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PARALLEL NORMATIVE REALITY: THE INFORMAL ORDER OF CORRUPTION AND CLIENTELISM IN SERBIA*

Paralelna normativna realnost: Neformalni poredak korupcije i klijentelizma u Srbiji

ABSTRACT: *In contemporary Serbia, political and economic elite members systematically break the law with impunity. The paper explains this phenomenon by relying on theory and data from legal theory, sociology, and political science. The behaviour of officials in contemporary Serbia can be explained by analysing complex interactions between state law and informal norms that arise from informal institutions of clientelism and corruption. These norms form a parallel normative order (1) composed of mutual expectations regarding the behaviour of others and consequences for not complying with these expectations. (2) It is based on social and political powers that strengthen informal institutions and the normative order. (3) Norms of this order regulate the behaviour of actors, and (4) they are mutually harmonised, with the norm of loyalty central to the normative order. (5) The parallel normative system suspends state law for political and economic actors who respect informal rules while using mechanisms, rules, and resources of state law to sanction violations of informal norms that are considered crucial for maintaining the informal order. The relation between formal state law and the informal normative order is one of conflict, competition, and parasitisation. To elaborate on these findings, we explain the concepts of informal rules, institutions, and orders, along with an exposition and analysis of typologies of their relations. We then present and analyse empirical research data about corruption and clientelism in Serbia. Finally, based on*

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the theoretical framework and the available data, we conclude that there is ample evidence that a parallel normative order is established and sustained in Serbia.

KEYWORDS: *informal institutions, corruption, clientelism, informal normative orders, state law, typologies of informal orders.*

APSTRAKT: *U savremenoj Srbiji pripadnici političkih i ekonomskih elita sistematski krše zakone i za to ne bivaju kažnjeni. U ovom tekstu nudimo objašnjenje ove pojave oslanjajući se na nalaze iz oblasti pravne teorije, sociologije i političke nauke. Delovanje zvaničnika u savremenoj Srbiji može se objasniti analizom složenih interakcija između državnog prava i neformalnih normi koje nastaju na neformalnim institucijama klijentelizma i korupcije. Te norme čine zasebni neformalni ili paralelni normativni poredak koji čine (1) neformalne norme i zajednička očekivanja u pogledu njihovog poštovanja (koja mogu imati oblik sankcija). (2) U njegovoj osnovi stoje odnosi društvene i političke moći koji osnažuju i neformalne institucije i sistem neformalnih pravila. (2) Norme ovog poretka regulišu ponašanje aktera i (3) međusobno su usklađene, a u njihovom središtu nalazi se norma lojalnosti. (4) Paralelni normativni sistem suspenduje državno pravo za političke i ekonomske aktere koji poštuju neformalna pravila (5) Istovremeno, paralelni normativni sistem koristi mehanizme, pravila i resurse državno-pravnog normativnog poretka naročito u pogledu sankcionisanja težih kršenja neformalnih pravila koja se shvataju kao temeljna. Odnos između formalnog i neformalnog normativnog poretka je konfliktan, kompetitivan i parazitirajući. Da bi obrazložili ove teze, mi najpre objašnjavamo pojmove neformalnih pravila, institucija i poredaka, i izlažemo i analiziramo tipologije odnosa između formalnih i neformalnih poredaka i institucija. Zatim prikazujemo i analiziramo niz empirijskih istraživanja o korupciji i klijentelizmu, da bi na kraju, na osnovu postavljenog teorijskog okvira i raspoloživih podataka, utvrdili da se u Srbiji može govoriti o ustanovljavanju i održavanju paralelnog normativnog poretka.*

KLJUČNE REČI: *neformalne institucije, korupcija, klijentelizam, neformalni normativni poreci, državno-pravni poredak, tipologije neformalnih poredaka*

1. Introduction

A decade ago, a domestic company privatised an old firm with a land lot in the centre of a large city and several production plants. All plants were built over half a century ago, but none was legalised. A few years ago, the company decided to legalise those buildings. They submitted a request to the state authorities, yet the answer did not come even after a year. Instead, a group of people close to the government contacted the company's director with an offer "to assist" in the legalisation process in exchange for a "commission". After some deliberation, the company's owners decided to refuse payment and complete the legalisation process themselves. Another message from the same group of people followed. The first part of the message read that it was known they had tried to complete

legalisation on their own and the legalisation was divided into several cases “dispersed” throughout the state administration. “Collecting” cases and “solving” them can be done only by a person who knows all the details. Again, the task would be done in exchange for a “commission”. The second part of the message read: Do not try to complete this without us. In the end, the “commission” was not paid, and the buildings remained unlegalised (adapted from Vuković, 2021).

Businesspeople, most often anonymously and to respond to inquiries of social researchers, testify about an unofficial obligation to finance ruling parties in the domestic economy and politics. One of them explains the way of concluding such agreements. An owner of a chain of stores who contacted him praised his work by saying he had “a really nice autumn collection and that he would like to cooperate” with the respondent. Further on, he explained that he was “a businessman who is close to the government, so if you want to be close to them as well, I am your ticket in”. It turned out he was close to the authorities and did not offer the possibility of marketing the respondent’s products but close contact with state officials. The condition was, naturally, to pay the “admission fee”, a specific amount of money. The respondent was caught by surprise and immediately rejected the offer. As a result of the rejection, inspections disturbed his business every other day. Under the pressure of continuing controls and inconveniences, he was forced to move the production out of the country (Stanojević, Babović & Gundogan, 2016: 60–61).

These two examples share several common characteristics. Clientelistic networks close to state authorities offer assistance or require businesspeople’s services so that businesspeople can exercise their legal rights or obtain illegal privileges. The condition is to enter the clientelistic network. In both examples, the refusal of the offers and failure to meet the expectations of the people in authority had consequences – individuals and companies refusing to enter the clientelistic structures faced sanctions. In the first case, the sanction consisted of preventing the exercise of rights, and in the second case, it included pressure by various inspections.

The examples we have listed here draw the attention of the media, citizens, and scientists because they exemplify the illegal behaviour of the political elite. Sociological research on clientelism, the rule of law and government accountability in Serbia show that clientelistic networks represent parallel power structures through which redistribution of various resources is conducted and the way how they take control of the formal state institutions (Cvejić, ed. 2016; Bliznakovski, ed. 2021; Vuković and Babović, 2018). In this paper, we take a step further and explain the phenomenon of systematic violation of law with impunity by power holders and their related parties using conceptual and methodological tools of legal theory, sociology, and political science. *Our main claim is that the actions of officials in contemporary Serbia can be (better) explained by considering complex interactions between formal rules of the state law and informal rules which oblige the subjects relatively independently from formal rules, as well as that these informal rules form a discrete informal and parallel normative order.* To elaborate on this central claim, we shall first explain the concepts of informal rules, institutions, and normative orders. We shall then present typologies of

relations between formal and informal rules and institutions, which will serve as the basis for classifying and explaining the links between formal and informal institutions in Serbia. In the second part of the paper, we explain corruption and clientelism in Serbia as examples of complex relations between state law and informal normative orders. Finally, in the third part of the paper, we show that, based on available data, we can talk of establishing and sustaining a parallel normative order in Serbia while explaining its relation to state-legal order.

2. Rules and orders

2.1. *Norm, institution, and order*

Rules are general requirements to act or to refrain from acting accepted by a specific group of people. The existence of a rule depends on the normative attitudes of the group members to which the rule refers and on their awareness or knowledge about such attitudes (Brennan, Eriksson, Goodin, & Southwood, 2013: 29). A norm is valid if enough people believe that it exists and when they expect from other people to act accordingly. Collective beliefs and expectations give rise to regularities in behaviour, owing to which we can say that norms guide the behaviour of people in norm-regulated situations (Bicchieri, 2005: 2). For a rule to exist, it is, therefore, necessary that the regularity in behaviour is viewed as a standard of conduct assessment, which most often results in criticism, requests for behaviour in accordance with the rule and acknowledgement that these criticisms and requests are justified (Hart, 1994: 55–56). Rules can be formal and informal. Formal rules are generated in an official institutional framework, such as, for instance, a framework of private or public organisations. People are informed through official channels about the existence of such rules, they are implemented through official channels, and society accepts them as such. In contrast, informal rules are socially accepted, usually unwritten and generated, spread, and applied outside official channels (Helmke and Levitsky, 2004: 727).

Institutions are sets of formal and informal rules and procedures that provide frameworks, i.e. instructions for human action. Within these frameworks, there are some common forms of behaviour and human action (Brinks, 2003: 3–5; Helmke and Levitsky, 2004: 725; Nee, 2005: 55; Portes, 2006: 241–242). Therefore, institutions consist of (a) formal and informal rules guiding behaviour and prescribing sanctions for their breach, and (b) factual, established and habitual action or behaviour. Formal institutions, such as the state, companies, political parties, or universities, regulate relations through formal rules. Informal institutions guide behaviour by employing rules generated, communicated, and applied outside the officially accepted frameworks (Helmke & Levitsky, 2004: 727). The work of formal institutions is based both on formal and informal norms (North 1990:37). Professional communities will have their unwritten labour rules, as is the case with the communities of doctors and their informal attitude towards euthanasia (Griffiths, 1995); political institutions will often have their internal unwritten rules of functioning, in terms of division of work,

methods and order of solving citizens' requests, and interpretation of official rules (Christiansen and Piattoni, 2003; Spaić, 2020: 47–60); business relations will be based to a significant extent on informal, sometimes tacit conventions (Jütting, Drechsler, Bartsch and de Soysa eds., 2007).

Informal institutions differ from *informal practices*. Informal practices are activities occurring outside the formal sphere, whether in economy, politics, or society in general (Aliyev, 2015). Giving bribes or gifts to state officials or employees in the public sector is one of the widespread informal practices in Serbia and other countries (compare Ledeneva et al. eds. 2018). These actions are called informal practices when there is a regularity in behaviour in a significant number of cases and when there is no informal norm that establishes the obligation of giving money or gifts. Sometimes it occurs, however, that a service was not provided, to which a citizen – a bribe giver has a legal right. For instance, a patient did not undergo surgery, or an administrative licence was not issued. In such circumstances, someone in state administration or public institution likely decided to slow down or stop work on that issue to induce a citizen to pay the bribe. Such behaviour is a type of pressure, criticism, or sanction for not making an informal payment. Informal practices, whose disregard entails a form of social pressure, are *informal institutions*. So, corruption may present informal practice, when a gift or money is given to an official or doctor voluntarily, without a sense of obligation, expectation, pressure, criticism or coercion, and informal institution when there is a norm, i.e. regularity in behaviour which is followed by a sense of obligation or expectation to give a gift or money, as well as criticism, pressure or coercion as a consequence of non-fulfilment of an obligation (compare Brinks, 2003: 4; Helmke and Levitsky, 2004: 727).

General requests contained in formal and informal norms and institutions lead to a “current and predictable pattern of behaviour” arising from a shared awareness of the rights and obligations of actors (MacCormick 2007:16). *Normative orders* consist of collective behaviours which are predictable, pattern-like and externally noticeable (external criterion) (MacCormick, 1998: 306), and followed by a common understanding of actors that norms and institutions are directing their behaviour (internal criterion) (MacCormick, 1998:308–309). Normative orders are thus a unity of (1) *norms and institutions* that regulate social relations, (2) *common expectations* in terms of respecting norms and (3) *factual behaviour* in compliance with norms. For the order to exist, it is unnecessary to have officially created and communicated formal norms. It is sufficient that requests for a particular behaviour are “observed and respected to a significant extent, often without special oversight, instructions or coercion, except for the pressure of a common (not necessarily universal) belief” by those who participate in the practice (MacCormick, 1998: 309). Depending on whether they are predominantly made of formal or informal norms and institutions, normative orders can be formal and informal. Since a simple regularity in behaviour does not constitute a definite indicator that we are dealing with an institution or a norm, it cannot be decisively claimed that collective behaviour regulated by unrelated, diverse norms forms a normative order. The existence of a normative

order thus depends on two additional conditions: 1. Norms and institutions which are a part of that order must be *mutually conditioned and related* so that they form a system – a set of elements forming a unique complex entirety; 2. A system of norms and institutions must be *effective*, i.e. it must regulate to a great extent the behaviour of persons to which it refers. If those two conditions are not fulfilled, we can speak of a set of informal norms and institutions but not a normative order.

2.2. Plural normative orders

Normative pluralism denotes the simultaneous validity of several normative orders in one specific territory. In this sense, normative pluralism is a “social fact” (Griffiths, 1986: 4), considering that our daily activities are regulated by rules that belong to various normative systems – from supranational, national and local formal orders to less noticeable social rules regulating relations without institutionalised sanctions (Twining, 2010: 475–476).³

In the multiplicity of normative orders, the existence of one state-legal order is mostly unquestionable, especially to lawyers, since the rules of such order may be relatively easily identified and acquainted with. As a rule, lawyers hold a viewpoint that is designated as *legal monism* according to which “law is an exclusive, systematic and unitary hierarchical ordering of normative statements” which applies uniformly to all persons and which is superior to all other norms, institutions and normative orders (Griffiths, 1986: 3). Numerous criticisms did not impact the monistic perspective of lawyers and jurisprudence to change significantly, especially at the national level (Tamanaha, 2021: 7). On the contrary, even today monistic state law is the implicit standard to which lawyers widely adhere (Tamanaha, 2021: 8; Swenson, 2018: 438).

Legal pluralism is an orientation in legal theory that tends to emphasise that normative plurality is relevant to legal practice, science, and theory. After decades of neglecting the issue of pluralism of normative and legal orders, only in the last few years have implications of the erosion of monopoly of state law been considered more seriously in legal theory (Roughan & Halpin, 2017). Some of the key theorists of law have concluded precisely based on that fact that the exclusive focus that legal theory placed on state law was unjustified (Raz, 2017: 161). Still, while legal pluralism has placed at the centre of attention the co-existence of more *legal* orders in a specific territory, in political science and sociology, a particular emphasis has been placed on inquiries about *normative* orders, informal institutions and their relations with state-legal institutions.

3 Informal *normative orders* are usually not *legal* orders since they lack legal character. Taking into account that “legality” is a disputable term, we call an informal normative order a legal order, if the following two conditions are met: (1) informal rules are efficient — they fulfil their role in regulating behaviour, (2) rules show typical characteristics of law (Lauth, 2015: 158). As typical characteristics of legal orders, the following are often listed: *normativity* — an order consists of rules regulating behaviour and they are used for solving disputes; *institutionality* — norms are generated and applied by certain, most often, state institutions; *coerced warranty* — compliance with the rules is ensured by coercion mechanisms (Jovanović, 2019: 76).

Informal rules have been identified as crucial for explaining collective actions, and the efficiency of formal institutions and formal rules (compare the special issue of *Current Sociology* 65(2), 2017; Ledeneva ed. 2018).

2.3. Relations between state law and other normative orders

In the tradition of legal pluralism, non-state normative orders are mostly perceived as opposed to state-legal order as an obstacle to the realisation of the rule of law and democracy (Tamanaha, 2008: 400). Geoffrey Swenson offers a much more nuanced approach that starts from 1) classification of relations between normative systems and 2) types of strategies for harmonising state-legal system and non-state normative systems (Swenson, 2018: 444). According to him, these relations can be classified in terms of *conflict*, *competition*, *cooperation*, and *complementarity*.

State and non-state rule systems (such as law and other normative systems) can often be found in relations of mutual confrontation. Swenson names this type of normative pluralism (1) *combative*. It is characterised by a tendency of the systems to actively undermine and effectively eliminate each other from the social scene. The conflict of normative systems comes to the fore, especially in post-conflict societies where the state is not developed, with the efforts of, for instance, rebel or separatist movements and organisations to build parallel state structures (Swenson, 2018: 443).

(2) *Competitive normative pluralism* implies significant autonomy of non-state normative systems without questioning the supreme authority of the state. Tensions between state and non-state actors do exist and are significant, but non-state normative systems do not strive to completely undermine the authority of the state. Most often, the state and traditional normative orders, such as culture, tradition or customs, are found in competitive relations, as well as those orders where crime and other illegal organisations establish their rules and institutions without any intention to undermine the state normative order. Unlike the tense environment of combative normative pluralism, competitive pluralism often shows perseverance, especially in those situations where informal orders provide frameworks for legitimate and authoritative dispute resolution (Swenson, 2018: 444).

(3) *Cooperative normative pluralism* occurs when non-state normative orders have accepted the state normative order as legitimate *m*. State and non-state systems tend to work to achieve common goals in societies that aim to consolidate of state-legal authority, be it democratic or autocratic (Swenson, 2018: 445). In democratic orders, cooperation will strengthen democratic institutions, citizens' participation, the rule of law and human rights, and in autocratic orders, it will be directed to the consolidation of power of one man or a group of people.

(4) *Complementary normative pluralism* refers to the existence of multiple normative orders in circumstances of an established and efficient state-legal system. In most Western countries, informal normative orders support state law primarily due to the fact that the state delegated certain activities to them

(e.g. in case of arbitration and mediation as a way of resolving disputes). Within frameworks of complementary legal pluralism, the rule of state law is supported by informal normative systems (Swenson, 2018: 445–446).

Swenson's classification partially coincides with the classification of informal institutions formulated within institutional political theory. Helmke and Levitsky (Gretchen Helmke, Steven Levitsky) classify informal institutions based on two basic criteria: whether informal institutions produce the same or different *outcomes* relative to formal ones and whether they are *efficient* or not.

(1) *Complementary informal institutions* impact individual behaviour by increasing the efficiency of the formal-legal framework or by giving the actors additional reasons to behave in accordance with the formal order. The efficiency of formal institutions can be increased by rules that internally regulate the procedure, relationships and decision-making within state bodies so that, for example, they allocate the workload, standardise decision-making procedures in case of ambiguity of formal rules, facilitate coordination within collegial bodies, etc. (Helmke & Levitsky, 2004: 728).

(2) *Enabling informal institutions* are also efficient, but their effects are divergent. They change the outcomes produced by formal institutions without being illegal, i.e. they do not violate the letter of the written rules. Such informal institutions can regulate the division of functions among ruling political parties, relations within political coalitions, the action of political actors in legislative bodies, etc.

(3) *Competitive informal institutions* persist when legal rules are partially implemented or not implemented at all, so that the informal rules produce effects contrary to effects that formal rules should have. Helmke and Levitsky classify clientelism, corruption, clan politics and patrimonialism, which are pervasive in post-colonial and transitional societies, as competitive informal institutions (Helmke & Levitsky, 2004: 729).

(4) *Substitutive informal institutions* arise when formal institutions are inexistent or while achieving the exact effects that formal institutions would achieve if they were functional. An example of such an institution in politics are gentleman's agreements concluded more often in circumstances where formal institutions are bypassed in the election process due to lack of trust, but also in situations when formal institutions are unable to produce expected effects (Helmke & Levitsky, 2004: 729).

Despite some deviations, the typology of institutions presented by Helmke and Levitsky, on one hand, and the typology of relations between normative orders presented by Swenson, on the other hand, show a significant degree of concordance. The dominance of one specific type of informal institution within the typology suggested by Helmke and Levitsky gives us the basis to characterise the relationship between informal normative order and state-legal order in accordance with Swenson's typology. Thus, for instance, the dominance of competitive informal institutions would indicate that relationships between

informal normative order and state-legal order is combative. The supremacy of enabling informal institutions would, in turn, *prima facie* suggest the existence of cooperative normative pluralism.

3. Corruption and clientelism as informal institutions

In the previous chapter, we explained the concepts of norms, institutions, and order. We defined *norms* as rules of behaviour reflected in expectations that rules are to be respected and in criticisms and sanctions when the rules are violated. *Institutions* are sets of norms and social, political, and economic relations based on such norms. *Normative orders* exist when norms and institutions form a system of mutual conditioning and connection, behaviour that conforms to norms and shared expectations that these norms will be respected.

Informal institutions are at the centre of our attention, and we distinguish them from informal practices. The difference is reflected in the fact that informal institutions set expectations regarding behaviour and anticipate sanctions when such expectations are not met. Depending on the dominant type of institution on which it is based, normative order can be formal and informal.

There can be different normative orders in one society at the same time, and they can be in combative relations (conflict) with the state-legal order, competition relations (competitiveness), cooperation relations (cooperativeness) and complementary relations (complementarity). The relation between the state-legal order and informal normative orders mostly depends on the character of informal institutions, which are dominant in an informal order.

We have thus outlined the basis for understanding the systematic illegal behaviour of the Serbian political and economic elite members. We will explain below what informal institutions of corruption and clientelism are, with the aim of elaborating on their functioning in Serbia based on available empirical data.

3.1. Corruption, clientelism and party patronage

Corruption is the abuse of a public position for personal or political gain (Rose-Ackerman, 2004:1). Corruption can be *petty* and *grand*. Petty corruption is based on small gifts and services and small amounts of money, such as paying a traffic police officer to avoid a fine or giving a gift to a doctor or official. Petty corruption enables many people to cope with declined public sector, which fails to routinely render basic services. It is acceptable since there is no other way to exercise rights or receive services. Grand corruption, on the other hand involves a smaller number of people and its key feature is that it enables this small number of participants to get rich. Grand corruption is important because it deepens and emphasises inequalities in a society and is generally considered unacceptable. People are less tolerant of it, and its existence causes moral condemnation and public odium (Uslaner, 2008: 10–11).

Grand corruption also includes situations where politicians change laws to adjust to someone's particular needs and interests, whether it is the political or

business elite in question. This type of corruption “to amend the law” (Vuković, 2003: 169–176) borders on the concept of state capture. The state is captured when various segments of the elite, paramilitary formations or criminal groups succeed in influencing state decisions (including the already adopted laws) and directing them for personal gains. In our part of the world, state capture manifests as corporate and party state capture. In the first case, the state passes laws under the influence of international companies, from which these companies benefit the most, whereas in the second case, the entire state apparatus performs services for the parties in power (Innes, 2014: 88; Hellman, Jones, Kaufman, 2000: 2).

Clientelism. is the institutional basis of corruption, especially grand, political, or systemic corruption (della Port and Vanucci, 2010:7). Clientelism is a relationship between two persons, or a group of people assuming the roles of *patrons* and *clients*. A person in a higher social position (patron) uses his power and influence to provide protection or benefits to a person in a lower social and economic status (client), who, in turn, gives support and assistance to the patron (Scott, 1972: 91). This relationship is perceived as a form of instrumental friendship, since two persons or groups of people, although of unequal social power, are in a close mutual relationship based on reciprocity. However, clientelism can be perceived as a relationship of political subordination in which a person with political power receives support in exchange for, most often, some commodities a client provides.

Within a clientelistic network, there is an exchange of different resources: money, contracts, job positions, services, etc. According to Herbert Kitschelt and Steven Wilkinson the following features characterize clientelistic networks:

1. *Power asymmetry*. Clientelistic networks consist of two groups of actors – one group has the power, and the other has no power. Actors who have power can impose conditions under which their relationship will take place.
2. *Direct exchange*. Unlike party actions, where a party offers benefits to certain social groups or geographical regions, asking for political support, in clientelistic relationships, this exchange is directed to an individual. In the first case, in exchange for votes, parties distribute public goods (e.g. infrastructure, welfare, better education services). In the second case, they share private goods (e.g. business and contracts) (Kitschelt and Wilkinson, 2007a: 9–11).
3. *Predictability*. Resources available to politicians, job positions, state contracts or budget funds, are limited question. Therefore, politicians enter clientelistic relationships with people they are confident will vote for them (Kitschelt and Wilkinson, 2007a: 12–14).
4. *Monitoring*. To be certain that voters will vote for them, politicians monitor their behaviour and ask them to publicly participate in party activities, to publicly declare themselves as members or supporters, to announce publicly how they voted, i.e. to make secret voting public (e.g. by taking photos of their ballot using their mobile phones). (Kitschelt

and Wilkinson, 2007a: 15–17; compare also Kitschelt and Wilkinson, 2007b).⁴

One of the mechanisms by which clientelism enables corruption is *party patronage*, that is, the practice of appointing party staff to positions in state administration (Christiansen and Piattoni, 2003) or, viewed more broadly, to posts in the state, including civil service, public enterprises, regulatory bodies, universities, boards of directors, advisory boards and commissions, etc. (Kopecký and Scherlis, 2008: 356). As long as the party is not in a position to control state institutions through the process of appointing personnel, it will hardly be in a position to develop clientelistic networks or to illicitly use public resources for the private needs of its members (Kopecký and Scherlis, 2008: 357–358).

3.2. *Clientelistic networks in Serbia: characteristics and modus operandi*

Clientelism is a practice that takes place in secrecy, beyond the public eye and outside official decision-making channels. We learn about clientelism and its outcomes from the media, through affairs that reveal mechanisms of political party employment and awarding state contracts and subsidies to companies close to the authorities. Contrary to the abundance of media reports (e.g. Đorđević, 2021; Insajder, 2020; Insajder, 2021a; Insajder, 2021b; Insajder, 2021c; Istinomer, 2018; Kostić, 2019; Krik, 2018; Krik, 2019; Krik, 2019; Krik, 2021; Mihajlović, 2015; Nikolić, 2019; Novaković, 2015; Pedejski et al. 2013; TI, 2015), we lack a scientific research on clientelism. Individual analyses shed light on certain aspects of this phenomenon (Antonić, 2006; Pavlović, 2016; Zurnić, 2018), but the only comprehensive study was conducted in 2016 by a group of sociologists gathered around the organisation SeConS (Cvejić ed., 2016). The study was based on 98 interviews with the representatives of the political and economic elite, intermediaries, and experts. It provides in-depth insight into the structure and operation of clientelistic networks. We shall use it as a basis for analysing the structure and method of functioning of clientelistic relationships in modern Serbia (research results are presented according to Stanojević, Babović and Gundogan, 2017: 44–65).

This study records steady clientelistic networks, including politicians (state and party functionaries), businesspeople (from the public and private sector) and ordinary citizens. Within these networks, important political and economic decisions are made, and resources are exchanged: information, contracts, job positions, financial benefits, services, control mechanisms (inspections), etc.

The most important actors in clientelistic networks are *politicians*. Their power arises from their position or engagement in political parties, whether based on membership and party work or services they provide to the party.

4 These two types of redistribution of public goods often exist in parallel. Therefore, some authors speak of a *formal electoral system* based on program redistribution of goods and a *parallel electoral system* based on clientelistic exchange. It is rare to find a system with only one type of electoral system, but, as a rule, both systems exist simultaneously (Volintiru, 2010: 11–12).

Serbian parties are often perceived as hierarchical organisations with the party leader at the top of the “pyramid”. Respondents in the study, however, testify that there are informal networks of individuals within parties that highly value power and loyalty (the so-called “*ekipa*” or the “team”). In such narrow circles, the most important decisions are made, and only after that do they become official at formal meetings. Similar power structures can be found at the level of local self-government, and there they are concentrated around the municipality president or a mayor. With the rise of the Serbian Progressive Party (SNS), the function of party trustee or commissioner for a city or a region became a focus of parallel power structures.

Common interests, trust and loyalty bind network members or the “team”. These networks cut across party structure horizontally (within boards, councils and presidency, etc.) and vertically (from the presidency to local committees). For a network to function well, dissatisfied actors must be controlled. This is done by distributing resources (money, job positions, contracts, etc.) or party discipline. Every “team” consists of politically most influential persons, i.e. the inner circle of the closest party staff, then a broader party circle, and finally, the party base. The most important criterion for selecting the “team” members is personal and party loyalty. Loyalty is the key norm that regulates relationships within clientelistic networks. (Stanojević, Babović and Gundogan, 2017: 55).

Economic actors come from the public and private sectors. Members of boards of directors and public enterprises directors are the ruling party cadre. Public enterprises are also conquered “in-depth”, so people loyal to the party (members of clientelistic networks) are also appointed to all lower management positions (Stanojević, Babović and Gundogan, 2017: 57). Their role is to manage companies, but also to provide resources for the parties, such as money, services and job positions. Still, according to the respondents’ opinion, they are less significant than political actors. The real power lies in politics, and only the most outstanding entrepreneurs, called “tycoons”, can independently “pursue politics”. Other entrepreneurs and companies strive to establish good relationships with future or current authorities and, based on that, ensure certain privileges for themselves: contracts with the state, information on investments or less pressure of inspection and “turning a blind eye”.

Some businessmen finance political parties voluntarily, whereas others understand that giving monetary donations to the parties is the “rule of the game”, and they obey the rule under more or less coercion. If they refuse to finance the parties, a business may face “penalties”. It can mean more stringent inspection controls or contract termination with the state or public enterprises. Sometimes this pressure is so intense that it can lead to the closure of a company (Stanojević, Babović and Gundogan, 2017: 60–61).

The third group of actors are *interlockers* who connect political and economic actors. Interlockers can be people who work in companies or public enterprises; they are members of the board of directors and politicians. Their role is essential since they provide resources for the parties necessary for functioning,

winning and keeping the power: money, jobs and services. They have political and economic skills, and they must have the ability to adapt and negotiate and present one of the critical resources available to parties within clientelistic networks.

In clientelistic networks, as already stated, politicians, businessmen and ordinary citizens exchange various resources – money, employment, positions on boards of directors, voluntary work, contributions “in kind”, information, contracts and other resources.

Money is exchanged through employment, membership in boards of directors and donations to the parties. Party cadre and supporters can obtain permanent or temporary jobs in the public or private sector. Due to the duality of the labour market (Arandarenko, 2018), permanent jobs in the public sector are preferable since they offer security and protection of labour rights, higher incomes, and a lower level of dependency on the party. Some respondents state they all have to give the party between 5 and 10 per cent of their earnings (Stanojević, Babović and Gundogan, 2017: 48–49). Finally, members of the board of directors are appointed through clientelistic party networks. They receive high compensations, considered a reward for loyalty to the party, and a pledge that they will vote as the party deems fit when the time comes.

Sometimes it happens that both *goods* and *services* are exchanged. Public and private companies, for example, finance trips, services, and printing of promotional materials pay for media space or support parties’ work in any other way and give formal and informal *donations to parties*, thus enabling them to pay for their employees and finance their activities. Services are also expected from those who got a job through the networks, especially in the public sector, by volunteering for the party, particularly during the election campaign.

The state budget represents a substantial resource for the distribution of “party prey”. This distribution is conducted through state subsidies, state contracts and other forms of discretionary spending (TC 2019, 2020). Often unofficial agreements are concluded among the crucial political and economic actors. At the same time, the companies’ profit can be increased by expanding the scope of work or by increasing expenses (Stanojević, Babović and Gundogan, 2017: 57).

Results of this study record that *amendments to laws and bylaws* are agreed upon and implemented through clientelistic networks. This is most often done at the request of private entrepreneurs and companies. Respondents state that the process of European integration narrowed the space for such interventions. However, they still exist (Stanojević, Babović and Gundogan, 2017: 51). In this way, clientelistic networks become the channel for taking control of the state.

Information presents one of the essential resources for the business sector, whether information about envisaged law amendments, new investments or tenders are in question. In the end, one of the resources in such exchange is the “*right position*”. Business sector representatives strive to appoint “their people” to the “right positions” to access decisions and information. This way, winning the

open call, contracts, and support for one's work, public investments, and the like is more accessible.

Using state-controlled mechanisms such as inspections presents one of the most important resources for politicians. They can be used in two ways: Firstly, employing them diligently to pressure an entrepreneur to enter the clientelistic network and support the ruling party. Secondly, not using them to free up space for loyal network members for unfettered business. Thus, inspections are a formal penalty for those who violate informal norms established in the clientelistic networks and informal protection from formal control mechanisms for loyal members of clientelistic networks. The effectiveness of other control mechanisms, such as the police and judiciary sector, is limited in this way, creating a system where members of the political and economic elite are not accountable for their actions before the law, but only in relation to norms of loyalty and obedience created by clientelistic structures.

Admission to clientelistic networks brings lucrative *economic benefits* to business people and individuals, such as state contracts, job positions, various licences and financial benefits, as well as *social benefits*, such as better status and access to public administration or public services (healthcare, education, etc.). Indeed, in both cases, preferential legal treatment is in question, which often turns into de facto impunity for law violations.⁵

4. Parallel normative order in Serbia

In the last part, we have explained the concepts of corruption and clientelism. Corruption is the abuse of a public position to achieve personal or political benefits. Grand corruption occurs in political institutions; high government and political officials take part in it, and it has an array of extremely adverse effects, from undermining institutions through increased inequality to declining trust. It is this grand or political corruption that can lead to state capture.

At the core of corruption are clientelistic networks within which political loyalty and various economic resources are exchanged. There are widely spread clientelistic networks in Serbia which include political and economic actors and ordinary people. Those networks are maintained on the obligation of loyalty – loyalty to the party, the team within a party and the leader. Loyal network members can expect preferential legal treatment, even immunity from legal liability. Clientelistic networks can achieve this because they control the economic sphere, state institutions, and the judicial system.

5 It may thus happen that evidences disappear in the case of traffic accident in which members of authority take part in (Živanović, 2019), state officials relativize serious crimes (KRIK, 2021), buildings are demolished in the centre of Belgrade without any legal liability or consequences and buildings are constructed illegally in the areas where construction is prohibited (Georgijev, 2019). This area of government impunity is neither thematic nor time limited, and we find examples in Serbia in both first and second decade after October the 5th (compare Zurnić, 2019; CINS, 2021).

In this chapter, we will show that clientelistic networks, as informal institutions, create norms and such norms form a parallel normative order. Systemic impunity for violations of law by elites can be legally and sociologically explained precisely based on the existence of a parallel normative order. Respecting such order and loyalty to structures found in its basis (political and clientelistic networks) represents the basis of *de facto* legal immunity enjoyed by members of the Serbian political and economic elite.

4.1. Validity of norms: from informality to parallelism

In contemporary Serbia, state-legal order successfully regulates and coordinates the activities of many citizens and entrepreneurs. Despite widespread informal practices, the everyday activities of ordinary people are limited by the rules of state law, and breaking the law brings the certainty of being sanctioned. Civil and political rights are protected; physical integrity and personal security are not jeopardised as is the case in countries of similar degree of development, private property is, for the most part, inviolable, there is essential protection from discrimination, and a right to a fair trial (Vuković, 2021). Laws and state institutions protect social and economic rights, albeit with unequal success, because socio-economic inequalities influence the exercising and protection of rights. On the other hand, the amount of individual political, social, cultural or economic capital determines access to justice before courts (Vuković and Mrakovčić, 2021) as well as access to public education (Baucal and Pavlović, 2009) or healthcare (UNICEF, 2020). Public policies are shaped on the same basis, such as tax, transportation or housing policies (Arandarenko, 2018; Kostić and Vuković, 2019SeConS and DCIG, 2019; Vuković, 2017). These shortcomings in protecting individual rights are systemic, have their historical background, and sometimes they are long-lasting. However, they still present shortcomings that do not make the entire civil and socio-economic rights system essentially dysfunctional.

The same state-legal order shows quite different effects when it comes to regulating the activities of the political and economic elite. From a legal point of view, citizens and members of the elite are equal. They have the same rights and obligations before the constitution and laws. In practice, they are distinguished by the chances to exercise their rights, which depend on their social status, and economic, social, and cultural capital. However, possessing some of these types of capital is not a key demarcation line between the political and economic elite and individuals and organisations that do not belong to this group.

The crucial demarcation line is involvement in clientelistic networks. Members of political and economic elites participate in various illegal corruptive actions without punishment, and the laws do not apply to them as they do to “common” citizens and companies. If the laws are not applicable, does it mean that social processes (primarily economic and political ones) occur in such an environment without any rules or do some other norms that govern behaviour come into play?

4.2. *Parallel normative order*

The stark difference between the position of the political and economic elite and ordinary citizens can be explained by the existence of parallel normative order that regulates the actions of the political and economic elite. This order consists of informal rules created and applied within a limited network of actors involved in informal institutions of clientelism and corruption. It creates normative expectations, i.e., imposes rules of the game to the actors participating in the exchange within these institutions, and has the power to sanction rule violators. Yet do they form a parallel normative order?

We have argued that the following is required for the existence of informal order: 1) existence of informal norms and informal institutions which form such order and shared expectations in terms of respecting those norms, which can take the form of formal or informal sanctions for disrespecting informal rules, (2) existence of stable relations generated based on such norms, i.e. norms and institutions effectively regulate the behaviour of actors participating in it – members of political and economic elite, and (3) norms which form the order are mutually connected so that their creation, change, validity or efficiency depends on other norms. Below we will consider the fulfilment of each of these criteria to determine the peculiarities of the relationship between informal normative order and state-legal order in Serbia.

(1) Research on clientelism and corruption confirms that we are dealing with informal norms and institutions, showing that individuals and companies learn through unofficial channels about their rights and obligations established by those rules. They learn about it from explicitly or tacitly communicated expectations about what they should do in exchange relations within clientelistic networks (Cvejić, ed., 2016). Despite the non-transparency of clientelistic networks, some of the rules applicable to their members are also well-known to the general public to such an extent that even ordinary people can relatively easily reconstruct them based on random encounters with actors from clientelistic networks or based on media reports about actions by members of the political and economic elite.

Breaking informal rules of clientelism and corruption entails disapproval, pressure, criticism and even relatively precisely defined *sanctions*.⁶ Just as compliance with informal rules protects the state-legal system, a kind of limited immunity for actors in informal institutions, violations of the rules of this social sphere imply the abolition of protection from the state-legal system. Those who dare to break the rules of the game within the informal system, for instance, becoming disloyal, greedy, threatening the patron's position, attracting too much attention from the police, or causing media damage, suffer the consequences within the informal order. One of the consequences is loss of support within informal networks and advantages gained based on it. Suppose the offence is

⁶ Sanctions in this paper mean the reaction of a part or the entire society to behaviour of its members, for whom such behaviour is approved or disapproved.

of a large scale or concerns the breaking of informal rules deemed particularly important within the order, such as the rule of loyalty. In that case, violators are excluded from informal order that gives them immunity from state-legal order. In other words, when someone's transgression threatens the basics of informal normative order, he is punished by being handed over to the state judicial system.⁷

State-legal order is also used to ensure observance of informal order norms or as a system of rewarding loyalty. For instance, politicians may threaten that contracts will not be extended or that a message not to cooperate with uncooperative actors will be sent to state companies and institutions (Stanojević, Gundogan and Babović, 2016: 234). In addition to direct coercion to join informal networks, there is 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 company.⁸

(2) Informal normative order is valid only in one social sphere, consisting primarily of members of the political and economic elite but also members of clientelistic networks with less social power. To that effect, norms of informal order effectively regulate the behaviour of actors involved in clientelistic networks – actors act in expected ways, predictably and relatively consistently, following the norms of the informal order, even though their behaviour often deviates from expectations established by state law. Although the order has limited validity – it regulates the conduct of *specific subjects* and social relations – it is open to new actors and rules that can become its integral part. Also, considering that a number of its actors are power holders, in conditions of non-democratic political culture (Pavlović 2021), norms of informal order are very often followed in political, media, economic and official circles consisting of actors who are not direct participants in clientelistic networks.

However, only by entering clientelistic exchange networks does one receive adequate protection from the action of state-legal order. The degree of protection is in direct proportion to the significance of actors in clientelistic structures – lower-positioned actors may be subjected to investigation and persecution, although they may, even then, have a particular level of political and factual protection. In contrast, for more powerful actors, this is far less likely. Skimming the media headlines in the last two decades strongly confirms this thesis. During that period, many scandals were revealed by independent investigative media, but there were very few judicial outcomes. There were people convicted of various offences, including corruption and trading in influence, but very few from the highest authority circles (EC, 2020: 25–29; TI, 2021: 28–34). By entering those limited circles of political and economic elites, one obtains an implicit or explicit licence to follow these rules, a licence that certainly carries immunity from legal norms.

7 For a recent case see Štetin Lakić, 2021.

8 Such type of pressure resembles the impact of political authority on justice system, identified in earlier studies of the judiciary (Vuković, 2020).

(3) Reconstruction of how informal institutions function *prima facie* testifies in support of the claim that informal norms do not constitute a simple set of rules but an extensive system where the validity of rules depends on the validity of other rules. Those rules regulate: (a) the status of members so that political and economic (but also media, judicial, etc.) actors became members of clientelistic networks either as clients or patrons, (b) behaviour of actors in mutual relations, public relations, and with other persons who are not involved in the clientelistic network, as well as (a) the exchange within networks so that public political and financial support is expected from the clients, and political protection and preferential treatment in the redistribution of resources and before the law is expected from patrons.

The norm linking other norms of the system is the norm of *loyalty*. Loyalty to the party and its management or loyalty to a “team” within the party ensures (1) redistributive gains, which are enabled by a clientelistic network, and (2) immunity from sanctions of the official legal system. The obligation of loyalty to the groups hierarchically subordinated to the management of the political party is based on authorisation to establish clientelistic and corruptive relations at lower levels. Breaking the norms of the informal order leads to suspension of protection from state-legal order, so the primary informal sanction for violating the informal rules is to turn over the “troublemakers” to state-legal order and its formal sanctioning mechanisms. Vertical mobility within the clientelistic network, especially its political part, depends partially on respecting norms of loyalty.

(4) Finally, the informal normative order, which we have identified in Serbia, is closely connected to state-legal order in a specific way. State law and its institutions are used (a) as an official, formal coercion mechanism to join clientelistic networks and (b) as a mechanism of sanctioning violations of that informal order norms. Persons who do not belong to clientelistic networks receive an invitation to be involved in informal structures. If they refuse, politicians use mechanisms of state-legal order: they send inspectors and police to check their business or manipulate with certificates and permits, delaying their issuance and, in such a way creating obstacles to acting and doing business. Actions of state institutions serve as a proxy to clearly communicate normative expectations that the actors of clientelistic networks have from those who are (still) not their members. Enhanced surveillance, administrative obstacles and police interventions are a clear message that the only way for a businessperson to conduct business is to informally pay the politicians and officials or to provide them with other services. Those members of the network who respect informal rules have a privileged status so that, for instance, the quality of their work or services they provide to state bodies is not officially controlled (Pešić and Milošević, 2021: 124), and can they do business without interference from inspections, while the state bodies “turn the blind eye”.

Corruption and clientelism as informal institutions produce effects contrary to the effects of formal state law rules. Such competitive informal

institutions exist in societies where laws are applied sporadically, partially, or they are not applied at all. Since competitive informal institutions are dominant in the informal normative order we have just outlined, the relation between this order and the state-legal order can be characterised as partially combative and *partially competitive normative pluralism*. As a reminder, combative normative pluralism means that informal normative order strives to actively undermine state-legal order. In contrast, in competitive normative pluralism, the supreme authority of state-legal order is not called into question since non-state normative orders do not strive to undermine the state authority completely. To the extent that norms of the described informal order enable political and economic elites' behaviours, which are contrary to behaviours required by state-legal order, thus producing opposite effects to those that state-legal order should produce and effectively invalidating its norms, we may speak of the combative relations.

However, taking into account that in terms of sanctioning behaviours that comply with the informal norms, informal order relies to a significant extent on the functioning of the state-legal order and the authority of the state law is (mis)used for the purpose of ensuring the efficient functioning of informal institutions. To that effect, we may speak of *parasitisation* as a specific relation between the described informal order in Serbia and the official legal order and *parasitic normative pluralism* as an addition to the presented typologies of normative orders and institutions.

Conclusion

In today's Serbia, informal institutions and informal norms are connected in a *parallel normative order, which is predominantly valid for the political elite and segments of the economic elite related to the holders of state authority*. The essential features of this order are as follows: (1) It is made up of informal rules of behaviour arising from informal institutions, such as clientelism and corruption. (2) The relations between social and political powers at its core also empower informal institutions and the system of informal rules. (3) Norms of informal order provide practical and recognisable instructions for behaviour and impose sanctions for their non-compliance. (4) Parallel normative system suspends state law for political and economic actors who respect informal rules and activates official institutions and procedures for actors who do not respect informal rules. (5) At the same time, the parallel normative order uses mechanisms, rules, and resources of state-legal normative order, especially in sanctioning severe violations of those informal rules that are regarded essential. To the extent to which it efficiently ensures behaviour in accordance with the informal rules, informal normative order makes the state-legal order ineffective and "captured" in a specific limited domain.

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