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NARRATIVE OF THE FIGHT AGAINST

**ORGANISED CRIME**

IN THE FUNCTION OF **CAPTURING THE STATE**

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# The Lie Detector and the Stories about It: Narrative of the Fight against Organised Crime in the Function of Capturing the State

**Marija Pavlović, Miloš Jovanović, Bojan Elek**

The so-called *war on mafia*<sup>1</sup> officially began on 19 October 2020, when the President of Serbia used his Instagram profile to announce the final showdown between the state and organised crime. Set forth after a series of unsolved murders that had taken place on the streets of Serbian cities - characterised by experts mostly as mafia-style terminations - it initially looked like a marketing move that preceded the constitution of a new Government. Such understanding was supported by the fact that this was not the first time that government officials declared war on organised criminal groups. Former Minister of the Interior [MoI] declared a similar war almost four years earlier, under similar circumstances. Namely, just one day after the murder of 'Partizan' fan Aleksandar Stanković (a.k.a. Sale the Mute) in October 2016, the Minister of Interior announced:

“We are declaring war on this type of mafia, and we are starting it without hesitation. Our security structures will be fighting a difficult fight, which we must win for the sake of citizens, for the sake of peace and security on our streets, and for the sake of the final showdown with all the criminals who think they can shoot our citizens in the streets without being punished for it, and that they can fight amongst themselves because of their own drug-related, criminal or any other reasons”.<sup>2</sup>

Judging by the dark balance in the “Black Book”, i.e. the Radio Free Europe’s and Krik Portal’s joint database of murders with mafia characteristics, law enforcement agencies of the Republic of Serbia had, in fact, lost that war.<sup>3</sup> However, after the latest declaration of war on the mafia of October last year, the citizens of Serbia could have thought that, this time, the state might take a more serious approach to solving the problem. In the months that followed, we have witnessed the arrests of members of the criminal group of Veljko Belivuk, extensive investigations, indictments, as well as personnel changes within the police under the slogan of cleansing the force from bad police officers associated with this criminal group.<sup>4</sup> These events were accompanied by a very intensive media campaign aimed at convincing citizens of Serbia that the war against the mafia was being waged on all fronts and that the state was winning, all in line with the message of the President of the Republic who had declared the war: “The state will win over mafia!”<sup>5</sup> The fight against organised crime found itself among the priorities of the new Government, in the exposé presented just a few days after the President’s announcement, where the words of the newly appointed Prime Minister sounded like an echo of his words: “I have no dilemma; in the fight between state and mafia – the state will win”.<sup>6</sup>

One hero particularly stood out in this war. It was the lie detector, the omnipotent polygraph, used extensively in the previous months as the supreme arbiter of truth. Instead of lengthy court proceedings, complex investigations and obtaining evidence acceptable to the court, the polygraph was used by the highest state officials as a simple tool to directly prove to the citizens whether someone was telling the truth or lying, and to unmistakably determine guilt or innocence. Trials were replaced by media performances involving debates on who passed the lie detector test and who refused to take it, while politicians kept offering to be subjected to it or calling each other out for not doing the same thing, all in the name of the alleged fight against organised crime.

The objective of this report is to analyse the narrative of the fight against organised crime, i.e. the story the authorities are offering the public concerning this topic, for the purpose of establishing how it is used to capture the state. More precisely, the analysis attempts to explain how the polygraph was abused during the declared war on mafia to suspend judicial institutions, 'cleanse' some in the eyes of the public or criminalise others outside the statutory criminal procedure, and to identify the consequences of this approach to fighting organised crime. The initial analytical approach was based on the Narrative Policy Framework (NPF).<sup>7</sup> The main feature of this approach is the understanding of public policies - in this case the fight against organised crime - as a special form of narration, that is, telling a story that is very effective in mobilising the public and shaping the views of the audience. As always, the narrative of the fight against organised crime contains key elements that are important for understanding the story: the context, the main characters divided into heroes and villains, the plot, and the moral of the story. All these elements will be briefly analysed below, followed by the analysis of the use of the polygraph as a *deus ex machina* which, as in the ancient drama, appears out of nowhere and resolves a complicated situation.

## Once upon a time, there was a country

The context of the story is important for understanding the place and time of the fight between good and evil, which is also one of the main starting points of the narrative about the fight against organised crime. The war against the mafia is taking place, at least judging by the statements of public office holders, in an idyllic country whose citizens have been leading serene and carefree lives. Then, mobsters appeared from somewhere and spoiled everything.

“While we were fighting for a better standard of living, while we were fighting for Kosovo and Metohija, for a better health system that would allow us provide good medical treatment, some people got the idea that the most profitable thing for them was to become mobsters, to kill people, to kidnap our citizens, to sow fear [...] We will defeat them, I guarantee this regardless of personal, political and any other consequences!”<sup>8</sup>

These were the words of the President of Serbia in the above mentioned Instagram address announcing the war against the mafia. The narrative is presented in the already well-known, Manichean style, where absolute good opposes absolute evil. The scene

of the story, on the other hand, is a Serbia where the government should to be thanked for having spent years fighting for territorial integrity and for the citizens' ability to enjoy well-being and good health care. On the other side there are these unidentified mobsters, who are also the main negative characters, i.e. the villains in the story about the war against the mafia. After the address of the President, the same narrative was adopted by other officials. It also appeared in the exposé of the new Government' Prime Minister-designate, which was presented a few days after the President's address.

“All the kilometres of new highways, new factories, new jobs, new hospitals, schools, and all the economic successes we have achieved in previous years will not be worth much if we do not deal with the mobsters who came to think that they were stronger than the institutions”.<sup>9</sup>

Here, too, it was being made clear that in Serbia, which is progressing and achieving success in all fields, the main problem are the mobsters who threaten to annul it all.<sup>10</sup> In addition to confirming who the main villains are, the speech also acquainted the public with main character of the story:

“Organised criminal groups are very dangerous and skilled in manipulating, spreading false news and concealing their true intentions. We expect that in the coming days and weeks criminal organisations will intensify their media activities; we expect that they will continue to criminalise and dehumanise President Aleksandar Vučić as the man who has declared war on the mafia and is a symbol of the fight against them”.<sup>11</sup>

This presentation of the President of Serbia as the main participant in the war against the mafia was later taken over by other ministers and state officials, whose numerous statements do not need to be listed here. To illustrate, it is sufficient to say that the President was mentioned in the speeches of the current Minister of the Interior:

“I can proudly say that President Aleksandar Vučić insists, at both the Ministry of the Interior and the BIA [*Security and Intelligence Agency*], that no one be protected, that we can and must do our job in accordance with the law, and that no one is so powerful as to be untouchable or that his violation of the law can be forgiven, no one at all [...] Now, after they have seen how the fight against organised crime that has been ordered, initiated and demanded by President Aleksandar Vučić is carried out, I no longer hear them laughing [...] When you have a president and a supreme commander like Aleksandar Vučić, then it is not very difficult to do all the things that we do”.<sup>12</sup>

This served to achieve a double effect. On the one hand, war rhetoric communicates the feeling that the problem of organised crime is extremely dangerous, thus requiring extraordinary measures, while on the other it gives the President the authority to implement them. It was particularly interesting to hear, in the same sentence, that “we are doing our job in accordance with the law” but that all this was in fact a consequence

of the will of the president who “has insisted, at both the MoI and the BIA”. This served to normalise the abuse of power and acting outside constitutional restrictions.

Here, we come to the plot in the narrative about the good guys’ fight against the mafia, which was quite obvious in the exposé of the Prime Minister-designate, and was later repeated in the statements of other officials:

“We expect a wide range of accusations: from the alleged betrayal of national interests to the alleged threat to democracy and human rights. We expect to hear about new invented scandals whose aim is to undermine the trust of citizens in the highest holders of state offices and the state itself”.<sup>13</sup>

So, in addition to working against the interests of the citizens of Serbia, which is indisputable, organised crime also has its own political agenda, aimed at discrediting the government. Organised criminal groups are presented as manipulative actors, skilled in public relations and capable of waging a media war. In this way, the connections of people in power with organised crime, which have been repeatedly confirmed by investigative journalists, are pre-emptively neutralised and attributed to the activities of the criminal groups themselves. And the most important lesson on what awaits the villains from this story is given by the President, who - seemingly without hesitation, and taking on the role of the main hero in the fight against the mafia – says the following:

“Well, now we will see if you are stronger than the state. If you are criminals, you are up against me. As the president of the state, I have the right to disperse the whole gang directly, with a bat to the head”.<sup>14</sup>

In addition to clearly saying what fate awaits criminal structures, with this statement the President in fact suspended the division of power, placing it all in his own hands. It is especially dangerous to identify the state with the image of the president, because such a narrative erases the difference between these two concepts, and the attack on the state is equated with the attack on the president. In addition, the president himself declares that he has the right to engage in the fight against organised crime, outside the Constitution and the powers assigned to him by law. The mechanism of capturing the state in two steps is clearly obvious: the first step is the personalisation of the fight against organised crime in the form of a president who usurps the authority to deal with this issue, while in the second step he uses that power, handed over to him, to suspend institutions. Personalisation of the fight against organised crime in the person of president, therefore, creates preconditions for interfering in the work of the government and general institutions responsible for the fight against organised crime. One such example is the appointment of Veselin Milić, President’s former advisor, as head of the Belgrade Police Administration.

In what way and by what methods will the state oppose the activity of organised criminal groups? According to the Prime Minister-designate, later Prime Minister, only the truth can put an end to false news.

“We will oppose the media war waged by organised crime groups against the Republic of Serbia with the truth, by providing timely information to the citizens of Serbia and exposing all the lies and true intentions of those who spread those lies”.<sup>15</sup>

However, in the world of post-truth and false news, it would be great if there were an instrument that could show citizens, in a simple, easy and likable way, what real truth is. Because, in the fight against organised crime, which represents an imminent danger and is directly trying to undermine the state, establishing the truth in court is too slow a process. And, if such an instrument does not exist, then one can at least be presented as such to the public.

## Polygraph for you, polygraph for me

The use of lie detectors, or polygraphs, is widespread in the public life of Serbia, although in domestic court practice the examination of defendants and witnesses in criminal proceedings using a polygraph is not accepted as valid evidence.<sup>16</sup> Despite the fact that the results of the polygraph examination are not final and can be interpreted arbitrarily depending on who interprets them, or perhaps precisely because of it, the lie detector has been promoted into the main hero of the fight against organised crime. This arbitrariness in interpreting the results of polygraph examinations is also the main reason for its wide (mis)use, because it serves to move the truth from the domain of technical showing what is true and what is a lie using a reliable instrument, into the domain of arbitrary decision-making of the interpreter.

One of the earliest examples of such use of a polygraph occurred in 2014, when the new Government, headed by the current President of the Republic, had just been formed. There was a major purge in the police, during which five police chiefs were dismissed over allegations of connections with organised criminal groups.<sup>17</sup> For days, the media campaigned against police generals, including the then head of the Criminal Police Directorate, described by (in the meantime) charged and convicted drug dealer Darko Šarić as the corrupt “General Papaya” who had contact with criminal structures. Although the head of the Directorate voluntarily underwent a polygraph examination, and passed, the day after the polygraph the then Prime Minister of Serbia held a press conference at which he said that a decision had been made to dismiss five chiefs, including the head of the Directorate, without providing any reasons for such a decision.

“The results of the polygraph test indicate that, concerning relevant issues, there are no psycho-physiological reactions that occur when a person is lying” said the Minister of the Interior, commenting on this case. However, he did not state the reasons for the dismissal of the Head of the Directorate despite the test results.<sup>18</sup> As a curiosity, it should be noted that Darko Šarić also passed the polygraph, at the same time, although his claims were completely contrary to those of the head of the Directorate”.

This unreliability of the polygraph is precisely the reason why it is used as just one of the police measures, most often when verifying allegations contained in the criminal report, and much less often in the investigation phase. Polygraph testing requires voluntary consent, and a number of preconditions need to be met in order for it to be conducted.<sup>19</sup> The polygraph is essentially a psychological examination. It measures the physiological reactions of the human body, registering symptoms such as changes in breathing, pulse, blood pressure and perspiration, all under the assumption that the examined subject will experience excitement that can be registered when someone is lying. There are many factors that can affect its accuracy - from the intelligence of the person tested, to the use of tranquilisers and the skills of the examiner. It is therefore not surprising that “from the technical and methodological point of view, this technique is not 100% perfect and cannot in fact detect false statements. It is difficult to believe that there will ever be a device that will indicate with 100% certainty whether a person is telling the truth or not”.<sup>20</sup>

### How to conduct a polygraph examination

Properly applied, a polygraph test enables quick elimination of innocent persons from the circle of suspects and makes it easier to find traces and objects.<sup>39</sup> The Law on Police prescribes who, and when, can be subjected to a polygraph examination, which requires voluntary agreement and written consent.<sup>40</sup> Before applying it, it is necessary to acquaint the subject with how the polygraph actually works. Anyone is allowed to request the interruption of a polygraph examination at any time. The subject is connected to a device that accurately registers and measures changes in physiological reactions. S/he is instructed to answer the questions briefly, using replies such as “yes” or “no”, while the questions themselves are prepared to suit the specificities of the crime at hand and the personality of the subject. The skill of the examiner and the choice of method are of great importance for the success of testing, while the most difficult task is a good interpretation of the results, which necessarily requires an experienced examiner.<sup>41</sup> The following persons may not be subjected to a polygraph examination: a person under the influence of alcohol, narcotics or other psychoactive substances; a person who has severe heart disease or respiratory problems; a person who is under extreme stress; a person under the influence of tranquilisers; a person who shows visible signs of mental illness, temporary mental disorder or is in another medical condition that makes him/her impossible to be examined; a person who is in intense physical pain; a pregnant woman or a woman who has recently given birth; and a person under the age of 14.<sup>42</sup>

However, despite its unreliability and the fact that it “falls under the category of illicit evidence – or more precisely, the category of means that are contrary to the legal order”,<sup>21</sup> the lie detector is presented within the narrative of the fight against organised crime as the supreme arbiter of truth. As if it were some miraculous artefact from folk tales, the stone of wisdom, or the poisonous apple, the heroes of this story of the fight against organised crime attribute to the polygraph almost magical powers.

Thus, the President of Serbia, speaking about the Jovanjica case (where members of the security services were suspected of participating in the production of marijuana at a plantation near Belgrade), said the following: “You cannot cheat a machine. Unless you take too many sedatives, you cannot cheat the machine with your reactions and your emotions”.<sup>22</sup> In his earlier statement, the President made yet another incorrect



statement: "I accept the polygraph; it is accepted by most of the services in the world (...) Polygraph cannot be rigged, and that is why I speak about this and other cases with certainty".<sup>23</sup> He simultaneously acknowledges that the polygraph has no value as evidence, but that it is still reliable for establishing the truth: "We will see which, of the things they told us, were the truth and which were not, during a real polygraph examination and with real polygraph questions, although that is not sufficient proof for anything".<sup>24</sup>

The main reason for the use of polygraph in the government's narrative of the war against the mafia is actually the arbitrariness of the interrogation process itself. Thus, in the case of Jovanjica, according to the first-accused Koluvijska, police officers who conducted the investigation were allegedly trying to "frame" the President's brother for the entire case by proposing that he provide false testimony.<sup>25</sup> The fact that the two police officers passed the polygraph test twice did not prevent their criminalisation in pro-government tabloids.<sup>26</sup> On the other hand, after the murder of Oliver Ivanović in January 2018, Milan Radoičić, against whom a warrant had been issued in Kosovo at the time on suspicion that he was connected to the murder, did take the polygraph.<sup>27</sup> He passed it, and the President personally stood up for him, claiming that the test freed him of any suspicions regarding his involvement in that case.<sup>28</sup>

## If you agree - you will be sorry; if you refuse - you will also be sorry

The 'tabloidisation' of the media and sensationalist reporting have placed the lie detector test on such a pedestal that, despite the fact that the law requires the consent of the subject, mere refusal to accept the polygraph examination is deemed in itself evidence in support of the claim that the person is guilty of whatever suspicion. One example of this is the refusal of the president of the Football Association of Serbia to undergo a polygraph examination in connection with the claims that he participated in the planning of the assassination of the President of the Republic. The President spoke about this case as follows:

“I do not wish to make any statements regarding this, except to say that I don't understand why a man I trusted refused a polygraph, especially because he was told that he would be free to go after just one test. Even though the key question was whether he participated in the planning of my liquidation, he refused it. That's very strange. I can't believe it. You can also see from my mood how it disturbed me and how sad I am".<sup>29</sup>

Minister of the Interior also provided a statement regarding the same case: "The police have significant doubts when it comes to his answers, and he has refused to be subjected to a lie detector. It is not accepted as court evidence, but it unmistakably points to the truth".<sup>30</sup> Therefore, with these statements, the Minister criminalised the person in question, despite the fact that the law provides for a possibility of not agreeing to a polygraph examination. In addition, the inaccurate claim about the infallibility of the polygraph was made yet again, fuelling suspicions that non-compliance is almost the same as admitting one's guilt. A particularly dangerous and incorrect claim was made

by the president of the Association of Judges and Prosecutors of Serbia regarding the refusal to undergo a polygraph examination. In a television program, he stated that “whoever passes the polygraph frees himself from criminal responsibility, which does not apply to those who refuse to take it”.<sup>31</sup>

It is interesting to note that pro-government tabloids have started using a similar pattern in their reporting, and that they are now, between the lines, putting forward the thesis that refusal of a polygraph examination is a reason to suspect the innocence of persons charged with certain criminal acts. If we pay attention to the language used in the paragraph below, we can see words such as *avoidance, justification and excuses*, which further fuel the suspicion that the above persons are hiding something:

“Ajfonka [ed: Tijana IPhone] immediately agreed to the polygraph, unlike Slaviša Kokeza, Dijana Hrkalović and Vladimir Vuletić, who did everything to avoid it one way or another! Kokeza justified himself by saying that the president of the High Court in Belgrade, Aleksandar Stepanović, advised him not to go on the polygraph, while Hrkalović and Vuletić avoided it by saying that they had health problems”.<sup>32</sup>

The same tactic is used also to incriminate people who, allegedly due to health problems, refuse to undergo a polygraph examination. The following conversation, between a journalist and the President of Serbia, is indicative of an attempt to let the citizens know, between the lines, that stating any reason for refusing a polygraph almost means admitting guilt. Although it is not directly mentioned anywhere, it is left to the citizens to draw such a conclusion:

“ - Journalist: “They are refusing the polygraph again? What is the problem with it?”

- President: “Well, nothing, they have no problem going anywhere except to take a polygraph test. They are not sick when appearing on all possible TV stations. These medical documents are not applicable when they go and tell all kinds of stories on TV? They only apply when you need to go for a polygraph? That’s how it is? Well then keep showing the medical findings. Okay. I think that people understand all this very well”.<sup>33</sup>

On the other side of the refusal to take a lie detector test, public office holders are often voluntarily offering to be subjected to this type of testing. Although the polygraph is questionable as a valid method for establishing guilt, it is used as an argument that a person who is ready to come face to face with a polygraph has nothing to hide and is telling the truth. There is a long list of office holders who offered to be subjected to the polygraph. This text mentions just a few of them.

The former Minister of the Interior expressed his readiness to undergo a polygraph test to confirm that he did not put pressure on police officers in the case of Jovanjica.<sup>34</sup> Speaking about the Belivuk case, Director of the Police also voluntarily offered to take a lie detector test: “If there is anyone who believes that I have anything to do with Belivuk and his gang, I am ready to take the polygraph”.<sup>35</sup> The President of Serbia has offered several times to do the same in connection with various allegations, including alleged links between members of his family and the Jovanjica case:

“Next week, whenever you want. I’m going to go take the polygraph *now*. I will answer all the questions that exist regarding Jovanjica - did I call this person, did I hear from the other person, did I meet with the third person, did I order anyone to do anything, did I take one dinar, five dinars, these drugs, the other drugs, I will answer all the questions”.<sup>36</sup>

The double-edged sword of the polygraph is another thing that can be seen very clearly from the President’s rhetoric; namely, consent to it guarantees innocence in advance, while refusal for any reason casts doubt: “I seem to be the only fool who has agreed to take the polygraph. Not like these other people - everyone wants to take it, but when the time comes, they refuse. Vuletić talked all day about taking the polygraph, and then, when he was supposed to take it - he refused. So did Ms. Hrkalović”.<sup>37</sup>

## Does it even matter who is guilty?

The analysis presented above briefly presents the way in which the narrative of the fight against organised crime is used for what is called state capture. In other words, it shows how the use of polygraph and its abuse by public officials makes the work of judicial institutions meaningless and violates the presumption of innocence, but also misleads the public into thinking that the declared war on mafia is producing results.

To understand this problem, it is important to also understand that to personify the fight against the mafia in the president of Serbia and leave room for the application of broad powers outside of those that are prescribed by law are key factors that lead to the capture of the state. Although there are many voices that oppose such abuse of power, they are much less frequently heard. Such is this voice of the representative of the Association of Prosecutors and Deputy Prosecutors of Serbia:

“The public has become desensitised to stories about the polygraph. We know that the polygraph cannot be used as evidence; we all know that any claim can be verified only in court, and not using a machine that detects lies or emotions”.<sup>38</sup>

Instead of establishing criminal responsibility before the independent judicial authorities and using the prescribed procedure, those in power have introduced instant ‘martial law’ based on the results of polygraph tests. Media are now used to bypass the institutions. “Evidence” is presented directly to the citizens via media appearances and in newspaper columns. The arbitrariness of the process of establishing the “truth” with the help of a lie detector leaves a wide space in which to confront those who think differently or professionals within law enforcement agencies, potentially in favour of the politicians who, according to investigative journalists, have ties to organised criminal groups.

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