing set of legal questions. A nation state can completely adopt another state's (more often a supranational organization's) legal solutions and there is no possibility to negotiate about the content or the form of that law. The adoption of another country's or an international organization's law is conducted under summary procedure. An example of such practice is the adoption of EU law. The third mechanism is harmonization, when the law of a separate jurisdiction is adopted based on another law, to diminish the possibility of (legal) disputes that might arise between them. The fourth mechanism is establishing Supra-national Legal Frameworks that restrict the existing sovereign law mostly through international (regional) organizations, which regulate various legal questions of interest to member countries. The volume of questions solved in this way varies significantly and it ranges from business to social questions. These organizations overtake a part of sovereignty, which belongs to the states, that is, they restrict a part of their state sovereignty. A legal entity or natural person from the nation state has the possibility to complain or object directly to those international organizations (bodies) and in that way the nation state's sovereignty is restricted.³⁶

In the modern world, first forms of the globalization of law, that is, of global approaches to legal solutions for some questions appeared within the United Nations and regional alliances of states enacting various conventions adopted by nation states and then ratified within their national legislative bodies. This is how international law was internalized and became a part of that country's national legal system.

A significant part of the globalization of law is the law that is created by the EU as one form of creating legal standards within EU, that is, the form of homogenization of European law. Apart from that, EU law is a form of imperialistic influence of powerful and rich European countries on developing countries, which are or would like to become a part of the Union.

³⁵ F. Steeves, *Globalization and United States Law Practice*, Washington University Global Studies Law Review, 2014, vol. 13, 474.

³⁶ *Ibid.*

EU law, according to some (Chinese) authors, has confederal and federal elements. It increasingly assumes the tendencies of federal law, which reflects the tendency to form one universal government within the EU.³⁷ Small countries have no influence on the creation of this law. They can only adopt it within the given frameworks. With their EU accession (or the attempt to do so) nation states willingly renounce their national and legal sovereignty to a great extent. The highest instance for all legal disputes of citizens of EU member countries or EU candidate countries is no longer the highest court in the given nation state, but the EU court of law. The process of EU law adoption is present in Serbia, where a whole complex of laws and regulations of the EU are being adopted under summary procedure without public discussion or discussion with experts. The main role in this process belongs to the translators and members of parliament who vote without a real possibility to process such a great volume of regulations. This practice is present in all the Balkan countries on their way to EU accession.

From the political aspect and the aspect of the theory of law, the influence of American law on EU law is insufficiently researched. Starting from the hypothesis that the global influence of American law on European law really exists, which we consider a provable assumption, an interesting theoretical and practical question arises about dual influence of globalization, which simultaneously occurs within the legal jurisdiction of European countries. At the same time, two processes happen within the process of globalization of European law. On the one hand, there is the Europeanization/harmonization of national laws of EU countries and candidate countries (influenced by EU law), and on the other hand, there is the globalization of law in European countries influenced by the USA (that is, Americanization of European law, as some authors refer to the process).

One of the forms of globalization of law exists in the sphere of international business and that is the so-called corporate law. Its characteristic is that it is out of reach of nation states' immediate influence. Legal subjects, especially from small countries, have to accept business conditions of corporations, that is, adapt to them if they want to conclude legal business deals with them. In conclusion of such business contracts, the law applicable to the mutual relations is defined and this law is usually American. Apart from that, in case of a dispute, international arbitration is arranged and in this way the application of national law is avoided. Certain jurists consider that in the process of defining the law, there is a free market

³⁷ F. Snyder, L. Yi, *Transnational Law and the EU: Reflections from WISH in China*, *European Law Journal*, Vol. 19, No. 6, November 2013, 705–710.

competition and that in the area of international business, one can speak about the existence of an 'international market of legal solutions' for typical situations, which companies consider acceptable. Because of its flexibility and the legal possibilities it offers, American law is most commonly accepted in practice (unlike European law, which is rigid). This is why, it should be noted that there is no accordance between the territorial sovereignty of a country and its legal system, within the field of corporate business with the selected solutions from the field of international corporate business.³⁸ In this field, the course of globalization shifted dramatically towards the American legal models and it was a reflection of the strong negotiating position of large international organizations. This opens the problems of legal control of international legal subjects' business operations. The rights of the third party can be endangered if the contract directly or indirectly affects them although they (most often) do not participate in its drafting with the international corporation.³⁹ There are various ways to avoid the country itself as a business partner in the area of business.⁴⁰ In legal business of this kind, there are also questions of preventing money laundering and terrorism financing, because the countries cannot control the business efficiently, since the nation states do not have the influence on provisions regarding these kinds of business contracts.

One of the significant modalities brought by the globalization in the area of law is the introduction of the active legitimation of natural persons to start legal proceedings against their countries before international courts. As a consequence of lessened sovereignty of states, there arises the possibility for an individual to start legal proceedings against their own country before the European Court of Human Rights in Strasbourg⁴¹, as an out-of-state court

³⁸ H. Eidenmüller, *The Transnational Law Market, Regulatory Competition, and Transnational Corporations*, Indiana Journal of Global Legal Studies Vol. 18/2 (Summer 2011), 707-749.

³⁹ See more about this: *ibid.*, 748.

⁴⁰ Legal system on global level supports the growth of private sector. Contracts are concluded with international companies and the arbitrations are arranged in case of disputes. International companies have their own set of forms for the contracts. Frameworks, clauses, and contracts are then copied, applied to new situations in different countries with different.. parties, and copied again. Arbitration clauses replace local regulations etc. Robert Barry, a former U.S. ambassador to Bulgaria said: "We do not have government-to-government agreements Our task is to promote the growth of the private sector rather than to encourage the growth of new bureaucracies." F. Steeves, *op.cit.*, 476 (footnote).

⁴¹ http://www.coe.org.rs/def/tdoc_sr/council_of_europe/coe_institutions/?conid=18, dostupan 28. 6. 2016.

(that is to say, a court that is not under the jurisdiction of a country), in case the possibilities for their protection from national courts have been exhausted. Apart from this, one of the forms of globalization with political rather than legal background is about the mechanism of a global approach in the protection of individuals' human rights in cases where the nation state has violated its citizen's rights. Individuals, nongovernmental organizations or other countries can start proceedings against the country for violating or harming human rights (Human rights mechanisms). It is suggested that the mechanism is highly cosmopolitan and goes beyond the borders of state sovereignty.⁴² This form of globalization in the area of law strongly affects the limitation of national states' sovereignty. It is used in practice by the powerful countries against the small ones in order to reach their political and military goals under the excuse of protection of human rights. Nowadays, this is one of the mechanisms for starting 'humanitarian' military interventions against small countries and introduction of double standards of action which Serbian people have experienced in their recent history.

Some authors write about the so called globalistic, out of state law, which regulates actions of international companies, organizations, associations, and even individuals. This law is beyond the countries and territorial jurisdiction. It is a matter of legal norms published on the internet sites of those organizations and transnational corporations which regulate the subjects' behavior, their rights, obligations, business relations, and competences. The authors define these norms as soft law codes and guidelines, highlighting that in the sphere of transnational business this is the way to undermine the economical management of the country and to accomplish the so-called globalization of the law. This weakens countries' sovereignty and undermines the presumptions of a country's inviolateness as a final form of political and legal organization.⁴³ Various forms of businesses and activities provide profits for organizations, associations, companies, and individuals, and the taxes are not paid for the profit because they are not related to the legal jurisdiction of certain countries nor can they be controlled, since there are no locally authorized financial institutions. These can be membership fees, participation fees, donations for certain activities support, online trade, etc. Within these forms of business and money flows, there exists an underground economy and tax evasion, and opportunities for transferring all

⁴² A. Brysk, A. Jimenez, *The Globalization of Law: Implications for the Fulfillment of Human Rights*, *Journal of Human Rights*, 2012, 11:4-16, 5.

⁴³ F. Steeves, *op.cit.*, 473.

kinds of 'dirty money' (gained by organized crime), as well as various modalities of terrorism financing.

7. CONCLUSION

Globalization is a process that undoubtedly exists and is reflected in the processes of deterritorialization and denationalization of law. These processes have developed and can be observed as real legal categories. At first sight this is contradictory, as the law has always been related to a certain territory and certain country, which enforces it. There is no doubt that globalization questions fundamental postulation of the traditional understanding of the law and the traditional idea of a state. Terms like 'new international law', 'cosmopolitan law', and 'world law'⁴⁴ can already be seen in literature and they refer to the law concerned with legal entities on the global market, and on the other hand, to the law regarding natural persons in situations where their human rights are at stake, since they are moved from the national to an international and beyond national sovereignty level, that is, out-of-state level. Undoubtedly, under the influence of globalization neither the country, nor the law, nor the country's sovereignty are the concepts they used to be.

It is noteworthy to mention Kelemen's observation that the essence of globalization is the imposing of standards of developed countries to other countries (apart from developed countries, standards are also imposed by international organizations, which are under their influence).⁴⁵ The Serbian author Miša Stojadinović indicates that globalization has two sides. The first one is emancipator, while the second one is neoimperialistic.⁴⁶ It seems that the globalization's essence cannot be fully described using only the terms 'dictatorship of profit' and 'neoimperialistic side of globalization'. Its essence cannot be explained by its allegedly 'emancipating side' behind which there are political and economical interests of powerful countries, wars, etc.

It seems that, regardless of the field in which it is present, globalization implies the process of the creation of one supreme authority, global government, world's system of values and safety, if we observe its neoliberal side and tendency to have a unique global market and currency on the one hand and the tendency to create denationalized citizens of the world and consumers with the same values (material, cultural, family, etc.) on the other hand. Some authors emphasize that the existing processes (mentioned in

⁴⁴ J. Ku, J. Yoof, *op.cit.*, 213.

⁴⁵ D. Kelemen, E. Sibbitt, *op.cit.*, 107-108.

⁴⁶ M. Stojadinović, *op.cit.*, 93.

their papers) are developing into a system of aglobal rule, that is, a global government.⁴⁷ In accordance with this, there are authors who point out that globalistic processes are forming the 'embryo of a future federal country', that is, a future global state whose creation, or at least the attempt of it, is an ongoing process.⁴⁸

Under the influence of globalization process, any law has been and will always be merely a servant of the powerful who create (or at least they try to create) global processes in accordance with their interests.

One should bear in mind that the existing world's processes are very complicated and divergent. Brexit (referendum for Great Britain's exit from the EU) is probably one of the indicators of this complexity. This is why papers which compare former colonial law and globalistic law should be taken into consideration. For example, the American author Merry indicated numerous similarities between colonial and today's globalistic law in her paper. One of the conclusions of her research is that legal models and ideas which are transferred from one system to another can transform and they can cause unwanted, unexpected and unplanned effects.⁴⁹

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⁴⁷ J. Ku, J. Yoof, *op.cit.*, 213.

⁴⁸ Regarding this see K. Mitrović, *Učinja dva velika svetska sistema prava o zakonitosti i njihovo približavanje*, Nauka, bezbednost, policija, br. 2, 2014, 137-151. See also literature that the Author lists in his paper.

⁴⁹ M. S. Engle, *From Law and Colonialism to Law and Globalization*, Law And Social Inquiry, 2003, Vol. 28, 569-590.

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